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Department of Communities and Justice

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### **NSW Aboriginal Women's Advisory Network's submission to the NSW Sentencing Council Review into Good Character at Sentencing**

The NSW Aboriginal Women's Advisory Network ('AWAN' or 'the Network') thanks the NSW Sentencing Council for the opportunity to comment on the review into Good Character at Sentencing.

The [NSW Aboriginal Women's Advisory Network](#) was established in 2022 and operates as a mechanism to drive Aboriginal-led policy solutions to the NSW Government Closing the Gap Target 13 initiative to reduce the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children by at least 50% by 2031 as progress towards zero.<sup>1</sup>

AWAN's Executive Council is led by Co-Chairs from Wirringa Baiya Aboriginal Women's Legal Centre ('Wirringa Baiya') and the Aboriginal Legal Service (NSW/ACT) ('ALS'). ALS is the Coalition of Aboriginal Peak Organisations (CAPO) lead on Target 13. Wirringa Baiya is the organisation that auspices the AWAN secretariat. Both Wirringa Baiya and AWAN are gender-specific and sensitive to the culturally diverse needs of Aboriginal and Torres Strait Islander women and children victim-survivors of domestic, family and sexual violence.

AWAN works to reduce violence against Aboriginal women and children through the following multi-pronged approach:

- *Educating community* around issues of domestic, family and sexual violence against Aboriginal and Torres Strait Islander women and children.
- *Empowering Aboriginal and Torres Strait Islander women* across New South Wales with opportunities to provide their insights on issues that impact themselves, their families, and their communities.
- *Representing the voices of Aboriginal and Torres Strait Islander women to government* at the NSW State and Australian Federal levels.
- *Representing the voices of Aboriginal and Torres Strait Islander women to frontline services.*
- *Advocating for better protections and support* in community for Aboriginal and Torres Strait Islander women and children.

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<sup>1</sup> NSW Government, 2022-2024 NSW Implementation Plan for Closing the Gap, 109.

## Consultations

Whilst our consultations are ongoing, the communities that we have visited so far include Brewarrina, Campbelltown, Dubbo, La Perouse, Mt Druitt, Redfern, Walgett, Wellington, Armidale, Glen Innes, Tingha, and Inverell. Over 7 – 8 December 2023, the Network also held a State-Wide Conference around Domestic, Family and Sexual Violence which hosted over 100 Aboriginal and Torres Strait Islander women from urban, rural, regional and remote communities across NSW. Our work and this feedback is informed by the insights shared with us by Aboriginal and Torres Strait Islander women with whom we have consulted with from communities across NSW.

Specific consultations were held with 9 AWAN members representing 4 organisations to inform this submission.

## Summary of recommendations

AWAN's positions into the NSW Sentencing review into Good Character at Sentencing is as below:

- 1.1 The use of good character references should not be used in relation to child sexual assault, due to the heinous nature of the crime and the lifelong traumatic impacts on victim-survivors. Good character evidence misleads courts by applying an outdated understanding of who sexual offenders are.
- 1.2 Section 21A(5A) ought to be amended to prevent the application of evidence of good character and the absence of prior convictions as a mitigating factor in sentencing: (a) regardless of whether or not either factor "assisted" in the commission of the convicted offence, and (b) in the sentencing of all sexual offences, whether the survivor is an adult or a child.
- 1.3 In order to achieve the sentencing goals of rehabilitation, there is a need to better manage and strengthen programs delivered to offenders by Community Corrections Offices (Probation and Parole). Programs should be trauma informed and culturally safe. Funding allocations should be prioritised for Aboriginal Community Controlled Organisations (ACCOs) in line with the National Agreement on Closing the Gap (the National Agreement).
- 1.4 To realistically improve the victim-survivor experience of sentence proceedings involving good character evidence, meaningful investment in improving the broader justice response to sexual violence is required. This includes implementing meaningful measures to address issues that affect the overall justice process that can compound the trauma experienced by victim-survivors' in sentence proceedings, such as lengthy delays in proceedings, underfunded legal assistance services and the involvement in sexual violence matters of personnel who have not undertaken trauma-informed training. For Aboriginal women, there is a need to consider the extent of Police misidentification as perpetrators of family violence and the significant adverse impacts this has on women and children's safety.
- 1.5 Further to the operation of the mitigating clause of disability, due to the barriers to diagnosis and treatment, courts should also play a more active role in diagnosis and ordering treatment to address recidivism. This also takes into account the overlap between experiences of which can result from experiences of Family, Domestic and Sexual Violence (DFSV).

