INQUIRY INTO OVERCOMING INDIGENOUS DISADVANTAGE

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INQUIRY INTO OVERCOMING INDIGENOUS DISADVANTAGE

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Submitted by

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Executive Summary

This submission provides recommendations for improvements to NSW

services to overcome Indigenous disadvantage and close the large life

expectancy gap. These recommendations are mainly based on research

performed by two of the authors of this paper, Sue Green and Dr Eileen

Baldry and their peers. This research was largely focused on human

services, housing and incarceration and encompasses both analysis of the

issues and evidence-based recommendations to improve services.

Despite many previous reports outlining past policy failures and the

consequent current Indigenous disadvantage, current policy continues to

make the same mistakes. The federal intervention in the Northern Territory is

a prime example of what not to do. The way forward in closing the gap is to

strengthen Indigenous communities, not weaken them as this policy does.

Part of the problem is that Australian human services and social work are

dominated by Euro-Western theories and practices and consequently have

poor records in Indigenous outcomes. This submission proposes commonly

agreed elements for an Indigenous social framework. In addition, several

vicious cycles are in motion and underpin the life expectancy gap. One of

these is the unrelenting criminalisation of and systemic discrimination against Indigenous peoples in, and lack of appropriate support through, the NSW criminal justice and prison systems. This compounds Indigenous disadvantage in NSW. A government framework for social, agency and family support is needed to avoid the cycle of incarceration. Another vicious cycle is that of homelessness and disadvantage. Many suggestions to improve support for the homelessness and stop the cycle are attached in the findings from a related research project. Reference is also made to mental health problems facing Indigenous Australians and the scarcity of policy and resources to address the issue. International research supports national findings that sovereignty matters. 'When Native nations make their own decisions about what development approaches to take, they consistently out-perform external decision makers…' on a wide range of policy areas (Harvard University 2003-2004). A Commonwealth analysis of 'things that work' supports this view by including the following in their list of 'success factors': 'a bottom-up rather than top-down approach' (Commonwealth Government of Australia 2007, p.11).

There is no mystery to overcoming Indigenous disadvantage. The answers have been well-documented. With a booming economy, Australia, and NSW in particular has an exceptional opportunity to make this a reality. NSW can provide the power, respect and resources to its Indigenous communities to close the gap.

Contents

Introduction

Despite Australia's thriving economic and social indicators, Indigenous Australians have a life expectancy 17 years less than other Australians. Oxfam Australia claims that 'it is inconceivable that a country as wealthy as Australia cannot solve a health crisis affecting less then three per cent of its population' (Oxfam Australia 2007). The authors of this submission concur and therefore welcome this Inquiry into Overcoming Indigenous Disadvantage.

This submission provides recommendations for NSW services to 'close the gap'. This will link mainly to items 1(a) and 1(b) in the terms of reference for this Inquiry with particular focus on 1(a) and 1(b)(v) and (vi). Items 1(c), (d) and (e) will be mentioned in this paper. Research by the authors of this paper has not extended to item 1(f) so that will not be explored here. The core recommendations provided in this report are not new. They are consistent with best practice in the relevant sectors both internationally, nationally and locally. Australia and NSW have the capacity and knowledge to overcome Indigenous disadvantage. In fact, a Commonwealth report stated that:

> the level of Aboriginal ill health will only be reduced if there are dramatic improvements in the physical environment, if there is maximum participation by Aboriginals in all stages of the planning and delivery of health care, and if Aboriginals, like all Australians, are given the opportunity to choose the type of health care they consider best suits their needs (Parliament of Australia 1979).

Nearly thirty years later this submission echoes these recommendations. Not only does the knowledge already exist, so too do the resources to close the gap. The missing component has been political will. On 13 September 2007, 144 states voted in favour of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the General Assembly (Office of the UN High Commissioner for Human Rights 2007). Australia was one of only four states that voted against this. Although such conventions are national matters, NSW can state its support for this declaration in the strongest

possible terms. The authors are hopeful also that the recent change of federal

leadership will herald a change in Australian Indigenous policy for the better.

Background

> We use Indigenous Australians…to refer to all peoples who lived in Australia prior to British occupation and their descendents. These include the many different clans living on the Australian Mainland, the Torres Strait Islands and Tasmania. Indigenous Australians are not, and never have been a homogenous group. Although we refer to Indigenous Australians as shorthand we do not intend to imply they have the same needs or experiences (Baldry and Green 2003, p.55).

Current Indigenous disadvantage has arisen from over two hundred years of policy

failure (Baldry & Green 2003, p.54). In addition to these policy flaws, the lengthy

duration of these failed policies, spanning many generations, has further compounded

the devastating consequences for Indigenous Australians. Many existing reports

articulate the impacts and provide strong, evidence-based recommendations for future

policy (Commonwealth Government of Australia 2007; Human Rights and Equal

Opportunity Commission 2007; Secretariat of National Aboriginal and Islander Child

Care 2007). Rather than repeat these details, this paper highlights key points that are

critical for NSW service delivery in overcoming Indigenous disadvantage. Learning from

past mistakes is necessary. As Green states in a more recent paper current policy is

reinforcing this disadvantage instead of tackling it (Green 2006, p.130). To overcome

Indigenous disadvantage, the impacts of past failures must be addressed and these

failures avoided in future.

Human services

An effective Indigenous social work framework 'is in its infancy in Australia'

(Green & Baldry 2007, p.2). Instead, Australian human services and social work are

dominated by Euro-Western theories and are failing to achieve the desired outcomes in

Indigenous communities (Wilson 1995 and Gilbert 2001 cited by Green & Baldry 2007,

p.3). Green and Baldry (2007, p.3) provide some recommendations below for an

Indigenous framework based on national and international work and 'debate and discussions amongst Indigenous social workers'.

First, Green and Baldry outline the potential to apply an Indigenous interpretation to 'some of the fundamental principles of western critical social work' (Green & Baldry 2007, p.19). 'These…include an Indigenous interpretation of social justice, emancipation, human rights, empowerment, self-determination and respect' (Green & Baldry 2007, p.19). Despite several of these principles existing in the current Australian social work framework, they are not encountered by many Indigenous Australians in their interactions with human services. To overcome disadvantage, these approaches must become reality not just statements' (Green & Baldry 2007, p.10).

Second, Green and Baldry highlight some crucial elements to Indigenous world views that are lacking in the current Australian social work framework. Some of these elements include: 'working towards the de-colonisation of Indigenous and non-Indigenous social workers; and the acceptance and inclusion of Indigenous views including, but not limited to, Indigenous Australians' understandings of land and family and their importance in social relations and well-being' (Green & Baldry 2007, p.19). The process of de-colonisation is described as "'a throwing off of the colonial mentality' and where there is a process of recognition of past and present cultural, community and spiritual strengths independent from and in spite of the colonial oppression" (Watson 1994, p.96 cited by Green & Baldry 2007, p.14; Green & Baldry 2007, p.14). One relevant suggestion here would be to stop 'imposing armies of military, police and social and community workers' on Indigenous communities. Instead, it is crucial to see and build on the 'strength and capacity' that already exists within these communities (Green & Baldry 2007, p.16).

By continuing to rely on a Euro-Western approach to social work, the authors suggest it will be impossible to overcome Indigenous disadvantage. While the authors acknowledge there is no single Indigenous view, it is clear from their research that the elements outlined above could provide a commonly agreed framework for the future of effective Australian Indigenous social work.

Education and training for all forms of human service provision needs to more effectively prepare the human service workforce for the design and delivery of services to address Indigenous disadvantage and help in the building of healthy and resilient Indigenous communities. In its submission to the Productivity Commission's Study in Pressures Facing the Health Workforce, (2005) MHCC, Fisher and Freeman note that deep engagement with Indigenous communities is required in vocational education and training at all levels. In particular they recommend:

- Effective consultation about the workforce development requirements necessary to support Indigenous social development.

- Indigenous involvement in the workforce development for the human services – including the planning, design and delivery of vocational education and training.

- Specific training and support initiatives to build an Indigenous workforce equipped to plan and provide services to Indigenous communities.

- Policy and resourcing to support the development of holistic and culturally sensitive approaches to human service design.

Urban human services

Research reveals that several changes could improve urban human services for Indigenous peoples. As Sydney's Indigenous population represents approximately one

quarter of the total NSW Indigenous population, these research findings are relevant to

overcoming Indigenous disadvantage in NSW (Australian Bureau of Statistics 2002

cited by Baldry et al 2006a, p.364). The main suggestions for improvement from

Indigenous participants in recently published research were as follows:

- Managers, policy-makers and ministers should talk genuinely with Koori [Indigenous term for Indigenous peoples from South East Australia] organisations.

- Staff members should have appropriate skills to work with Aboriginal clients

- A summary of departmental policies in plain English should be available; clear explanations need to be made regarding what is wrong when a form is incorrect.

- Information should be shared among and between government services and non-governmental organisations (NGOs) in order to ensure holistic responses (Baldry et al 2006a, p.372).

Further suggestions arising from the same research are as follows:

- Expand the number of Aboriginal liaison staff to meet demand while respecting the right of those who do not wish to use this service. '…Aboriginal liaison staff members were praised as essential' (Baldry et al 2006a, p.368);

- Ensure Aboriginal services are accessible to Aboriginal peoples in Sydney. Poverty, difficulty travelling with children and long distances required to travel to Aboriginal services are just three of the reported reasons for difficulty in accessing services by Sydney-based Aboriginal peoples (Baldry et al 2006a, p.371);

- Provide user-friendly complaints system to encourage continuous improvement of human service delivery.

To complement and strengthen these recommendations, it will also be important to:

- Ensure genuine engagement with Indigenous communities in the design and delivery of services;

- Provide training for Indigenous peoples on how to engage effectively in the process above;

- Increase the number of Indigenous professional staff and provide genuine career advancement for them; and

- Hold those responsible for service delivery to key performance indicators relating to the desired Indigenous outcomes.

Ultimately, the Indigenous participants in this research 'wanted their lives and interactions in society, including with human-service departments, to be seen in positive and egalitarian terms' (Baldry et al 2006a, p.373). The changes outlined above to urban human services have the potential to assist in overcoming Indigenous disadvantage.

Mental Illness

Concepts of mental health and mental illness are highly culturally specific. Aboriginal and Torres Strait Islander understandings of mental health are deeply embedded in a holistic understanding of health involving the 'social, emotional, and cultural well-being of the whole community.' (National Aboriginal Health Strategy Working Party 1989).

There are numerous reports outlining very high levels of mental illness and mental distress amongst Indigenous Australians. These need to be understood in the context of extreme distress caused by disproportionately high levels of numerous negative factors including severe and chronic health problems, reduced life expectancy, high levels of incarceration, substance misuse, homelessness, unemployment and poverty, excessive attention from police, Department of Community Services and other regulatory bodies combined with, cultural dislocation, discrimination at all levels of

society and a history of racist and sometimes genocidal government policy enacted

since invasion.

Currently appropriate service provision for mental health issues affecting

Indigenous Australians is scarce. It is significantly under-resourced, and service

provision is patchy. Nonetheless there are some excellent examples of effective

services, clearly addressing identified needs, with a strong level of Indigenous control

and engagement in their design and delivery. Examples of these can be seen in the

NSW Aboriginal Health Awards (Health NSW). However, these are the exceptions, and

often delivered in pilot programs. Unfortunately, most of the limited resources allocated

to addressing Indigenous mental health are going into approaches with little support

from Indigenous communities, such as the recent interventions in the Northern Territory

and the Shared Responsibility Agreements aimed at addressing behaviour in

Indigenous communities and the de-facto use of the criminal justice system as a mental

health service provider.

