Submission to:

Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia

(The Senate Standing Committee on Legal and Constitutional Affairs)

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Submission Rationale

The imprisonment of disadvantaged and marginalised Australians has reached epidemic proportions. Sisters Inside contends that prisons have become default (mental) health institutions, housing services and *drying out* facilities: prisons function in lieu of adequate health and community services for the most disadvantaged members of society. Increasingly judges and magistrates are imprisoning people on remand, simply to ensure their access to critical services, particularly accommodation and mental health services. The profound and multi-generational damage brought about by this injustice will take generations to repair.

This trend reflects ill-informed social attitudes rather than rational social and economic thinking. Despite a lack of any increase in serious crime over the past 30 years (and evidence of decreased rates of some violent crimes), an irrational fear of crime pervades the wider community. The current *law and order* approach to public policy has, ironically, served to criminalise increasing numbers of women and children for increasingly minor offences and maintain recidivism rates - that is, to increase the risk of crime. It has also unnecessarily cost the taxpayer $millions.

There is a better way. Providing adequate economic support and social services for disadvantaged groups at risk of criminalisation can contribute significant budget savings and prevent the long term social, cultural and economic costs of imprisonment. This is particularly apparent amongst the vast majority of women prisoners who are imprisoned for minor, non-violent offences - where their lives, and the lives of their children, are irrevocably worsened as a result of imprisonment.

Sisters Inside strongly supports the reinvestment of funding from punitive approaches driven by the criminal justice system, to prevention, early intervention, diversionary and rehabilitatory services which genuinely address the economic, social and cultural needs of women and their families.

About Sisters Inside

Established in 1992, Sisters Inside Inc. exists to advocate for the human rights of women in the criminal justice system and to address gaps in the services available to these women. We work alongside criminalised women to determine the best way to fulfil these roles. Sisters Inside provides services to women in prison and following their release from prison. We also work with young women in the juvenile justice system, and the children of criminalised women.

Sisters Inside has progressively developed a unique model of service and highly successful programs, which are informed by the wisdom of criminalised women themselves. Wherever possible, Sisters Inside employs staff with lived prison experience, including a focus on employing Aboriginal and Torres Strait Islander women and being guided by Aboriginal women Elders.

About 'Justice Reinvestment'

The term 'justice reinvestment' is used throughout this submission to refer to reallocation of funds from punitive approaches to crime (such as policing, courts and corrections) to addressing the primary causes of criminalisation (poverty, homelessness, mental health issues, cultural destruction, substance abuse, etc.) These alternatives to imprisonment include prevention, early intervention, diversionary and rehabilitation programs.

Why Focus on Women & Child Prisoners?

Sisters Inside recognises that the vast majority of prisoners in Australia are from disadvantaged populations. Most investigations over the past 30 years have focused on prisoners as a total population and/or prisoners from particular socially or economically marginalised groups. Only a small minority of the research[1] and few state or federal government inquiries[2] have responded to the situation of women prisoners.

Over the past 30 years, increases in the rates of imprisonment of women (particularly Aboriginal and Torres Strait Islander women) have grown faster than for men. Criminalised men and women have different criminogenic profiles and different experiences within the justice system. Further, women's imprisonment has a particular impact on their families and communities, including increased risk of multi-generational criminalisation. These differences have been sadly neglected.

This submission focuses on women in the hope that the current inquiry will begin to redress this imbalance and recognise the discrete and central role of justice reinvestment in addressing issues contributing to the criminalisation of women and children. (These children include the children of women prisoners, children in state care and children in the juvenile justice system.) Justice reinvestment strategies will only have successful outcomes for women and their families if they take account of the particular realities of criminalisation for women.

[1] One study found that only 3% of all research on prisoners examined focused on the situation of women prisoners (McGuire 2002 cited in Goulding 2004:14).
[2] A notable exception being the Inquiry into The Impact of Drug-Related Offending on Female Prisoner Numbers (Parliament of Victoria Drugs and Crime Prevention Committee 2010).

Overrepresentation of Disadvantaged Women & Children

Almost 100% of women prisoners come from economically and/or socially disadvantaged groups. Most women prisoners are loath to report personal details to correctional authorities or researchers, therefore the lower estimates of percentages of women with particular experiences of disadvantage must be treated as conservative[3]. At the very least:

- Approximately 30% of women prisoners are Aboriginal or Torres Strait Islander women[4].
- 81% - 98% of women prisoners are survivors of physical and/or sexual abuse, with over 44% having experienced childhood sexual assault[5]. (In other words, the vast majority of women prisoners are themselves, victims of crime.)
- Indications[6] are that over 50% of women prisoners were in care as a child and 17% - 25% spent time in a juvenile prison[7].
- 50% - 84% of women prisoners have a psychological/psychiatric disability (compared with 13% in the wider community); 12% - 30% have an intellectual disability; and 15% - 50% have a learning disability[8].
- Between 50% and 92% of women prisoners have a history of alcohol and/or drug dependence[9].
- 50% - 75% were unemployed prior to incarceration. Most did not complete their secondary education, many have experienced homelessness and indications[10] are that the majority will leave prison with an outstanding debt.[11]
- 10% - 15% of women prisoners come from non-English speaking backgrounds[12].

Further, the majority of women prisoners are mothers of dependent children, and were heads of single parent families (80% - 85% according to most studies) prior to incarceration[13]. At least 80% of the Indigenous women prisoners are believed to be

[3] Generally, the lower percentages come from data collected by Corrections Departments or government researchers and the higher percentages from community-based services which work with women prisoners. Women repeatedly report that they have greater trust in the privacy and security of their personal information, when provided to these community organisations. Therefore, Sisters Inside contends that the higher percentages are likely to be the most accurate.
[4] ABS 2011a:58
[5] Quixley & Kilroy 2011:15
[6] Little research has been conducted in this area. The data in this area relies heavily on Sisters Inside's own research with women prisoners in Queensland.
[7] Quixley & Kilroy 2011:16
[8] Quixley & Kilroy 2011:19
[9] Quixley & Kilroy 2011:16
[10] Little research has been conducted in this area. The data in this area relies heavily on Sisters Inside's own research with women prisoners in Queensland.
[11] Quixley & Kilroy 2011:17
[12] Quixley & Kilroy 2011:29
[13] Multiple studies cited in Quixley & Kilroy 2011:15; ADCQ 2006:119; Cerveri et al 2005:12; Kilroy 2000:3. The WA government reported a lower rate – 61%, possibly due to a different description …mothers of *young children* cited in Goulding 2004:14.

mothers of dependent children[14], and some had carer responsibilities for other family members prior to imprisonment[15]. The children of women prisoners are at increased risk of criminalisation, with one study finding that the children of prisoners are 5 times more likely to end up in prison than other children[16].

Child prisoners similarly come from highly disadvantaged backgrounds and, like criminalised women, face multiple disadvantages. Aboriginal and Torres Strait Islander young people are highly overrepresented in juvenile detention - on an average day in 2011-12, they were 31 times more likely to be in detention than non-Indigenous young people[17]. A key NSW study[18] found that:

- 81% of the young women and 57% of young men in child prisoners had experienced abuse and/or neglect.
- 57% of child prisoners had been placed in care when aged 10 years or older.
- 92% of young women and 86% of young men had a *diagnosed psychological disorder.*

A history of childhood incarceration is, in and of itself, an indicator of adult criminalisation. For example, a NSW Bureau of Crime Statistics and Research study of juveniles before the Children's Court for the first time found that 90% of Aboriginal and Torres Strait Islander children and 52% of non-Indigenous children, went on to appear before an adult criminal court during the follow-up period[19].

In short, both adult and youth prisons function as punishment for social and economic disadvantage. Imprisonment is, in and of itself, criminogenic.