## Well established limitations of good character references

The concept of character is vague and incoherent, and lacks a settled definition, including in philosophy or psychology, or empirical foundation. Consequently, decisions that rely on purported evaluations of individuals' character and adversely affect their legal rights are at risk of being speculative, misguided and arbitrary.<sup>2</sup>

The Sentencing Council has previously noted the logical fallacy in the use of an absence of a prior record to indicate good character. By itself, the absence of a prior record is generally neutral and the absence of tangible evidence of bad character cannot be equated with positive evidence of good character.<sup>3</sup>

## Lack of criminal history is a poor indicator of criminal behaviour

The lack of criminal history and the absence of evidence of prior criminal behaviour is not evidence of such behaviour, particularly in relation to sexual and domestic violence offences which continue to be underreported.

Many victims of child sexual assault do not disclose child sexual abuse until adulthood and some choose to never disclose to anyone. The Royal Commission into Institutional Responses to Child Sexual Abuse (2017) found that of the people who provided information about disclosure, 57% first disclosed as adults with 43% disclosing during childhood. On average, it took victims and survivors of child sexual abuse 23.9 years to disclose the abuse to anyone.<sup>4</sup>

## Child Sexual Assault

The difficulties associated with the application Section 21A (5A) stems from a degree of misunderstanding as to who perpetrates Child Sexual Assault (CSA). Over a third of sexual assaults are domestic or family violence related,<sup>5</sup> and most are perpetrated by someone the survivor knows<sup>6</sup> who in this context cannot tender evidence that the offender's known good character or lack of convictions was what facilitated their being granted access to the child. For women, the perpetrator was most likely to be known to them (88% or 986,000), and was commonly a family member (47%) including non-immediate adult male relatives (25%), their father or step-father (16%) or their brother or step-brother (5.6%)<sup>7</sup>.

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<sup>2</sup> [https://www.monash.edu/data/assets/pdf\\_file/0005/1981454/03\\_Wolf.pdf](https://www.monash.edu/data/assets/pdf_file/0005/1981454/03_Wolf.pdf) p568

<sup>3</sup> NSW Sentencing Council, Penalties Relating to Sexual Assault Offences in New South Wales, Report (2008) vol 1 [5.25].

<sup>4</sup> RCIRCSA (2017b) [Final report—Identifying and disclosing child sexual abuse- external site opens in new window](#), RCIRCSA, accessed 19 May 2023.

<sup>5</sup> Australian Bureau of Statistics, Recorded Crime - Victims 2022 (29 June 2023) ('ABS Victims 2022'). Recorded means offences which may have been reported by a victim, witness or other person, or detected by police. Sexual assault definition is based on ANZSOC classification 0311 and 0312).

<sup>6</sup> Australian Institute of Health and Welfare, Sexual Assault in Australia, 2020, 8-9 ('Sexual Assault in Australia').

<sup>7</sup> ABS (Australian Bureau of Statistics) (2023) [Childhood abuse, 2021-22- external site opens in new window](#), ABS website, accessed 27 February 2023.

The use of good character references in child sexual assault matters works to achieve a punitive impact on victim-survivors, given that these character references are considered after enduring cross-examination and the successful conviction of the abuser. This works to undermine their experience of abuse and can further lead to discouraging future victim-survivors of child sexual abuse from coming forward which further enables child sex abusers to offend and hindering the achievement of justice.

