14 September 2017

Judge Matthew Myers OAM
Commissioner
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001

By email: sabina.wynn@alrc.gov.au

Dear Commissioner Myers,

Submission to the Indigenous Incarcerations Rates Inquiry

Community Legal Centres NSW (CLCNSW) and the CLCNSW Aboriginal Advisory Group (AAG) are writing to you regarding the inquiry into Indigenous incarceration rates.

Community Legal Centres NSW (CLCNSW) represents the network of 39 community legal centres (CLCs) throughout NSW. The CLCNSW Aboriginal Advisory Group (AAG) is comprised of the Aboriginal staff working in CLCs in NSW. AAG members, both as Aboriginal community members working in CLCs, as well as CLC staff working in Aboriginal communities, are uniquely positioned to give specialist insight into the legal and social barriers effecting Aboriginal and Torres Strait Islander people in NSW, particularly in regards to the scope of CLC business, which largely consists of civil and family law matters and community legal education.

We consider the inquiry as an important opportunity to present government with recommendations for legislative and systemic change.

We are writing to provide comments in three parts:

- Part One: Provide comment from the CLCNSW Aboriginal Advisory Committee
- Part Two: Provide comment from the CLCNSW Aboriginal Legal Access Program
- Part Three: Provide an overview of CLC submissions endorsed by CLCNSW from Kingsford Legal Centre, Women's Legal Services NSW, Redfern Legal Centre, and the Public Interest Advocacy Centre.

If you have any questions or require any further information regarding this submission, please don't hesitate to contact me via 9212 7333 or zachary@clcnsw.org.au

Yours sincerely.

[redacted]

(per) Zachary Armytage
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Acknowledgement of Country

CLCNSW and the CLCNSW Aboriginal Advisory Group acknowledges and pays respect to Aboriginal and Torres Strait Islander Traditional Owners and Elders, past, present, and future, and extends that respect to all Aboriginal and Torres Strait Islander people. CLCNSW and the CLCNSW Aboriginal Advisory Group acknowledges that lands, islands, seas, waters, and sky in this region of the globe, always was, and always will be, Aboriginal and Torres strait Islander Country.

Part 1: Comment from the CLCNSW Aboriginal Advisory Group

The CLCNSW Aboriginal Advisory Group (AAG) is comprised of the Aboriginal staff working in CLCs in NSW. The following comments were provided by AAG members in response to the question:

What systemic changes need to be made to stop our mobs from getting caught up in the criminal justice system?

Expert Aboriginal community worker at a metropolitan community legal centre:

> "I am speaking from personal experiences. We see too many of our people incarcerated, especially our young people, and the justice responses I have observed in many cases seem unfair when sentencing our young people and adults.
>
> As our people are suffering intergenerational trauma from colonisation and from the lateral violence observed by Indigenous people with our communities, incarceration of our people should not be the solution to cultural influences in understanding traditions and preventions to interventions of programs.
>
> We need to enforce and create educational programs that engage Indigenous people to change behaviour, by empowering communities to address cultural practices and developing programs with consulting Indigenous communities."

Aboriginal Legal Access Program Worker in Regional NSW:

> "Money. Not too sure of the cost and difference, but it would be cheaper to invest or run programs that are about behavioural change and education, than it is to throw billions of dollars into jails.
>
> For young offenders, we need more culturally appropriate programs, because youth and children tend to listen and embrace cultural practices: so more money into cultural camps and programs. More family support and community support programs. There are stories of various camps and programs, where community members are mostly volunteering their time, houses, beds, lounges, and cars to young offenders. Community people who do these extra activities for our youth do not get any funding whatsoever and instead use a couple of dollars from their Centrelink benefits.

The Aunty, Uncle, Pop and Nan, and Sister that are the taxi driver, cook, safe house, baby sitter, fisherman, sporting supporter, they all work under together so youth are not locked up, and they encourage our young ones' ways of behaviour and change.

We need to support those community people who are helping the system. These people are not recognised and sometimes they don't want to be. They mainly do these kind acts due to cultural obligation and family."

