

Submission on the ALRC inquiry into the incarceration rate of Indigenous Australians

Your details

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Would you prefer this submission to remain confidential? YES / NO

11 December 2016

ALRC Incarceration Inquiry
Legal Assistance Branch
Attorney-General's Department
3-5 National Circuit
Barton, ACT 2600

By email: ALRCIncarcerationInquiry@ag.gov.au

Dear Sir or Madam,

Inquiry into the incarceration rate of Indigenous Australians submission

The Top End Women's Legal Service (**TEWLS**) welcomes the opportunity to respond to the consultation draft of terms of reference for the Australian Law Reform Commission (**ALRC**) inquiry into the incarceration rate of Indigenous Australians. Our response will be focused on the experience of Indigenous women in the NT, where cycles of incarceration and violence are contributing to alarming levels of over representation of Indigenous Australians in the prison system as well as a saturation of Indigenous children in the child protection system. TEWLS believes it is vital to invest in early intervention, prevention and diversion strategies to address the root of offending and reoffending in Indigenous communities, and cut imprisonment rates.

About TEWLS

TEWLS is a community legal centre focused on the advancement of women's rights. Founded in 1996, we are funded by the Commonwealth Attorney General's Department and the Department of the Prime Minister and Cabinet to provide high quality and culturally appropriate legal advice, casework, community legal education and advocacy to women living in the Top End of the NT.

We provide assistance in a number of areas of law including:

- Family law;
- Domestic and family violence;
- Housing and tenancy;
- Debts;
- Sexual Assault;
- Discrimination;
- Compensation for victims of crime; and
- Complaints.

Our Submission

I Background

As at June 2011, the population of the NT was 231,292;¹ Aboriginal and Torres Strait Islander Australians comprised 29.8 percent of the population, the highest proportion of any Australian state or territory. The NT also has the highest rate of incarceration of any Australian state or territory,² where “[i]ncarceration rates in the Northern Territory are not only four times higher than the national average, but even higher than the global outlier in incarceration rates, the United States.”³

Table A: Daily imprisonment rate as at June 2016⁴

Australia	NT
208 per 100,000 adults	934 per 100,000 adults
Aboriginal and Torres Strait Islander	Aboriginal and Torres Strait Islander
2,373 per 100,000 Aboriginal and Torres Strait Islander adults	2,958 per 100,000 Aboriginal and Torres Strait Islander adults

In the most recent report of the NT Department of Correctional Services,⁵ the daily number of prisoners held in adult correctional institutions in 2014-15 was 1,597, where 85 percent identified as Indigenous. Further, the daily number of adult females in custody in 2014-15 was 128, representing a 15 percent increase from the previous year. In 2014-15, the recidivism rate for the NT was 57.5 percent; over ten percent higher than the national recidivism rate of 44.3 percent. Incarceration rates of Indigenous women and Indigenous youth are of particular concern; noting a 2011 review of Indigenous incarceration rates found that Indigenous women are 21.5 times more likely to be incarcerated than non-Indigenous women,⁶ and a 2013 review of Indigenous youth incarceration rates found that the daily average detention rate for Aboriginal and Torres Strait Islander youth was around 24 times the rate for non-Indigenous youth.⁷

¹ Australian Bureau of Statistics, Estimates of Aboriginal and Torres Strait Islander Australians, June 2011, Cat No 3238.0.55.001, ABS, Canberra.

² Australian Bureau of Statistics, Corrective Services, Australia, June Quarter 2016, Cat No 4512.0, ABS, Canberra.

³ Community Council for Australia, “The Australia We Want”, First Report, October 2016, Canberra, 10.

⁴ Australian Bureau of Statistics, Corrective Services, Australia, June Quarter 2016, Cat No 4512.0, ABS, Canberra.

⁵ Northern Territory Department of Correctional Services, Annual Statistics 2014-2015, Northern Territory Government 2016, Northern Territory.

⁶ Steering Committee for the Review of Government Service Provision 2011, *Overcoming Indigenous Disadvantage: Key Indicators 2011*, Productivity Commission, Canberra.