The Inquiry about institutional responses to child sexual abuse in religious institutions uncovered the extent of the issue regarding the committal of child sexual assault by clergymen and covering up by people in authority. The report represents the culmination of our five-year inquiry into institutional responses to child sexual abuse and related matters. It presents the findings and recommendations of the Royal Commission. It also documents the experiences of people affected by child sexual abuse in an institutional context.

To achieve the recommendations set out by the Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse that in relation to child sexual abuse, the criminal justice system should be reformed to ensure that the following objectives are met<sup>8</sup>:

- a. the criminal justice system operates in the interests of seeking justice for society, including the complainant and the accused
- b. criminal justice responses are available for victims and survivors; and
- c. victims and survivors are supported in seeking criminal justice responses.

### Grooming

Section 21A(5A) fails to account for the fact that CSA offenders frequently possess behavioural characteristics that align precisely with the courts' understanding of "good character" and yet are also characteristics which are intrinsic to offending.

Grooming is a term used by a wide range of professionals working with sex offenders. It is defined as patterned behaviour designed to increase opportunities for sexual assault, minimise victim resistance or withdrawal, and reduce disclosure or belief. Grooming is a complex set of behaviours which can target both the victim and other individuals in the victim's life (the victim's environment). In many sexual assaults, the victim's environment must be groomed prior to, during, and after the assault to ensure continued access to the victim and minimise discovery or disclosure of the assault.<sup>9</sup>

Child sexual abuse is inherently enabled through an exploitation of power. When abusers are active in their community, they are rewarded by being elevated to positions of trust in their public and private lives, thereby being provided with greater opportunity to abuse others, particularly children. Acquiring positions of trust within institutions has consistently been demonstrated as an enabling factor that helps them maintain secrecy and evade detection for extended periods.<sup>10</sup>

The case of George Pell, former Australian cardinal of the Catholic Church is an accurate illustration. Pell was initially convicted of child sexual abuse. Pell's character referees included John Howard, a former prime minister. Pell's defence lawyer said of Pell's referees: "These people love him; none of them believe he is capable of these offences."<sup>11</sup> This

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<sup>8</sup> Final Report Recommendations: Royal Commission into Institutional Responses to Child Sexual Abuse [https://www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_recommendations.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_recommendations.pdf), p 91

<sup>9</sup> Tanner J and Brake S, Exploring Sex Offender Grooming, <https://kbsolutions.com/Grooming.pdf> 2013

<sup>10</sup> S J Nicol and others, Evading Detection: What do we know about men charged with extrafamilial child sexual abuse following delayed detection?, Journal of Child Sexual Abuse 4 March 2022.

<sup>11</sup> <https://www.theage.com.au/national/victoria/thoughtful-considerate-the-people-who-wrote-character-references-for-george-pell-revealed-20190227-p510pp.html>

highlights the fact that perpetrators of child sexual assault, often present as upstanding citizens who have carefully shaped positive public opinion as a cover to their offending (also called 'environmental grooming').

### Adult Sexual Assault

Victims of sexual assault endure significant trauma, and the judicial process should be a crucial part of their journey toward healing and closure. When offenders receive reduced sentences based on their good character, it can lead to the victims feeling marginalized and the invalidation of their trauma and suffering. Such outcomes can deter victims from coming forward, fearing that their attackers may not face the full consequences of their crime. This perpetuates a cycle of silence and impunity, undermining efforts to combat sexual violence effectively. Ensuring that sentences reflect the crime's severity and the harm caused to the victim is essential for maintaining the integrity of the justice system and supporting victims in their recovery.

As noted in the Rape and Sexual Assault's Preliminary Submission<sup>12</sup>, the infrequency with which rape and sexual assault offences are successfully prosecuted means it is vital that, on the rare occasion when a conviction is secured, courts have the correct tools to impose a sentence which adequately reflects the severity of the offender's conduct, recognises the impact of offending and sends a strong message to the community that sexual violence is not acceptable.

When the focus is shifted from the crime to the character of the offender, the judicial system fails to hold the perpetrator fully accountable for their actions. This can erode the deterrent effect of sentencing, as potential offenders might perceive that their good behaviour in other areas could protect them from the full consequences of their criminal actions.