Incarceration and the criminal justice system

Systemic discrimination and lack of appropriate support throughout the criminal

justice and prison systems is compounding Indigenous disadvantage in NSW.

Indigenous peoples are caught up in a cycle of criminalisation resulting from their

disadvantage (Beyond Bars 2005). High and increasing rates of incarceration are

further traumatic blows to Indigenous communities by fuelling family breakdowns,

increasing poverty and institutionalisation and further socially excluding those caught in

the criminal justice system. It is of serious concern then that Indigenous prisoner

populations are on the rise.

Women

Overcoming disadvantage for Indigenous women requires special attention.

Research shows that women ex-prisoners suffer worse social and economic

disadvantage than men (Baldry & McCausland 2007). Aboriginal women are now

'approximately 30% of the NSW women's prison population' and are the 'most rapidly

growing group of prisoners in Australia' (Baldry & McCausland 2007). The majority of

these women face complex problems including but not limited to:

- Dependent children and extreme difficulty reuniting with them
- Very poor housing options if any
- A history of sexual and physical abuse and few options but to return to abusive situations
- Alcohol/drug problems and few culturally appropriate rehabilitative services to …go to
- Very poor physical and mental health (Baldry & McCausland 2007).

In addition, Aboriginal women face systemic discrimination throughout the NSW criminal

justice and prison systems (Beyond Bars 2005). A paper, written by the Beyond Bars

Alliance, outlining details of this discrimination is included in this submission in Appendix

2. Key points are summarised here.

Multiple forms of discrimination in these systems converge to compound Indigenous

women's disadvantage. First 'the criminalisation of Aboriginal women is strongly linked

to the socio-economic disadvantages suffered acutely by women' (Beyond Bars 2005).

> In the case of the NSW criminal justice system, women are subject to such systemic discrimination on the basis of their sex, race and disability. As gatekeepers to and frontline workers of the criminal justice system, the NSW Police Department contributes to this discriminatory process through the criminalization of women, and particularly poor, marginalised, and racialised women (Beyond Bars 2005).

Then, when they are imprisoned, the small numbers of women prisoners relative to men

'has been used as a justification for the failure to focus on the particular requirements of

women in prison' (Beyond Bars 2005). Baldry and McCausland (2007) assert that

'Indigenous women prisoners and ex-prisoners are the most severely disadvantaged

group in the criminal justice system'. For example, despite research that establishes

the importance of stable housing for women post-release to avoid recidivism, 'current

post-release housing for Aboriginal women in New South Wales is largely inadequate,

inaccessible and uncoordinated (Baldry & McCausland 2007).

> Programs for Indigenous women leaving prison must be grounded in their cultural values, beliefs and realities, and should be developed in consultation with and run by Indigenous women. Yulawirri Nurai is an example of a program with the potential to provide such special needs supported accommodation (Baldry & McCausland 2007).

Successes with Indigenous women ex-prisoners in Canada highlight the possibilities for

Australian Indigenous women. National and international evidence suggests:

> that an emphasis on throughcare and aftercare delivered through an Indigenous women-run case management approach; a focus on the particular issues facing Aboriginal women; and a holistic philosophy underpinning post-release services could provide a policy and program framework (Baldry & McCausland 2007).

Discrimination is feeding a vicious cycle:

> …Aboriginal women in particular return to prison after release significantly faster and in greater numbers than men which suggests they face significantly greater barriers to social integration (Beyond Bars 2005).

Indigenous women have an important role to play in overcoming disadvantage within

their communities. The NSW criminal justice and prison system in its current form is

obstructing this role and instead is compounding their disadvantage. This discrimination

in the NSW system must be overcome in order to close the gap.

Mental Illness

People with mental illness are vastly over represented in the criminal justice

system. This position is of particular concern to Indigenous people as the many

stresses and disadvantages faced by Indigenous communities have resulted in

disproportionately high rates of mental illness. The prison system is being used as a

de-facto mental health facility and unfortunately provides extremely poor support to

address mental health issues. The Mental Health Coordinating Council

(www.mhcc.org.au) along with many other research and advocacy groups has clearly

documented this process. Thus appropriate support for people experiencing mental

illness is vital to end the cycle of disadvantage for Indigenous communities.

Support

Insufficient support for Indigenous ex-prisoners, men, women and youth, is resulting in a disproportionate number of these people being 'caught in the vicious cycle of prison, homelessness, re-arrest and re-incarceration' (Baldry & McCausland 2007). The finding that provisions for ex-prisoners are 'seriously insufficient' is supported by NSW Inquiries and reports (New South Wales Legislative Council Standing Committee on Law and Justice, 2000; NSW Legislative Council, 2001; NSW Legislative Council , 2002; all cited by Baldry et al 2006b, p.22). In particular, the lack of housing support is explored further here as one of the key areas that needs to be addressed to break this cycle.

Housing support for ex-prisoners

As Indigenous Australians make up approximately 21% of the NSW prison population (20% men; 31% women) post-release support is a vital issue for the health and wellbeing of Indigenous prisoners. A study in NSW and Victoria shows that returning to prison is significantly associated with a 'state of homelessness' (Baldry et al 2006b, p.31). The lack of housing support in addition to having little social capacity fed the 'cycle of losing capacity…very quickly upon release for about half the participants' in this study. Yet there is little systemic pre-release support for prisoners for their transition to the community.

> Reduction in poor communities of publicly provided transport, affordable decent housing, employment, health services – especially drug and alcohol services, relevant education services, and legal aid leaves those, like ex-prisoners, who cannot afford to participate in private market solutions, without capacity to address these exclusions (Baldry et al 2006b, p.31).

An excellent initiative, involving a partnership between the NSW Department of Corrective Services and Housing NSW is the pilot Mt Druitt Probation and Parole Homelessness Project. This pilot involves ex offenders at high risk of homelessness

and reoffending being provided with case management services to assist in gaining and maintaining secure and appropriate housing, as well as in accessing required support services. Approximately 40% of project participants were Indigenous. Outcomes included greatly increased housing stability and reduced rates of reoffending.

To avoid the cycle of incarceration for disadvantaged Indigenous Australians, it will require a government 'framework for social, agency and family support in which ex-prisoners can work to establish and integrate themselves in their community' (Baldry et al 2006b, p.31). Both pre- and post-release housing support are core to this framework.

Housing

A 2005 research project on Aboriginal homelessness in Sydney contains many recommendations 'to co-ordinate and improve a wide range of housing and support services for homeless people' (Paul Memmott & Associates 2005, p.v). The full report is attached to this submission. Key recommendations are summarised below.

Co-ordination between service providers and agencies needs to be strengthened. Culturally appropriate services including accommodation options and a number of drop-in centres are required. Other elements of a homelessness strategy should include 'a trained team of outreach workers, and in-house case management and counselling staff' (Paul Memmott & Associates 2005, p.xiii). The report notes that services need to be improved for those experiencing mental illness; women and children escaping family violence; transgender individuals; sex workers; and gay and lesbian people. The same report reiterates how Indigenous disadvantage drives a cycle of homelessness and further disadvantage. These recommendations provide an evidence-based foundation to help close the gap.

Previous committee reports

With respect to term of reference 1(c), it is evident from current poor outcomes that many recommendations from previous committee reports still have not been implemented.

Federal intervention in Northern Territory

In relation to term of reference 1(d), the federal government intervention in the Northern Territory replicates the major flaws of past policies. Therefore the authors of this paper strongly recommend that NSW does not follow suit. Instead the authors support the recommendations made in the Northern Territory Government Inquiry report 'Little Children are Sacred' (Northern Territory Government 2007).

Many excellent submissions were made to the Senate Inquiry on the federal intervention articulating in detail how it is more likely to exacerbate the problems rather than address them. Australia's peak council of the community services and welfare sector, ACOSS, stated that it hoped that the attention would lead to interventions that are implemented:

> …to effectively protect children through strengthening communities, funding services like housing, child protection, schools, family services, health services and alcohol and drug rehabilitation programs and that the deplorable living conditions of Aboriginal people are finally tackled in an urgent and comprehensive manner, without the arbitrary removal of cash payments (ACOSS 2007, p.3).

Instead the intervention introduced: blanket quarantining of welfare with no right of appeal; a clawback of hard-won Aboriginal land rights in the NT; a highly complex web of legislation governing the lives of Aboriginals and many more punitive measures. Ultimately this approach is likely to criminalise the severely disadvantaged and this will continue the vicious cycle of poverty, trauma and forced separations. Therefore this intervention extends a 200 year reign of disempowering, racist, oppressive and devastating policies. Has Australia forgotten what happened the last time non-Indigenous Australia attempted to 'save' Aboriginal children? The intervention weakens

the strength and capacity within these communities to combat the problems. In its current form, it is doomed to fail. Curiously, the Commonwealth's own crime prevention programme's advice, as follows, has been ignored:

> We maintain that to solve violence in Indigenous communities, it is necessary to work from the premise that an Indigenous community is as intelligent and capable of solving its own problems as any other community (National Crime Prevention Program 2001, p.80).

Both the Australian Democrats and Australian Greens expressed significant opposition to the policy:

> 'these Bills represent the most significant changes to the relationship between governments and Indigenous people since the 1967 Referendum. They are a deliberate and calculated move away from efforts to build the capacity of Aboriginal communities, and a return to complete central government control over every aspect of the lives of Aboriginal Australians' (Australian Greens 2007).

Even Pearson, a conservative Indigenous leader, has expressed serious concern over these Bills as they stand:

> The difference between disaster and success will depend on whether Brough and Howard will engage with Yunupingu and the traditional leaders of the NT on a way forward (Noel Pearson 2007a).

It is noteworthy that Pearson's recommendations are significantly different from what is being imposed on the Northern Territory communities. Some key components of the welfare reforms proposed by Pearson's Cape York Institute that are absent in the reforms imposed by the federal intervention are as follows:

- Original policy research was performed within the affected communities so the policy was developed from the grassroots;

- The starting point is an initial pilot which will be evaluated and only rolled out further if deemed successful;

- a multi-stage negotiation and support process occurs before welfare quarantining is imposed;

- the decision-makers are respected leaders from the community, not Centrelink officials;

- the Cape York reforms include an appeal process (Cape York Institute 2007, p.44-72).

The way forward in closing the gap is to strengthen not weaken Indigenous communities. Therefore the federal intervention is an alarming example of what not to do. The following section outlines findings and recommendations on evidence-based alternatives.

Strengthening cultural resilience

Term of reference 1(e) invites comment and recommendations on opportunities for strengthening cultural resilience within Aboriginal communities in NSW. Some comments are made here based on related international, national and local research.

First, international research has been performed to identify the most significant factors in overcoming Indigenous disadvantage. Among the key research findings of the Harvard Project on American Indian Economic Development are that:

▶ Sovereignty Matters. When Native nations make their own decisions about what development approaches to take, they consistently out-perform external decision makers—on matters as diverse as governmental form, natural resource management, economic development, health care, and social service provision.

▶ Institutions Matter. For development to take hold, assertions of sovereignty must be backed by capable institutions of governance. Nations do this as they adopt stable decision rules, establish fair and independent mechanisms for dispute resolution, and separate politics from day-to-day business and program management.

▶ Culture Matters. Successful economies stand on the shoulders of legitimate, culturally grounded institutions of self-government. Indigenous societies are diverse; each nation must equip itself with a governing structure, economic system, policies, and procedures that fit its own contemporary culture.

▶ Leadership Matters. Nation building requires leaders who introduce new knowledge and experiences, challenge assumptions, and propose change. Such leaders, whether elected, community, or spiritual, convince people that things can be different and inspire them to take action (Harvard University 2003-2004).

World Health Organisation provided the following comment on responding to trauma after a natural disaster. There is a strong parallel here with Indigenous communities experiencing ongoing trauma from devastating social policy.

