

**Law and Justice Committee  
Parliamentary Inquiry into Community Based Sentencing  
Options for Rural and Remote areas and Disadvantaged  
Populations**

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

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## **Inquiry into community based sentencing options for rural and remote areas and disadvantaged populations.**

### **Introduction**

The Conference of Leaders of Religious Institutes in New South Wales (hereafter referred to as CLRI(NSW)) represents 3,500 religious women and men, 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 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.

The Social Justice Committee has long advocated for the rights of women in prison. In 2005 the Committee is narrowing that focus to Indigenous women, in recognition of their overrepresentation in prisons and the disadvantage that stems from that overrepresentation.

Community based sentencing options offer the possibility of reducing the pressure on prisons in NSW and of exploring different models for rehabilitation for NSW prisoners. CLRI NSW considers that a discussion of the accessibility and suitability of such options to Indigenous women should be an important part of this inquiry. A large number of Indigenous women live in rural and remote NSW, so extension to rural and remote areas will make some of these options real possibilities for Indigenous women. CLRI argues that Indigenous women's position in the justice system and relationship to drugs and alcohol merits a thorough investigation of tailoring community based options to their needs. In this submission, we hope to raise some issues for further examination by the Committee on Law and Justice. Any action taken in regards to Indigenous people should be shaped directed by NSW's Indigenous population.

## **Why should Indigenous women be a priority for Community Based Sentencing Options?**

### Overrepresentation in the Prison System

Community based sentencing options mean diversion from the prison system, which should be a priority for Indigenous people given their well documented overrepresentation in all stages of the criminal justice process. Indigenous women are the most rapidly increasing prison population in Australia.<sup>1</sup> In 2002, 30% of women in NSW prisons were Indigenous, despite the fact that they make up only 2% of NSW women<sup>2</sup>. Indigenous women should therefore be a priority when formulating policies on Community Based Detentions, purely because they are going to prison in such large numbers.

### The Nature of Offences Committed by Indigenous Women

The imprisonment rates for robbery offences have increased significantly for Indigenous women<sup>3</sup>, while non-violent crimes show much smaller increases. One compelling argument for imprisonment as a sanction for criminal behaviour is that of community protection from the offender. The nature of many offences committed by women – non violent, property offences means that they are unlikely to pose a threat to the safety of the wider community.

### Length of Indigenous Women's Sentences

Generally, Indigenous women serve shorter sentences than non-Indigenous women.<sup>4</sup> Many women on shorter sentences are unable to access rehabilitation counselling or courses while in gaol, making it difficult to address underlying causes of offending. CLRI believes that prisoners on short sentences should be prioritised for diversion into community based sentencing options.

#### **1. Effects of Prison Sentences on Indigenous women**

##### *Drugs and Alcohol*

Alcohol abuse is a particular problem for Indigenous communities. Research demonstrates that, however, alcohol is becoming one of *a number of substances* abused by Indigenous people. Between 1990 and 2001, there has been a decrease in the number of Indigenous people receiving

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<sup>1</sup>Lawrie, Rowena, *Speak Out, Speak Strong: Researching the Needs of Aboriginal Women in Custody*, AJAC, 2003, p7

<sup>2</sup> HREOC Social Justice Commissioner, "Indigenous Women and Corrections – A Landscape of Risk", *Social Justice Report 2002*, Ch 5, p4

<sup>3</sup> HREOC, p6

<sup>4</sup> HREOC, p7

services with alcohol as their principal drug problem. However, this decrease has coincided with a marked increase in service access for other drug problems, including opiate, cannabis and poly-drug abuse.<sup>5</sup> Drug abuse is a problem for Indigenous women in prison, and in many cases a significant driver of criminal activity. Research conducted by the Department of Corrective Services found that 62% of female inmates reported being under the influence of drugs when they committed their most serious offence, and 72% perceived a link between their drug use and their prison sentence.<sup>6</sup> 80% of imprisoned Indigenous women in NSW interviewed by the AJAC<sup>7</sup> reported that “they thought that alcohol and/or drugs was a contributing factor in their offending behaviour and current imprisonment.”<sup>8</sup>