### Good Character References are an extension of white privilege

A consistent theme that underpinned our consultations is that the ability to benefit from a good character reference is connected to white privilege and proximity to institutional power. There is often a power imbalance when a victim is Aboriginal and the defendant is non-Aboriginal due to the stronger access to legal representation. This is an inherent feature of the adversarial system of trial.

A participant shared during a consultation that "being privileged strengthens the ability to manipulate the system and present an appearance of credibility which is strengthened by giving judges discretionary power". White victims are generally given a higher levels of support, and the Bowraville murders and the battle for justice by the Victims' families presents a case study for this.

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<sup>12</sup> <https://sentencingcouncil.nsw.gov.au/documents/our-work/good-character/PGC42.pdf>

Another participant shared that Aboriginal and Torres Strait Islander people “don’t benefit from good character references” and do not access the same level of credibility when invoking character references. This also reflects the disparity of organisational reputational weight given to mainstream organisations and faith based Non-Government Organisations (NGOs) in comparison to Aboriginal Community Controlled Organisations (ACCO’s) or community leaders and elders.

As noted in the Sentencing Council’s discussion paper, factors such as acts of bravery or being a “valuable member” of the community are accepted as mitigating without challenge in NSW Courts.<sup>13</sup> This fails to consider the lack of apparent cultural diversity amongst mainstream volunteer based institutions such as Surf Life Saving clubs and the Royal Fire Service (RFS).

### Limits of the sentencing process to achieve sentencing objectives

Section 3A of the Crimes (Sentencing Procedure) Act 1999 sets out the objectives of sentencing, which include community protection, general and specific deterrence, rehabilitation, retribution; and denouncing the conduct of the offender. While these aims are not formally ranked in order of importance, it is generally accepted that the key goal is community protection.<sup>14</sup> Use of good character references in sentencing limits the achievement of these objectives.

There are limits on the role of the criminal justice system in its ability to deliver justice for First Nations peoples. There is a need to strengthen early intervention programs, stronger behavioural change programs in correctional centres to bolster the role of accountability that sits outside the criminal justice system, and in line with Closing the Gap targets.

In order to achieve the sentencing goals of rehabilitation, there is a need to better manage and strengthen programs delivered to offenders by Community Corrections Offices (Probation and Parole).

### Meaningful programs to foster accountability

Complementing the sentencing process as part of the criminal justice system’s response, there is a need to proactively extend Victim Support programs and funding for wraparound supports for children to mitigate the impacts of long term trauma facing child victims of child sexual assault (CSA). Although prevalence is difficult to ascertain, several studies relate that people who have been sexually abused as children are two to three times more likely to be sexually revictimised in adolescence and/or adulthood.<sup>15</sup>

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<sup>13</sup> See, eg, *R v Zamagias* [2002] NSWCCA 17 [19]; *Osborne v R* [2015] NSWCCA 260 [86]

<sup>14</sup> While the legislative provisions that set out the main objectives of sentencing generally do not prioritise any of the competing objectives, the courts in applying these objectives generally regard community protection as the cardinal objective of sentencing adult offenders: see, eg, *Channon v The Queen* (1978) 20 ALR 1; *R v Valentini* (1980) 48 FLR 416; *R v Williscroft* [1975] VR 292, 298; *R v Radich* [1954] NZLR 86, 87; *DPP (Cth) v El Karhani* (1990) 21 NSWLR 370, 377. I

<sup>15</sup> Stathopoulos M, Sexual revictimisation – Individual, interpersonal and contextual factors, <https://apo.org.au/sites/default/files/resource-files/2014-05/apo-nid39622.pdf>

### Strengthening the role of Community Corrections

Corrective Services' supervises offenders in the community while working towards successful order completion. It promotes offenders' successful re-settlement through partnerships with other agencies and community groups. Community Corrections aims to reduce the impact of crime on the community by effectively managing offenders and by being a decisive influence on sentencing. It provides pre and post-sentence assessments and advice to courts and releasing authorities as well as a range of community-based interventions which take account of community protection, compliance by offenders with Court Orders, restitution to the community, and the personal and developmental needs of offenders in addressing their offending behaviour. These programs need to be meaningful to achieve rehabilitation goals of sentencing as well as accountability, and our members emphasised that they should be more than a "ticker box exercise".

