

# **NSW SENTENCING COUNCIL**

## **Inquiry into the Abolition of Sentences of Six Months or Less**

**Submission by**

**Social Justice Committee  
Conference of Leaders of Religious  
Institutes (NSW)**

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## Introduction

The Conference of Leaders of Religious Institutes in New South Wales (hereafter referred to as CLRI(NSW)) represents 3,500 women and men religious, and promotes the life, mission and concerns of religious congregations in the Church and in our society. CLRI(NSW) does this by:

- articulating our spirituality and commitment as members of religious congregations;
- actively promoting Reconciliation;
- working for justice for all through our advocacy, especially for Aborigines and Torres Strait Islanders, Australians who live in poverty, refugees and asylum seekers, those harshly treated before the law, and victims of racism;
- raising our corporate voice to challenge the structures of injustice in our state, our country and our world; and
- establishing committees, working groups and task forces which maximise the potential of the Conference to bring about change, especially structural change, in the area of social justice.

As one of these established committees, the Social Justice Committee (hereafter referred to as the Committee) is a means through which CLRI(NSW) can act effectively with respect to issues of social justice. The functions of the Committee are to investigate, to initiate action concerning, and to prepare papers on, social justice issues.

In 1997, the members of CLRI(NSW) decided that one of their key concerns was the subject of women in prison. Since that time the Committee has sought to address the issues surrounding the increasing number of women in prison in NSW and the consequences of this for children. Amongst other activities, the Committee has:

- successfully lobbied for a parliamentary inquiry into women in prison;<sup>1</sup>
- held information evenings at Parliament House at which members of parliament and other key speakers were asked to discuss the issue of women in prison;
- formed part of a coalition whose aim was to stop the building of the new women's prison at Windsor; and
- lobbied for alternatives to imprisonment for female offenders.

In line with the concerns of CLRI(NSW), the focus of this submission will be the social costs of incarceration for female prisoners and for their children. **The central point made is that the consequences of imprisonment for female prisoners and for their children are so great that women ought not be incarcerated for relatively minor offences.** We will also briefly outline some additional issues which we believe are important. Having

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<sup>1</sup> For the results of this inquiry see: Select Committee on the Increase in Prisoner Population, *Interim Report: Issues Relating to Women* (NSW Parliament: July 2000).

discussed all of our concerns with respect to the subject of abolishing prison sentences of six months or less, we will provide a list of recommendations.

## **The Social Costs of Incarceration for Female Prisoners**

There are numerous burdens placed upon women when they are incarcerated that go beyond the loss of personal liberty. Women may lose their children, their employment and their accommodation. In addition, incarceration may lead to the breakdown of relationships with partners, family members and friends. Once released from prison, a woman, who then has the stigma of having been in gaol attached to her, must try to repair these fractured parts of her life, with little assistance from the state.

CLRI(NSW) contends that where a woman commits a non-violent offence<sup>2</sup> that carries a sentence of six months or less, the burdens placed upon that woman far exceed, and thus override, any reasons the state may have for incarcerating her. On 30 June 2001, the most serious offence committed by over 50% of the women who were incarcerated for six months or less was theft.<sup>3</sup> Irreparably damaging a woman's life for theft is, we contend, simply not worth it.<sup>4</sup> The experiences of the two women outlined below illustrate this point. These women's experiences also serve as a reminder that ultimately this debate is not about money or numbers, it is about real people.

### **Holly's experience<sup>5</sup>**

Holly was incarcerated for three months for using amphetamines. She had three children and no family who could take care of them. The father of the children, with whom Holly no longer lived, was also a drug user who, when he could not get drugs, would physically abuse the children. Holly decided that the safest place for her children was with the Department of Community Services (hereafter referred to as DoCS) so she took her children to a DoCS office believing that as she had given them up voluntarily (and had not been found to be an unfit mother) she would be able to get her children back when she got out of gaol. The children were placed in three separate foster

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<sup>2</sup> CLRI(NSW) does not believe that prison sentences of six months or less should be abolished for violent offenders. This will be discussed in more detail below.

<sup>3</sup> Bureau of Crime Statistics and Research, "The impact of abolishing short prison sentences", *Contemporary Issues in Crime and Justice*, Number 73 (September, 2002), obtained at <[http://www.lawlink.nsw.gov.au/boscar1.nsf/files/CJB73.pdf/\\$file/CJB73.pdf](http://www.lawlink.nsw.gov.au/boscar1.nsf/files/CJB73.pdf/$file/CJB73.pdf)>, p. 3. Note, theft here includes several offence types including 'fraud', 'break and enter', 'steal motor vehicle', 'steal from person', 'other stealing' and 'goods in custody/receiving'.

