

NATIONAL FAMILY VIOLENCE PREVENTION LEGAL SERVICES

WORKING TO ACHIEVE IMPROVED JUSTICE OUTCOMES FOR ABORIGINAL AND TORRES STRAIT ISLANDER
VICTIMS/SURVIVORS OF FAMILY VIOLENCE AND SEXUAL ASSAULT

Submission to the Senate Standing Committee on Legal and Constitutional Affairs

Value of a justice reinvestment approach to criminal justice in Australia

1. Introduction

The National Family Violence Prevention Legal Services Forum (the National Forum) welcomes the Senate Standing Committee on Legal and Constitutional Affairs inquiry into the 'Value of a justice reinvestment approach to criminal justice in Australia.'

The National Forum is strongly aware of the connection between Aboriginal women's experience of family violence and criminality. We seek to address the underlying causes of offending among Aboriginal women that leads to Aboriginal overrepresentation in the criminal justice system. Strengthened culturally safe, accessible and broad ranging community supports and services for Aboriginal women and children are fundamental to addressing this overrepresentation.

The National Forum supports the calls of other prominent Aboriginal community members including Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda and former Commissioner Tom Calma to implement a justice reinvestment approach in Australian Aboriginal communities. We urge the Commonwealth and State Governments to work together to identify opportunities for implementing justice reinvestment. In particular the National Forum highlights the need for the diversion of funds from the prison system into early intervention and diversionary programs that address the causes of crime for Aboriginal women, and that support victims and communities in addressing crime.

2. About the National FVPLS Forum

The Australian Government through the Attorney-General's Department provides funding for the Family Violence Prevention Legal Services (FVPLSs). The primary function of FVPLSs is to provide legal assistance, casework, counselling and court support to Aboriginal and Torres Strait Islander adults and children who are victim-survivors of family violence, including sexual assault/abuse. FVPLSs can also provide a law reform and advocacy function, community legal education and early intervention and prevention activities.

The National Forum was formally established in May 2012 and it has adopted a Charter setting out its objectives and procedures to guide its operation.

Members of the National Forum are those 14 organisations in receipt of Commonwealth funding to deliver Family Violence Prevention Legal Services in 31 rural and remote locations across Australia:

- Aboriginal Family Violence Prevention and Legal Service Victoria
- Central Australian Aboriginal Family Legal Unit (Alice Springs NT)
- Family Violence Legal Service Aboriginal Corporation (SA)
- Kempsey Family Violence Prevention Legal Service (NSW)
- Marninwarnitkurra Family Violence Prevention Unit WA (Fitzroy Crossing)
- Maruma-Li Mari Outreach Service QLD (Roma)
- Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council Domestic and Family Violence Service
- North Australian Aboriginal Family Violence Legal Service (Darwin)
- Queensland Indigenous Family Violence Legal Service
- Southern Aboriginal Corporation Family Violence Prevention Legal Service (Albany WA)
- Thiyama-li Family Violence Service Inc. NSW (Moree)
- Warra-Warra Family Violence Prevention Legal Service (Broken Hill NSW)
- Western Australia Family Violence Legal Service (Perth)
- Yoorana Gunya Family Violence Healing Centre Aboriginal Corporation (Binaal Billa FVPLS, Forbes NSW)

The national FVPLS program was established in recognition of the gap in access to legal services for Aboriginal and Torres Strait Islander victims of family violence – predominantly Aboriginal and Torres Strait Islander women and children.

The National Forum's comments to this Inquiry are informed by members' experience of working with Aboriginal women with lived experience of the prison system, who have been victims of family violence and other crimes and/or who live in communities with high rates of imprisonment.