Aboriginal and Torres Strait Islander Women

> *Action to reduce Aboriginal and Torres Strait Islander overrepresentation in the criminal justice system needs to recognise that the causes of overrepresentation are multi-dimensional, cross-generational and interrelated.*
>
> (National Congress of First Peoples 2012:26).

This submission in no way seeks to diminish the highly disproportionate imprisonment of Aboriginal and Torres Strait Islander men, and the profound effect of this on their families and communities. A core recommendation of Royal Commission into Aboriginal Deaths In Custody (RCIADC) related to use of imprisonment as a last resort appears to have been ignored across Australian criminal justice systems.

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[14] Behrendt et al 2009 - While the average rate of incarceration for Aboriginal and Torres Strait Islander women across all age groups is 405.4 per 100,000, it peaks between 25-39 years at an average of 768.1 per 100,000 - that is, the age group most likely to have dependent children.
[15] Goulding 2004:29-30
[16] Shine for Kids (Children of Prisoners Support Group) cited in Aboriginal and Torres Strait Islander Justice Commissioner 2009:19.
[17] Mundine 2013
[18] Indig et al 2011 cited in Cashmore 2011:32-33
[19] Cited in Aboriginal and Torres Strait Islander Justice Commissioner 2009:42.

Aboriginal and Torres Strait Islander women are the most significantly over-represented population in Australian prisons and their rate of imprisonment is increasing more rapidly than any other group. This is an issue which can no longer be ignored or subsumed under broader policies on Aboriginal and Torres Strait Islander criminalisation or criminalised women.

The National Congress of First Peoples cites the ABS age standardised rate of imprisonment for Aboriginal and Torres Strait Islander people as 14 times that of non-Indigenous people as at 30 June 2011[20]. Limited gender-separated data is available, however according to the raw 2011 ABS data, Aboriginal and Torres Strait Islander women comprised 30.7% of the female prison population in 2011 (622 of the 2,024 women prisoners in Australia) and Indigenous men comprised 26% of the male prison population[21]. Aboriginal and Torres Strait Islander women were imprisoned at 22.1 times the rate of non-Indigenous women (357.5 compared with 16.2 per 100,000) - with Indigenous men being imprisoned at 17.8 times the rate of non-Indigenous men[22]. That is, Aboriginal and Torres Strait Islander women are even more disproportionately represented in the women's prison population than men are in the male population.

Not only are Indigenous women the most over-represented population in prison; they also have the fastest growing rate of imprisonment. Nationally, the increase in incarceration rates between 2000 and 2010 is greater for Aboriginal and Torres Strait Islander women than any other cultural group. According to the Steering Committee for the Review of Government Service Provision over this decade there was a 58.6% increase in incarceration for Indigenous women, 35.2% increase for Indigenous men, 22.4% increase for non-Indigenous women and only a 3.6% increase for non-Indigenous men[23].

Aboriginal and Torres Strait Islander women are also more likely to return to prison than non-Indigenous women. A study of women prisoners revealed that 67% of all Indigenous women prisoners had been incarcerated previously, while almost half this percentage of non-Indigenous women had a history of imprisonment[24]. The alarming rates of incarceration and re-incarceration of Indigenous women highlights the urgent need to consider and address the unique needs of Indigenous women who are involved in the criminal justice system.

Aboriginal and Torres Strait Islander women prisoners have generally experienced a significant level of trauma and abuse beginning in childhood[25]. Many face high levels of ongoing family violence which have been connected to their offences and convictions[26], with 80% of women prisoners in one NSW study stating that they believed their offending was a direct consequence of their victimisation[27]. The effects of repeated victimisation are well documented and can lead to low self-esteem, anxiety,

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[20] National Congress of First People 2012:5
[21] ABS 2011a:58. Note an apparent arithmetic error in the table on page 58. The number of Aboriginal and Torres Strait Islander women in prison in Australia totals 622, rather than 623 as cited.
[22] ibid
[23] Steering Committee for the Review of Government Service Provision 2011
[24] ABS 2011b
[25] Aboriginal and Torres Strait Islander Social Justice Commissioner 2006
[26] Victorian Department of Justice 2006
[27] NSW Aboriginal Justice Advisory Council 2001

depression, other mental health issues and substance abuse. These factors are all correlated with increased risk of offending and in the case of substance abuse can constitute an offence in itself. Therefore many Indigenous women and girls are not only stuck in cycles of abuse as victims, but also get stuck in cycles of offending in an effort to cope with their difficult life situations.

Most Aboriginal and Torres Strait Islander women prisoners also face many (or all) of the other social and economic disadvantages experienced by other women prisoners - often at higher levels than non-Indigenous women. For example in Queensland in 2010, 86% of Aboriginal and Torres Strait Islander women prisoners were found to have a *diagnosed mental health disorder* over a 12 month period - including substance misuse disorders (69%), anxiety disorders (51%), depressive disorders (29%) and psychotic disorders (23%)[28]. Indigenous women prisoners are more likely to be a victim of a violence crime, including physical and sexual abuse than non-Indigenous women[29].

Aboriginal and Torres Strait Islander women continue to be punished for surviving historic oppression and ongoing social and economic disadvantage.

Survivors of Childhood Abuse and State Care

The nexus between childhood abuse and neglect, the child protection system, the juvenile justice system and the criminal justice system is complex.

Limited information is available on women prisoners' experience of childhood incarceration and institutionalisation. A 2004 Sisters Inside study found that over 50% of women in Queensland prisons had been in care as a child and approximately 25% had been imprisoned in a juvenile detention centre[30]. This is consistent with the anecdotal evidence from other states and territories.

Some key findings from various state-based studies on the relationship between being in care and criminalisation include:

- 26% of young people who had been removed from their family subsequently offended at least once, compared with 13% of maltreated children who had never been placed outside the home[31].
- 21% of young men and 36% of young women on community services orders in NSW had a history of being in care[32].
- 28% of young men and 39% of young women in youth prisons had a history of out-of-home care[33].

[28] Heffernan et al 2012:197
[29] ADCQ 2006:108
[30] Kilroy 2004 cited in Quixley & Kilroy 2011:16
[31] Stewart, Dennison & Waterson 2002 cited in Cashmore 2011:33
[32] This study was cited by Justice Wood in his report on the outcomes of the Special Commission of Inquiry into Child Protection Services in NSW. Kent et al 2006 cited in Wood 2008 cited in Cashmore 2011:32
[33] Wood 2008:556 cited in McFarlane 2010

- At least 21% of children aged 10 or older in out-of-home care had been cautioned, warned or charged with a criminal offence by police in a single 6 month period in Victoria[34].
- Being placed in out-of-home care increases the risk of young women being criminalised - whilst unstable placements (3 or more) increased young men's risk of criminalisation[35].
- An increasing percentage of young people in the child protection system are being held in youth prisons on remand[36].

The lack of adequate replacements for family social supports has directly contributed to the disproportionate criminalisation of young people in state care. Of particular concern is the greater likelihood of 'ordinary' teenage behaviour leading to criminalisation for young people in care. Young people who react in anger and cause damage or threaten harm in their family home are generally dealt with by their family. In out-of-home care however, carers or staff too often involve the police rather than using strategies to deal with difficult behaviour themselves, often leading to charges being laid[37]. Similarly, a peak in criminalisation has been identified amongst 18 year olds leaving the state care system without the social and emotional support typically available to their peers who are still living with their family[38], leading to an adult criminal record.

Studies indicate the particularly high risk of criminalisation faced by young people who are abused or neglected as adolescents. Without a *safe place* (in the widest sense) to live, they face key life transitions (e.g. moving from primary to secondary school, school to training/work or leaving care) in more public settings. They are more likely to experiment with increasing independence through running away, becoming homeless and/or engaging in illegal and survival activities that bring them to the attention of police[39]. They commonly receive less sympathetic attention than younger children experiencing abuse[40] and are dealt with by police rather than child protection services. As a result, they are more likely to be criminalised than cared for[41].