…we must address the needs of people who have not only lost loved ones, homes, means of earning, but their entire neighborhood and with it their lives' context which essentially defines every individual. The best method of dealing with this would be to find people in neighbouring

villages or communities, people of similar cultural background, who understand the cultural
norms to help them (World Health Organisation 2007).

The key is not to send in an army of people from another culture, but to utilise the

available strengths from within the affected culture. This is in direct contrast with the

approach of the recent federal intervention.

Second, an Australian analysis has also been performed which mirrors the findings

above.

> Analysis of the 'things that work' together with wide consultation with governments and
> Indigenous people, identified the following 'success factors':
>
> • cooperative approaches between Indigenous people and government (and the private
> sector)
> • community involvement in program design and decision-making — a 'bottom-up' rather
> than 'top-down' approach
> • good governance
> • on-going government support (including human, financial and physical resources)
> (Commonwealth Government of Australia 2007, p.11).

Following on from these recommendations, Green and Baldry expand on the concept of

self-determination. '…Indigenous peoples understand and experience self-

determination largely, but not exclusively, within a collective framework' Green & Baldry

2007, p.17). The paper suggests that there is 'no aspect of Indigenous life that can be

separated from responsibility to the group and the land' (Watson 1994 cited by Green &

Baldry 2007, p.17). Yet Australian policy continues to disrupt these relationships with

devastating consequences. To strengthen cultural resilience, these damaging policies

must stop. Instead, dialogue, understanding and respect are required in all interactions

with Indigenous communities.

Conclusion

In conclusion, the knowledge to overcome current Indigenous disadvantage

exists and Australia's current economy has the resources to achieve this. What is

required is the political will to implement the oft-articulated recommendations on how to

do this. At the core of these recommendations are the following principles:

empowerment, self-determination, respect, human rights and social justice. However,

these principles applied alone will not close the gap. Reliable, appropriate resources

are fundamental to deliver the policies also. The authors of this submission are

optimistic that, if these recommendations are genuinely and consistently adopted, the

gap will be closed.

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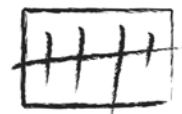# Appendix 1

Beyond Bars Fact Sheet

beyond bars
alternatives to custody

Aboriginal people & the criminal justice system

There are many Indigenous people in prison in NSW. This fact sheet provides some basic information about why Aboriginal people are imprisoned at such high rates in NSW, and looks also at what this means for both Aboriginal and non-Aboriginal communities.

Facts and Figures

1. In NSW Aborigines make up only around 2% of the total population, but they are increasingly over-represented inside prisons. 16% of men, and 26% of women in prison are Aboriginal[i]

2. Aborigines are also more likely to be remanded to custody due to a lack of secure accommodation and limited personal or family assets to fund bail sureties. [ii]

3. For similar reasons, Aborigines are also less likely to receive sentences other than imprisonment.[iii]

4. Nationally Indigenous people are six times more likely to be arrested than non-Indigenous people and 13 times more likely to be imprisoned.[iv]

5. This number is higher for young Aboriginal people. In 2004 84% of juveniles between the ages of 10 and 14 were Indigenous[v].

6. In NSW there has been a three-fold increase in the number of Indigenous prisoners over the last twenty years.

7. The number of Indigenous women in NSW prisons increased twenty six fold between 1982 and 2001

8. The number of Aboriginal people dying in custody has more than doubled since the Royal Commission into Aboriginal deaths in custody. In 1999 22% of all deaths in custody were Aboriginal.

Why are there so many Aboriginal people in prison in NSW?

Aborigines are clearly over-represented in NSW prisons. There are a number of probable explanations for this over-representation.

Policing, Surveillance, and the Law

One of the reasons for the over-representation in prisons, is that Aborigines are over-represented at *every other* stage of the criminal justice system. Some Aboriginal communities are clearly 'over-policed' and are subject to a form and level of surveillance that is not replicated in other communities. Differential policing – the targeting of specific areas for crime - ensures that certain 'groups' of offenders are caught, and certain 'types' of crime are targeted.

There is much evidence that there are certain laws that are used much more frequently 'against' Aboriginal than non-Aboriginal communities. The *Summary Offences Act* is one example- especially the 'trifecta'- (offensive behaviour, resist arrest and assault police). These offences are sometimes used together by police to charge people who have not committed any crime *until* they come into contact with the police. The Aboriginal and Torres Strait Islander Commission has noted that there are other specific offence categories in which Aboriginal offenders are dramatically
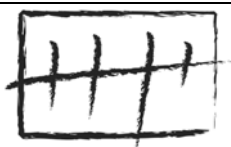
Beyond bars: alternatives to custody

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over-represented including theft, driving offences and assault.

Search and remove powers are also over-used by police in areas where there are high Aboriginal populations[vi].

One study (AJAC 2001) found that in Bourke, police used their powers at a rate 492 times the State average. Aborigines were searched at 30 times the state rate. In Walgett, Moree and Broken Hill, police use their 'move on' powers 321 times, 173 times, and 145 times the State rate respectively.

In 10 police Local Area Commands in NSW with high Indigenous populations, Aboriginal males were refused bail at a rate of 12 times higher than non-Aborigines. Aboriginal females were locked up at a rate 40 times greater than non- Aboriginal females for intoxication. Detention for outstanding warrants was 14.4 times greater for Aboriginal males and 16.5 times greater for Aboriginal females than non-Aboriginal males and females.

Other Structural Reasons

Some would argue that it is very difficult to separate the causes of Aboriginal crime with the history of racism in Australia. The over-representation of Indigenous people in NSW prisons is deeply connected to the general disadvantage of Aboriginal people in NSW, which is in turn connected to the violent colonisation of Australia.

The high levels of poverty, unemployment, and homelessness all impact on the likelihood of people to commit crime. The associated alienation and dislocation of some Aboriginal communities is also an important factor. Drug and alcohol use has also been a very big problem in some Aboriginal communities. It is probably impossible to separate this problematic drug use from the generally high levels of disadvantage experienced by so many Indigenous people.

In this sense, the over-representation of Indigenous people in prisons might be described as a continuation of certain forms of structural racism.

There has been a history in NSW of both explicitly and implicitly racist policies in the areas of both welfare and criminal justice. From the earlier 'assimilation' policies such as the removal of aboriginal children from their families, to the contemporary practice of over-surveillance and policing of particular Aboriginal communities, discrimination by the state against Aborigines continues to damage both Aboriginal and non-Aboriginal communities.

What About The Royal Commission?

The Royal Commission into Aboriginal Deaths in Custody, established in 1987 published what was considered by many to be a landmark report in 1991. In examining the deaths of Indigenous persons in custody, the commission found that whilst Aboriginal people were no more likely than non-Aboriginal people to die in custody, the disproportionate numbers of Indigenous people in custody meant that Aboriginality itself was a significant factor in the incarceration, and therefore the deaths in custody.

339 recommendations were handed down by the Commission, and roughly half of these dealt with 'justice' system for Indigenous people. However, a decade on, Aboriginal people are still vastly over-represented in custody, and are still dying in custody at an unacceptably high rate.

But shouldn't people who commit crime go to prison?

The problem with sending people from alienated, disadvantaged and dislocated communities to prison, is that this experience frequently *increases* the alienation, disadvantage and dislocation. This in turn increases the likelihood of people committing crime.

In some Aboriginal communities, there are so many people in custody, that although the experience of imprisonment is still frequently devastating, it also is partially 'normalised'. Because the criminal justice system continues to be seen as such a destructive force, victims of crime in Aboriginal communities are frequently alienated from *using* the police for

assistance in the same way as non-Aboriginal communities might.

Many Aborigines who are imprisoned come from remote areas in NSW and imprisonment for people from these areas involves a massive dislocation from their families. Often Aboriginal people who go to prison are also very involved in caring for their families and communities. When this is the case, a bout of imprisonment can leave a real gap for those on the outside. Caring roles on the outside can be neglected, or sometimes filled by someone else, thus further alienating the person who has gone to prison from their community.

Children are deprived of parents and other culturally significant relatives and support networks are further broken down. The cycle of poverty in many Aboriginal Communities is also perpetuated through loss of income, payment of fines and legal costs, and people are further denied adequate health services, education and adequate AOD Programmes whilst in custody.

The other important point is that the majority of Aboriginal people who are sentenced to full time custody are given very short sentences. This means that the majority of Aboriginal people in prison are there for offences that are not considered by the courts to be extremely serious.

If all the Aboriginal people who are currently sentenced to serve prison sentences of under six months were instead given a non-custodial sentence, the number of Indigenous people sentenced to prison could be reduced by 54%.

There have been some moves, initiated mostly by indigenous communities, to incorporate elements of Aboriginal customary law into the western legal framework. The State Governments trial of 'circle sentencing' also aims to increase the role of Aboriginal communities in sentencing. Such attempts acknowledge-

and strive to overcome the alienating process of the adversarial legal system and racist history between the legal system and Aboriginal communities in Australia.

There is clearly a need to look at alternatives to imprisonment for Indigenous communities. There is also a need to better respond to the structural factors which influence the disproportionately high numbers of Aborigines coming into contact with the criminal justice system.

The Use Of Circle Sentencing Has Been One Positive Trend

Circle Sentencing in NSW only concerns sentencing and not the determination of guilt. The process involves the offender sitting with some Elders, a Magistrate, a Prosecutor, and other support people to talk about the offence and how it has affected the Community, victim and offender. The Elders recommend a sentence to the Magistrate, but this sentence must be allowable within the relevant legislation.

The two core criteria of Circle Sentencing are that the offender must be willing to take full responsibility for his/her wrongdoing and there must be a Community willing and able to facilitate a process of healing and restoration of the offender. Circle Sentencing attempts to acknowledge, and strives to overcome, the alienating processes of the adversarial legal system and racist history between the legal system and Aboriginal Communities in Australia.

The use of Circle Sentencing has resulted in reduced recidivism rates in all jurisdictions in which it currently operates.[vii] The levels of recidivism are reduced because Community support is provided to the offender throughout the sentence and beyond, the social dimensions relating to the offenders behaviour are addressed, and the offender becomes accountable to the whole Community

This factsheet is for information and discussion purposes only. It does not necessarily represent the views or policy positions of organisations involved in the Beyond Bars Alliance.

Fact Sheet updated March 2007

Appendix 2

Beyond Bars – Inquiry into the Treatment of Women within the Criminal Justice System in New South Wales

Beyond Bars - Inquiry Into Treatment of Women

Submission to the Anti Discrimination Commissioner for an Inquiry into the Discrimination Experienced by Women Prisoners within the Criminal Justice System in New South Wales

Written and Submitted by:
Members of the Beyond Bars Alliance NSW
Kat Armstrong, Vicki Chartrand & Dr. Eileen Baldry
May 2005

The Purpose of this Submission

On 20th July 2004, the Beyond Bars Alliance wrote to the Commissioner of the Department of Corrective Services (DCS) NSW, the Attorney General of NSW, the Commissioner of Police of NSW, and to the NSW Anti-Discrimination Board (see Appendix I) seeking an inquiry into the treatment of women prisoners in NSW.

Beyond Bars Alliance is concerned about systemic discrimination on the basis of sex that is faced by women throughout the criminal justice and prison systems. We are concerned about discrimination on the basis of race faced by Aboriginal women and other women marginalized by race. In addition, we are concerned about discrimination on the basis of impairment that is experienced by women prisoners with cognitive, mental and physical disabilities.