Samantha Alexander – Macarthur Legal Centre, Aboriginal Legal Access Program Officer and qualified Criminologist:

"Whilst Aboriginal people only comprise of less than 3 per cent of the entire Nation, we make up almost 28 per cent of those in custody[1]. This is a substantial overrepresentation of our brothers and sisters whom are entrenched in the criminal justice system.

In my experience, practise and studies, we need more Aboriginal workers within the criminal justice system. Evidence consistently demonstrates the efficacy, effectiveness and influence Aboriginal professionals, scholars and skilled workers have when it comes to intervention with the Aboriginal population in custody.

Therefore, we need to encourage our mob to seek further education and training. Cultural awareness training should also be practised regularly for non-Aboriginal staff. Culturally appropriate diversion programs and initiatives, such as the Koori Court should be utilised more frequently so as to reduce the 'revolving door'.

Looking through a utilitarian and national lens, there will only be a reduction in crime by Aboriginal people when the 'gap' is finally closed. Then we will be on par with our non-Aboriginal brothers and sisters in all arenas, such as employment, education, housing, health, life expectancy, etc.

Once we are all on the one platform, the overrepresentation in custody should cease."

Aboriginal Legal Access Program Worker in regional NSW:

"The amount of our children being stolen by inexperienced and culturally incompetent FACS workers creates a pipeline drawing generations of our mobs through the out of home care system and straight into the criminal system.

Where are the changes from historical practices upon which the apology was made?

Sure, changes to remand, bail, and policing will bring much needed, albeit very late, reprieve to the systemic abuse, but this focus per se is far from the beginning of the systemic entrapment of our people into prisons.

[1] '4517.0 - Prisoners in Australia, 2016 ', Australian Bureau of Statistics, 8/12/2016, retrieved 28/3/2017. Source: https://www.creativespirits.info/aboriginalculture/law/aboriginal-prison-rates#ixzz4siQMP8bp

Of course, the fiscal argument that diverting some portion of the monies spent on the out of home care, juvenile justice, and adult prison systems and into early intervention and community support structure is a no brainer.

However, it's also the right thing to do.

As a country, we're imprisoning our Aboriginal and Torres Strait Islander Brothers and Sisters at a rate higher than in South Africa at the height of the Apartheid.
Building prisons is not the answer, as they only fill up, and you can guess who by.

What we need is community lead solutions securely funded to a level better than incompetent government agencies, and a complete dismantling and re-design of any system that proposes to remove children for their own safety, that is, if we truly want to change the rates of incarceration of our people."

Part 2: Comment from CLCNSW Aboriginal Legal Access Program

The CLCNSW Aboriginal Legal Access Program is a state-wide program. It aims for better access to legal services and increased awareness among Aboriginal people of their rights and legal services available.

Aboriginal Legal Access Workers are currently available to assist people in the following community legal centres: Macarthur Legal Centre, Northern Rivers Community Legal Centre, Western Sydney Community Legal Centre, Illawarra Legal Centre and Shoalcoast Community Legal Centre.

CLCNSW also engages a Coordinator who supports the ALAP workers in the CLCs. We do not provide frontline services; our role as a peak body is to provide systemic support and to resource staff in the CLC sector, as well as representing and facilitating the CLCs' voice in social justice and community law contexts.

An ancillary outcome of our role is a unique perspective of the intersection between the community, frontline and systemic advocacy by the CLC sector, and the seemingly entrenched drivers and consequences of under-resourcing on access to justice.

In this resource-restricted context, the CLCNSW Aboriginal Legal Access Program works to increase the efficacy of CLCs when working with Aboriginal communities, particularly with regards to the pivotal role of cultural safety in legal assistance services by non-Aboriginal community controlled services.

The growth, support, and adequate funding of Aboriginal and Torres Strait Islander staff and programs within CLCs improve outcomes in civil and family law, including:

- diverting issues that may be escalating towards contact with the criminal justice system;
- breaking down barriers and developing self-determinative relationships within Aboriginal communities towards the Commonwealth's legal systems; and
- influencing and informing thought leadership on, amongst other areas, the nexus between social, civil & family law issues in the matrix the accumulates in the over-presentation of our people in the criminal justice system.

