

Submission in Response to the NSW Sentencing Council

Review of Intensive Correction Orders

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Written and submitted by

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1. Introduction

On behalf of the Women in Prison Advocacy Network (WIPAN), we would like to thank the NSW Sentencing Council for providing WIPAN with the opportunity to make a submission on the review of intensive correction orders (ICOs). In the interests of this submission, we will first provide a brief description of our organisation. We will then provide a snapshot of the unique experiences of female offenders, before addressing WIPAN's concerns regarding ICOs and suggested amendments to the legislation.

a) What is WIPAN

WIPAN is an advocacy-based organisation managed and directed by women, including reformed ex-prisoners, dedicated to improving the status, wellbeing and prospects of women involved in the Australian criminal justice system. WIPAN takes a grassroots approach to addressing the social injustices that exist for many women in the criminal justice system; and campaigns to raise awareness of the cultural, social, economic and political inequalities that sustain these injustices.

WIPAN operates a voluntary mentoring program that seeks to enhance the wellbeing of female ex-prisoners by increasing their social capital, supporting their community reintegration, encouraging their autonomy, and learning from their lived experience. It is through this engagement with women with lived experience that WIPAN gains an invaluable insight into the inequalities facing women both inside the correctional system and in the wider community upon release. WIPAN aims to empower these women by involving them in the organisation's work. This is done in a variety of ways, such as seeking their input for submissions/articles or other documents we produce, as well as encouraging them to actively participate in current debates surrounding the policies and laws that may affect them personally.

WIPAN's close and extensive work with women during their incarceration, and following their release, informs our submission.

b) The Need for a Gendered Approach to Sentencing

This submission advocates for sentencing options such as ICOs to take the specific needs of women in the criminal justice system into account. The pathways of women in and out of offending are inherently complex and multifaceted and different to those of men. Men have traditionally received the most attention in our criminal justice system due to their overrepresentation in the system. However, despite the minority status of women within the criminal justice system, imprisonment rates for women are increasing at a higher rate than male imprisonment rates and women have higher levels of previous victimisation, mental health issues, substance misuse and unemployment than their

male counterparts.¹ This indicates that there is a need to approach community based sentencing options, such as ICOs, from a gendered perspective.

2. A snapshot of women offenders in NSW

The female prison population constitutes some of the most complex and vulnerable women in Australian society, and is the fastest growing prison population, both domestically and internationally.

In NSW, more females are entering the criminal justice system than ever before. As at September 2015, there are 844 women in prison in NSW and 17 females in juvenile detention. Out of the women in prison, 287 are Indigenous and out of the female juveniles in detention, 13 are Indigenous.²

Female offenders have high levels of previous victimisation, including high rates of sexual victimisation, mental health issues, substance misuse issues and other social disadvantages.³ Out of the women in custody in NSW, 45% have experienced domestic violence or abuse as an adult, 66% have been in violent relationships, 54% had been treated for a mental health problem, 27% have attempted suicide, 67% were unemployed prior to incarceration, 32% had been placed in out of home care as children and 45% did not complete year 10.⁴ In a 2008 study of female prisoners in NSW, 59% of participants reported experiencing some form of sexual coercion or violence.⁵ Women in community corrections also report high rates of sexual victimisation. In Queensland, one study indicated that between one-quarter and one-third of women in community corrections reported sexual violence.⁶ A significant proportion of female offenders also have dependent children. Almost half of the women in prison in NSW are mothers of children below the age of 16.⁷

Female offenders typically spend only short periods in custody. Women in NSW typically spend less than 6 months in prison. Over half of those released in 2013/14 served 3 months or less in prison. Out of the women who had been sentenced to custody and were released in the September 2015 quarter, the average length of imprisonment was under 4.5 months.⁸

¹ Mary Stathopoulos and Antonia Quadara, Women's Advisory Council of Corrective Services, *Women as offenders, women as victims: the role of corrections in supporting women with histories of sexual abuse* (Report, 2014) available at: <<http://www.correctiveservices.justice.nsw.gov.au/Documents/women-as-offenders-women-as-victims-the-role-of-corrections-in-supporting-women-with-histories-of-sexual-assault.pdf>>.

² NSW Bureau of Crime Statistics and Research, *New South Wales Custody Statistics: Quarterly Update September 2015*, available at <http://www.bocsar.nsw.gov.au/Documents/custody/NSW_Custody_Statistics_Sep2015.pdf>.

³ Stathopoulos and Quadara, above n 1.

⁴ Devon Indig et al, *2009 NSW Inmate Health Survey: Key Findings Report* (NSW Health, 2009) available at: <<http://www.justicehealth.nsw.gov.au/publications/2009-ihs-report.pdf>>.

⁵ J Richters et al, *Sexual Health and behaviour of New South Wales prisoners* (New South Wales: School of Public Health and Community Medicine, University of New South Wales, 2008).

⁶ R Teague et al, 'Linking childhood exposure to physical abuse and adult offending: Examining mediating factors and gendered relationships' (2008) 25(2) *Justice Quarterly* 313.

⁷ Indig et al, above n 4.

⁸ NSW Bureau of Crime Statistics and Research, above n 2.