This complaint is made on the grounds that the manner in which women prisoners are treated is discriminatory in contravention to several of the prohibited grounds articulated in the Anti Discrimination Act 1991 and in Federal anti-discrimination legislation and Human Rights Conventions. Beyond Bars Alliance received a response from the Attorney General's Department stating that the letter was being handed on to another unit for consideration. A letter was also received from the NSW Police Department stating that NSW police follow a range of policies, programs, and training programs, as well as being involved in various community liaison partnerships with other agencies to assist in countering discrimination against women in general. The Anti Discrimination board of NSW acknowledged receipt of the letter and stated that the information provided by the Beyond Bars Alliance would be placed on file and that they looked forward to receiving any further correspondence. There has been no response from the NSW Department of Corrective Services.

In addition to the letter supplied to all the Departments mentioned above, on the 20th July 2004, we referred them all to a number of additional government and academic documents. These documents chronicle the nature and extent of the discrimination on the basis of sex, race, and disability. Furthermore, strip searching and use of the Mum Shirl Unit at Mulawa Correctional Centre are experienced in a discriminatory manner by women prisoners in New South Wales.

The purpose of this submission is to request the Anti-Discrimination Commissioner to conduct an investigation under s.155(2)(b) of the Anti-Discrimination Act (ADA). Beyond Bars Alliance contends that there is systemic discrimination on the basis of race, sex and disability in NSW policing practices and also in the administration of women's prisons.[1] Women prisoners experience direct[2] and indirect[3] discrimination on the grounds of sex, race, and impairment.[4]

Police Practices and Systemic Discrimination

Systemic discrimination consists of individual and collective acts, structural processes and administrative practices that contribute to the overall discrimination against a particular group of

people. In the case of the NSW criminal justice system, women are subject to such systemic discrimination on the basis of their sex, race and disability. As gatekeepers to and frontline workers of the criminal justice system, the NSW Police Department contributes to this discriminatory process through the criminalization of women, and particularly poor, marginalised, and racialised women. Accordingly, the Anti-Discrimination Act 1977 which applies to the police service as a provider of 'goods and services', identifies systemic discrimination as unlawful, including discrimination based on race, sex and disability.

Social and Economic Disadvantage

Worldwide, women are a disadvantaged group. The gap between women and men living in poverty has continued to widen in the past decade; a phenomenon commonly referred to as the "feminization of poverty"5. In NSW, women are also subject to the feminization of poverty. In February 2003, the average weekly earning of all women in the NSW workforce, including part-time and casual workers, was $591.30, approximately 64.5% of the average weekly earning of men. Additionally, 60% of families living in NSW public housing are headed by women.6   In 2001, the average gross income for Aboriginal peoples in NSW was $364 per week, approximately 62% of the gross income of non-Aboriginal peoples. For Aboriginal women, the unemployment rate was 14.9% compared with 7.7% of non-Aboriginal women.7 Aboriginal women and women with mental health concerns are over-represented in the criminal justice system as they are more often arrested for poverty related offences. The criminalisation of women who are at a social disadvantage clearly represents an inherent and prima facie case of discrimination.

Policing and Systemic Discrimination Based on Sex

Women, by virtue of their social and economic disadvantage, often find themselves reliant on the services and support of the state. As a result, the state becomes increasingly more involved in the everyday lives of women. Consequently, the greater the disadvantage, the greater the state becomes involved in their affairs. This increased intrusion into and scrutiny of the lives of disadvantaged women often results in their subsequent criminalisation. As noted above, socially and economically disadvantaged women generally tend to reside in affordable public housing or low-income neighbourhoods or are homeless and are, consequently, more heavily policed. This reality further contributes to an increased intrusion of the state into the lives of women and to their subsequent fine, charge, arrest, and/or revocation of community, bail or parole orders. Once women have been arrested and charged, the possibility of leaving the system is limited and, if released, re-arrest is more likely. In the twenty-year period between the mid-sixties and the mid-eighties, state government spending on police increased 172% as compared to, for example, only a 41% increase for housing and community amenities.8   Financial resources that could have been afforded to women's services to alleviate the symptoms of poverty are adopted for more invasive measures of control and surveillance.

Policing and Systemic Discrimination Based on Race

The Racial Discrimination Act 1975, Section 9:

It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.

The Human Rights and Equal opportunity Commission (HREOC) of Australia made amendments to the Racial Discrimination Act 1975 s9(1A) to include 'indirect discrimination on the basis of race' as grounds for complaint.

In NSW, the Select Committee into the Increase in Prison Population found that in 2001 the most significant contributing factor to the increase in incarceration of Aboriginal women was the increase in remand. In 1991, the National Inquiry into Racist Violence reported various and numerous

incidents of "intrusive and intimidatory" policing against Aboriginal peoples in general. This includes unwarranted entry into households, physical abuse and discriminatory policing in public places and at private functions.9 The inquiry also provided significant evidence of the maltreatment of Aboriginal women and girls, which included racist and sexist verbal and physical abuse. Allegations of sexual abuse and rape have also been made by Aboriginal women while in police custody10 and today, Aboriginal women often report similar treatment.

A 1985–1986 study in NSW found that although Aboriginal peoples represented 1.5% of the overall population, they comprised 47% of police arrests.11   A more recent study found that Aboriginal peoples were over-represented among the population held in police cells by a factor of 19.12   In NSW, Aboriginal peoples overall represented 14% of those in police custody. Research carried out by the NSW Bureau of Crime Statistics and Research also shows that one of the main reasons for the over-representation of Aboriginal peoples in NSW prisons is due to high arrest rates.13   In 2001, more than 6% of the Aboriginal women arrested were subsequently charged and appeared in court, compared to 0.7% of the overall number of women arrested and charged.14
Policing and Systemic Discrimination Based on Disability

Women and girls with a disability experience discrimination in significantly different ways, such as through forced institutionalisation, denial of control over their bodies, physical restraint, medical exploitation, humiliation and harassment and lack of financial control.15

Given the lack of sensitivity and awareness of the issues faced by women with mental, cognitive and/or physical disabilities, women with disabilities often find it difficult to deal with the police. Often the evidence they provide is not seen as credible or the police are not skilled in addressing or working with people with such disabilities. The Anti-Discrimination Board receives a significant number of complaints against the NSW Police Service related to disability. In the years 2000/01 to 2001/02, the total number of complaints received by the Board increased from 40 to 54; twenty-four of those complaints, or 44%, were related to discrimination based on disability.

Furthermore, section 127 of the Police Act requires that complaints be made in writing. However, women and those with psychiatric and intellectual disabilities as well as non-indigenous culturally and linguistically diverse (CALD) may not be able to comply with this requirement due to mental, physical or language limitations which, as a result, limits the number of complaints. Many women, therefore, do not have equal access to the complaint process. The Anti-Discrimination Board has indicated that there are many instances where individuals are unable to lodge complaints about the discriminatory treatment they have suffered and that many complaints of alleged discrimination, harassment, vilification and victimisation by the NSW Police Service go unreported.

Women with psychiatric and intellectual disabilities often have what is referred to as "deficits in adaptive behaviour". This refers to limited communication skills, which includes limitations in both writing and speech, ability to sustain friendships, ability to engage in recreational and social activities, ability to work, manage finances or to run a household.16 The situation for these women contributes not only to their inability to lodge complaints, but also to ably manage themselves once in police custody. This can result in harsher custodial treatment towards these women as they may be consider uncooperative or unmanageable.
NSW Police Act

In the Review of the Police Act 1990 (NSW), the Anti-Discrimination Board (2002) recommended that it should be made clear that NSW police services should be provided in a non-discriminatory manner and in a manner which respects the diversity of the people of NSW. "Research evidence suggests that disproportionate use of police power is, at least in part, a product of discrimination, and that the abuse of power is most discriminatory where police autonomy and discretion are greatest".17 At present, police have authority to use various legislative provisions to search persons and premises without warrant if it is for a specific purpose or if obtaining a warrant would result in the destruction of evidence or cause harm or injury. This approach to policing places

priority of surveillance and control over individual rights and collective liberty and continues to contribute to the overall discrimination of women based on race, sex and disability.

NSW Courts

,Women in NSW are more likely to appear before the courts for theft and deception offences, while men are more often incarcerated for offences related to violence.18 The number of women incarcerated for drug offences increased 40% between 1994 and 2003 and many researchers provide strong evidence of the link between drug or alcohol related offences with sexual and physical abuse against women in Australia and as well as in other countries.19 These trends are further evidence of the discrimination within the criminal justice system as these offences are tied to the social and economic disadvantage faced by women.

In New South Wales, Aboriginal women constitute 2% of the female population20 and yet represent approximately 32% of the total NSW women's prison population.21 In the five years between 1997 and 2001, about 25,000 Aboriginal people appeared in a NSW court for criminal offence charges.22 This rate represents 28.6% of the NSW Aboriginal population and is 4.4 times higher than the rate for the NSW population as a whole. Aboriginal women appear in court on criminal charges about a third as often as their male counterparts and, in 2001, more than 6% of the Aboriginal women's population appeared in court compared to 0.7% of the NSW women population as a whole. Furthermore, Aboriginal women are also imprisoned at a very much higher rate than the general population. About 1.6 per cent of Aboriginal women in NSW aged 20-24 received a prison sentence in 2001.23 This rate is 18 times higher than the corresponding figure for women in the same age category.

Women actually pose very little threat to the community. For example, in 2003, of the 18,799 women who were found guilty in the NSW local courts, only 8 were convicted of homicide and related offences.24 It is important to further highlight that many acts of violence are against abusive partners. As numerous research studies have found, many of the victims killed by women are known to the women either as a husband, de facto partner, relative or friend and often occurs in the context of abuse by partners or self-defence during arguments or fights. Furthermore, there is a lack of emergency and support housing for women who want to escape domestic violence. In NSW in 2002-2003, the Supported Accommodation Assistance Program (SAAP) revealed that 67.1% of women seeking assistance were doing so in order to escape domestic violence. Those who are turned away usually had to return to their environments of abuse for lack of any other alternative shelter available to them.25 This further suggests that, on the whole, women pose the least amount of threat to the community upon release and should therefore be given all opportunities to return to their communities as quickly as possible. It is suggested that women, and Aboriginal women in particular, are both directly and indirectly discriminated against by the courts and the correctional system.

The Experience of Prison/Remand for Women in NSW

Women on remand represent a higher proportion (30%) than their male counterparts (18%).26 Given that women are charged with fewer serious and violent crimes than men, the number of women on remand should also be proportionally smaller to the number of men. Aboriginal women are again over-represented amongst women on remand.27 Furthermore, remand prisoners are classified by the Department of Corrective Services as 'maximum security' prisoners. This results in higher levels of security, restrictions on personal property, visits entitlements and other "privileges" for women who have yet to be found guilty.28 For example, despite Mulawa Correctional Centre being rated as a medium security prison and given the department's relatively new classification policy for female prisoners, "the presence of remand prisoners effectively means that medium and minimum security prisoners may serve their sentence in an environment that is more onerous than is necessary for their classification status."29

There are considerable social and psychological costs for a woman in custody. In her study, Women in Prison,30 for BOCSAR, Edwards describes imprisonment as a time of immense stress for women. She explains,

"The personal consequences of imprisonment can be devastating. Imprisonment can mean the

loss of a job, of significant relationships, and of the legal custody of children …Prisons are also sometimes places of violence and danger …Aside from the physical dangers of prisons, inmates must negotiate the day to day prison routine. Prison is an unnatural social environment, and it can take some time to adjust to it. Inmates must learn the social norms governing relations among inmates and between inmates and prison staff."

It is well known that defendants on remand who are in custody are at a particularly high risk of self-harm and suicide. In 2000, the Australian Institute of Criminology reported that "the proportion of remand prisoners who died in custody during 2000 is almost double the proportion of prisoners in Australian prisons."31   Fitzgerald and Marshal highlight the "irony of remanding a person in custody for their own safety, given the risks of self-harm and harm by others inherent in a closed institution."32 Given the severity in control and restrictions while in remand, and that women are disproportionately placed in remand, particularly Aboriginal women, Beyond Bars Alliance argues that this also presents a case of discrimination in the NSW criminal justice system.