Court-ordered programs delivered by Community Corrections should be better monitored by ensuring that regular updates are received from caseworkers from services to monitor behavioural changes. Otherwise, once the order lapses, an offender is likely to repeat offending. Programs need to be culturally safe and should be subject to cost-benefit analysis processes.

### Improving the victim-survivor experience of sentence proceedings involving good character evidence

While we appreciate the narrow scope of this review, it is our view that, to realistically improve the victim-survivor experience of sentence proceedings involving good character evidence, meaningful investment in improving the broader justice response to sexual violence is required.

This includes implementing meaningful measures to address issues that affect the overall justice process that can compound the trauma experienced by victim-survivors' in sentence proceedings, such as lengthy delays in proceedings, underfunded legal assistance services and the involvement in sexual violence matters of personnel who have not undertaken trauma-informed training.

For Aboriginal women, there is a need to consider the extent of Police misidentification of Aboriginal women as perpetrators of family violence and the significant adverse impacts this has on women and children's safety. For Aboriginal women, misidentification as perpetrators of violence occurs more frequently than it does for other women. In addition to the impacts on women and children's safety, misidentification leads to Aboriginal women's criminalisation, incarceration and removal of their children.

**Due to the concerns about misidentification of Aboriginal women for domestic violences, our members did not support abolishing the use of good character references on a wholesale basis.**

### Misidentification of women as perpetrators

For Aboriginal women, misidentification as perpetrators of violence occurs more frequently than it does for other women. In addition to the impacts on women and children's safety, misidentification leads to Aboriginal women's criminalisation, incarceration and removal of their children.



Government investment is required to expand Aboriginal-led and culturally-based legal support and court support for Aboriginal and Torres Strait Islander women who experience domestic, family and sexual violence. A perpetrator data system which values the safety of women and children must include straightforward and accessible mechanisms for correcting misidentification.<sup>16</sup>

Crucially, any strategy must be culturally appropriate for, and designed to meet the needs of Aboriginal communities<sup>17</sup>. For these communities, support services must be, at the very least, culturally safe, but they should ideally be provided by Aboriginal controlled services. To this end, Wirringa Baiya Aboriginal Women's Legal Centre has advocated for the establishment of a crime prevention unit in NSW, staffed by Aboriginal workers with different expertise, to focus exclusively on early intervention of sexual and domestic violence in Aboriginal communities.<sup>18</sup>

This model should include Aboriginal specialists from a range of disciplines, including counselling, early, middle and adult education, refuge services, child protection, law enforcement, legal, health, employment, and housing. Any service must be locality appropriate. What may work for one community in a metropolitan area may be quite different for what works for different Aboriginal communities in rural areas. It is also important to not homogenise metropolitan, regional, and remote Aboriginal communities when designing support services, as there are variations in each.

There is widespread support for models of independent legal assistance for victim-survivors within Australia. For example, the Victorian Law Reform Commission's recent review of the justice system response to sexual offences highlighted a gap in legal assistance for victim-survivors, resulting in a lack of understanding of legal rights and options, and concluding that the Victorian Government should pilot a scheme of separate lawyers for complainants in sexual offence cases.<sup>19</sup> This need for access to legal assistance and specialised legal advice was similarly recognised by the Meeting of the Attorneys-General as something that can provide victim-survivors with greater support, allowing them to better engage with the justice system<sup>20</sup>.

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<sup>16</sup> Djirra, Submission to Inquiry Into Capturing Data on Family Violence Perpetrators in Victoria (27 May 2024) 1.

<sup>17</sup> Wirringa Baiya Aboriginal Women's Legal Centre, Submission to Justice Responses to Sexual Violence: Issues Paper (2024) (7 June 2024) 4.