Accordingly, disproportionate presence of particular disadvantaged groups in the child protection system increases the risk of disproportionate criminalisation and imprisonment. Repeated inquiries into child protection and juvenile justice throughout Australia have recognised the over-representation of Aboriginal and Torres Strait Islander children in the child protection system. Most recently, the Queensland Child Protection Commission of Inquiry has noted that the rate of Indigenous children in out-of-home care has more than tripled in Queensland over the past decade (2002-2011) and that Indigenous children *comprised only 6.4 per cent of all Queensland children aged 0–17 years in 2010, (yet) they made up 29.1 per cent of children who were the subject of a substantiated notification in 2010–11 and 37.5 per cent of children in out-*

[34] Wise & Egger 2008 cited in Cashmore 2011:33
[35] Wisdom 1999 cited in Cashmore 2011:35
[36] Mazerolle & Sanderson 2008 cited in Queensland Child Protection Commission of Inquiry 2013:15
[37] Alder 1997; Carrington 1993; NSW Community Services Commission 1999; McFarlane 2010–11; and Taylor, 2006 cited in Cashmore 2011:35; Queensland Child Protection Commission of Inquiry 2012:15
[38] Taylor 2006 and multiple US, Canadian, English and Irish studies cited in Cashmore 2011:36
[39] *Kaufman & Spatz-Widom 1999* cited in Cashmore 2011:34
[40] Kaufman & Spatz-Widom 1999 cited in Cashmore 2011:34
[41] *Garbarino, Eckenrode, & Powers 1997 cited in* Cashmore 2011:34

of-home care as at 30 June 2011[42]. The Commission has acknowledged that a major contributor to this overrepresentation *lies in the significant, systemic and sustained disadvantage that Indigenous people inherit and continue to experience on all key indicators of disadvantage…* and that *… the main harm and risk indicators … are often grounded in neglect which can be directly linked to poverty and … low socio-economic status*[43].

This is not a new problem. In 1992, a NSW Parliamentary inquiry into juvenile justice heard evidence that young women in the child protection system (then called *female state wards*) were *forty times more likely to be detained in custody than other girls* and were *frequently unable to meet the bail conditions regarding an approved place of residence, by default remain(ing) in detention*[44]. Clearly strategies implemented in response to these findings by both child protection and juvenile justice authorities have been ineffective in diverting these young people from contact with youth prisons (as recommended by the Standing Committee).

Children and young people continue to be punished for being a survivor of abuse. It is essential that this Inquiry advocate new and innovative approaches to early intervention and prevention - otherwise, it seems inevitable that the problems of the past and present will continue.

Drivers Behind Increased Imprisonment of Women & Children

Imprisonment

> *… in the current policy and legislative climate of building more prisons to manage risk and therefore to deal with difficult social problems, more people with little capacity to negotiate the criminal justice system will be imprisoned and the more persons imprisoned, the more will return to prison; prison itself is criminogenic.* (Baldry 2007:2)

The vast majority of women in prison are imprisoned for non-violent, minor offences. 60% of women prisoners (compared with 2% of men) are first time offenders[45]. Aboriginal and Torres Strait Islander women are even more likely to be imprisoned for minor offences than non-Indigenous women. Of particular concern is the increasing

[42] Queensland Child Protection Commission of Inquiry 2012:4
[43] Queensland Child Protection Commission of Inquiry 2012:5
[44] Standing Committee on Social Issues 1992:141 cited in McFarlane 2010
[45] James cited in Cerveri et al 2005:12

number of women on remand[46] (too often, because homelessness reduces their access to bail) and decreasing use of alternative sentencing for women[47].

As a result of even a very short period in prison (sentenced or on remand) women may lose their housing and employment (if they had these prior to imprisonment). Many lose custody of their children - with their children, too often, going into state care. Any treatment they were receiving for mental health issues or substance abuse will have been stopped, or, at best, suspended. If they were participating in education or training, they may permanently lose their place. Many (particularly women who went to prison unexpectedly) will have accumulated debts and a poor credit rating, and have lost most of their household items and personal belongings. And, they leave prison with a new or extended criminal record which is an added barrier to accessing employment, housing and services.[48]

For women leaving prison, these often appear insurmountable obstacles. Many will engage in self harm, and some will commit suicide. At least 40% will return to prison - 17% within 12 months and 27% within 2 years[49]. (One major study found that 70% of Aboriginal and Torres Strait Islander women returned to prison within 9 months[50].) The prognosis for their children's future lives will have similarly deteriorated - particularly if they were taken into care with its' associated risk of child and adult criminalisation. The lives of most women and their families will be significantly worse than when they first went to prison.

Similarly, national and international evidence demonstrates that *it is considerably more difficult and more expensive to intervene when there have been established offending behaviours among adolescents*[51]. Once a young person has experienced imprisonment, whether sentenced or on remand, their likelihood of further imprisonment is increased. The horrifying rate of imprisonment of children and young people on remand[52], the failure to address young people who offend whilst in (or immediately following) care and lack of support for adolescents who offend following abuse[53], are of particular concern.

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[46] For example, over the 10 year period 1998-2008, the percentage of prisoners on remand in Australia increased from 14% to 23%. As at 2005, women in NSW were imprisoned on remand at almost twice the rate of men (30% compared with 18%). Data cited in Quixley & Kilroy 2011:13

[47] Quixley & Kilroy 2011:12

[48] These align directly with the key predictors of recidivism amongst former prisoners, identified by Baldry 2007 based on the available research data - that the person is from a socially and economically disadvantaged background; and/or is homeless or transient, or has insecure housing; and/or has debts; and/or is returning to an abusive or violent relationship; and/or has mental health issues or other disabilities; and/or is isolated from family/friends; and/or has a poor educational background; and/or has substance abuse issues.

[49] Indications of recidivism amongst women vary - one study found that women return to prison at a higher rate than men (Baldry 2003 cited in Baldry 2007:4); another found a 43% recidivism rate amongst women, which is lower than men (Johnson 2004 cited in Payne 2007:59). Return rates within 12 and 24 months were also findings by Johnson 2004 (cited in Payne 2007:59).

[50] Baldry 2007:4

[51] Cashmore 2011:38

[52] For example, as at 30 June 2006, 74% of children in youth prisons in Queensland were on remand (Quixley 2008:4)

[53] Cashmore 2001:38

Poverty

Any attempt to divert women and children from the juvenile justice and criminal justice systems must address the fundamental issue of poverty.

Studies throughout Australia have found that prior to imprisonment 50% to 75% of women prisoners were unemployed[54]. According to the Department of Correctional Services in Queensland in 2007, 76% of women prisoners had not completed their secondary education[55]. A 2004 Sisters Inside study found that 15% were homeless and 14% lived with their mother prior to imprisonment, and that 53% of women prisoners still in debt[56]. This is consistent with the anecdotal evidence from other states and territories. The majority of criminalised women (and their children) survived on Centrelink benefits prior to incarceration.

Single women and families on Centrelink benefits are experiencing increasing financial hardship as the real value of benefits decrease and the cost of living increases. With reductions in public housing throughout Australia over the past 30 years, most women and families on low incomes are forced to access housing through the private rental market. Little is left for other costs of daily living which have continued to increase - generally faster than increases in the Consumer Price Index (CPI)[57]. This situation will be further exacerbated by recent changes to Parenting Payments.