The Drift

There is a clear connection between care and protection interventions of children and future offending, with complex social disadvantage and vulnerability impeding the ability of a significant majority of the young people accessing the Children's Court to meaningfully participate and engage in decisions that will have a long-lasting impact on their life course.[2]

A lack of cultural competence, embedded in all levels of decision making, functions to deny young people strong connections to their identity. Connections 'intrinsic' to any assessment of what is in a child or young person's best interests is of strong significance for Aboriginal and Torres Strait Islander young people.[3]

The Lead

CLCNSW recommends that the Commonwealth Government leads the necessary reforms through potentially modelling laws that states can adopt.

Justice Reinvestment

CLCNSW supports a justice reinvestment approach to reducing Indigenous incarceration rates by diverting funding from prisons and into community programs designed to build resilience and decrease criminal behaviour.

We recommend that justice reinvestment programs be well funded; that data collection barriers be removed; and that justice reinvest bodies are supported in accessing the many data sets required to establish effective justice reinvest initiatives.

We note the paramountcy of community leadership and ownership in design and delivery of programs existing within a justice reinvestment framework.

Access to Justice

CLCNSW supports Proposal 11-1 with regards to interpreter services.

In response to ALRC Question 11-2, with regards to access to Aboriginal and Torres Strait Islander *services* within Aboriginal and Torres Strait Islander community controlled organisations*,* CLCNSW recommends the Commission to liaise directly with Aboriginal and Torres Strait Islander community controlled organisations.

With regards to Aboriginal and Torres Strait Islander *services* operating within 'mainstream'/non-Aboriginal and Torres Strait Islander community controlled organisations, CLCNSW strongly recommends the provision of adequate funding for legal services, particularly NGOs, by implementing the funding recommendations of the Productivity Commission in its *2014 Access to Justice Inquiry Report.*

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[2] Judge Peter Johnstone, President of the Children's Court of NSW, Aboriginal Legal Service Symposium, Noah's on the Beach, Newcastle, Friday 5th August 2016, 'Cross-Over Kids: The Drift of Children from the Child Protection System into the Criminal Justice System', p5.

[3] Ibid

Part 3: Overview of endorsed CLC submissions

CLCNSW endorses the submissions of several of our member CLCs: Women's Legal Services NSW, Redfern Legal Centre, Public Interest Advocacy Centre, and Kingsford Legal Centre. Following is a summarily look into, and, endorsed reiterations of, their respective submissions.

From the Redfern Legal Centre submission:

1. Offensive language
    a. Support for 6-4 is based on the indeterminacy test for offensiveness, the change of community standards, the role of offensive language in the 'trifecta' of offences in Aboriginal communities, the use of CINs issued for offensive language as a tool of oppression, and recommendation by RCIADIC that offensive language not be grounds for arrest or charge. Recommendation: Offensive language provisions be abolished.
    b. As the CIN has resulted in negative impacts due to, and stemming from, fine default, and widening the net of police interactions with Aboriginal people, RLC recommend that; If offensive language provisions are not abolished:
    A review of offensive language provisions to clarify the definition of 'offensive'; A cautioning scheme in place of CIN;
    c. If the CIN scheme is not replaced, an automatic review by a senior police officer
    d. Police should be required to examine and monitor the use of offensive language provisions in respect of Aboriginal and Torres Strait Islander peoples.

2. Police use of street powers
    a. Due to the racial profiling and the aggressive and oppressive targeting of Aboriginal people that significantly underpins, without a lawful basis, the systemic use of stop and search, move-on directions, and arrest, noting the compounding effects on community members who live with physical, cognitive and/or mental impairments, it is recommended that;
        i. Police agencies be mandated to collect and provide statistics publicly (at a minimum on a annual basis) on the use of police powers state by state. Statistics to be made available should include the numbers of arrests, personal searches, search of premises, vehicle stops, vehicle searches, move on directions and bail breaches and officer perceived ethnicity of the person being police, as per the framework set out in the Police Stop Data Working Group report.
        ii. Police receive ongoing, specials training on the basis for exercising their powers.
        iii. Police are mandated to explicitly use arrest as a last resort when dealing with Aboriginal and Torres Strait Islander people, in state-based legislation governing police powers.