3. Policy Context

a. Aboriginal imprisonment rates

Aboriginal people are imprisoned at a disproportionately high rate. Aboriginal women are 23 times more likely to be imprisoned than non-Aboriginal women.¹

Although actual numbers are comparatively small, Aboriginal women are the fastest growing prison population in Australia. With an average sentence length of just 16

¹ Australian Bureau of Statistics, *Prisoners in Australia*, 2012, [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/ADB317600AB68902CA257ACB00136DC0/\\$File/45170_2012.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/ADB317600AB68902CA257ACB00136DC0/$File/45170_2012.pdf)

months, most Aboriginal women are imprisoned for minor, often drug related and non-violent crimes.²

High numbers of Aboriginal women are also unsentenced and on remand. The high rates of women on remand are the result of a range of factors, including tightened restrictions on who can apply for bail and how many times they can apply. Homelessness, drug use, lack of access to legal services and other support agencies can all contribute to Aboriginal women not obtaining bail. The implications for women remaining unsentenced include reduced access to services in the prison, including mental health, alcohol and drug and education services, and much more limited case management, family access and transitional planning.

b. Characteristics of Aboriginal women in prison

Aboriginal women are living with the trauma of race-based oppression and the legacy of colonization. This trauma impacts Aboriginal women's psychological, emotional, spiritual, physical, social, cultural and economic health. The experiences of dispossession and its resulting distress and trauma underlie the violence experienced in Aboriginal communities today.

The majority of Aboriginal women in prison have experienced family violence which can be connected to their offences and convictions. A NSW study reported that 80% of women prisoners stated they believed their offending was a direct consequence of their victimisation.³ Many women are also survivors of past sexual assault, including in childhood. In the same survey, 70% of respondents reported they had been sexually assaulted or had suffered other types of abuse as children, while 44% reported they had been sexually assaulted as adults.⁴ A large proportion of these women have also been in the child protection system or institutionalised.

The majority of Aboriginal women in prison experience mental health issues often related to past trauma.⁵ Illicit drug use and drug related offending is also common.

Lack of culturally appropriate support and intervention is a tragic feature of these women's stories. Given the endemic racism and discrimination perpetuated on Aboriginal people, in which the legal system has been integral, a broad range of measures are required to ensure that Aboriginal people are accessing and pursuing legal and other assistance.

However, the needs and experiences of Aboriginal women in the prison system have received significantly less attention than Aboriginal men. The Royal Commission into Aboriginal Deaths in Custody whilst broad ranging, did not have a specific focus on Aboriginal women. Prior to the gradual expansion of the national FVPLS program in 2002 there were no specific legal supports for Aboriginal women and children impacted by family violence and sexual assault. Significant law and justice inequity for Aboriginal women in both service provision and policy development has resulted. Aboriginal

² Australian Institute of Criminology, *Indigenous Women's Offending Patterns: A Literature Review*, 2008, <http://www.aic.gov.au/publications/current%20series/rpp/100-120/rpp107/10.html>

³ NSW Aboriginal Justice Advisory council, *Holistic Community Justice: A proposal response to Aboriginal family violence*, 2001, NSW Attorney General's Department.

⁴ NSW Aboriginal Justice Advisory council, *Holistic Community Justice: A proposal response to Aboriginal family violence*, 2001, NSW Attorney General's Department.

⁵ Behrendt L, Cunneen C & Liebesman T. *Indigenous legal relations in Australia*. Melbourne: Oxford University Press, 2009.

women's imprisonment and its underlying causes is a significant aspect of this policy vacuum.

Prison compounds the trauma related to the underlying causes of imprisonment of Aboriginal women. Prison is an inappropriate environment to address the broad ranging health and social impacts of family violence and sexual assault. Unless the underlying causes of imprisonment are addressed and effective alternatives to prison developed, prison numbers are likely to continue to rise, reoffending rates will not be reduced and the costs to the public of the ineffective policy of locking women away will steadily rise.

c. Impacts of incarceration on children and families

It has been estimated that up to 80% of Aboriginal women in prison are mothers.⁶ A study of NSW Aboriginal women with lived experience of prison found that 29% of women on release had primary caring responsibilities for children other than their own.⁷ Because many Aboriginal women live in rural or remote areas, and the numbers of Aboriginal women prisoners is relatively small, many women are imprisoned in centres far from their communities and their children, impacting on their ability to maintain strong relationships while in prison.