<sup>4</sup> Theft here is used as an example of a relatively minor crime for which women are being incarcerated. We do not mean to limit those who should not be incarcerated for six months or less to those who have committed theft.

<sup>5</sup> The names of the two women whose experiences follow have been changed.

families. Whilst in gaol Holly saw a counsellor twice but at no point did she feel like she was part of a rehabilitation programme to help her get back on her feet. In the three years that have passed since she went to gaol, Holly has been unable to get her children back. Holly says "It's been devastating. They're all growing up. They keep saying each week 'My Mum's gonna come back and get me'." Holly is out of gaol, on a methadone programme and is still trying to get her children back.

It is not the position of CLRI(NSW) that the system is solely responsible for tearing Holly's family apart. It is the contention of CLRI(NSW), however, that the system has not done enough to help keep Holly's family together. Not gaoling Holly for three months for using amphetamines would have kept Holly's family together. Not gaoling Holly *and providing a support network* to help Holly with her drug addiction would have helped provide a stable future for Holly and for her children.

### **Diana's experience**

Diana grew up in the DoCS system. Her maternal grandfather repeatedly raped her mother and, although she was not a product of one of those rapes, her brother was. Diana was physically and sexually abused throughout her time in foster care. She became a drug user at 12 and a heroin addict at 16. She entered into a relationship with another heroin addict who held up stores to support his habit. When their child was three months old, Diana's partner was charged with multiple counts of armed robbery. Fearing that Diana would move interstate with their child, her partner told the police of the one hold up about which Diana had known of beforehand. Found guilty of accessory before the fact, Diana received a prison sentence of six months. Her worst fear was that her child would be put in DoCS care, as she had been, so she arranged for her partner's sister to look after her little boy. Whilst in gaol, her partner's sister came to Diana and asked her to sign papers changing the child's surname by deed poll as she said people were asking questions and she wanted to be able to say the little boy was hers. Diana refused as he was her little boy and she had every intention of getting him back when she got out. Her partner's sister said that if Diana did not sign the papers she would take Diana's son to DoCS. Diana signed the papers and has not seen her son since. That was seven years ago. Diana leaves presents and cards on the doorstep of her child's home at Christmas and on his birthday but she does not think he receives them. Every time she has tried to make contact her ex-partner's family threatens to call the police. Like Holly, Diana remembers speaking to prison staff on a very limited number of occasions but does not feel that she was offered any serious assistance to rehabilitate herself at any stage.

CLRI(NSW) submits that the criminal justice system has let Diana down throughout her entire life. Whilst not incarcerating Diana for six months would

not have solved all of her problems, had she not been incarcerated, Diana would not have lost her child. Ideally, not incarcerating Diana would have been just one part of a holistic rehabilitation system that would have helped Diana to rehabilitate herself and to provide a healthy environment for her son.

## **The Social Costs of Incarceration for the Children of Prisoners**

As the number of people incarcerated in NSW has increased, so too has the number of children experiencing parental incarceration. Whilst the separation of a child from his or her parent at any time is traumatic, CLRI(NSW) contends that it is particularly traumatic when a parent is incarcerated. This is because, unlike with divorce for example, the incarceration of a parent is seen as something that a child should be ashamed of. When a child's parents divorce, society says that everything should be done to help the child. But what of those children whose parents are incarcerated? At best, their parents' incarceration is not discussed. At worst, the children are made to feel ashamed of themselves and of their parents. As well as shame, the children of incarcerated parents may experience, amongst other things, anxiety, grief, anger, economic hardship, relocation, isolation, a lack of trust and a lack of self-worth.<sup>6</sup>

Upon examining the health of the families and children of prisoners in Australia, Simon Quilty (School of Public Health, University of Sydney) found that in NSW in 2001:

- 14,500 children (defined as 15 years old or younger) had experienced parental incarceration at some stage throughout the year,
- 60,000 children had experienced parental incarceration at some stage throughout their lives, and that
- 60% of children who had experienced parental incarceration at some stage throughout their lives did so before the age of 5.<sup>7</sup>

The statistics with respect to Indigenous children were especially alarming. Whilst 4.3% of all children in NSW in 2001 had experienced parental incarceration at some stage in their lives, 20.1% of Indigenous children had experienced parental incarceration at some stage in their lives.<sup>8</sup> Indigenous

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<sup>6</sup> Gloria Larman, *Raising the Profile of Children of Prisoners* (a paper presented in 2000 at the Children First Conference, unpublished), obtained at <<http://www.acwa.asn.au/wf2000/Papers/23LARMAN.doc>>, pp. 5 - 6.