3. Proactive policing of bail compliance:
    a. Although the policing of bail conditions is deeply entrenched in police policy, excessive policing of low risk offenders for minor and/or technical breaches has a negative aggregate effect on the publics' confidence in police, and a destabilising effect on the support systems for people on bail, including their family and social relationships. Therefore, RLC recommends that:
        i. Compliance checking be subject to the 'reasonable suspicion' test.

ii. Compliance checking be limited to those offenders at high risk of committing further serious offences.
iii. Police report annually on bail compliance strategies, in particular the demographics of offenders targeted, offences for which targeted offenders are on bail and method for calculating the efficacy of bail compliance strategies.

4. Dealing with Breaches
    a. As the common law principle of 'arrest as a last resort' has not been incorporated into s77 Bail Act 2013 (NSW), and arrest for breach is oft a first response, despite language in s77(3), there is no requirement that police be satisfied that an arrest is "reasonable necessary", as per s99(1)(b) LEPRA Act 2002 (NSW). The zero-tolerance approach to breach of bail in conjunction with the current formulation of s77 can result in an improper exercise of police powers with respect to minor offences and technical breaches, and has the impact of compounding vulnerability, as well as putting those on bail back behind bars for breaches that are not new offences themselves.
    b. ALRC to consider the weight that is given by police to the factors in s.77(3) of the Bail Act 2013 (NSW) when deciding what action to take in respect of a breach of bail.
    c. If a decision is made to arrest for a breach of bail, police be mandated to record:
        i. The factors considered by police in making the decision to arrest; and
        ii. the reasons that it was determined that an arrest was the most appropriate action.
    d. Introduce a cautioning system for technical breaches of bail in NSW such as breaches of curfew conditions, residence conditions and reporting conditions.
    e. Police be required to report annually on the number of arrests for breaches of bail including specific data on the categories of breach.

5. Other Proactive Policing' strategies
    a. Many Aboriginal clients of RLC are placed on the STMP and are over policed and harassed as a result. This damages the prospects of reintegration, and due to arbitrary application appears to aggravate discriminatory policing, thereby bringing the efficacy of the STMP as an appropriate crime preventing tool into question. RLC recommends:
        iii. Police be required to publish data on the use of the Suspect Target Management Plan (STMP) including Aboriginal and Torres Strait Islander status.
        iv. Police conduct an evaluation on the efficacy of the STMP in reducing crime.

6. Police accountability and the complaints system
    a. A core component of accountable policing is an effective complaints system. Police misconduct commonly experienced by RLCs clients relate to unlawful exercise of police powers like those mentioned above. Fear of reprisal and lack of faith in the police to independently investigate complaints deter clients not to pursue complaints. Non-serious misconduct is not captured under the LECC despite the fact that conduct complained of may involve an abuse of power that routinely impacts Aboriginal and Torres Strait Islander clients of RLC. Further, s45 of the LECC Act gives police the power to avoid critical review of police

conduct by declining complaints if the is an alternative means of redress available. Alternative means of redress in this context is systemically misapplied to include criminal hearings, and, civil proceedings against the State of NSW, where in the former the courts do not have the power to make a finding of conduct pursuant to s9(4)(c) of the LECC Act, and concerning the latter, the proceedings against the State of NSW do not necessarily deter future misconduct of the individual unless specific disciplinary action is undertaken by NSW Police. The RLC recommends:

i. The Law Enforcement Conduct Commission (**LECC**) and NSW Police develop policies governing the application of section s45(1)(e) of the *Law Enforcement Conduct Commission Act 2016* (NSW) (**LECC Act**) .
ii. The NSW Police automatically conduct an investigation under Part 8A of the *Police Act 1990* (NSW) where the Court has made a finding that a police officer has engaged in improper or unlawful conduct.