<sup>18</sup> Wirringa Baiya Aboriginal Women's Legal Centre, Submission to NSW Law Reform Commission, Report 148: Consent in Relation to Sexual Offences (29 June 2018) 3.

<sup>19</sup> Victorian Law Reform Commission, Improving the Justice System Response to Sexual Offences (Report, September 2021) 263-7.

<sup>20</sup> Attorney-General's Department, Work Plan to Strengthen Criminal Justice Responses to Sexual Assault (Meeting of Attorneys-General, 12 August 2022) 9

### **Recommendations to improve victim-survivor experiences:**

- A higher weight should be given to Victim Impact Statements during the sentencing process to restore justice. For Aboriginal women, it is noteworthy that sexual assault was a tool used part of the colonisation process, carrying added layers of trauma.
- Government investment is required to expand Aboriginal-led and culturally-based legal support and court support for Aboriginal and Torres Strait Islander women who experience domestic, family and sexual violence.
- A perpetrator data system which values the safety of women and children must include straightforward and accessible mechanisms for correcting misidentification.<sup>21</sup>
- Support services must be, at the very least, culturally safe, but they should ideally be provided by Aboriginal controlled services. To this end, Wirringa Baiya Aboriginal Women's Legal Centre has advocated for the establishment of a crime prevention unit in NSW, staffed by Aboriginal workers with different expertise, to focus exclusively on early intervention of sexual and domestic violence in Aboriginal communities.<sup>22</sup> This model should include Aboriginal specialists from a range of disciplines, including counselling, early, middle and adult education, refuge services, child protection, law enforcement, legal, health, employment, and housing. Any service must be locality appropriate. What may work for one community in a metropolitan area may be quite different for what works for different Aboriginal communities in rural areas. It is also important to not homogenise metropolitan, regional, and remote Aboriginal communities when designing support services, as there are variations in each.

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<sup>21</sup> Djirra, Submission to Inquiry Into Capturing Data on Family Violence Perpetrators in Victoria (27 May 2024) 1.

<sup>22</sup> Wirringa Baiya Aboriginal Women's Legal Centre, Submission to NSW Law Reform Commission, Report 148: Consent in Relation to Sexual Offences (29 June 2018) 3.

<sup>23</sup> Victorian Law Reform Commission, Improving the Justice System Response to Sexual Offences (Report, September 2021) 263-7.

<sup>24</sup> Attorney-General's Department, Work Plan to Strengthen Criminal Justice Responses to Sexual Assault (Meeting of Attorneys-General, 12 August 2022) 9

## Other relevant matters: Disability, psychosocial disability and overrepresentation of Aboriginal and Torres Strait Islander women in custody

Section 21A(3)(j) of the *Crimes (Sentencing Procedure) Act 1999* notes disability as a mitigating factor if the offender was not fully aware of the consequences of his or her actions because of their age or disability. While it is outside the scope of this Inquiry, there are numerous relevant issues pertaining to Aboriginal and Torres Strait Islander women and their experience of psychosocial disabilities, which can result from experiences of Family, Domestic and Sexual Violence (DFSV).

First Nations people experience barriers to assessments and diagnoses, making it difficult to access support. Whilst understanding a person's disability can assist in knowing the type of support a person may require, it is important to focus on the impact that it has on their life, rather than the diagnosis. Due to the barriers to diagnosis and treatment, courts should also play a more active role in diagnosis and ordering treatment to address recidivism.

There should be an expansion in the use of Community Treatment Orders (CTO's) as a diversionary mechanism to allow a person with a mental illness to receive treatment in the community under the Mental Health and Cognitive Impairment Forensic Provisions Act 2020, which provides a mechanism for magistrates to deal with persons with mental health impairments or cognitive impairments.