<sup>7</sup> Simon Quilty, *The Health of the Family and Children of Prisoners* (a thesis submitted in 2003 for the degree of Master of Philosophy, School of Public Health, University of Sydney, unpublished), pp. v and 121 - 122.

<sup>8</sup> *Ibid*, pp. 121 - 122.

children in NSW were six times more likely to experience parental incarceration than non-Indigenous children.<sup>9</sup>

One of the reasons that CLRI(NSW) has focused on the issue of women in prison, as opposed to women and men, is that whilst the children of incarcerated fathers are predominantly cared for by their mothers, the children of incarcerated mothers are most often placed in kinship care.<sup>10</sup> The problems this can create are highlighted by the child's experience outlined below.

### **One child's experience<sup>11</sup>**

A 12 year old boy was placed in the care of relatives as a result of his mother's incarceration. Four weeks after his mother was imprisoned, the boy's relatives went to New Zealand leaving him in the care of their 16 year old daughter. The boy subsequently moved onto the streets and, in the words of his mother, "changed from a soft-natured, good-natured little boy to a child that continually breaks the law".<sup>12</sup>

## **Additional Issues**

In addition to the matters discussed above, CLRI(NSW) would like to raise the following issues:

### **The incarceration of male prisoners**

That the focus of this submission is on women should not be interpreted to mean that CLRI(NSW) is opposed to the abolition of prison sentences of six months or less for male offenders. On the contrary, CLRI(NSW) would welcome such a change. The issue of men in prison has not been discussed at length as it is not something that CLRI(NSW) has pursued in the past.

### **Violent offenders**

CLRI(NSW) opposes the abolition of sentences of six months or less for violent offenders. This includes, but is not limited to, those found guilty of assault or sex offences. In 2000 and 2001, approximately 20% of those sentenced to six months or less were found guilty of assault or sex offences.<sup>13</sup>

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid, pp. 103 and 119.

<sup>11</sup> This child's experience was told by the child's mother to the Standing Committee on Social Issues in 1996 in relation to the Committee's inquiry into the children of imprisoned parents. It was quoted in Gloria Larman, note 6, p. 6.

<sup>12</sup> Ibid.

<sup>13</sup> Bureau of Crime Statistics and Research, note 3, p. 2.

Notwithstanding our belief that violent offenders should be made exempt from any legislative scheme which abolished prison sentences of six months or less, CLRI(NSW) is extremely concerned at the lack of counselling services and support networks set up to help rehabilitate violent offenders. It is our understanding that few, if any, courses are offered to inmates who are gaoled for six months or less, and that those who do undertake courses must wait for months before starting them. If only because violent offenders will be released, although we believe that there are other valuable reasons for rehabilitating violent offenders, these people ought to receive more assistance.

### **Recidivism rates**

CLRI(NSW) has been pleased to see the drop in recidivism rates that has resulted from the NSW Government's commitment to creative approaches to punishment. A perfect example of this was the circle sentencing initiative that was undertaken in Nowra. Under this scheme only 1 of the 25 offenders who participated in the trial re-offended.<sup>14</sup>

Whilst we do not know with any certainty whether abolishing prison sentences of six months or less would reduce recidivism rates, we believe that there is a significant likelihood that this would happen. One of the most obvious reasons for this is that those who commit minor offences will not meet with those who commit serious offences whilst in gaol and, thus, will not be able to learn their skills or befriend them.

### **Incarceration as a last resort**

At times, judges use prison sentences as a last resort. That is to say, a judge may have imposed a community service order or a good behaviour bond on an offender, only to have that offender repeatedly reappear before the Court. The judge then decides that a short prison sentence is the most fitting punishment. The issue here is that, were this to occur once sentences of six months or less had been abolished, a judge would have no option but to give a relatively minor offender a sentence of more than six months.

CLRI(NSW) contends it would be desirable for there to be a legislative mechanism whereby judges could impose sentences of six months or less *where it was used as a measure of last resort*. Ideally sentences would only be imposed where there were no other alternatives available.

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<sup>14</sup> Jonathan Pearlman, "Breaking the circle of crime", *The Sydney Morning Herald* (September 1, 2003) obtained at <<http://www.smh.com.au/articles/2003/08/31/1062268471150.html>>, p. 1.

## **Longer sentences**

Quite apart from the situation described immediately above, there may be times following the abolition of sentences of six months or less where a judge decides that he or she is unhappy to let an offender escape a prison sentence and, thus, imposes a sentence greater than six months. CLRI(NSW) submits that it is imperative that all necessary steps be taken to ensure that minor offenders are not disadvantaged by the changes in the legislation. This could be achieved, for example, by creating an education programme for judges and/or by closely monitoring the implementation of the new legislation.