Given that drug abuse is a serious problem within prisons and a factor that is perceived to influence the likelihood of offending, sentences should focus on possibilities for rehabilitation. There is some scope for rehabilitation within the prison system, though drug and alcohol programs need to be tailored for Indigenous participation, rather than adapted from existing ones. Community based sentencing, particularly initiatives like the Drug Court, allow more flexibility in service delivery. Indigenous women may be able to find Indigenous specific or Indigenous sensitive services, which have the potential to be more effective in combating drug dependency and the resulting chances of recidivism than often poorly administered and culturally inappropriate prison programs.<sup>9</sup>

#### *Isolation from community*

Two thirds of all of NSW’s Indigenous people live outside Sydney<sup>10</sup>, and a large number of them live outside major cities. This needs to be taken into account when discussing the effects of imprisonment on Indigenous women. If they are imprisoned in gaols that are distant from their communities, visits from friends and family may not be possible. Extension of community based sentences to rural and remote areas could address these problems and thus benefit Indigenous women.

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<sup>5</sup> Brady, M., *Indigenous Residential Treatment Programs for Drug and Alcohol Problems: Current Status and Options for Improvement*, CAEPR Discussion Paper no 236, 2002, p6

<sup>6</sup> Kevin, M *Drug and Alcohol Exit Survey*, cited in *Speak Out, Speak Strong*, p10

<sup>7</sup> for *Speak Out, Speak Strong*, published 2003

<sup>8</sup> *Speak Out, Speak Strong*, p48

<sup>9</sup> for a discussion Indigenous perceptions of drug and alcohol workers and programs in NSW prisons, see *Speak Out Speak Strong*

<sup>10</sup> NSW Department of Environment and Conservation, “Human Settlement”, *NSW State of the Environment 2003*, Ch 2, available at [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)

### *Separation from Family*

A high number of Indigenous women in custody in NSW are mothers.<sup>11</sup> A period of imprisonment generally means separation from children, though the Department of Corrective Services does provide some options for accommodation of young children with their mothers in prison. Particularly for single parents, imprisonment usually means the child losing his or her principal carer. Parents are forced to organise alternative arrangements for their children, leaving them with their partners, parents or DOCS. If the children are put into DOCS care, parents may have trouble regaining custody on release from prison. Separation from children is a serious issue for all people in the prison system, but particularly for Indigenous women, given the legacy of forced removal of children by the state, and the number of Indigenous mothers in prison. Even when children are in a satisfactory care arrangement, they may not be able to see their imprisoned mothers regularly, because of issues of remoteness and the cost of transport to and from gaols (discussed above).

## **2. Suitability of Community Based Sentencing Options**

### *Home Detention*

Home detention offers the particular advantage to Indigenous women of allowing them to stay in their communities and, if they have children, to continue to care for them. One of the reasons for the underrepresentation of Indigenous women in home detention is that the scheme is not operated in rural and remote parts of NSW, which tend to have a higher concentration of Indigenous people.<sup>12</sup> Extension to rural and remote areas could address this access problem. There are, however, problems both of the suitability of home detention in rural and remote areas, and of tailoring programs for Indigenous access within and outside cities.

Home detention is hard to operate effectively in rural and remote areas, as it is difficult for caseworkers to maintain face to face contact with prisoners when their caseload is spread over a large geographical area. Corrective Services has acknowledged the need for a different methods for rural and remote areas, suggesting partnership with local community organisations as a way of managing adequate contact with prisoners.<sup>13</sup> Such a model could potentially work well for Indigenous women, as there could be scope for Indigenous specific organisations to play a part in

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<sup>11</sup> *Speak Out, Speak Strong* p21

<sup>12</sup> NSW Law Reform Commission, *Sentencing: Aboriginal Offenders*, Report 96, 2000, Ch 5 "Sentencing Options"

<sup>13</sup> *ibid.*

case management. Rehabilitation could possibly be more effective. Such partnerships should be explored by the committee.

For many Indigenous people, contact with community and extended family and clan groups is an important part of life. Restriction to the home, and limited contact with wider networks can pose the same problems of isolation as a prison sentence.