The case study in **Appendix 1** demonstrates the realities of living on Centrelink Benefits. Using South Australia as an example, 2 scenarios are loosely based on indicative costs of rent and utilities, as calculated by the SA Council of Social Service. They demonstrate that on average:

- A single unemployed adult woman on NewStart could expect to have a total of $59.45 each week available to cover all costs, once rent and utilities were paid. (These include all her food, clothing, health, education, travel and communication.)
- A sole mother with two children on Parenting Payment could expect to have a total of $78.98 each week available to cover all costs, once rent and utilities were paid. (These include all the above expenses for the family of 3.)

Family Criminalisation

The social and economic profiles of criminalised women, criminalised children and young people and families impacted by the child protection system are identical. These characteristics have been aptly summarised by the Queensland Child Protection Commission of Inquiry:

[54] Cited in Quixley & Kilroy 2011:17
[55] Kilroy 2004, cited in Quixley & Kilroy 2011:17
[56] Quixley & Kilroy 2011:17
[57] This is due to the fact that the CPI is calculated based on average incomes, where people have greater access to discretionary spending, and the 'basket of goods' used to calculate the CPI includes many non-essential items. Since people on low incomes spend most or all of their income on essentials, disproportionate increases in the costs of essentials have a greater impact on low income families.

> *Individually, mental health, domestic and family violence, and alcohol and drug misuse can affect parenting and have marked affects on parenting capacity and the likelihood of abuse. Parents in families with complex needs are often struggling to overcome multiple issues including their own experience of trauma and victimisation, housing instability, low education, poverty, social isolation (Bromfield et al 2010) and disability (O'Connor 2012). These issues are exacerbated for Aboriginal and Torres Strait Islander families who have experienced a history of removal. There has been a significant impact resulting in grief and loss for Aboriginal and Torres Strait Islander people from past policies of removal of children from families and dislocation from land and culture. It is widely acknowledged that Aboriginal and Torres Strait Islander people are socially disadvantaged with higher unemployment, poorer education and health, and over-representation in the child protection and criminal justice systems. Aboriginal and Torres Strait Islander people also struggle with mental health, drug and alcohol abuse, and high suicide rates among young people.*
>
> (Queensland Child Protection Commission of Inquiry 2012:11-12)

Many of the families involved with Sisters Inside have members involved in all 3 systems - the child protection system, the juvenile justice system and the criminal justice system. Too often, a multi-generational, vicious cycle is well established. Women were in care as children …They were imprisoned in youth prisons … They progressed to adult prisons … Whilst in prison, their children were taken into care … These children have been criminalised.

Over the past 20 years, Sisters Inside has worked with up to 4 generations of some criminalised families. Despite clear evidence of the social and economic value of justice reinvestment, successive governments have failed to resource the strategies with demonstrated capacity to break these family cycles.

Policing

It has been well recognised that Indigenous communities are over policed. The impact of this on Aboriginal and Torres Strait Islander women was highlighted a recent NSW study which found that:

> *… in 10 areas in NSW with high Indigenous populations, Aboriginal women were locked up for intoxication at 40 times the rate of non-Aboriginal women and that detention for outstanding warrants was … 16.5 times for Aboriginal women*[58].
>
> (Newnam 2008)

Over policing does not reduce crime in these communities or make them safer to live in, rather it creates a net-widening effect. There are many low level crimes that are often undetected and untargeted in non-Indigenous communities, however net-widening often results in these crimes being detected and charged within Indigenous communities. In addition, increased interaction with the police increases the risk that charges will become escalated with an individual also being charged with offences such as resisting arrest and assaulting police. The NSW Aboriginal Justice Advisory Council has highlighted the over use of *move-on* and arrest powers for intoxication with

[58] Newman 2008

Indigenous people. This has the net result that Indigenous women are more likely to receive criminal charges as a consequence of the differential systemic treatment of Indigenous and non-Indigenous women and communities.

The exercise of police discretion has also been documented to favour non-Indigenous individuals over Aboriginal and Torres Strait Islander people[59]. This is particularly prevalent within juvenile justice where police may elect to divert a young person from a formal court procedure. Longitudinal research undertaken in Queensland has demonstrated that Indigenous juveniles are less likely to receive a diversion than non-Indigenous juveniles[60]. In addition to increasing the likelihood of a criminal conviction in the short term, this also has the long term consequences that Indigenous young people who come to the attention of police again in the future will be more likely to have a pre-existing criminal record, therefore will be treated more harshly than non-Indigenous young people who may have the same offending history.

Service Provision Changes

Measures to directly alleviate poverty have progressively diminished over the past 30 years. These include reduced public housing, reduced value in real terms of Centrelink benefits, narrowing of guidelines for access to the more secure forms of benefit (e.g. Disability Support Pensions and Parenting Payments) and reduced access to emergency relief funds.

Changes in service delivery have also severely restricted women and children's access to services that they perceive as useful. Criminalised families therefore rarely voluntarily engage with most of the available services.

Governments have progressively favoured funding a few large, often church-based, non-government organisations over a wider variety of smaller, community-based organisations. Too often, these large NGO's are associated with the very institutions which controlled women's lives when they were children. Too often, these are the very institutions in which women themselves, or their friends, experienced abuse.

Over the same period, models of service provision have also narrowed. By contrast with the informal, voluntary approaches widely available 20-30 years ago, funded services are increasingly required to function within highly inflexible guidelines:

- Structures such as 1 hour appointments and penalties for non-attendance are incompatible with the lifestyle of most criminalised women and children. For example, it is illogical to prioritise attending a counselling appointment when you don't have accommodation that night.
- Service delivery approaches such as development of singular/linear personal plans and formal/structured programs are incompatible with the complex, inter-related needs of criminalised women and children. For example, it makes no sense for a woman to focus on a step-by-step plan for engaging with education or training, when she concurrently dealing with issues with her children,

[59] Cunneen & Luke 1995
[60] Allard et al 2010

addressing legal problems, finding permanent housing and dealing with her own mental health issues.

- Siloeing of services has further alienated criminalised families. For example, many women have both substance abuse and mental health issues. Too many services do not provide mental health services to people with substance abuse issues or vice-versa.
- Reduced service delivery sites are a critical barrier for criminalised women and children who rely on public transport.
- A misplaced notion of *professionalisation* has led to a reduced number of workers with lived experience (e.g. shared cultural background or experience of homelessness) to whom criminalised women and children can relate.

Criminalised women and children are very used to authorities controlling their lives. They therefore guard their privacy, dignity and decision-making power. Use of models such as case management, where information about clients is widely shared and groups of workers gather to make decisions about their lives, are reminiscent of many years of experience in the child protection, juvenile justice and/or criminal justice systems. The increasing use of coercive models of service which require compliance as a condition of service delivery are, in real terms, inaccessible to criminalised women and children.

Economic & Social Costs of Women and Children's Imprisonment

The immediate costs of imprisonment are high. The 2009 Aboriginal and Torres Strait Islander Commissioner's Report found that in 2007-8, the cost of adult imprisonment in Australia was $2.6 billion[61] - of this at least $650 million was spent on imprisoning Indigenous people[62]. National figures on the cost of juvenile detention are not available however indications are that it costs more than twice as much to keep a young person in prison. For example, the estimated average cost of incarcerating a young person in NSW in 2008-9 was $543 per day[63] - compared with the average national cost of incarcerating an adult during a similar period of $187 per prisoner per day[64].

Of even greater concern, however, are the long term social and economic costs.

[61] Australian Institute of Criminology (2008) cited in Aboriginal and Torres Strait Islander Justice Commissioner 2009:39
[62] Aboriginal and Torres Strait Islander Justice Commissioner 2009:40
[63] National figures on the cost of juvenile detention are not available. This figure is from: Department of Juvenile Justice cited in NSW Audit Office 2009:115 =
[64] Australian Institute of Criminology (2008) cited in Aboriginal and Torres Strait Islander Justice Commissioner 2009: 40. The Report comments on the higher costs of imprisonment for women, and Indigenous prisoners in remote areas, so the actual costs for this family would be higher than this average.