From Women's Legal Services NSW submission:

1. Legal reform is needed to reduce the criminalisation and over-incarceration of Aboriginal and Torres Strait Islander peoples, particularly women. There must be a whole-of-system approach which addresses the underlying causes and drivers of the offending behaviour with a greater focus on prevention and early support.
   WLS recommends:

   a. Improved data be collected and made available by key agencies in the domestic violence sector in order to build a further evidence base on the experience of women defendants to AVOs.
   b. The NSW Bureau of Crimes Statistics and Research (BoCSaR) undertake a discrete project into the experience of women defendants to AVOs in the justice system.
   c. The NSW Police continue to strengthen their policies and procedures around identification of the "primary victim" in domestic violence incidents, and provide continuous training about the nature and dynamics of domestic violence.
   d. The NSW government take into account in its Domestic and Family Violence reforms that women defendants to AVOs may, in fact, be victims, rather than perpetrators of violence.

2. When Aboriginal and Torres Strait Islander women who are subjected to sexual and/or family violence for a long time and then lash out, the criminal justice system is too punitive towards them. Why not respond with increased assistance early?
3. Imprisonment for pregnant women or women who care for children should be a response of last resort. Flexible and accessible, non-custodial alternatives to prison should be available throughout all states and territories, including in rural, regional and remote areas.
4. Flexible alternatives to custodial sentencing
5. Every state and territory to develop a Women's strategy, noting New Zealand has recently released one.
6. The importance of culturally safe, trauma informed programs that are readily available to women, including those on remand, whenever they want to access such service.

   a. increase funding for community controlled Aboriginal and Torres Strait Islander legal services, including specialist Aboriginal and Torres Strait Islander Women's Legal

Services, Family Violence Prevention Legal Services and Aboriginal and Torres Strait Islander Legal Services;
   b. increase funding for specialist Aboriginal and Torres Strait Islander women's programs within mainstream specialist women's legal services; and
   c. fund legal services to provide specific assistance to people in prison, particularly Aboriginal and Torres Strait Islander women, including in civil and family law matters.

7. Fines should not result in the imprisonment of the defaulter.
8. Culturally safe, strengths based, trauma-informed programs which respond to the specific needs of Aboriginal and Torres Strait Islander women prisoners should be developed and readily available to all Aboriginal and Torres Strait Islander women in prison who would like to access these programs, including those on remand.
9. Offensive language should not remain a criminal offence.
10. Pertaining to the above: State and territory governments should provide alternative penalties to court ordered fines, such as driving, counselling or educational programs which help people to address issues which may be linked to the fine default. The alternative penalties should be reasonable and proportionate to the fine that would have otherwise been imposed.
11. Birth certificate should be issued to Aboriginal and Torres Strait Islander people for free on application.
12. Additional funding should be provided to Link-Up to assist Aboriginal and Torres Strait Islander people to reunite with their family, country and community and to support them through their healing journey.
13. Whole-of-system approach focused on prevention and early support to reduce the high rates of incarceration of Aboriginal and Torres Strait Islander Peoples.
14. Federal, state and territory governments should:
    a. increase funding for community controlled Aboriginal and Torres Strait Islander legal services, including specialist Aboriginal and Torres Strait Islander Women's Legal Services, Family Violence Prevention Legal Services and Aboriginal and Torres Strait Islander Legal Services;
    b. increase funding for specialist Aboriginal and Torres Strait Islander women's programs within mainstream specialist women's legal services; and
    c. fund legal services to provide specific assistance to people in prison, particularly Aboriginal and Torres Strait Islander women, including in civil and family law matters.
15. Police to engage in open and ongoing forum with Aboriginal Communities and Torres Strait Islander communities. Police Aboriginal Consultative Committees should be well supported and promoted.