Prison for Women in NSW

Background

In New South Wales, there are currently eight prisons for women located across the State: Mulawa Women's Correctional Centre; Dylwinia Women's Correctional Centre; Berrima Women's Correctional Centre; Emu Plains Correctional Centre; Bolwara Transitional Centre; Paramatta Transitional Centre; June Baker Centre – Grafton Correctional Centre and Kempsey Correctional Centre.33 All women prisoners are incarcerated in those prisons.

While women represent a smaller proportion of the total prison population, their imprisonment rate has been fast increasing. Women make up approximately 7.1% of the New South Wales prison population.34 This has been a 13% increase since 2001, and an 88% increase since 1998 of women in NSW prisons.35 Conversely, as the prison rates for women increase, there is a general downwards trend for women being placed in community-based corrections,36 which includes, but is not limited to parole, probation, corrections orders, drug programs, conditional release, and other alternatives to prison. These trends suggest a reliance on more punitive and restrictive measures being placed on women and can be understood as discriminatory.

Women Prisoners' Social Context

Women prisoners are likely to be poor, undereducated and lacking vocational skills that would enable them to earn enough income to be self-sufficient. On a whole, Australian women represent 85% of one-parent families.37 Prior to being criminalised, many women prisoners have experienced multiple disadvantages. Most women in prison have faced an overlapping series of difficulties in their lives, such as a disruptive upbringing that tends to lead to dropping out of school and the failure to develop job skills, coupled with substance abuse and violence and mistreatment from many sources.38 According to the 2001 NSW Inmate Health Survey, 64% of women in prison are hepatitis C positive, 75% of women were unemployed 6 months prior to incarceration, and prisoners in general have poor health characterized by neglect, substance abuse and mental illness. Common issues shared amongst women in prison include dependency, poor educational and vocational achievement, parental separation at an early age, foster care, living on the streets, prostitution, violent relationships, suicide attempts, self-injury and substance abuse.

A large percentage of women entering prison also have the sole responsibility for the care of children. This further places a strain on both women and children during the separation generally necessitated by a period of imprisonment.39 Separation from children and the inability to deal with other life challenges while incarcerated are cause for anxiety amongst women in prison. Particularly given that one of the main features of imprisonment is the stigmatization and separation of prisoners from the rest of the community, this strongly affects the relationship between mothers and children. Given the various challenges and difficulties faced by many women in prison, there is a strong interrelationship between background factors in the lives of women in prison that need to be addressed simultaneously and comprehensively in order to

effectively enable them to move forward.

Self-injury is a common response by women to the stress of imprisonment. The majority of women who self-injure identified situations producing feelings of helplessness, powerlessness, and/or isolation, as being those that make them want to self-injure. Women in prison are faced with exactly such situations. This is tacitly acknowledged by prisons, which have rules and regulations in place to prevent self-injury. The invasiveness and controlling nature of these prison policies and practices also work to trigger and worsen feelings of powerlessness.

The use of violence by prisoners against themselves or against others is often interpreted as an expression of violent pathology of the individual prisoner and often results in further punishment. However, this approach ignores the role of the prison in generating such violence. Fights in prison are often caused by factors such as boredom, provocation, unreasonable or unfair treatment by staff, denial of rights, favouritism, and constant security checks. Furthermore, severe methods of punishment, variation in the quality of staff and inmate relations, a perceived lack of autonomy, and staff age and experience also effects the level of violence in a prison. These organisational and institutional characteristics have greater effects on the level of violence than individual characteristics.40

The social context of women prisoners is integral to understanding their survival practices. The criminalization of women is strongly linked to the socio-economic disadvantages suffered acutely by women and is often a result of their marginal social and economic positions within society and their attempts to survive or transcend such an existence.   These matters must be considered when addressing the various 'needs' of women in prison as, consequently, such problems will persist and the circumstances that led to their criminalization will be repeated. 41

Aboriginal Women's Social Context

When issues of racism affecting the general community are mentioned, the over-representation of Aboriginal peoples in the prison system is cited as a marker of the levels of discrimination against this group. As noted above, Aboriginal women are particularly imprisoned at a much higher rate than non-Aboriginal people within the justice system, both as victims and as prisoners, and often as both.

Aboriginal women and their children suffer tremendously as victims in contemporary Australian society. They are victims of racism, of sexism, and of unconscionable levels of violence. The justice system has done little to address this or to protect Aboriginal women from this violence. In fact, the overwhelming response has been to further punish Aboriginal women by removing them from their communities through imprisonment. Why, in a country that is to be considered just with equal and fair application of the law, is a particular group so continuously and consistently over-represented within our systems of control and punishment?

Recent inquiries into the reasons for over-representation have concluded that while the issue is complex, two factors may be identified as the most significant; that the criminal justice system is discriminatory in its treatment of Aboriginal peoples and that Aboriginal peoples commit disproportionately more offences because of their marginalized status in society. This reality is rooted in a long history of discrimination and social inequality that has impoverished Aboriginal peoples and consigned them to the margins of our society. The marginalization of Aboriginal people stems from their historical exclusion from full participation in the dominant society and, more importantly, the interference with and suppression of their culture. Economic and social deprivation is a significant contributor to high incidences of Aboriginal crime and the over-representation within the criminal justice system. Beyond Bars Alliance firmly believes a deeper level of understanding and a greater amount of action is required that goes beyond simply acknowledging the role played by colonialism, poverty and debilitating social conditions. It is clear that the over-representation is directly linked to the particular and distinctive historical and political processes that have made Aboriginal peoples "poor beyond poverty"42 and forced them to live in

social conditions that are well below the high standard of living enjoyed by most Australians.

Social and economic disadvantage is a particular problem amongst Aboriginal women. For example, in February 2000, the labour force participation rate for Aboriginal women was 42.6% compared with 54.8% of non-Aboriginal women and the unemployment rate for Aboriginal women was 14.9% compared with 7.7% of non-Aboriginal women.43 The social context in which their crimes are committed is integral to understanding Aboriginal women who are criminalized. Many Aboriginal women have experienced disruption of their families and communities through the operation of racist government policies over generations. Individual Aboriginal women have experienced much disruption in their lives, both within the community and within prison. They face racism directly as individuals and as a community. Many Aboriginal women have been raised by non-Aboriginal families due to care and protection orders and removal policies implemented by the Government over the last 100 years.

Increasingly, societal norms, administrative policies and laws are in conflict with the lives of Aboriginal women and their attempts to survive are resulting in their increasing contact with the criminal justice system. Aboriginal women prisoners have significantly different personal and social histories from non-Aboriginal women in a number of ways and the relationship of Aboriginal peoples' marginalization to the criminal justice system has been well documented. As a group, Aboriginal women enter prison at a younger age than non-Aboriginal women, they generally have lower levels of education and employment, alcohol, drug abuse and violence are a greater problem for them and reportedly play a greater role in their offending and they also suffer from a greater incidence of past physical and sexual abuse.

As prisoners, Aboriginal women suffer the compounded and intersectional disadvantages of being both women and as Aboriginal peoples in a discriminatory correctional system. Aboriginal women in the prison system are triply disadvantaged: they suffer the pains of incarceration common to all prisoners, they experience both the pains Aboriginal prisoners feel as a result of their cultural dislocation, and those which women prisoners experience as a result of being incarcerated.44

Further, the Aboriginal & Torres Strait Islander Social Justice Commissioner states that:

The discrimination faced by Indigenous women is more than a combination of race, gender and class. It includes dispossession, cultural oppression, disrespect of spiritual beliefs, economic disempowerment, but from traditional economies, not just post – colonisation economics and more.45

The report goes on to identify that non-discrimination involves more than allowing Aboriginal peoples' access to the principles and standards of living in the dominant culture. Non-discrimination requires vigilance to ensure that legitimate cultural differences are respected. Differences caused by the long history of invasion and oppression suffered by Aboriginal peoples must also be respected.46

Discrimination within Women's Prisons in NSW

Access to Programs

In NSW, ironically, women prisoners have been penalized for constituting only a small percentage of the state's prison population. They are not provided with adequate recreation or programs, particularly educational and skill based training. The small numbers of women prisoners have resulted in insufficient opportunities made available to them in prison and have also been used as a justification for the failure to focus on the particular requirements of women in prison.

Many correctional policies and practices applied to women are fundamentally an adaptation of those considered appropriate for men. Furthermore, programs provided to women prisoners are not comparable in quantity, quality, or variety to those provided to male prisoners.47 Similarly,

women in prison do not have the same access to pre and post release programs. The programs a woman can access varies according to whether she is in prison, on remand, whether she has been sentenced, if she is released on parole or on a community based order, or if she has served a finite sentence. The 'status' of a female prisoner affects the types of programs that can be accessed; that is, depending on what classification she is.48 This arbitrary application of and inconsistent access to programming not only restricts women's opportunity to benefit from some form of activity while in prison, but also limits women's opportunities for early release. Women should not be further penalized for the Department of Corrective Services' failure to provide adequate programming.

Aboriginal women in prison rarely have programs and courses that are Aboriginal centred or that take into consideration their cultural and spiritual traditions and customs. Programs that fail to consider Aboriginal culture and their current social and economic disadvantage will similarly fail to prepare Aboriginal women for release or support them in coping with the day to day stress, boredom and loneliness of prison life.Additionally, due to the majority of Aboriginal women having a medium to high classification, access to prison programmes is restricted. (see section on Security Classification).49 This ongoing neglect is a continuation of the colonial legacy that has desecrated, exploited and marginalized Aboriginal peoples.

Access to Work Opportunities

Opportunities to work and develop employment and trade skills are also limited for women in NSW prisons. In addition to denying women opportunities to improve their economic situations, the type of employment that is offered to women in prison is not useful in gaining work outside prison. Furthermore, those who do not participate are sanctioned. Women also have very few opportunities to pursue education in prison as there are limited places for each program.50 Those who choose education have to do so at the expense of an already meagre pay for prison labour.51 Failing to provide women in prison with useful employment and educational opportunities limits their potential to succeed in their communities and essentially sets them up to fail.

Conditional and Community Release

Relative to men, women pose a lower risk to the safety of the community. However, except for the 40 or so women in transitional centres, women are provided with few opportunities for work release52 or other contact with the community prior to release. This reality is particularly true for Aboriginal women who are granted conditional or community release at a much lower rate than other women in prison.53

Similarly, women with mental or cognitive disabilities are more likely to be classified as higher security, as their inability to "manage" translates into a risk concern. As a result of this tendency to give women with mental or cognitive disabilities higher security classifications, they too are less likely to obtain conditional or community release. Furthermore, since women with mental or cognitive disabilities require more support upon release and the facilities that do provide such support are extremely limited, they are again less likely to obtain these types of release as there are few places that can accommodate their disability. A lack of adequate community-based resources is not a justifiable reason for failing to release women into the community as this constitutes discrimination based upon their disability.

Women with Disabilities

Women prisoners in New South Wales come from a wide range of backgrounds and experiences in terms of their age, social and economic position, culture and ethnicity, and sexual preferences. They include women who have spent much of their life on the street or in institutions, older first-time prisoners, those with families and children, single women, and those with special physical and health needs. Many women prisoners are identified as having high levels of need for programs and services, including mental health needs. Men and women in prison have markedly different mental health needs and problems. Many problems experienced by women prisoners can

be linked directly to past experiences of early and/or continued sexual abuse, physical abuse and assault.