The social costs of imprisonment are self-evident. With every new generation of criminalised women and children the net widens. Increasing numbers of individuals and families are being drawn into the cycle of criminalisation, child protection, poverty and despair - at great cost to the state. At the same time, they are being drawn away from social and economic productivity and contribution.

With the vast majority of women prisoners having experienced sexual assault, standard prison practices such as strip searching, use of male officers and administrative segregation function to exacerbate the trauma of imprisonment. This contributes to impacts long after leaving prison including rates of self harm, suicide, mental health issues and consequent family breakdown much higher than general population.

Further, family breakdown during a mother's imprisonment is exacerbated by the relatively small number of women's prisons and their typical location in areas inaccessible by public transport. This particularly impacts on Aboriginal and Torres Strait Islander prisoners families from remote communities - which, in addition to being hundreds or thousands of kilometres from their women's families, are limited by the small number of phones in many communities.

It is difficult to quantify the long term economic costs of imprisoning women and children. These impact every social institution and system. The following case study is an indicator of the possible costs for a single family over a 10 year period:

Case Study - Cost of Imprisoning One Family

Over 10 years ago, Deb Kilroy (CEO of Sisters Inside) was asked by a government official*: If you could have money for a single project that would have maximum impact on crime rates, what would it be?* Deb had a particular Aboriginal family in mind when she replied. This family was headed by a single mother with 4 school age children. She outlined a project (costing approximately $45,000 per family) to enable early, intensive, intervention with the woman and her immediate and extended family. The project failed to receive funding on the basis that if would achieve too few *outcomes* for the cost.

10 years on, the mother had returned to jail on several occasions, and all 4 children had been involved in the juvenile justice and criminal justice systems. All 4 had been in the care of the State for significant periods. All 4 children had been victims of violence. 3 had been imprisoned as both juveniles and adults. 2 had been imprisoned more than once. 2 are habitual drug users. All 4 children live a life characterised by disorder, poverty, a perceived lack of hope, and mental health issues.

It is difficult to estimate the direct fiscal cost of this failure to intervene. In total over the past 10 years alone, family members have collectively spend a total of <u>at least</u> one year in adult prison at a national average cost of <u>at least</u> $187 per prisoner per day (that is $68,255). 3 of the children have collectively spent <u>at least</u> one year in juvenile detention, at the NSW estimate of $543 per day (that is $198,195).

In **other words, the immediate family's imprisonment costs alone have amounted to well over $¼ million over 10 years.** This does not take account of other direct costs within the juvenile justice and criminal justice systems … and the child protection, health, policing, legal, welfare and educational systems. It certainly does not take account of other adverse consequences of the mother's original imprisonment for her children and wider family - both the human costs, and the loss of social value arising from this failure to provide adequate family support earlier.

Similarly, the Aboriginal and Torres Strait Islander Commissioner cited a study in Britain that measured the costs and long term benefits of diversionary programs for women. It found that every £1 invested into community-based diversions generated £14 of social value for women, their children, victims and the community over a 10 year period. Further, the study found that the adverse consequences for mothers' imprisonment on their children carried a cost of more than £17 million over a 10 year period[65].

Viable Alternatives to Imprisoning Women (and Children)

Sisters Inside supports the development of a variety of prevention, early intervention, diversionary and rehabilitation measures. We note the wide variety of previous inquiries which have advocated alternatives to imprisonment or early intervention to optimise child safety[66]. It has been widely agreed that Australian governments have under-invested in prevention and early intervention services to families at risk of criminalisation.

As an abolitionist, human rights driven organisation, Sisters Inside believes that *any* alternative is better than prison. However, some services and approaches are not *much* better than prison. It is important to acknowledge the relative lack of success of many programs which have been previously implemented as alternatives to imprisonment.

Diversion within the Justice System

The short term success of a justice reinvestment approach would rely, in part, on generating a culture of commitment at a state and territory level.

The single action arising from this Inquiry which would have the greatest short term impact on women prisoner numbers, would be the identification of the particular minor offences for which women are most commonly imprisoned. States and Territories could be encouraged to make legislative changes to decriminalise these (particularly poverty-driven) offences or, at the very least, ensure that they do not carry a prison sentence.

The multi-generational impact of the imprisonment of mothers (including ultimate imprisonment of their children) could be dramatically reduced if primary parenting

[65] New Economics Foundation 2008 summarised in Aboriginal and Torres Strait Islander Justice Commissioner 2009:17

[66] Queensland Child Protection Commission of Inquiry (2012:9-11) lists the Cummins Report (Victoria 2012); the Wood Inquiry (NSW 2008); Growing Them Strong Together (NT, 2010); Crime & Misconduct Commission Report (Qld 2007); Forde Inquiry (Qld 1999).

responsibility for dependent children was treated as a factor in sentencing. Whilst the Commonwealth Crime Act requires a court to take into account the probable effect of a sentence on an offender's family or dependents[67], some courts have seen this as only applying to *exceptional circumstances*[68]. At a state level, judges and magistrates have repeatedly asserted that they either can not, or should not, take parental status into account when sentencing. The Victorian Court of Criminal Appeal, for example, has stated that *the offender cannot shield herself under the hardship she creates for others, and courts must not shirk their duty by giving undue weight to personal or sentimental factors*[69].

Police diversions are aimed at diverting young people from formalised contact with the courts and addressing the factors underlying their criminalisation. In Queensland, however, research has demonstrated that Aboriginal and Torres Strait Islander young people are 2.9 times less likely to receive a caution than non-Indigenous young people and two times less likely to receive a diversion to a Youth Justice Conference than non-Indigenous young people[70]. The reasons for the disparity in the availability and use of diversionary options for Indigenous young people, and comparison with similar systems in other states and territories would be a worthy contribution to reduced incarceration of children.

In the longer term, a variety of diversion courts exist throughout Australia (e.g. Drug Courts, Aboriginal Courts) in both the adult and child justice systems. Too often, the effectiveness of these courts is limited by the resources available to them for alternate sentencing - most commonly, drug rehabilitation programs, mental health services and housing. Justice Wood particularly noted the value of providing secure accommodation for young people appearing in the juvenile or adult justice systems as an alternative to remand and a basis for non-custodial sentencing[71]. Too often, these diversion courts are vulnerable to cessation by State Governments (such as has occurred over the past 12 months with the Drug Court, Murri Court and Special Circumstances Court in Queensland[72]) on the basis that they do not reduce prisoner numbers sufficiently to justify ongoing funding[73]. Substantial justice reinvestment in services would optimise the capacity of these courts to contribute to long term outcomes for women and children.