⁷ Steering Committee for the Review of Government Service Provision 2014, *Overcoming Indigenous Disadvantage: Key Indicators 2014*, Productivity Commission, Canberra.

Indigenous, community and advocacy groups have long voiced concerns over the over-representation of Indigenous women and youth in Australian prisons, bringing both short and long-term Government responsibility, transparency and accountability into sharp focus.

A Incarceration in the context of domestic violence, family violence, lateral violence and normalised violence

Domestic violence has been described as an “epidemic”,⁸ a “contagion” and a form of gendered violence.⁹ The characteristics of domestic violence are described by each jurisdiction in relevant legislation relating to domestic violence orders,¹⁰ with discussions around forms of violence intrinsic to both preventative and reactive models. In 2014-15, around 1 in 5 (21.8%) of Aboriginal and/or Torres Strait Islander adults reported being a victim of physical or threatened violence- similar to the rates in 2002 and 2008¹¹. In 2014-15, hospitalisation rates for Aboriginal and Torres Strait Islander family violence related assaults were 530 females per 100,000 female population and 191 males per 100,000 male population. This was 32 times the rate for non-Indigenous females and 23 times the rate for non-Indigenous males¹². Recognising the impacts of family violence, and, lateral and normalised violence are crucial in examinations of criminal behaviours, where behaving violently can become a learned response to stressful situations for children residing in families and/or communities where violence is perceived by many to be ‘normalised’.

In a recent decision of the NT Coroner, it was noted that incarceration of the relevant perpetrators as a response to domestic violence “did not seem to have the effect hoped for by the justice system. It seemed not to provide deterrence.”¹³ This was clear in two separate studies (in Queensland and Victoria) that both showed an overrepresentation of Aboriginal and Torres Strait Islander population (around 4 to 5 percent) breaching family/domestic violence protection orders¹⁴. In examining the over representation of Indigenous Australians in prison, consideration must be given to the impacts of domestic and family violence on the victim, children and the family unit, and the wider community as a whole.

II Our experience

In 2015-16, around 60 percent of TEWLS clients were experiencing or at risk of experiencing domestic and family violence; over 60 percent were on a low or nil income; and over 20 percent identified having a disability and/or mental illness. Additionally, in 2015-16, TEWLS provided

⁸ Australian Broadcasting Corporation, *Rosie Batty gives her valedictory speech as Australian of the Year* (25 January 2016) ABC < <http://www.abc.net.au/news/2016-01-25/rosie-batty-valedictory-speech-australian-of-the-year/7113516>>.

⁹ *Inquest into the deaths of Wendy Murphy and Natalie McCormack* [2016] NTLC 024, 1 (Cavanagh J).

¹⁰ See, eg, *Domestic and Family Violence Act* (NT).

¹¹ Steering Committee for the Review of Government Service Provision 2016, *Overcoming Indigenous Disadvantage: Key Indicators 2016: Overview*, Productivity Commission, Canberra, 20.

¹² Steering Committee for the Review of Government Service Provision 2016, *Overcoming Indigenous Disadvantage: Key Indicators 2016*, Productivity Commission, Canberra, 4.98.

¹³ *Inquest into the deaths of Wendy Murphy and Natalie McCormack* [2016] NTLC 024, 29 (Cavanagh J).

¹⁴ Stewart, A. 2000, ‘Who are the respondents of domestic violence protection orders?’ *Australian and New Zealand Journal of Criminology*, vol. 33, no. 1, pp. 77-90, and VLA 2015, *Characteristics of Respondents Charged with Breach of Family Violence Intervention Orders*, Research brief, Victoria Legal Aid.

double the amount of advices as the previous year, and triple the amount of casework, with women still being referred out due to capacity constraints.

Of specific note, TEWLS' Indigenous Advancement Strategy (**IAS**) funding provides one 0.75 FTE lawyer and 0.75 FTE Indigenous Community / Project Officer to service seven outreach locations, including the fortnightly advice clinics to the Women's Sector in the Darwin Correctional Precinct. In the 2015-16 financial year, service demands in the IAS funding stream experienced a 500 percent increase in both legal advice and casework. It is in this context of growing legal need that TEWLS provides this submission to the Commission.