Aboriginal children are disproportionately represented in the child protection system, with incarceration of parents a significant contributing factor for many children. Children with incarcerated parents are also at increased risk of abusing drugs and alcohol, engaging in antisocial behaviour, dropping out of school or experiencing a decline in school attendance and engagement, and exhibiting aggressive and/or disruptive behaviours.

Reducing the rates at which we incarcerate Aboriginal mothers has the potential to improve the outcomes for Aboriginal children and break the long term cycles of disadvantage and incarceration that continue to do damage to Aboriginal communities.

4. Justice Reinvestment in Aboriginal communities

a. What is justice reinvestment?

Justice reinvestment itself is relatively simple. It involves the diversion of a portion of public funds spent on imprisonment back into communities with high rates of offending. These funds are then used by communities to fund initiatives that reduce the rate of offending and address the underlying causes of crime. Initiatives should include prevention, early intervention, diversionary and rehabilitation programs that are tailored to suit the specific needs of the each community.

Case study: justice reinvestment in Texas

In 2007 the Texas state legislature rejected plans to spend \$0.5 billion on building new prisons in favour of adopting a justice reinvestment approach. Half of this money was spent on expanding the capacity of residential and out-patient treatment for substance misuse, mental health treatment, community based sanctions for

⁶ Behrendt L, Cunneen C & Liebesman T. *Indigenous legal relations in Australia*. Melbourne: Oxford University Press, 2009.

⁷ Australian Institute of Criminology, *Indigenous Women's Offending Patterns: A Literature Review*, 2008, <http://www.aic.gov.au/publications/current%20series/rpp/100-120/rpp107/10.html>

offenders and post-prison support. This reduced parole revocations by 25% and the increase in the prison population was 90% less than projected. This demonstrated that significant savings can be made in the relative short-term, as the cost of increasing the capacity of treatment and residential facilities was significantly less than the cost of increasing prison capacity. The state estimates budgetary savings of \$210.5 million in 2008/09 and additional savings of \$233 million from averted prison construction.⁸

b. Why Aboriginal communities?

Justice reinvestment refocuses spending on addressing the underlying social causes of crime and offending, many of which are disproportionately present in Aboriginal communities.

Aboriginal communities face increasing levels of disadvantage, with poorer health and educational outcomes, higher rates of mental ill-health, drug and alcohol use and homelessness. Aboriginal women are up to 45 times more likely to be the victims of family violence than non-Aboriginal women.⁹ Experiencing family violence places women and children at greater risk of themselves becoming involved in the criminal justice system. These issues are directly relevant to a justice reinvestment approach to reducing offending, as they are the types of social disadvantages that investment at an earlier stage can address.

c. Emphasis on community ownership and place based responses

Community ownership and responsiveness to local need is a key attribute of the justice reinvestment concept. This is aligned with the goals and principles of key Aboriginal policy documents including the National Indigenous Law and Justice Framework and the Closing the Gap Initiative. Both these documents emphasise community ownership and responsibility and responsiveness to local need.

The National Forum advocates for the right to self-determination, where services are owned, controlled and operated by the local Aboriginal community and that local Aboriginal people own and determine the decisions and decision making processes within the services that support them. Aboriginal self-determination means Aboriginal people are in charge of their own decisions and have ownership of their services.

Aboriginal communities are also extremely diverse, and any system must account for this diversity. Programs must be based in local communities and responsive to community need. Community consultation is crucial for any justice reinvestment initiative to be effective. The consultation process should be inclusive, engaging both men and women, and young and older people. Aboriginal people in some areas of Australia, such as Central Australia commonly speak English as a second, third or even

⁸ Justicereinvestment.org, adopted from Cutting Crime.

⁹ Ferrante A, Fernandez J & Loh N 2001. *Crime and justice statistics for WA: 2000*. Perth: University of Western Australia Crime Research Centre cited in Australian Institute of Criminology, *Indigenous Women's Offending Patterns: A Literature Review*, 2008, <http://www.aic.gov.au/publications/current%20series/rpp/100-120/rpp107/10.html>. It should be noted that there is a lack of reliable data about the rate of family violence in Aboriginal communities. According to Victorian Police data in 2007-08, in Victoria the rate of family violence experienced by Aboriginal women was five times as high as the rate for non-Aboriginal women. However this is likely to be a significant underestimate due to underreporting and a failure to identify Aboriginality.

fourth language. This creates particular challenges for the reception and ultimate effectiveness of programs imported into those communities.