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[67] 29.25 Section 16A92) (p) cited in Flat Out Inc & VACRO 2006:48
[68] Australian Law Reform Commission cited in Flat Out Inc & VACRO 2006:48
[69] Cited in Flat Out Inc & VACRO 2006:45
[70] Allard et al 2010
[71] Cited in Cashmore 2011:36. Justice Wood also noted that this would accord with Australia's international human rights obligations.
[72] Clearly, limited numbers of prison diversions was not the only reason for cuts to these courts. As at 2010-11, the Drug Court, which will end on 30 June 2013, had diverted 155 people from imprisonment, saving the equivalent of 588 years of imprisonment (Magistrate's Court of Queensland 2011: 31). Whilst the Murri Court did not reduce Aboriginal prisoner numbers, it did provide a bridge between Indigenous Elders and communities and the justice system. Moreover, the report used to legitimise these cuts also found that one of the primary limitations of the Murri Court was the lack of appropriate rehabilitation and diversion programs available for the court to refer offenders to as an alternative to custody (Morgan & Louis 2010). For such a court to be effective, it needs to have access to a range of resources that address the underlying issues which lead to offending. A justice reinvestment approach would ensure that diversion courts such as these were adequately resourced to fulfil their roles.
[73] A number of evaluations of youth diversion courts (e.g. Borowski 2010; Morgan & Louis 2010; University of NSW Evaluation Consortium 2004) have indicated some positive outcomes. Cited in Cashmore 2011:36

Investment in appropriate rehabilitation and diversionary programs for Aboriginal and Torres Strait Islander women and children needs to acknowledge and address their unique needs. The 2006 Victorian Aboriginal Justice Agreement exemplifies specific recognition of further needs that should be addressed such as the fact that many Indigenous women are primary care givers to children and in many cases older family members; the financial dependence of many Indigenous women on their partners which may increase their vulnerability and risk of victimisation; the high levels of family violence experienced by Indigenous women and children; the experience of both racial and gender discrimination; and the high level of disadvantage on all key indicators such as education, employment, health and well-being. By facilitating and resourcing Aboriginal Courts to address these needs, this Inquiry could contribute to reducing recidivism and achieving overall fiscal savings.

Principles Underpinning Effective Service Provision

Over the past 20 years, Sisters Inside has progressively developed principles, models and practices with a high success rate in diverting women from future imprisonment. Some of the key attitudes and values that have underpinned the success of our service provision are:

- Every woman is entitled to have her human rights met - women are not expected to be grateful for services.
- Staff should respect women as equals, treat them as the experts in their own lives and respect their decisions about their needs (including when, and whether, to address issues in their lives).
- Women are entitled to privacy at all levels - staff should treat any provision of personal information as a privilege, not a right, and never breach confidentiality.
- *That could be me!* - recognising that criminalisation is largely driven by social and economic background rather than individual inadequacies.
- Staff must take responsibility for exploring their own personal values and educating themselves about criminalised women's context and culture.
- Staff must respect women's context and culture, step outside their *comfort zone* to meet women on their terms, be willing to admit their mistakes and always operate in the interests of women.[74]

Our services have been further enhanced through our recognition of shared experience as highly relevant when appointing staff. Accordingly, Sisters Inside staff has always included women from a variety of backgrounds, including Aboriginal and Torres Strait Islander women (and, where possible, Elders) and women with lived prison experience.

Social action is also essential to effective service provision. Sisters Inside only provides fully voluntary services - criminalised women and children *vote with their feet* when they opt to use our services. Criminalised women are extremely cautious of services, and are almost exclusively attracted to Sisters Inside by our *word of mouth* reputation. Sisters Inside's willingness to speak out on issues affecting criminalised women, their children and their families plays a central role in the organisation's credibility with participants.

[74] Quixley & Kilroy 2011:104-123

In short, these principles have led to development of customised, responsive services which, wherever possible, address the varying needs of different women and children at different times.

Addressing Recidivism

Addressing recidivism requires a focus on addressing poverty. As identified earlier in this submission, criminalised families overwhelmingly face social disadvantage and inequities in areas such as employment, income, housing and health. A direct investment in these areas can be expected to reduce imprisonment rates amongst women and children. At a policy level, significant increases in Centrelink payments would make a major contribution to reduced criminalisation of women and children. More immediately, allocation of highly flexible funds to assist families following a mother's release from prison could have a major impact. For example, Sisters Inside's *3-2-1 Transition Support Program* (detailed below) includes a budget of $15,000 per family to cover costs for which other assistance funds or services are not available (e.g. personal identification, debt assistance, education costs, respite, purchase of private health or counseling services). The availability of flexible brokerage funds to purchase additional assistance for these families has been a significant contributor toward the program's key achievement - that no participating women or family members have returned to prison.

Too often, services have been involuntary or semi-voluntary and have been provided using prescriptive, formal, structured approaches. This applies to both services provided through corrections departments or those sub-contracted to large NGO's, particularly transition programs. Few criminalised women will willingly engage with services which function in a way which reminds them of prison, or whose staff behave in a similar way to child protection, prison or parole officers.

The so-called *transition support* available to women post-release has consistently been shown to be entirely inadequate to meet the complex and inter-related needs of women, let alone their children[75]. These include new needs directly resulting from imprisonment - including practical consequences such as accumulated debt as a result of unexpected imprisonment, and emotional consequences of the trauma of imprisonment such as re-engagement with past experiences of violence and sexual assault.

In 2005-6, Sisters Inside was funded by (then) FaCSIA, to undertake a National Homelessness Demonstration Project entitled *A Place to Call Home*. This pilot project achieved some success in reducing levels of homelessness and associated recidivism amongst the women who participated. However, the project was limited in several ways. It primarily focused on the housing needs of women and their children. Whilst Sisters Inside was able to provide multi-faceted support to each woman, the project did not have the capacity to provide focused individual and collective support for children and other family members. It became clear that, whilst a focus on housing had a

[75] See, for example, Goulding 2004 and Baldry et al 2007

significant impact on recidivism rates amongst the women participants it had a limited crime prevention effect on other family members, particularly children. Impacting more widely on crime rates required more intensive support for the children of mothers with lived prison experience.

Dot Goulding's comprehensive study of the needs of women post-release, noted the importance of recognising the full breadth of women's needs, including oft-discounted factors such as social isolation and loneliness, and the needs of other family members. Goulding made detailed recommendations about concrete service delivery strategies required to address women's post-release needs[76]. These, combined with learning from the A *Place to Call Home*, have informed Sisters Inside transition support programs.

***3-2-1*, for example, offers a fundamentally different solution to crime prevention:**

Good Practice Example 1 : 3-2-1 Transition Support Program

This Sisters Inside diversionary program was funded by the POCA Crime Prevention Fund. This 18 month project (in progress) has developed and implemented a model of whole-of-family intervention, through highly focused individual and collective support for 3 highly criminalised families, each for a total of 6 months. ***3-2-1*** refers to the level of intensity of service provision. Each family receives:

- 3 days per week of dedicated support, for 3 months immediately following the mother's release from prison.
- 2 days per week of dedicated support, for the following 2 months.
- 1 day per week of dedicated support, for the final 1 month.

At the end of the 6 month period, eligible family members are connected with other programs and support services relevant to their needs, within or outside Sisters Inside.

The definition of *family* is determined by the woman participant and can include up to 15 people. It must include her dependent children. She may also choose to include her non-dependent children, other children with whom she is closely associated (e.g. *cousins* for whom she has parental responsibility, in the case of many Indigenous families), people she cares for (e.g. aged parents or family members with disability), grandparents (or others with a key role in caring for her children) or her partner.

Intensive support provided includes:

- Establishing the woman's identification, housing and emergency income immediately upon release from prison.
- Advocacy with other service providers (e.g. housing, mental health, emergency financial assistance, child protection, substance abuse, schools, family support/parenting).
- Rapid response intervention and support with individuals and whole families using the (highly successful) *Inclusive Support* model[77].
- Targeted support to address the particular issues faced by the children, including loss of attachment bond with parents, mental health problems (particularly

[76] Goulding 2004: 55-56

[77] Sisters Inside Inc. (2007). The first draft of this model was documented as part of the Sisters Inside National Homelessness Demonstration Project, funded by (then) FaCSIA, and has since been further refined (see Sisters Inside 2010). It has proven a highly effective model, allied to case management, with women with lived prison experience and their families.

depression, withdrawal and anxiety), physical health problems, behavioural issues and school-related problems[78].

- Brokerage assistance in areas for which other assistance funds or community services are not available.

Participation is fully voluntary, however, once families commit to participating, they are expected to engage with the project for the full 6 months. Participating families are selected by SIS, including women participating in the project must:

- Be a victim of violent crime.
- Have at least one dependent child.
- Have only been imprisoned once.
- Fit the profile of likely recidivism.