If home detention were considered an option for an Indigenous woman in a rural or remote area, the Department of Corrective Services may also have to address housing problems. Home detention relies on access to and security of the technology associated with electronic surveillance. Appropriate housing or specialised facilities may need to be provided.

#### *Periodic Detention*

Periodic detention is a good alternative to full time detention, allowing prisoners to stay a part of their community and to maintain jobs and other responsibilities while serving out their sentence. Lack of access to facilities means that for a lot of Indigenous people in remote areas, periodic detention is not a sentencing option. A NSW Law Reform Commission survey of judicial officers found that “more than 70% of District Court judges and more than 53% of Local Court magistrates said that, when sentencing Aboriginal offenders, the lack of facilities prevented them from exercising the option of periodic detention.”<sup>14</sup> An expansion of periodic detention into rural and remote areas would address access and transport difficulties for Indigenous women, making it a much more viable option. CLRI supports the extension of the periodic detention program to rural and remote NSW, but urges the commission to consider and address the particular problems faced by Indigenous women all over the state in accessing such a sentencing option.

Periodic detention is difficult for women who care for children, as finding an appropriate carer for weekends could be difficult and expensive. To make it very accessible to women, a more flexible approach would be important. The NSW Law Reform Commission recommended that prisoners be given the option of reporting for detention within school hours.<sup>15</sup> CLRI supports such a recommendation, and asks that any expansion of periodic detention to rural and remote areas take into account the special needs of Indigenous women.

#### *Community Service Orders*

Community Service Orders offer another means of keeping Indigenous women in their communities and maintaining family unity, thus should be a priority in extension to rural and

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<sup>14</sup> *ibid*

<sup>15</sup> NSW LRC, Ch 6 “Female Offenders”

remote areas, to give offenders in these areas more options. More widespread availability would make community service orders a more realistic possibility for Indigenous women in rural and remote NSW. However there are other issues that would need to be addressed to make the program easier to access. Women with younger than school age children would find it difficult to meet the requirement of a CSO without assistance with childcare. More attention needs to be paid to the provision of childcare as part of a CSO. Also, Community Service Orders need to recognise specific Indigenous cultural issues, including the nature of the work, and rules relating to breaching orders. CSO supervisors need to take see funerals and community events as valid reasons for non-attendance. Inflexibility about absences could see Indigenous people breach their CSOs, and face imprisonment.

Any extension of Community Service Orders to rural and remote areas is contingent on the availability of community work. The Government would have to make sure that infrastructure and opportunities existed to offer meaningful, properly supervised community work. There also needs to be a commitment to provide drug and alcohol rehabilitation as part of a community service sentencing option to address offending behaviour.

#### *Drug Court*

As discussed above, initiatives like the Drug Court have the advantage of creating opportunities for the provision of services that are more suitable for Indigenous people than mainstream treatment in prison. It is important that the treatment services for Drug Court participants include Indigenous organisations, and recognise the different context of Indigenous drug use. Often, residential programs will be more appropriate for Indigenous women, given the widespread disadvantage and drug dependency in Indigenous communities.<sup>16</sup>

Indigenous women should be targeted to participate in the Drug Court program because of their overrepresentation in prison, and their relationship with drugs.

#### Alternative Sentencing Options

##### *Bail Hostels*

CLRI would like to take this opportunity to draw the Committee's attention to the question of providing Bail Hostels for remand prisoners. The 2001 report of the Select Committee on the Increase in prisoner population recommended the establishment of bail hostels for women in

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<sup>16</sup> Matthews, Winsome "Are we meeting the needs of women, aboriginal and torres strait islanders and offenders from Non-English Speaking Backgrounds", transcript of a workshop held at Drug Court Conference – *Drugs, Rehabilitation and the Criminal Justice System*, Feb 28-March 1 2002, available at <http://www.lawlink.nsw.gov.au/drugcrt/drugcrt.nsf/pages/conference>

NSW, with a hostel to be reserved for Indigenous women. Such a scheme is a valuable means of keeping women out of prison before they are sentenced, and should be pursued.

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