The key issue is effective communication. This is of fundamental and strategic importance and overarches any other factor in the development and delivery of programs. Skilled interpreters must be engaged from the outset to contextualize and account for the language and social circumstances of a target community or group. Failure to do so risks reduced effectiveness and the failure of initiatives.

5. National FVPLS Forum considerations in implementation of justice reinvestment

a. Cultural safety

FVPLS services have found that Aboriginal women are reluctant to engage in mainstream diversionary and counselling programs, and are significantly more likely to engage and remain engaged when services are gender and culturally specific. For justice reinvestment to successfully impact on the imprisonment rates of Aboriginal women, we need to divert funds to programs that will be successful in engaging women.

Designing and implementing successful programs requires ensuring cultural safety, incorporating Aboriginal understandings of healing and community, and having programs that are designed by Aboriginal women, for Aboriginal women. A culturally safe environment is one where Aboriginal and Torres Strait Islander people feel safe and draw strength in their identity, culture and community. Cultural security requires service providers to actively ensure that the cultural needs are met of those accessing the service.

b. Aboriginal community ownership

Social Justice Commissioner Mick Gooda commented in 2010 that ‘justice reinvestment provides opportunities for communities to take back some control.’ ‘The community has to be involved and committed to not only taking some ownership of the problem, but also some ownership of the solutions.’¹⁰

An effective justice reinvestment strategy must include a strong structure that ensures funding remains with Aboriginal organisations. There are many examples of programs intended to be delivered by Aboriginal groups to Aboriginal people that have ended up under the control of Governments or non-Aboriginal services. The system will require to implementation of safeguards to ensure that practical self-determination is realised, and that money earmarked for reinvestment is not funnelled into non-Aboriginal agencies.¹¹

c. Women’s diversionary programs

Diversionary and other support programs have traditionally targeted men. There are few diversionary options available to women across Australia. There are even fewer programs and less information about diversion programs specifically for Aboriginal women.

¹⁰ Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Justice Reinvestment – a new solution to the problem of Indigenous over-representation in the criminal justice system*, 2010.

¹¹ Melanie Schwarz, *Australian Indigenous Law Review* 14(1), Building Communities not Prisons: Justice Reinvestment and Indigenous Over-Representation, 2010, 1.

Programs are often inadequately funded through short term, limited project grants. Where such programs do exist, there is a lack of robust evaluation and as a result little evidence to prove their effectiveness. However anecdotal evidence and our experience in the area consistently demonstrates the need for such diversionary and intensive support programs for Aboriginal women at risk of offending.

Given the complexity of the issues faced by Aboriginal women, long term intensive support is essential. It must be acknowledged that it may take Aboriginal women a considerable period of time to effect and sustain change in their lives therefore programs must be responsive and flexible according to needs.

Culturally safe programs that address the underlying causes of offending must also be available throughout Australia, in rural, remote and urban areas. Connection to culture, community and family are important protective factors that reduce the likelihood of offending or reoffending, and program structures should support this. Post release programs must take into account that many Aboriginal women exiting prison will want to return to their communities to connect with family. Most of the Aboriginal women in the prison system have experienced violence, abuse, trauma and other multiple disadvantages. To prevent reoffending, it is essential that the underlying causes of offending are addressed. However it is well established that providing therapeutic services to women in prison for past assaults and trauma they have experienced is problematic. The prison environment is not appropriate or conducive to healing. Strip searches, for example, reinforce the trauma of prior sexual abuse.

Alternatives to prison where women can access therapeutic intervention and healing in a supportive community environment are likely to be much more effective.

d. Evaluation and data collection

Justice reinvestment should be based on evidence and data. We need to build the evidence base on the effectiveness of diversionary programs for Aboriginal women. As such, funding for robust, independent evaluation must be built into programs funded through justice reinvestment.