The well-documented institutional warehousing of persons with disabilities54 is not an acceptable practice and the recognition that people with mental disabilities can and do benefit from community-based services has rendered the practice of institutionalization more objectionable. The provision of community-based services and less invasive treatments are now recognized as the preferred approach.55 Although community integration is a highly valued principle, relentless cuts to social and health programs over the last two decades have eviscerated any real hope for progress offered by this principle. Currently, the shortage of adequate community resources causes many persons, particularly those with mental disabilities, to fall through the cracks of the system. In too many cases, society responds to the attempts of such persons to survive by characterizing their behaviour as 'criminal', labelling them as 'criminal offenders', and institutionalizing them in the criminal justice system. Social and economic challenges such as homelessness, unemployment, social isolation, malnutrition and substance abuse further compound the struggles and challenges of people with mental disabilities. As a result of these difficulties, prisons are increasingly becoming the default placement for people with mental disabilities. 56

Historically, women have been over-represented in psychiatric facilities and under-represented in the prison system. However, with the closure of psychiatric institutions and increasingly overtaxed and under-resourced community based services, New South Wales is now witnessing a marked increase in the number of women with cognitive and mental disabilities who are being criminalized. Studies about women in prison indicate that women prisoners have significantly higher incidences of mental disabilities including schizophrenia, major depression, substance use disorders, psychosexual dysfunction, and antisocial personality disorder, than the general community. In addition, incarcerated women have much higher incidences of histories of childhood sexual abuse and severe physical abuse than women in the general population.57

Overall, women outnumber men in all major psychiatric diagnoses:58 women prisoners are three times as likely to experience moderate to severe depression (68.9%) compared to men in prison; men in prison tend to be more physically and sexually threatening and violent while women are more self-abusive and suicidal; self-destructive behaviours, such as slashing, are not uncommon for women with mental disabilities. Although men were more likely than women to report a psychiatric admission within the correctional system, this is likely due to there being little access to a women's psychiatric hospital in prison59 despite a 20 bed hospital being opened in 2004 in Long Bay Correctional Centre for forensic and/or psychiatric affected women.

Women with mental disabilities often serve long sentences and are labelled as having significant disciplinary problems, while the prison system is ill equipped to provide the services and supports required by such women . According to the Crimes (Administration of Sentences) Act 1999 and Regulation, "community safety" is the paramount consideration in sentencing. It is not surprising then that administration and staff prioritize security and risk management over all other institutional and/or individual needs. As a result, women's health and well-being is given secondary consideration, if at all, and prison staff have little awareness of how to respond appropriately to prisoners with mental disabilities. 60 For example, some women with mental disabilities may have difficulty understanding prison rules if they are not fully explained. It is not uncommon for prison staff to respond to such a circumstance with some form of punishment or by placing women in physical restraints or administrative segregation – crisis support units. Such responses often exacerbate rather than alleviate the woman's symptoms. 61

The Department of Corrective Services state that 57.1% of women in New South Wales prisons have been diagnosed with a specific mental illness.62 The trend to incarcerate persons with mental disabilities in prisons has caused advocates for the mentally disabled to say that the "clock is being turned back to the 19th century".63 Indeed, the spectre of institutionalization common in

previous days may very well be reinventing itself in today's prisons.

Non-Indigenous and Linguistically Diverse Women (CALD)

CALD women are a minority group within NSW prisons and failing to address language barriers represents a failure of the Department of Corrective Services to assist women with culturally and linguistically diverse backgrounds in NSW prisons. For example, CALD women found that, in general, contact with prison staff was difficult.64 Prison management's attempt to overcome such barriers through the use of other women prisoners as interpreters is not an adequate or realistic strategy.

Imprisonment is one of the most isolating, horrifying and depriving experience for any woman. For women from non-English speaking backgrounds (NESB) the prison experience is one of "desperate isolation".65

The Department of Corrective Services only attempts to provide linguistically and culturally appropriate information at reception upon arrival at prison. The reception/induction process can be quite lengthy and complicated, but rather than use face-to-face interpreters, management relies upon a telephone interpreting service, and only if considered necessary. This method is highly alienating form of communication, particularly upon entry when women are most confused, alarmed and vulnerable.

After induction, no further attempts are made to ensure that CALD women have information regarding their legal rights, privileges, punishments or regulations as provided for in the Operations, Policy and Procedures Manual. This information is only available in English. In a recent survey, women that were interviewed stated that they did not have access to an interpreter after admission into the prison.66 CALD women endure absolute deprivation and isolation in the prison system. They are in a "state of de facto solitary confinement."67 As a result, CALD women frequently rely on information from other women in prison. The CALD women claim they prefer to observe the custom of the prison and to watch before they act, as a means of gathering information. If they have to ask someone, they would choose another CALD person. Furthermore, women routinely spend twelve to thirteen hours per day locked in their cells or units and given the small number of CALD women, they are often placed in a cell with non-CALD women. CALD women report social and emotional isolation due to cultural and language difference. As there are only a small number of CALD women at each prison, care is needed to ensure that CALD women have ready access to each other. The situation is particularly unfortunate when it is remembered that CALD women often have to rely on a trusted other to help them gather information and to fill in forms.

CALD women also found that, in general, contact with prison program staff was not easy. The difficulties were most apparent in the early stages of prison life. In common with many other prisoners, CALD women felt afraid to ask for help (particularly at Mulawa Women's Correctional Centre) and were unaware of the procedures for seeing a counsellor or accessing educational programs.68 Prison management attempts to overcome language problems through the use of other women prisoners as interpreters, which is not an adequate means to ensure women are properly and well informed.

All prisoners suffer difficulties in maintaining ties with families and friends. Visiting times and number of visitors are restricted, as are times for telephone calls. The cost of telephone calls is also prohibitive for those whose families are interstate or overseas as women are required to pay for all telephone calls. Furthermore, women in prison pay premium rates for both local and international phone calls. So, for example, for a local call women pay 40c rather than 20c. As mentioned above, given that many women come from lower socio-economic backgrounds, maintaining outside contacts remains difficult for many.

Security Classification

Clause 10 of the Crimes (Administration of Sentences) Regulation 1995 requires that every prisoner be assigned a security classification. The Crimes (Administration of Sentences) Act 1999 provides that security classifications apply to both men and women prisoners. Beyond Bars Alliance disputes the application of the security classification system for women in two ways: firstly, as to whether women should be assigned a security classification at all and, secondly, whether the current instruments that measure 'risk' are valid for women prisoners.69

The NSW Department of Corrective Services assesses security classification on the basis of 'risk' as determined by 'needs'.70 Given their social and economic disadvantage, women prisoners are particularly discriminated against by a security classification system that equates a woman's 'needs' as risk factors. Consequently, a process that converts 'disadvantage' or 'needs' into 'risk' penalizes women for their disadvantage. Accordingly, a greater social and economic disadvantage will attract a higher security classification.

This security classification rating scheme results in Aboriginal women being disproportionately classified as higher security for reasons that relate to the historical reality of colonial oppression and the current social and economic realities of Aboriginal disadvantage. Since such disadvantage equates to 'risk', the 'individual' risk categories used in the classification scheme reflect the experience of the entire Aboriginal population, resulting in the over-classification of the majority of Aboriginal peoples. A higher classification for Aboriginal women results in them not being eligible for a range of opportunities including, for example, being eligible for the Paramatta Transitional Centre, the Jacaranda Cottages at Emu Plains or a Section 25 release. 71

Similarly, women prisoners labelled with a mental or cognitive disability are also more likely to be classified as maximum-security prisoners as they are often described as "difficult to manage".72 Conditions of isolation and the lack of appropriate services exacerbate existing mental health conditions and underscore the harsh and discriminatory nature of placing women with mental and cognitive disabilities in higher maximum security. Additionally, women prisoners who have a mental or cognitive disability, or who are in need of support due to self-harming, are confined in exactly the same way as women who are perceived as problems for prison discipline.73 Prison staff are not adequately trained and resources are not available to ensure proper treatment is available for these women. The risk assessment tools and classification schemes that are used for women, particularly Aboriginal women, culturally and linguistically diverse women and women with disabilities, impose a white, middle-class, and male-based approach on women prisoners and fail to consider the diverse challenges women face.

Section 2 of the DCS Operation & Procedures Manual requires that every prisoner be assigned a security classification of maximum security, high security, medium security, low security, or open security. Theoretically, a prisoner's security classification determines the type of prison in which the prisoner is incarcerated. Prisons are operated pursuant to rules that reflect the different degrees of supervision and control imposed on prisoners according to their security classification. Security classifications also underlie various other decisions such as the granting of Leaves of Absence, the prisoner's access to visitors and the treatment that they receive when they have health problems. Maximum security prisoners can be housed only in maximum security prisons. They are usually in the secure section of the facility. High security prisoners are also only housed in maximum security prisons, though they may live in the residential area. Medium security prisoners are also housed in maximum security prisons; they do not have access to work release and they can receive Leaves of Absence only if they are escorted in handcuffs. Low and open security prisoners should be housed in low security prisons, but because of the paucity of low security beds they are often housed in maximum security. Low and open prisoners should have access to work release and unescorted Leaves of Absence. If a low or open security prisoner is in a maximum security prison, then they do not have the same access to the entitlements of a low security prisoner. As already documented above, there are inadequate low security beds for women in New South Wales prisons. Women regularly serve their sentences in maximum security regardless of their security classification.

The conditions of confinement of women prisoners are virtually the same regardless of security classification. The majority of women are imprisoned in maximum-security prisons despite a lower security classification rating. This is a result of there being too few low and open facilities. Beyond Bars Alliance asserts that the lack of low security facilities available to women prisoners constitutes discrimination based on sex. Although there are several NSW prisons that are regarded as medium and minimum security, the actual number of women that are classified low security and have access to the privileges and programs associated with being a low security is minimal.74 In 2003, Emu Plains Correctional Centre, which was considered a medium to low security prison, built more fencing to enable remand women prisoners (i.e. high security classified) to be housed there. This, therefore, minimizes the low security positions that the prison was originally developed for.75

Strip Searching

Mandatory strip searching is also experienced in a discriminatory manner by women prisoners. Women prisoners, as a group, have higher incidences of prior sexual assault, domestic violence and other forms of abuse 76 (and suffer post-traumatic stress as a result at higher rates than male prisoners 77 as well as the general community). As a result, they often experience strip searching as a new occurrence of assault. Furthermore, there is no evidence that mandatory strip searching actually carries out its stated purpose to prevent contraband. There are other proven ways to search for and prevent contraband. Mandatory strip searching, as a non-consensual act, is de-humanising and humiliating and fails to accomplish its intended purpose. It is an unjustified assault on women prisoners by the state and thus breaches their human rights. 78

As a debasing, unreasonable and discriminatory practice, strip searching contravenes Australia's International Treaty obligations, such as the International Covenant on Civil and Political Rights (ICCPR), ratified in Australia on 13 November 1980, the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), ratified in Australia on August 27 1983 and the Convention Against Torture and Other Cruel Inhuman or Degrading Punishment or Treatment ratified in Australia on 7 September 1988 (henceforth referred to as the Convention Against Torture).

All persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person
Article 10.1 ICCPR

No-one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
Article 7 ICCPR

No-one shall be subjected to arbitrary and unlawful interference with his privacy, family, home or correspondence ...
Article 17.1 ICCPR

Everyone has the right to protection of the law against such interference or attacks
Article 17.2 ICCPR

The ICCPR makes reference to prisoners' human rights based on the following provisions: That prisoners will be treated with humanity and respect and that they shall not be subject to cruel, inhuman or degrading treatment or punishment. Furthermore, ICCPR codifies the right of people not to be arbitrarily interfered with and the protection of the law against such interference.