Over the past 18 months, this program has worked with 3 highly criminalised families. To date, no member of these families has returned to prison, despite several members previously having had high levels of recidivism. Sisters Inside will continue to track the impact of this project on each family member for a further 10 years, and (subject to funding) publish a quantified cost benefit analysis of the program.

Actually Providing Services

The Community Services Industry is overloaded with programs which focus on coordination and referral, rather than actual service provision. For example, the Queensland Child Protection Commission of Inquiry *Issues Paper* listed reforms and programs run by the Queensland Government in response to the overrepresentation of Aboriginal and Torres Strait Islander children and wider prevention and early intervention services[79]. Only one service (Aboriginal and Torres Strait Islander Family Support services - which are only available to families referred by child protection authorities) actually focused on providing practical in-home support. The remainder mainly involved coordination of existing services, referral to existing services, or *telling-based* services (e.g. parenting education, anger management, establishing routines, budgeting).

Case management is the current dominant approach to work with vulnerable and marginalised groups. It would be surprising if any criminalised women or children had not (repeatedly) experienced case management. The very fact that imprisonment continues to rise is an indication of the failure of this approach to service delivery. Case management typically involves[80]:

- Workers spending an enormous amount of time in meetings, whose primary purpose is to *pass the buck* - to try to get other organisations to provide services. That is, time and resources spent on *coordination* at the expense of service delivery.
- A top down approach to service delivery. Case management plans are too often worker driven, and used as a tool to control participants.

[78] Steering Committee for the Review of Government Service Provision (2009) cited in Aboriginal and Torres Strait Islander Justice Commissioner 2009:19
[79] Queensland Child Protection Commission of Inquiry 2012:5-6; 9-10
[80] For a more detailed analysis of case management see Sisters Inside 2010

- Developing case management plans which are linear and inflexible. They describe a step-by-step process to achieve one or more specific goals. This ignores the complexity of criminalised families' needs. It ignores the competing (often urgent) issues which distract them for a singular focus on achieving pre-determined goals.
- Working within existing resource constraints, rather than being driven by participants' real needs. For example, even if housing is a key need, workers often discourage identifying this as a goal if housing options are not readily available. Too often, case management plans function to blame participants for their situation through individualising their needs.
- A lack of additional resources to meet even the simplest real needs.

Most criminalised people are necessarily preoccupied with addressing the most urgent needs in their lives on that particular day - catching up on sleep after a restless night in a crowded household; finding food or somewhere to stay tonight; attending appointments; dealing with a school; meeting the needs of corrections or child protection authorities. Case management denies the complex realities of the lives of most criminalised women and children.

In Sisters Inside's view, case management is the service delivery equivalent of an unfunded policy - the illusion of action without any new resourcing to enable real needs to actually be met: an emphasis on coordination and referral, in lieu of additional services and resources. It is essential that programs supported by this Inquiry allow for optimum flexibility in responding to people's needs and redistribution of resources to meet real needs which are currently unfunded.

Service Quality and Relevance

Criminalised women and children have a predictable caution about engaging with services. A voluntary program is only as useful as its perceived relevance by women themselves. As discovered by Eileen Baldry in her study of 339 prisoners released from prisons in Victoria and NSW over a 3 month period, a key predictor of participants returning to prison was if either they did not have accommodation support *or if they felt the support was unhelpful*[81]. The lack of success of involuntary programs is reflected in the failure of existing programs and approaches to stem the flood of imprisonment of women and children over recent decades.

The Wood Inquiry in NSW (2008) recommended that greater responsibility for early intervention services be given to the non-government sector. Similarly, the *Growing them Strong Together* NT review pointed to only a small non-government system of child and family wellbeing services that is under-resourced and an absence of any Aboriginal-operated and controlled child safety and wellbeing service in the Northern Territory.[82]

[81] Baldry 2007:4 (our emphasis). Other key determinants were homelessness/transience, increased substance abuse problems, being Aboriginal or Torres Strait Islander, being a woman and having debt(s).
[82] Queensland Child Protection Commission of Inquiry 2012:9

As discussed earlier, women are typically loath to engage with services provided by institutions associated with authorities and past experiences of powerlessness and abuse. This limits the capacity of large NGO's to provide services which will be perceived as relevant by criminalised women themselves.

Successful justice reinvestment depends on the provision of women and child-friendly services. Genuinely engaging affected women and communities is central to effective service provision. This is most readily achieved through small, community-based organisations, including Aboriginal and Torres Strait Islander controlled agencies. Women and children will respond best to organisations where they feel respected, and able to take genuine power in decision making about their lives. This requires a level of power and influence in service design beyond consultation alone.

Baldry also highlighted the importance of a multi-faceted, flexible, humane approach to service delivery:

> *… it is doubtful that any one intervention alone is going to be effective, particularly for those with complex needs. Indications are that combinations of support and rehabilitation programs in the community appropriate to the circumstances and needs of the person are necessary. This and a human relational approach that takes into account the impact of things like returning to violent and abusive relations or isolation and loneliness, have the best chance of assisting people being released from prison to reduce re-offending.*
>
> (Baldry 2007:5)

Sisters Inside supports a broad approach to community safety, particularly leadership by Aboriginal and Torres Strait Islander Elders, communities and organisations in determining the strategies which will be most effective in addressing Aboriginal and Torres Strait Islander overrepresentation in the justice system, and associated discrimination and violation of human rights.

Sisters Inside strongly supports the contention that *… specialist services provide a crucial alternative, and oftentimes the only option, for Aboriginal and Torres Strait women victims/survivors of family violence*[83]. We support the need for integrated legal services that avoid referral to range of different agencies. In our experience, addressing full clusters of issues and needs is both more efficient and effective than referring women to a variety of services[84]. Programs such as the Family Violence Prevention Legal Service (FVPLS) could be expanded to provide services beyond its current focus on legal problems, education and advice on issues such as housing, family violence and child safety. FVPLS could be extended to address the array of complex, interrelated issues associated with family violence such as mental health issues, substance abuse and housing/homelessness. The program could also be expanded to ensure national coverage of urban, regional and remote locations. Further, FVPLS's are uniquely placed to undertake policy and law reform work, FVPLS's are surrounded by *evidence* on a daily basis, which enables them (even in the absence of substantive national data) to provide sophisticated, evidence-based solutions to legal injustices. A funded national secretariat could make a unique contribution to

[83] National Congress of Australia's First Peoples 2012:17
[84] See, for example, the Sisters Inside model of service detailed in Sisters Inside 2010.

ongoing policy and law reform work to *identify where the law is having perverse or dysfunctional effects*[85] and advocate for evidence-based strategies to reduce rate of incarceration, including justice reinvestment.[86]

Data Required to Implement Justice Reinvestment

As is evident throughout this submission, Sisters Inside frequently has to rely on anecdotal data or evidence from single studies, to demonstrate the particular experiences and needs of women, particularly Aboriginal and Torres Strait Islander women, in the justice system. This data, though soundly based in experience, is too readily dismissed by authorities. Too often, Sisters Inside is told that our proposals are not sufficiently *evidence-based.* This, despite the fact that governments consistently refuse to collect even the most basic evidence on criminalised women - or fail to produce the same data over several years to allow identification of trends. There is a general absence of consistent, quality, accessible, gender-specific, culture-specific statistical data on criminalised women and children.

Consistent national data should be collected and made publicly available. This data should be able to be readily disaggregated for both Aboriginal and Torres Strait Islander and non-Indigenous men and women in the following areas:

- Number of police warnings
- Number of arrests
- Number and length of detentions in police custody
- Number of releases on police bail
- Number of releases on court bail
- Number and length of detentions on remand
- Number of community service orders
- Number of referrals to diversionary courts
- Length of prison sentences for similar offences
- Number who access parole or early release
- Number of returns to the criminal justice system in the 2, 5 and 10 years following sentence completion - following imprisonment on remand, prison sentences, community-based sentences and diversionary orders
- Number of deaths in custody
- Number of deaths, and cause of death, in the 2 years following completion of imprisonment - following imprisonment on remand, prison sentences, community-based sentences and diversionary order[87].