In the first of "The Australia We Want" series, the Community Council for Australia noted "Australia is a society where the experiences of women are significantly different to the experiences of men."¹⁵ Relevantly to the Commission, the experiences of Indigenous women continue to differ from that of Indigenous men, with the rate of incarceration for Indigenous women now exceeding that of Indigenous men.¹⁶

As noted by the Aboriginal and Torres Strait Islander Social Justice Commissioner in 2002, "[t]he rising rate of over-representation of Indigenous women is occurring in the context of intolerably high levels of family violence, over-policing for selected offences, ill-health, unemployment and poverty."¹⁷ As a women's legal service, TEWLS' works systematically to empower and assist women to overcome barriers of gender, race, domestic violence and limited financial circumstances through the provision of legal information, advice, community legal education and advocacy.

In the context of servicing incarcerated women in the Women's Sector in the Darwin Correctional Precinct, TEWLS has had to decline requests for weekly rather than fortnightly attendance and additional community legal education sessions, due to restricted capacity. To fully address these and related needs, TEWLS would require an additional lawyer and an additional Indigenous Community / Project Officer.

A Cycle of detention

In any discussion of incarceration, cycles of detention and recidivism are at the forefront; it is through key factors that cycles of detention are perpetuated and grow, where factors include domestic and family violence, inequality and lack of access to appropriate support services.

In our submission, specific consideration must be given to the experiences of incarcerated women in the NT, where Aboriginal women continue to remain largely invisible to policy makers and program designers with very little attention devoted to their specific situation and addressing legal and related needs holistically.¹⁸

Almost all TEWLS Indigenous clients at the Darwin Correctional Precinct have experienced family violence, and suffer trauma as a consequence. Most clients have experienced the vortex of child protection contacts and/or orders both as children and as parents, and some have been incarcerated at Don Dale. Of note, the numbers of first time disclosures of sexual offences are increasing and TEWLS has organised for an external specialist sexual assault service, the Ruby

¹⁵ Community Council for Australia, *The Australia We Want*, October 2016, Canberra, 10.