International Law says that a punishment is cruel if it does not contribute to acceptable goals and results in purposeless and needless pain and suffering. One indicator of cruel punishment is where the permissible aims of punishment (deterrence, isolation to protect the community and rehabilitation) can be achieved as effectively by punishing the offence less severely.79 Two important principles emerge from the international standards on the treatment of prisoners. Firstly,

individuals are sent to prison as a punishment, not for punishment and secondly, despite having lost their right to freedom, prisoners' rights do not stop at the prison door.80 "While the law does take [the prisoners] liberty and imposes a duty of servitude and observance of discipline for [her] regulation and that of other prisoners, it does not deny [her] right to personal security against unlawful invasion".81

Mandatory strip searching is in breach of the ICCPR principles, as women in prison are routinely punished through the random and mandatory strip searches that are conducted without reasonable suspicion and that violate their right to personal security against unlawful and unreasonable invasion.

Strip searching also violates the provisions set forth by the Convention Against Torture as it constitutes cruel, inhuman and degrading treatment. Strip searching, as an unjustifiable and dehumanizing practice, is an unlawful interference with the privacy and wellbeing of the prisoner and violates the obligation to treat women prisoners with humanity and respect for the inherent dignity of the human person.

Subjecting a woman prisoner to a mandatory strip search, other than one based on specific and reasonable suspicion of a criminal offence, constitutes and reinforces her powerlessness and loss of dignity. The strip searching of women, and particularly women who are survivors of sexual assault, is an antiquated practice that can only result in the further degradation and humiliation of women. Corrective services are clearly in breach of Australia's obligations under the ICCPR and the Convention Against Torture.

The arbitrary, capricious and oppressive strip searching of women is also in breach of Australia's commitment to the rights of women. The CEDAW committee, which comprises 23 experts of "high moral standing and competence", has articulated that discrimination against women includes gender based violence, that is, violence that is directed against a woman as a result of her gender, or that affects women disproportionately. As a large majority of women from prison are survivors of sexual abuse and/or incest, strip searches impact women disproportionate. A strip search, as an assault, is an act of violence towards a woman's person. In Queensland, women prisoners are strip searched more frequently than male prisoners. The frequency at which strip searches occur on women further reinforces gender subordination and violence directed towards women.

Post-release

After release from prison, women and especially Aboriginal women are subject to discrimination. There are only ten funded post-release support places for women in NSW at Guthrie House. These places must also serve women seeking housing support for bail, women awaiting a Drug Court hearing and women on parole. There are no funded supported places for Aboriginal women. Women and Aboriginal women in particular return to prison after release significantly faster and in greater numbers than men which suggests they face significantly greater barriers to social integration. This is unsurprising, considering that they are provided with fewer resources and opportunities.82 Aboriginal women who are on parole are also breached in greater numbers than other parolees often due to lack of suitable housing, failed attempts to reclaim their children and the necessity of having to consort with partners, family and friends who they may be ordered not to mix with. There is a growing rate of re-imprisonment due to these breaches of administrative orders and they affect women disproportionately.83

Other Forms of Discrimination

Religion

The religious needs of women prisoners are met through the Chaplaincy Board. The Chaplaincy Board currently includes four denominations (Anglican, Catholic, Uniting Church and the Salvation Army). Prisoners whose religions are not included in these groups must make special arrangements for services or visits by contacting their case workers/welfare workers; 61.6% of

CALD women stated that no information was provided about access to religious services for their faith, 23% stated that they have to pray in their cell and are sometimes disturbed by prison officers, 15.4% were given a Christian Bible even though they were not Christians. There is clear discrimination against women who are not Christians in the failure to provide them access to the religious services and pastoral care that is appropriate to their faith.84 Furthermore, Vietnamese women have very distinct days of special significance. Yet their festivals and days of special religious observance are not celebrated within prison. Vietnamese women identified two days of special significance: Tet and the Moon Festival, yet while the prison makes allowances for Christian holidays such as Easter and Christmas, no allowance is made for non-Christian religious holidays.

Food

Despite the existence of some freedom in selecting menus, some women, such as vegetarians, vegans, CALD women and women of certain religious faiths find it very difficult to accommodate their dietary needs as food selection and preparation are based on a Western standard.85 In addition, some women have metabolic conditions (such as lactose intolerance) that prevent them from eating much of the food served in the prison. Although the prison does provide some basic ingredients for the women's use and the women then "buy in" any special items which they wish to use, women still find that the basic ingredients are western and they are forced to buy most or all of the ingredients for their meals. This presents a financial burden because the women only receive approximately $3 to $4 a day, depending on what industry they work in and even less if they are continuing their education. This practice is detrimental and discriminatory in regards to respecting women's dietary and cultural needs.

Systemic Discrimination: The Regulatory Framework

The Statutory Framework

The Crimes (Administration of Sentences) Act 1999 and Regulation, the Crimes (Sentencing Procedure) Act 1999, the Parole Orders (Transfer) Act 1983 and departmental policies and procedures govern the conditions of imprisonment and the release of women prisoners in New South Wales.

The Crimes (Administration of Sentences) Act 1999 provides that every member of society has certain basic human entitlements and that, for this reason, a prisoner's entitlements, other than those that are necessarily diminished because of imprisonment or another court sentence, should be safeguarded. The Crimes (Administration of Sentences) Act 1999 and Regulation both include restrictions on the rights and privileges of prisoners and provide them with certain entitlements and procedural protections. The Act recognises the need to respect the dignity of those in prison and their special needs by taking into account age, gender, race, disability status and the culturally specific needs of Aboriginal and Torres Strait Islander peoples. Therefore, prisoners retain all the rights and privileges that are enjoyed by all members of society except for those which are necessarily removed as a consequence of the sentence of imprisonment.

Many of the policies, procedures and practices which operate in prisons are not contained in the Act or the Regulation but are promulgated by the Commissioner of the Department of Corrective Services. For example, there is no provision in the Act that specifically mentions "management plans", but management plans are nonetheless one way in which women in prison are controlled. Firstly, management plans are not applied to all women, only to those selected by the prison administration. Furthermore, the vast majority of women on management plans are Aboriginal. These plans do not require women to be placed in separate prison cells, but it is a practice regularly used by prison authorities.

The Crimes (Administration of Sentences) Act 1999 establishes a complete statutory framework, which regulates all aspects of the confinement and release of prisoners serving prison sentences.

The overriding purpose expressed in section 3 of the Crimes (Administration of Sentences) Act 1999 is community safety and crime prevention through the humane containment, supervision and rehabilitation of prisoners. The primacy of this concern reflects the traditional security based model for prison management. Because of the statutory mandate, Crimes (Administration of Sentences) Act 1999 views virtually all decisions concerning imprisonment through a security prism. Unfortunately, the Department interprets this requirement to mean that security concerns prevail even over human rights, including equality rights.

For the Department, prisoners' human rights and rights under the Act can be ignored or restricted when there is a "security concern", no matter how important or fundamental the right and how tangential or speculative the security concern. From the perspective of the Department, actions are not recognised as discriminatory or otherwise illegal where the purpose of the action is security. The legality of policy and the manner in which policy is implemented are assessed only against the requirements of the Crimes (Administration of Sentences) Act 1999 and Regulation. Actions by the Department and the prison administration are not assessed against other legislation. However, as with all governmental actions, decisions taken by the Department of Corrective Services must comply with the Anti Discrimination Act 1991, which applies to all members of society and prohibits unlawful discrimination.

Conclusion

The systems and processes of policing, courts, prisons and are often shielded from public scrutiny. While past inquiries, reviews and reports have repeatedly and consistently documented the abuses and mistreatment to which women have been and are subjected, there are no systems of accountability to ensure the rule of law is upheld and that women's well-being is maintained. Whilst women caught in the criminal justice system may have only a brief encounter with policing and the courts, they may have prolonged encounters with the prison system. For women prisoners, enquiries and investigations into the prison are often seen as potentially harmful as any information that they convey can be used against them by prison authorities and/or administration in various pernicious ways. As a result, women are often reluctant to disclose information that can have personal consequences for them.

Beyond Bars Alliance urges the Anti Discrimination Commission of NSW to immediately initiate an inquiry and/or a review into the conditions of women in the criminal justice system in New South Wales, in order to remedy the systemic discrimination and human rights violations that women in prison face.

Reference for the above:

Beyond Bars 2005, 'Submission to the Anti-Discrimination Commissioner for an Inquiry into the Discrimination Experienced by Women Prisoners within the Criminal Justice System in New South Wales', dated May 2005, Justice Action Australia, viewed on 25 November 2007, <http://www.justiceaction.org.au/index.php?option=com_content&task=view&id=150&Itemid=32>

Appendix 3

Mental Illness amongst Indigenous Australians

Mental Illness amongst Indigenous Australians

How is mental illness understood within Indigenous culture?

Concepts of mental health and mental illness are highly culturally specific. Aboriginal and Torres Strait Islander understandings of mental health are deeply embedded in a holistic understanding of health involving the "social, emotional, and cultural well-being of the whole community." (National Aboriginal Health Strategy Working Party 1989).

Rate of mental illness amongst Indigenous Australians

It is difficult to estimate the prevalence in Aboriginal and Torres Strait Island communities of what in western culture is understood to be mental illness. There are many reasons for this including:

- A scarcity of culturally appropriate and accessible mental health services for Indigenous communities, meaning that Indigenous people with mental health problems are often not being provided with mental health services. (MHCC, Fisher and Freeman, 2005)

- Many Indigenous people have a well founded fear that treatment in a mental health service my result in unwanted outcomes such as hospitalisation and medication, and hence do not attend these services (Vicary & Bishop, 2005)

- The cultural identity of people using mental health services is often not recorded. (ResponseAbility – Mental Health Resources for Tertiary Education website www.responseability.org/site/index.cfm?display=25861)

- Some experiences (feelings, beliefs or hallucinations) which non Indigenous Australians many label as mental illness, may be seen as a spiritual or personal issue.

- The excessive levels of disadvantage and related distress common to Indigenous communities and individuals throughout Australia have resulted in mental distress often being treated as a norm rather than a problem that can be addressed.

Consequently most available statistical data about mental illness within Aboriginal communities is drawn from figures regarding hospitalisation, death

(including suicide) and Incarceration.   Three key sources for such information are:

- 2004-05 National Aboriginal and Torres Strait Islander Health Survey (NATSIHS) - the largest health survey of Indigenous Australians conducted by the Australian Bureau of Statistics (www.abs.gov.au/ausstats/abs@.nsf/productsbytitle/C36E019CD56EDE1FCA256C76007A9D36?OpenDocument)

- The Australian Institute of Health and Welfare - Aboriginal and Torres Strait Islander Health and Welfare Unit (www.aihw.gov.au/indigenous/health/mental.cfm)

- The ResponseAbility – Mental Health Resources for Tertiary Education website (www.responseability.org/site/index.cfm?display=25861)

The figures provided in these reports indicate alarmingly high and disproportionate psychological distress amongst Indigenous communities.

Hospitalisation

- Hospital admissions relating to self harm amongst Indigenous Australians are double the national average (AIHW)

- The chances of an Aboriginal or Torres Strait Islander person being involuntarily admitted to psychiatric care are 3 to 5 times higher than for other Australians. In particular, the rate of hospitalisation is higher for disorders relating to substance use, psychotic disorders and dementia. (ResponseAbility)

- In 2001-2002, Aboriginal and Torres Strait Islander people were hospitalised for mental and behavioural disorders at a rate 1.4 times that of the general population. (ResponsAbility)

Mortality

- For the period 1999-2003 in Queensland, Western Australia, South Australia and the Northern Territory, the mortality rates for mental and behavioural disorders for Indigenous males and females were 5.5 and 2.2 times the rates of non-Indigenous males and females respectively. (AIHW)

- There were also much higher rates of mortality from assault and intentional self-harm of Aboriginal and Torres Strait Islander people compared to non-Indigenous people. (AIHW)

- The death rate associated with mental disorders among Aboriginal and Torres Strait Islander males was over three times the rate for other Australian males, but for females the rates were the same. (AIHW, 2004).