From Public Interest Advocacy Centre submission:

1. The full implementation of Recommendation 87 RCIADIC
2. Arrest and detention as measure of last resort
3. Better communication of best-practice of police policies, powers, and procedures to the NSW Police Force
4. Bails laws expressly provide that arrest for breach as a sanction of last resort (s77 of the NSW Bail Act)

5. Community consultation-informed 'breach reduction strategy', particularly in communities with large Aboriginal populations.
6. Police policies and training to be clarified so that policing of bail conditions is lawful and not oppressive.
7. The role of arrest, remand and bail in the intersection with a) the degree of discretion available to decision makers, and b) incarceration as a last resort, as strong contributing factors to increased incarceration, referring to RCIADIC (14.4.14), and recommendations 87, 92 and 239, with contrast made to PIAC's experience of police failing to consider alternatives to arrest.
8. PIAC critiques of the lack communication to NSW police of the discretionary powers contained within ss 99 and 105 LEPRA, with further comment of how this systemic behaviour effect children, citing the Convention of the Rights of the Child, s7(a) and (c) Young Offenders Act, and Children (Criminal Proceedings) Act 1987 (NSW) s8(1),8(2)(a), and 8(2)(b).
9. With regards to the above in the context of suspected breaches of bail, the case work of PIAC shows a failure by police to consider alternative to arrest, and a failure to consider other matters in deciding what action to take, as required by s77(3) Bail Act.
10. PIAC recommends that bail laws expressly provide that; a) arrest for breach is a sanction of last resort, and b) police officers consider a persons age when determining ramification of breach of bail.
11. The lack of understanding by police of the role of bail enforcement orders, and the court, in the enforcement regime set out in s30 Bail Act, underpins a recommendation by PIAC that police policies and training to correct the systemic misapplication of a generally misunderstood bail enforcement regime.
12. The oppressive application of proactive policing under the STMP, amongst other negatives, likely increases the incarceration rates of young Aboriginal and Torres Strait Islander people.
13. Support for proposal 2-1, and in-principle support for Proposal 2-2.
14. CLCNSW particularly draws to the attention of the ALRC PIAC's work in the nexus of homelessness and imprisonment[4] in response to Chapter 5 of the Discussion Paper particularly with regards to pre-release exit planning for prisoners, best-practice case-management pre- and post- release, and the need of access to services providing welfare, community managed accommodation, and post releases support. Noting that barriers to accommodation draw from availability, affordability and intersectional discrimination.
15. Support for Proposal 5-1, 5-2, 5-4 and in-principle support for Proposal 5-3
16. Support for Proposal 6-1 noting the long history of reports that recommend that fine default should not result in imprisonment.
17. Strong support for Question 6-3 limiting the number of infringement notices in one transaction.
18. Support for 6-4 that offensive language not remain as a criminal offence.
19. Strong support for Work Development Orders under 6-2 and 6-6.

[4] pages 12 to 17 of PIACs' submission

20. Strong support for encompassing justice targets in the Close the Gap strategy, with targets designed to address over-representation of adult and youth incarceration rates.
21. Support for 12-3 and 12-4 relating to public reporting of police engagement with Aboriginal and Torres Strait Islander communities, and, documentation, evaluation, succession planning and auditing of police programs aimed at reducing offending behaviour.

From Kingsford Legal Centre submission:

1. Bail and the remand population
    a. Aboriginal and Torres Strait Islander people often don't have access to rehabilitation programs while on remand. Research conducted by Queensland Corrective Services shows that culturally-specific programs that are effective in reducing recidivism.
    b. The KLC recommends:
        i. Commonwealth, state and Territory governments should ensure that Aboriginal and Torres Strait Islander people have access to culturally sensitive rehabilitative programs while on remand.