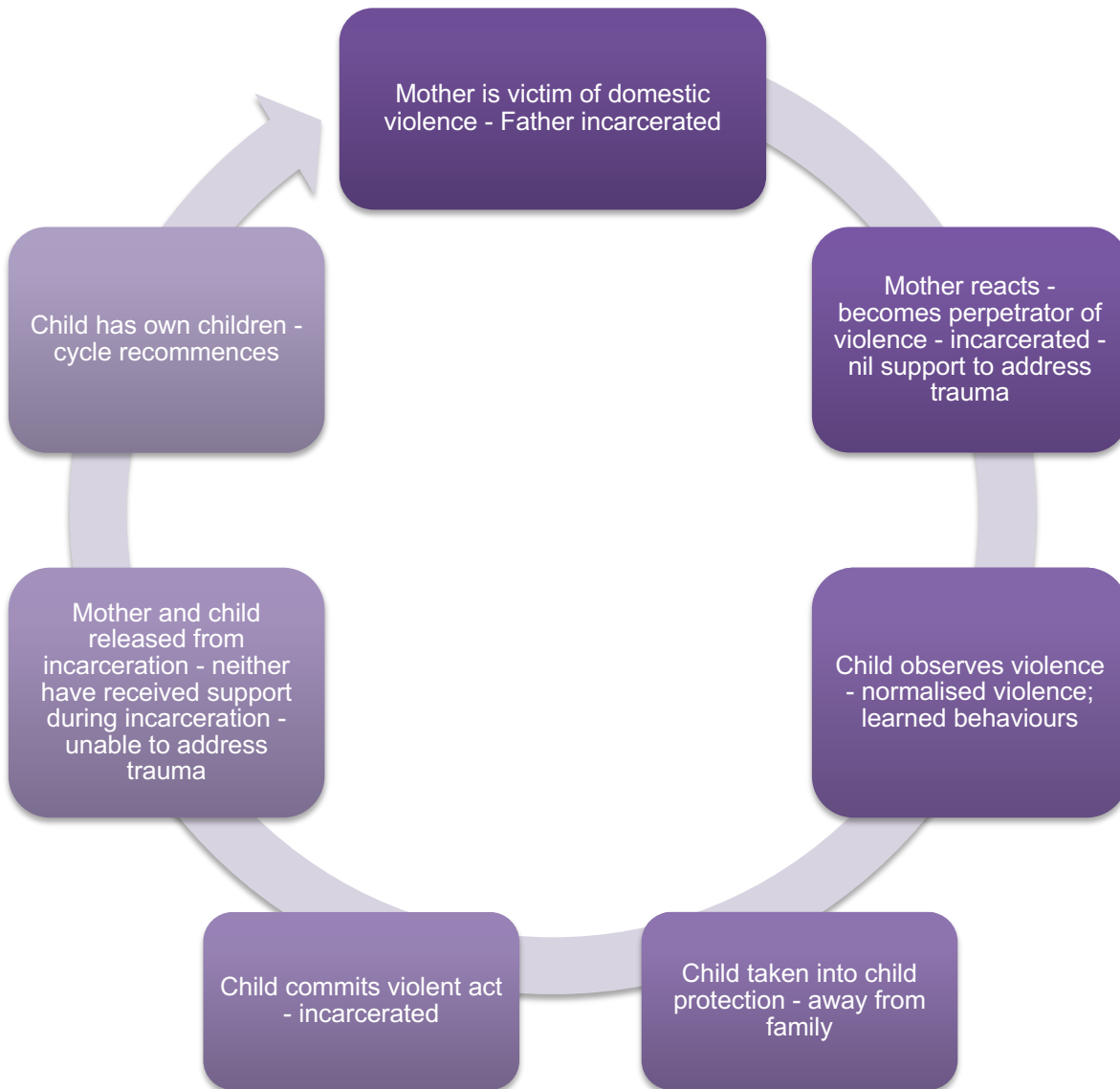
¹⁶ Northern Territory Department of Correctional Services, Annual Statistics 2014-2015, Northern Territory Government 2016, Northern Territory.

¹⁷ Aboriginal and Torres Strait Islander Social Justice Commissioner (ATSISJC) 2001:15.

¹⁸ Aboriginal and Torres Strait Islander Social Justice Commissioner (ATSISJC) 2001:15.

Gaea Darwin Centre Against Sexual Violence Inc., to attend twice weekly at Darwin Correctional Precinct.

Diagram A: Example of an abridged cycle of incarcerated women



C Holistic servicing gap for women in the Darwin Correctional Precinct

In our experience, there is a holistic servicing gap for women currently incarcerated in the Darwin Correctional Precinct. Women in the Precinct are currently able to access:

- TEWLS' fortnightly civil advice clinic;
- TEWLS community legal education workshops, run on an ad hoc basis (subject to capacity);
- Sexual assault counselling through Ruby Gaea Darwin Centre Against Sexual Violence Inc. – referrals from TEWLS – servicing commenced in mid 2016 on TEWLS initiative;
- YWCA Women of Worth (WoW) programs and support – only available to women with six months or less of sentence to go;
- Select programs offered by the Darwin Correctional Precinct including Alcohol and Other Drugs counselling and programs (typically tied to sentencing), work-based programs and literacy and numeracy programs.

Women are unable to access external generalist counselling services to address trauma, including where the particular woman has been a victim of domestic violence. This stands in contradiction to numerous reports regarding issues in custody, including a 2005 Victorian study which found that female prisoners saw mental health / well being as being the single biggest issue they faced in prison, and saw mental health as inextricably linked with other issues such as family violence, sexual abuse and addiction.¹⁹

In our submission, the current counselling gap at the Darwin Correctional Precinct is a lost opportunity. In not providing holistic, wrap-around servicing, women are unable to address their own trauma and mental health, meaning that upon their return to the community, they are unable to break out of their own cycle of detention. Holistic servicing, including culturally safe and appropriate mental health services, is a critical step in breaking the cycle of recidivism.