[85] National Congress of Australia's First Peoples 2012:21
[86] National Congress of Australia's First Peoples 2012:25 & Recommendation 3.4:40)
[87] This has been identified as a key issue for women prisoners. Dot Goulding, in her substantial study on the social and familial impact of imprisonment on women in WA, cited a study by Aungles (1994). Aungles found that the death rate amongst people serving community corrections orders was 6 times that of the general population for the same age group. Further, Ogivly (2001) found that the suicide rate amongst women on parole was 3 times that of men.

And corrections authorities in each state and territory should also be required to report on the background of prisoners including:

- Number of dependent children for whom each had primary care responsibility immediately before imprisonment
- Pre-existing mental health diagnosis
- Housing status
- Income source
- First language
- Level of educational attainment

Note that Sisters Inside does not advocate collection of health or personal information. Our experience shows that women are unlikely to provide accurate information to prison authorities. Further, women prisoners report that this type of information has been inappropriately used as a basis for punishment within prisons throughout Australia.

Sisters Inside also strongly supports the need to address overrepresentation of Aboriginal and Torres Strait Islander people through national targets. We propose that these national targets should go well beyond simple statistics on the number of Aboriginal and Torres Strait Islander people in prison, and should include some targets which reflect the different criminogenic profile of Aboriginal and Torres Strait Islander women. The targets should address all levels of the child protection, juvenile justice and criminal justice systems, and the consequences of their actions.

Diversionary Programs: Beyond data collection

Sisters Inside strongly supports the need for additional funding to enable improved data collection in relation to diversion programs - including family violence support services. However, data collection alone does not ensure ongoing availability of successful diversionary services. It is clear that some diversionary programs have been discontinued, even where they are demonstrably effective. For example, funding to the Special Circumstances Court in Queensland ended in December 2012:

Despite not being asked a question about suicide or self harm, 13% of respondents in Goulding's survey volunteered the fact that they had attempted suicide whilst in prison, and 35% reported that they had attempted suicide within the days or weeks following release. (Goulding 2004: 16, 36)

Good Practice Example 2 : Sisters Inside SCC Program

Sisters Inside in Queensland was, until mid 2012, funded to provide services to women appearing before the Special Circumstances Court (SCC) Diversionary Program. This diversionary court was part of the Brisbane Magistrates Court system, and focused on addressing participants' mental health, housing and substance abuse needs.

A significant proportion of the women appearing before the court were Aboriginal and Torres Strait Islander women. Participation in both the court itself and the Sisters Inside SCC Program was fully voluntary. Women appearing before the court could select the organisation(s) through which they accessed support.

The Sisters Inside Program had a 96% success rate in diverting women from prison. As at June 2010, 30% of program participants were Aboriginal and Torres Strait Islander women (78 women). Every Aboriginal and Torres Strait Islander woman involved in the Program between 2007 and 2010 either did not re-offend, or had a reduced rate of offending, throughout this 3 year period.

In addition to the value of the program to individual women, the Sisters Inside SCC Program has been conservatively estimated to have saved $250,000 in imprisonment costs alone[88].

This underlines the importance of national targets to maintain and further develop diversionary options, including increased funding for diversionary courts, with dedicated funding to ensure culturally appropriate service provision to Aboriginal and Torres Strait Islander women and men utilising these programs.

Conclusion - Benefits of Justice Reinvestment

> *Albert Einstein famously defined insanity as 'continuing to do the same things and expecting a different result'. This is exactly the sort of madness that we see in the Indigenous interactions with the criminal justice system. We need to try something fundamentally different to solve this problem.*
>
> (Aboriginal and Torres Strait Islander Justice Commissioner 2009:65)

The Social Justice Report 2009 devotes over 50 pages to the issue of Indigenous imprisonment, and provides a detailed, evidence-based rationale for *justice reinvestment* as an alternative to continuing increases in rates of incarceration:

> *Justice reinvestment asks the question: is imprisonment good value for money? The simple answer is that it is not. We are spending ever increasing amounts on imprisonment while at the same time, prisoners are not being rehabilitated, recidivism rates are high and return to prison rates are creating overcrowded prisons.*
>
> (Aboriginal and Torres Strait Islander Justice Commissioner 2009:13)

[88] Quixley 2011:23

Most of the principles and practices advocated by the Aboriginal and Torres Strait Islander Justice Commissioner can be readily applied to decarceration strategies with women and children.

Sisters Inside believes that justice reinvestment would have a significant positive effect on our wider Australian social fabric. It would redirect expenditure to areas that help, rather than harm, individuals, families, communities and society - in both the short and long term. The challenge will be to move beyond aspirational strategies and targets alone, and achieve allocation of resources for service delivery.

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Appendix 1

Case Study: Realities of Living on Centrelink Benefits in South Australia

This is a very broad, indicative case study, based on average costs calculated by the South Australian Council of Social Service Inc.

Housing (SACOSS 2021a): Most criminalised women are in *housing stress* (spending more than 30% of their income on housing costs) and many are in *extreme housing stress* (spending more than 50% of their income on housing costs). The following table compares different types of *cheap* housing with income for different categories of welfare payments (including Commonwealth Government Rent Assistance and other relevant allowances):

Centrelink Benefit	Weekly Payment	Housing Type	Low-end Rent	% of Income
NewStart (single: no children)	$304.95	1 Bedroom Flat	$176	58%
Parenting Payment (sole parent: 2 children)	$450.48	3 Bedroom House	$302	67%

Table 1: *Adelaide Rents and Welfare Housing Stress* (June Quarter 2012)

Utilities (SACOSS 2012b): Costs have risen exponentially over the past 2 years, and further major price rises will be implemented in 2012/13. The South Australian Council of Social Service (SACOSS) has conservatively estimated that in 2012/13 a household with average consumption rates will pay $1,980 p.a. for electricity and $897 p.a. for gas and can be expected to cost $739 p.a.[89].

Food (SACOSS 2011): Over the past 2 decades, the cost of food has gone up faster than CPI. SACOSS calculates that the real cost (adjusting for inflation) of food in Adelaide in the March Quarter of 2011 was 18.4% higher than it was in 1990. The cost of healthy food has increased more than the cost of other food over a sustained period – a massive 29.2% more than CPI since 1990. Low income families spend proportionally more on food, therefore price impacts are greater for them than the wider population. For many criminalised families, poor diet becomes not a choice but an economic imperative.

In summary:

Centrelink Benefit	Income & Expenditure items	Costs
NewStart (single adult: no children) Weekly Income = $304.95 (adjusted for additional payments)	**Income**	+ $304.95
	Fixed Expenditure • Rent (1 Bedroom Flat) • Utilities ($3,616.00 annually)	 - $176.00 - $69.50
	Remaining $$$ - weekly budget for food, clothing, health, education, travel, communication	**$59.45**
Parenting Payment (sole parent: 2 children) Weekly Income = $450.48 (adjusted for additional payments)	**Income**	+ $450.48
	Fixed Expenditure • Rent (3 Bedroom House) • Utilities ($3,616.00 annually)	 - $302.00 - $69.50
	Remaining $$$ - weekly budget for *whole of family* food, clothing, health, education, travel, communication	**$78.98**

[89] Water calculated using average annual household water bill in 2011/12 ($660) with expected 12% increase for concession recipients = $739; SACOSS has already calculated the average annual cost of gas and electricity in 2012/13.