2. Sentencing options: 4-1(a)
    a. Disproportionate impact on Aboriginal and Torres Strait Islander people underpin human rights concerns with mandatory sentencing. Although Australian governments promote mandatory sentencing based on deterrence through harsh penalties, this rational is outweighed by the detrimental effects mandatory sentencing has on the human rights of Aboriginal and Torres Strait Islander people, further noting the lack of evidence supporting the effect of mandatory sentencing on deterrence.
    b. Mandatory sentencing blunts the sentencing tools of the Court by contradicting sentencing principles and impeding judicial discretion. In this sense, it also undermines the Rule of Law and is inconsistent with the separation of powers by allowing the executive to exercise judicial power and to limit judicial discretion. Mandatory sentencing is also contrary to the principle that imprisonment should be a sanction of last resort.
    c. The disproportionate and discriminate impact of mandatory sentencing on Aboriginal and Torres Strait Islander people due to its application to 'crimes of poverty' also like creates cycles of criminality, which are particularly harmful to young offenders.
    d. KLC notes the disproportionate effect of the mandatory sentencing framework in conjunction with socio-economic situations of many Aboriginal and Torres Strait Islander people cumulates not only in over-representation but also breaches many human rights conventions.
    e. The KLC recommends:
        i. All States and Territory review their mandatory sentencing provisions.
        ii. The mandatory sentencing provisions contained in section 297 and section 401(4) of the *Sentencing Act* (NT) be repealed.
        iii. The mandatory sentencing scheme adopted by the Northern Territory should be reviewed as a whole, and in particular, the mandatory sentences imposed for level 1, 2 and 4 offences should be repealed.

iv. The mandatory sentencing scheme adopted by the Northern Territory should be reviewed as a whole, and in particular, the mandatory sentences imposed for level 1, 2 and 4 offences should be repealed.

3. Fines and drivers licences
    a. The majority of fine-default incarcerations arise from offences of relatively low seriousness. In most states, fine defaults are linked to penalties such as suspended licences and suspended motor vehicle registration. Combined with barriers to documentation, like birth certificates, fine-default and driving disqualification, particularly in remote areas, create a systemic barrier to access-to-justice which disproportionately effects Aboriginal and Torres Strait Islander people, and further, strongly influences social exclusion and over-representation.
    b. Work Development Orders (WDO's) enable eligible applicants to reduce fines through unpaid work, approved vocational training and compliance to drug and alcohol treatment programs.
        i. States and Territories should repeal provisions in fine-enforcement statutes that provide incarceration penalties for unpaid fines.
        ii. The NSW government should no longer suspend licences or suspend motor vehicle registration as penalties for fine-default.
        iii. Policy initiatives such as NSW's Work Development Orders should be adopted across Australia.
        iv. Governments should replace fixed fines with fines proportional to income and assets.

4. Female Offenders
        i. The Commonwealth, State and Territory governments review and reform laws that disproportionately criminalise Aboriginal and Torres Strait Islander women, in particular mandatory sentencing laws for minor offences, such as defaulting on fines, which can be dealt with in non-punitive ways, and for which imprisonment is inappropriate.
    b. The impact of imprisonment, including remand, on dependent children
        i. Consideration be given in sentencing of Aboriginal and Torres Strait Islander women to the impact of imprisonment, including remand, on dependent children. Sentencing considerations should include the best interests of the child and recognise the family as the fundamental unit in line with established international human rights principles.
        ii. Where possible, children under 6 years of age should be able to live with their mothers where the mother has been imprisoned for a non-violent crime.
        iii. Commonwealth, State and Territory governments provide increased, stable and ongoing funding for diversion programs for Aboriginal and Torres Strait Islander women which are culturally appropriate.

5. Access to Justice issues
    a. Interpreter Services
        i. Commonwealth, State and Territory governments should work with peak Aboriginal and Torres Strait Islander organisations to establish and fund high quality, culturally appropriate and accessible interpreter services within the criminal justice system.

b. Increased Investment in Diversion Programs

    i. Specialist sentencing courts be rolled out nationally, including in rural, remote, regional and metropolitan areas.
    ii. Diversionary programs should be accessible, receive ongoing and stable funding, and be available in rural, remote, regional, and metropolitan areas.

Acknowledgements

CLCNSW acknowledges the work and words within this submission of;

- Kingsford Legal Centre
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- Redfern Legal Centre
- Public Interest Advocacy Centre
- National Association of Community Legal Centres, and
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