- Suicide and self-harming behaviours have not been described as a part of traditional Aboriginal society, prior to contact with Europeans. (ResponseAbility)

- Research in the Northern Territory indicates that approximately 70% of Aboriginal males who died by suicide had features that may have been characteristic of mental illness prior to taking their life (Parker & Ben-Tovim, 2002, cited in ResponseAbility).

- For the period 1999-2003 the suicide rate for Indigenous males and females was twice that for non-Indigenous males and females. For Indigenous males aged 0-24 and 25-34 years, rates were 3 times those for non-Indigenous males. For Indigenous females aged 0-24 years, rates were 5 times those for non-Indigenous females. (AIHW)

- Current data suggests that in 2004 suicides accounted for 4.2% of all deaths of Aboriginal and Torres Strait Islander people. In contrast, suicide deaths represented only 1.5% of deaths among other Australians. (ABS cited in ResponseAbility)

Incarceration

- In the year 2004, 21% of the total prisoner population were Aboriginal and/or Torres Strait Islanders. Indigenous people aged over 17 years were incarcerated at a rate of 1,417 per 100,000 compared to only 129 per 100,000 non-Indigenous people. (AIHW)

- At 30 June 2004, 32% of young people in juvenile detention were identified as Aboriginal and/or Torres Strait Islander. (AIHW)

- Incarceration may be both a risk factor for, and a result of, emotional distress and mental illness. The 1991 Royal Commission into Aboriginal Deaths in Custody found that Aboriginal people who were imprisoned 'often experience depressive symptoms and unresolved anger which sometimes leads them to attempt or commit suicide whilst in custody' (HREOC 1993, p. 698). The incarceration of young Indigenous men and juveniles during their formative years left them 'permanently alienated from their communities', so that on release from prison, they were likely to turn to substance abuse and violence (HREOC 1993, p. 698). (AIHW)

- 25% of all deaths in custody involved Indigenous people

Factors affecting mental illness amongst Indigenous Australians

The high levels of mental illness amongst Indigenous Australians needs to be understood in the context of extreme distress caused by disproportionately high levels of numerous negative factors including severe and chronic health

problems, reduced life expectancy, high levels of incarceration, substance misuse, homelessness, unemployment and poverty, excessive attention from police, Department of Community Services and other regulatory bodies combined with, cultural dislocation, discrimination at all levels of society and a history of racist and sometimes genocidal government policy enacted since colonisation.

Spread of mental illnesses and distress amongst Indigenous Australians

Indigenous Australians suffer from high levels of stress, anxiety and depression. The 2002 NATSISS (National Aboriginal and Torres Strait Islander Social Survey) noted that stressors reported most frequently by Aboriginal and Torres Strait Islander people were death of a family member or close friend, serious illness or disability and inability to get a job. (ResponeAbility).

Schizophrenia, schizotypal and delusional disorders were more than double those for other Australian males and females, and those for mood and neurotic disorders slightly higher. (ResponeAbility).

There is a strong link between mental illness and substance misuse. High rates of substance misuse in Indigenous communities have resulted in correspondingly high rates of related mental disorders. The rate of hospitalisation for those diagnosed with mental disorders due to psychoactive substance use in 2000-2001 was 4.8 times higher for Aboriginal and Torres Strait Islander males than other Australian males and 3.6 times higher for Aboriginal and Torres Strait Islander females than other Australian females (ABS & AIHW, 2003). Along with this, 74% of the deaths attributable to mental disorders amongst Indigenous Australians were related to psychoactive substance use (AIHW, 2004).

Current mental health service provision for Indigenous Australians

Currently appropriate service provision for mental health issues affecting Indigenous Australians is scarce. It is significantly under-resourced, and service provision is patchy. None the less there are some excellent examples of effective services, clearly addressing identified needs, with a strong level of Indigenous control and engagement in their design and delivery. Examples of these can be seen in the NSW Aboriginal Health Awards (Health NSW). However, these are the exceptions, and often delivered in pilot programs. Unfortunately, most of the limited resources allocated to addressing Indigenous mental health are going into approaches with little support from Indigenous communities, such as the recent interventions in the Northern Territory and the Shared Responsibility Agreements aimed at addressing behaviour in Indigenous communities

There have been some positive developments in the development and delivery of mental health and other human services to Indigenous communities.

- Recently the culture of human service provision throughout Australia has shown a growing focus on the effective services to Indigenous communities. This is reflected in areas such as the inclusion Indigenous service standards and performance indicators in the operations of human service providers. Effective service design and delivery is a key component in the quality accreditation processes available for human service NGOs through the Quality Improvement Council (www.qic.org.au). Government departments and service providers also utilise performance indicators and strategic goals associated with providing services to Aboriginal and Torres Strait Islanders.

- Vocation education is increasing its capacity to prepare service providers to design and deliver human services in Indigenous communities. Indigenous mental health is now a recognised service delivery area. Approaches that have been developed include Indigenous competencies and qualifications included in the vocational education sector:

    o Training in Indigenous service provision is included in human services curricula. Courses designed and run by, or in partnership with Indigenous academics, elders and other representatives. An example is seen in the activity of Nura Gil, the Indigenous Programs Unit at the University of NSW.
    o A small number of projects and incentive programs to encourage Aboriginal and Torres Strait Islanders to train in human service courses. An example is seen in the work undertaken by Nura Gili.
    o A small amount of human service training designed by and for Aboriginal and Torres Strait Islanders, such as the Djirruwang mental health worker course at Charles Sturt University.

- The skill and knowledge that Indigenous community members bring with them is recognised through the inclusion of employment roles where Aboriginality is included in the Essential or Desirable criteria for employment in many positions.

- There are some projects that work to address problems in Indigenous communities in a holistic manner, in keeping with Indigenous cultures and practices. One such initiative is the Mt Druitt Homelessness run in a partnership between the Housing NSW and the NSW Department of Corrective Services.

Work in this area is greatly encouraging, particularly as it is based upon recommendations common to most of the research and consultation undertaken regarding Indigenous community service provision.

However, it is unfortunate that such achievements are not typical of service provision to Indigenous communities. A detailed analysis of mental health service provision to Indigenous communities and related gaps and inadequacies is provided in 'Ways Forward: National Aboriginal and Torres Strait Islander Mental Health Policy National Consultancy Report" 1995. Although this report is now over 10 years old, little has changed in relation to the issues and patterns of service delivery.

> "Aboriginal people perceived mainstream mental health services as failing them, both in terms of cultural understanding and response, and repeatedly identified the need for Aboriginal mental health services, which took into account their concepts of the holistic value of health and their spiritual and cultural beliefs, as well as the contexts of their lives."

Reasons for these shortfalls were identified as being:
- Limited mental health service provision of any kind available to Indigenous communities, due in part to the high number of Indigenous communities in remote areas where there are extreme shortfalls in all kinds of infrastructure and service provision. (A 1996 ABS survey outlined in ABS Health and Welfare, Aboriginal & Torres Strait Islanders1997, highlights poor Indigenous access to health services in general, noting 1 in 7 Indigenous people in rural areas did not have a doctor or nurse available within 25 km of their community on either a permanent or visiting basis.)
- Shortage of funds available for mental health service provision
- Culturally inappropriate service provision. Perhaps the most extreme, but also prevalent example of this is the high level of mental illness amongst incarcerated Aboriginal and Torres Strait Islander people, such that the prison system is being used as a de-facto mental health service system.
- Poor understanding of Indigenous cultural values by mental health workers
- A shortage of Indigenous mental health workers
- A shortage in the provision of holistic approaches to mental and broader community health services
- Limited engagement of Indigenous communities in the design and delivery of Indigenous mental health services.

Recommendations to overcome these problems:

Recommendations to overcome these problems have been provided in numerous reports and submissions concerning Indigenous mental health. Strategies to remedy the problem are largely agreed upon and well

understood by advocates for Indigenous service delivery. The main barrier to appropriate and effective service delivery is the will of government policy makers. A very comprehensive suite of recommendations to mental health service delivery for Aboriginal and Torres Strait Islanders is provided in 'Ways Forward: National Aboriginal and Torres Strait Islander Mental Health Policy National Consultancy Report" 1995.

This and other reports have highlighted 3 key areas as essential to effective mental health service delivery in Indigenous communities. These are:
- Effective engagement of Indigenous communities in the design and delivery of mental health services.
- Holistic and culturally sensitive approaches to service design and delivery
- More resources allocated to the provision of appropriate services to holistically address mental health and related issues for Aboriginal and Torres Strait Islanders.

Effective engagement of Indigenous communities in the design and delivery of mental health services

Effective engagement of Indigenous communities needs to occur at all levels of the design and delivery of mental health services. This means that:
- Effective consultation needs to occur with Indigenous communities about their mental health concerns and the best ways to address them. To do this it is necessary to:
  o Engage Indigenous representatives in the design and practice of consultation
  o Provide training and information to enable Indigenous communities to effectively participate in consultation processes. This includes ensuring that Indigenous representatives on committees have the skills, knowledge and attitudes necessary to effectively represent their communities.
  o Recognising that there are both a diversity of Indigenous communities within Australia and that within and amongst these communities there are a diversity of views.
  o Conduct consultations in culturally appropriate ways, so as to encourage contribution to the consultation process.
  o Conduct multiple types of consultations so as to enhance possibility of effective contribution by diverse sections of the Indigenous population – i.e.
    o urban, rural, and remote,
    o men and women
    o all ages including elders, youth, and children
    o employed, unemployed
    o literate, illiterate
    o English speaking, non English speaking
    o Incarcerated, non incarcerated

- o Ensure feedback about the outcomes of consultations and the progress of work undertaken that has drawn upon the consultation information.
- o Engagement of Indigenous representatives in the planning of programs based on information gained from consultations.

- Holistic and culturally sensitive approaches to service design and delivery requires addressing the full range of factors linked to mental health problems amongst Indigenous Australians, including:
    - o Homelessness and associated housing stresses
    - o Recognition of the destructive impact of European colonisation
    - o Recognition of the value and uniqueness of Indigenous cultures
    - o Over representation in the criminal justice system
    - o Extremely high levels of unemployment
    - o Poor health and significantly lessened life expectancy
    - o Lack of health and social support services
    - o Lack of social and town infrastructure – transport,
    - o Over representation by Indigenous communities as victims of crime, including violence, domestic violence, sexual abuse,
    - o Discriminatory practices by governments such as the current NT interventions, and the Shared Responsibility Agreements.
    - o Excess attention from police, DoCS and other authorities.

These issues need to be addressed in a culturally appropriate and sensitive manner. There needs to be services specifically for Indigenous people, with design, service provision and evaluation provided by Indigenous people.

Effective vocation education and training is essential to this endeavour. In its submission to the Productivity Commission's Study in Pressures Facing the Health Workforce, (Fisher an Freeman 2005) MHCC notes that effective mental health service provision to Indigenous Australian requires:
- o Consultation with Indigenous communities about mental health service delivery needs
- o Engagement of Indigenous people in the design and delivery of mental health training and education programs
- o Specific training for Indigenous mental health workers
- o Encouragement through promotion and incentives for Indigenous community members to undertake training in mental health service delivery
- o Increased focus on effective Indigenous mental health service delivery in the vocational education of non Indigenous mental health and other human service providers, ideally with such education being designed and delivered by Indigenous representatives.
- o Indigenous engagement in the evaluation of training concerning Indigenous mental health service delivery.

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