III Proposals

As noted by the NT Ombudsman in their 2008 report, “[w]omen constitute a small but growing part of the NT prisoner population. Their small numbers present both a challenge and an opportunity for the Territory to get things right.”²⁰ While the Commission has been charged with an investigation of youth incarceration and child protection systems in the NT, it is our submission that efforts must be taken to address the experiences of women in the NT, particularly Indigenous women, in order to effect the change sought by the Commission and the community as a whole.

A Additional Funding

Additional funding is sought for TEWLS to attend the Women’s Sector at Darwin Correctional Precinct on a weekly basis, provide regular community legal education, and undertake a legal needs health check to create the first evidenced based research on the needs of Indigenous women incarcerated in the Northern Territory.

¹⁹ Lorana Bartels, *Indigenous women’s offending patterns: A literature review* (Australian Institute of Criminology Reports: Research and Public Policy Series: Report 107, AIC 2010) 12.

²⁰ Ombudsman NT, *Women in Prison NT: Report of the Investigation into complaints from women prisoners at DCC 2008*, Ombudsman NT, 11 April 2008.

This would require funds of approximately \$200,000.00 per year to employ full time, one lawyer, one Indigenous Community /Project Officer and one counselor, to be housed at Darwin Centre Against Sexual Violence Inc.

B Adoption of a justice reinvestment model

Justice reinvestment is a data-driven approach to improve public safety, examine corrections and related criminal justice spending, manage and allocate criminal justice populations in a more cost-effective manner, and reinvest savings in strategies that can hold offenders accountable, decrease crime, and strengthen neighborhoods.²¹

The significant goals and outcomes of justice reinvestment are to:

1. Reduce spending on corrections and increase public safety – design, enact, and adopt new policies, practices, and programs that reduce recidivism, improve public safety, impact prison and jail populations, and otherwise help generate savings; and
2. Reinvest in strategies that can decrease crime and strengthen neighborhoods – determine how to invest a portion of the generated savings from policy changes such as reducing or averting growth in the jail and prison populations in strategies to increase public safety such as community-based treatment, probation, prevention-oriented policing strategies, and community-based recidivism reduction efforts.

TEWLS advocates the implementation of justice reinvestment principles to the incarceration of both youth and adults, as well as the child protection system in the Northern Territory.

C “Making Justice Work” coalition

The Making Justice Work coalition (**the Coalition**) has a wide membership base of organisations with the common interest of improving how to make justice work for the community. The focus of the Coalition’s work is to promote tangible actions the incoming government can take to make justice work better for all Territorians.

Coalition members, including TEWLS, promote evidence-based approaches to ‘law and order’ and community safety, and advocate the following principles:

1. Stronger measures are needed to prevent crime and deal with its causes;
2. Prison is not a solution;
3. Young people should be kept out of the criminal justice system where possible;
4. We should put offenders to work, not just lock them up; and
5. We should work with offenders and set them up to succeed, not fail.

It is our submission that the above principles should be utilised in any examination of the NT justice system, as well as NT child protection system.

D Culturally appropriate service provision

²¹ See, eg, Mick Gooda ‘Justice reinvestment and its importance to Aboriginal communities’ (Speech delivered at the Aboriginal Legal Service Annual Conference, Novotel Hotel Wollongong, 1 August 2012).

Cultural competency is foundational to effective policy, program performance, service provision and client outcomes. Base line prerequisite for success are frameworks that are culturally empowering, responsive and respectful of all community members of the Northern Territory.

It is our submission that all service provision in the Northern Territory must be culturally safe and appropriate so that community members are able to access and engage in services in a meaningful and effective way.

IV Conclusion

We thank you for your consideration of the above and would be pleased to be contacted should you wish to discuss this submission further.

Should you require further information, please do not hesitate to contact our office on (08) 8982 3000.

Yours sincerely,

TOP END WOMEN'S LEGAL SERVICE INC.

Vanessa Lethlean

Managing Solicitor