## **Support networks**

CLRI(NSW) is deeply concerned with the lack of social support provided to offenders. CLRI(NSW) contends that, where an offender would have been gaoled for six months or less had it not been prohibited by law, that offender should not simply be let loose by the system. A support system should instead be put in place in order to help the offender to get back on his or her feet. A community liaison officer could, for example, be assigned to offenders to assist them get into rehabilitation courses, to find employment and to access any services that are available to them. Whilst we have been told of one instance where a parole officer effectively fulfilled this role, this seems to be far from the norm amongst parole officers.

More generally, CLRI(NSW) also submits that rehabilitation courses should be more widely available in gaols (for example, anger management classes), more crime-specific rehabilitation programmes should be created for those both in and out of gaol (for example, domestic violence rehabilitation courses) and more alternatives to gaol should be explored (for example, home detention facilities for women and their children).

## **The financial consequences of the proposed legislation**

The Bureau of Crime Statistics and Research has estimated that by abolishing sentences of six months or less the NSW Government would save between \$33 million and \$47 million per year.<sup>15</sup> The Government would obviously save less if, as CLRI(NSW) believes is appropriate, violent offenders were still incarcerated for six months or less. Irrespective of the exact amount the Government saved, CLRI(NSW) believes that all of the money saved should be diverted into programmes designed to stop people from re-offending and, thus, being imprisoned. An example of this is a drug rehabilitation centre. Ideally, some of this money would go to building a support system for those who were not imprisoned because of the proposed legislative amendments.

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<sup>15</sup> Bureau of Crimes Statistics and Research, note 3, p. 5.

## **Pilot Project**

As highlighted by much of the discussion above, there are many unknowns relating to the abolition of prison sentences of six months or less. In line with the Select Committee on the Increase in Prisoner Population's Final Report,<sup>16</sup> CLRI(NSW) asserts that a beneficial way in which to approach the legislative change would be to first undertake a pilot project. Like the Select Committee on the Increase in Prisoner Population, CLRI(NSW) believes that women and Indigenous persons should be given priority when choosing participants for the project.

## **Monitoring**

If a pilot project were undertaken, it would necessarily be closely monitored. It is the contention of CLRI(NSW) that, whether or not a pilot project is undertaken, the implementation of legislation which abolishes sentences of six month or less should be closely monitored. It is clearly a complex issue with significant ramifications and it would be irresponsible to implement it without also implementing an adequate mechanism for review.

## **Recommendations**

Based on all that has been discussed above, CLRI(NSW) would like to make the following recommendations:

### **Recommendation 1**

A pilot project ought to be undertaken whereby a group of non-violent offenders, who would have otherwise received a sentence of six months or less, are not incarcerated. Priority ought to be given to women and Indigenous persons with respect to such a project.

### **Recommendation 2**

If the pilot project is seen as a success, or if a pilot project is deemed unnecessary, legislative amendments ought to be made whereby prison sentences of six months or less are abolished for non-violent offenders. Violent offenders should still be eligible for prison sentences of six months or less.

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<sup>16</sup> Select Committee on the Increase in Prisoner Population, *Final Report* (NSW Parliament, November 2001), p. 112.

### **Recommendation 3**

The legislation should not allow for prisoners to be abandoned by the system. Where offenders who would have otherwise gone to gaol are set free, the offenders should be given access to a support system that helps them to reform themselves. This might be achieved by providing a community liaison officer who would, amongst other things, help them to get into rehabilitation courses and to access any services available to them. This could be achieved by expanding the role of parole officers.

### **Recommendation 4**

The legislation should allow for prison sentences of six months or less for non-violent offenders where it is used as a measure of last resort. A prison sentence of six months or less should only be given where there are no other reasonable alternatives available.

### **Recommendation 5**

The legislation should provide for the monitoring and reviewing of the implementation of the new sentencing scheme. This is necessary so that the scheme can be assessed and, if necessary, altered.

## **Conclusion**

Based on our experiences working with and for incarcerated women and their children, CLRI(NSW) supports the abolition of prison sentences of six months or less for non-violent offenders. CLRI(NSW) submits that the serious consequences that flow from the imprisonment of women make it unjust and undesirable to imprison women for relatively minor offences. Accordingly, a policy ought to be implemented whereby prison sentences of six months or less are abolished in line with the abovementioned recommendations.

## References

Bureau of Crime Statistics and Research, "The impact of abolishing short prison sentences", *Contemporary Issues in Crime and Justice*, Number 73 (September, 2002), obtained at [http://www.lawlink.nsw.gov.au/boscar1.nsf/files/CJB73.pdf/\\$file/CJB73.pdf](http://www.lawlink.nsw.gov.au/boscar1.nsf/files/CJB73.pdf/$file/CJB73.pdf).

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