We also note that the experience of Family, Domestic and Sexual Violence (DFSV) is recognised as a cause or contributor to disability. AIHW (2018) research indicated that intimate partner violence caused more illness, disability, and deaths than any other risk factor for women aged 25–44 in Australia.<sup>25</sup> Family violence contributes significantly to the 'burden of disease' experienced by First Nations women with disabilities, alongside far higher rates of depression, anxiety, alcohol use, early pregnancy loss, suicide and self-harm, and homicide and violence.<sup>26</sup>

Aboriginal and Torres Strait Islander women are overrepresented in prison and account for a third (33%) of the total female prisoner population. They are imprisoned at a much higher rate than non-Indigenous women (453 and 24 per 100,000 adult female population, respectively).<sup>27</sup> The close links between imprisonment and domestic and family violence (DFV) and sexual violence are poorly understood, but are crucial in addressing cycles of violence and imprisonment, and providing support services to women who have experienced both violence and imprisonment.

There is an urgent need to recognise the importance of continuity of services, case management, pre-release planning and throughcare, as well as to Develop and fund culturally relevant diversion and prison initiatives such as the Miranda Project or the Sisters Inside diversionary program.

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<sup>25</sup> Australian Institute of Health and Welfare. (2018). Family, domestic and sexual violence in Australia, 2018. Canberra: AIHW. Retrieved November 3, 2022 from: <https://www.aihw.gov.au/reports/domestic-violence/familydomestic-sexual-violence-in-australia-2018/summary>

<sup>26</sup> Our Watch. (2018). Changing the picture, Background paper: Understanding violence against Aboriginal and Torres Strait Islander women, p.30- 31

<sup>27</sup> Australian Institute of Health and Welfare 2020. The health and welfare of women in Australia's prisons. Cat. no. PHE 281. Canberra: AIHW.

While comprising 3% of the total female population, Aboriginal and Torres Strait Islander women make up one-third of Australia's female prison population. National and international research further suggests that between 40% and 73% of female prisoners have acquired brain injuries.<sup>28</sup>

Women can become caught in cycles of imprisonment and experiencing violence: violence increases the risk and effects of imprisonment, and imprisonment increases the risk and effects of violence.<sup>29</sup> Women in prison are more likely to have a history of physical and sexual abuse than men; are more likely to have mental health problems; and experience drug and alcohol dependence at higher rates than men.<sup>30</sup>

### **Recommendations:**

1. Expand training provided on disability by developing and providing immersive-based training on disability for Police, lawyers and the judicial system;
2. Expand diversionary mechanisms for Aboriginal and Torres Strait Islander communities with psychosocial disabilities by expanding the use of Community Treatment Orders (CTO's) as a diversionary mechanism to allow a person with a mental illness to receive treatment in the community under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*, which provides a mechanism for magistrates to deal with persons with mental health impairments or cognitive impairments.
3. To address the overlap between experiences of DFSV, disability and incarceration, women in custody must have access to trauma informed recovery and person-centred interventions that support successful transition from prison into education, employment, housing, and parenting responsibilities.

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<sup>28</sup> <https://lens.monash.edu/@politics-society/2021/07/30/1383557/rethinking-female-incarceration-road-to-prison-paved-with-domestic-abuse#:~:text=While%20all%20of%20Australia's%20prison,prisoners%20have%20acquired%20brain%20injuries.>

<sup>29</sup> ANROWS report

<sup>30</sup> WHO 2014. Prisons and health. Copenhagen: World Health Organization Regional Office for Europe.

## Conclusion

The NSW Aboriginal Women's Advisory Network again thanks the NSW Sentencing Council for the opportunity to provide our feedback.

If the NSW Sentencing Council has any questions about this feedback, or wishes to speak to us further, please contact the NSW Aboriginal Women's Advisory Network's Acting Program Co-ordinator, Shaquille Robinson by email: [s.robinson@awan.org.au](mailto:s.robinson@awan.org.au) or phone: 02 9560 5432, 0484 914 523 and the Network's Policy and Advocacy Officer, Yusra Metwally by email: [y.metwally@awan.org.au](mailto:y.metwally@awan.org.au).

Yours Sincerely,

*Shaquille Robinson*

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