More consistent national data must also be collected and made available. Data must be able to be readily disaggregated for Aboriginal and non-Aboriginal men and women.

e. Early intervention programs

We believe that early-stage prevention initiatives and community legal education are better ways of approaching the issue of family violence, and that more resources should be put into these projects. Dealing with a problem earlier in its lifecycle is not only more effective, it generally requires a less intensive and costly response. For this reason, early intervention and prevention programs should be a government priority. However early intervention and prevention services targeting people at risk of offending are inadequately funded by governments across Australia. The Commonwealth Attorney General's Department's decision to remove funding from the FVPLS Early Intervention and Prevention programs, and redirect it to the Northern Territory Emergency Response is an example of the lack of priority government places on early intervention.

We are now able to draw direct links between being a victim of or observing family violence and abuse and an increased likelihood of committing crimes. Funds diverted from the prison system through justice reinvestment must be targeted at the underlying social causes of offending, targeting the attitudes and behaviours of people most at risk

of offending. This can be done by reducing the risk factors associated with offending, including exposure to family violence, and enhancing protective factors (such as cultural strength, self-esteem, education and employment).

f. Victim and community support

As well as reducing crime, justice reinvestment should involve investment in programs that benefit communities where victims and offenders families live. High levels of crime in Aboriginal communities have a significant financial and social impact on whole families and communities. Having a family member imprisoned also results in significant loss to the family and community. Former Social Justice Commissioner Tom Calma said that ‘every time an Indigenous person goes to prison and leaves their community, there are children that are losing parents, sisters, brothers, uncles and aunties.’¹² The relationship damage, loss of connection to culture, shame and financial implications all impact heavily on families. The long-term impacts can include generations of disadvantage. The National Forum advocates for investment that is integrated and holistic, benefiting whole communities, not only offenders.

Justice reinvestment funds must also be diverted to support the victims of crime. Aboriginal women are 31 times more likely to be hospitalised for an injury caused by assault¹³ and 15 times more likely to seek support from the homelessness sector to escape violence than non-Aboriginal women.¹⁴ The costs to the public of providing crisis homelessness services and medical care are substantial, and the longer term impacts on families and communities can be high. In the traditional legal system, services, including legal services, tend to be focussed on the offender. Victims can often feel disempowered and overlooked in the legal process. Justice reinvestment has the potential to redress this balance, and to more appropriately recognise the impact of crime on victims, offenders’ families and communities.

6. FVPLS policy capacity

FVPLS services nationally have extensive experience working in local communities with Aboriginal women that makes them well placed to inform the development of a justice reinvestment model in Australia. However, FVPLS Victoria is the only FVPLS service with funding for policy and law reform activities, and this funding is time limited and reliant on philanthropic foundations. The Commonwealth Government should consider resourcing FVPLS services to undertake policy development work that will support and inform the development of an effective justice reinvestment system.

7. Conclusion

The National FVPLS Forum supports the implementation of a justice reinvestment approach that moves funding and policy emphasis from prison, to addressing the social causes of crime in local communities. In implementing a justice reinvestment system, focus must be given to ensure the process and the services funded are:

¹² Tom Calma, the Mabo Oration, *From Self-Respect Comes Dignity, and from Dignity comes Hope: Meeting the Challenges of Social Justice for Aboriginal and Torres Strait Islander Peoples*, 2009.

¹³ Australian Productivity Commission, *Overcoming Indigenous Disadvantage- Key Indicators*, 2011.

¹⁴ Australian Institute of Criminology, *The Relevance of Family Violence to Indigenous Women’s Offending*, 2010.

- Culturally safe and secure.
- Addressing the disadvantages experienced by whole communities, not just offenders.
- Targeted at early intervention and prevention that address the underlying causes of crime and have broad impacts, including breaking the generational cycles of disadvantage.
- Addressing the inequity that has resulted in significant gaps in policy and services for women, especially Aboriginal women.