3. The need for alternative sentencing options such as ICOs

The high levels of previous trauma, including sexual violence, mental health issues, substance misuse issues and other social disadvantages, mean that women offenders have complex needs. The prison system is ill-suited to assisting women offenders with their complex needs and with rehabilitation. As stated by a Senior Research Officer with the Australian Centre for the Study of Sexual Assault, “penal environments are designed and built with an ethos of power and control and are often re-traumatising for female offenders with a sexual abuse victimisation history.”⁹

Criminalising and institutionalising women who have previously been abused or experienced social disadvantage may further exacerbate their trauma and produce counterproductive consequences such as causing such women to continue to re-enter the criminal justice system.

Further, as the majority of women in NSW serve sentences of 6 months or less, they are rarely able to access rehabilitative programs aimed at trauma or their specific offending histories, drug or alcohol programs or educational programs. WIPAN receives numerous complaints from women across NSW regarding the low levels of access to education and work programs in prison.

WIPAN has concerns regarding the programs offered to women in custody. While a sentencing judge can make recommendations about the programs a person needs to undertake to address their offending behaviour, it is WIPAN's experience that these recommendations are not pursued and the programs do not exist. Likewise, educational programs within female correctional centres are not such that they provide meaningful skills for women for their release.

The high rate of recidivism in NSW which sees a large number of female offenders re-enter the criminal justice system in the two years following their release draws attention to the problematic nature of women receiving relatively short custodial sentences. Even short interim periods of incarceration have many detrimental effects on the ability of female offenders to maintain employment and housing, as well as damaging relationships with children, family and the community. It is WIPAN's view that short custodial sentences serve no beneficial purpose as they do not provide any rehabilitative purpose.

These factors demonstrate that imprisonment for female offenders in NSW, in the vast majority of cases, is ineffective and does not serve a rehabilitative purpose. Rather, for many offenders, imprisonment is highly disruptive and re-traumatising. WIPAN is of the view that alternative sentencing options, such as ICOs, which enable female offenders to participate in programs targeted to their specific needs, continue to care for their children, maintain community ties and maintain full-time or part-time employment, should be utilised as an alternative to imprisonment.

⁹ Mary Stathopoulos, *Addressing women's victimization histories in custodial settings* (Australian Centre for the Study of Sexual Assault, ACSSA Issues No 13, 2012) available at: <http://www3.aifs.gov.au/acssa/pubs/issue/i13/i13.pdf>.

4. Suggested improvements to the ICO legislative scheme

Despite the clear advantages of alternative sentencing options, such as ICOs, for female offenders sentenced to imprisonment, ICOs have not been used as a true alternative sentencing option. Rates of women being imprisoned (most for under 6 months) have continued to steadily rise despite the introduction of ICOs as an alternative sentencing option in 2010 for those sentenced to under 6 months imprisonment. As stated by the Law Reform Commission, “the courts have not used home detention and ICOs to any significant extent. Together they made up only 1.09% of sentenced imposed in 2012. ... The use of ICOs increased steadily after their introduction but now seems to have stabilised slightly below the level at which periodic detention was used.”¹⁰

WIPAN submits that ICOs should be available as an alternative to imprisonment for all female offenders sentenced to short terms of imprisonment (constituting the vast majority of female offenders). Given the particularly disruptive and re-traumatising nature of imprisonment for many female offenders (discussed in the previous section), WIPAN supports the implementation of measures which would increase the number of women who could receive an ICO in lieu of imprisonment. There is evidence that women offenders are likely to respond better to community based sentences than to prison.

WIPAN is concerned that many ICO suitability assessments may exclude female offenders with medical and/or mental health issues and substance misuse issues. As stated by the Law Reform Commission, “[t]he NSW Bureau of Crime Statistics and Research has found that only 55% of ICO assessments actually result in an ICO being imposed. The most common cause recorded of a negative suitability assessment was alcohol or other drug dependency.”¹¹ Female offenders with mental health and substance misuse issues have complex needs that cannot be met by the prison environment, particularly when they are sentenced to short terms of imprisonment and denied access to rehabilitative programs. Thus, WIPAN submits that mental health and substance misuse issues should not form the basis for negative suitability assessments for ICOs. Rather, the conditions of ICOs should be tailored to meet the needs of women with histories of trauma, mental illness and substance misuse.

WIPAN is also concerned that the mandatory community service work requirement under the ICO legislative scheme is excluding female offenders who have housing instability, full-time caring obligations, substance misuse issues or mental illnesses. WIPAN submits that community service work should only be an optional condition, with the court having the discretion to set the number of hours required and associated conditions in accordance with the needs of particular female offenders.

WIPAN submits that participation in a wide variety of activities aimed at addressing the rehabilitative needs of female offenders, including treatment programs, intervention programs, educational or vocational programs, and other rehabilitative and development activities, should be capable of fulfilling the community service

¹⁰ pp 200-201

¹¹ New South Wales Law Reform Commission, *Report 139: Sentencing* (Report, July 2013) available at: <<http://www.lawreform.justice.nsw.gov.au/Documents/report%20139.pdf>>.

requirement. The purpose of the work requirement should be to address the causes of offending.

WIPAN also submits that it should be possible for an offender to defer the work requirement of an ICO to participate in a drug and alcohol rehabilitation program or other treatment program, without extending the overall ICO.

WIPAN recommends that supervision and reporting requirements be tailored to meet the specific needs of the offender and that care-giving and other responsibilities of female offenders be taken into account.

WIPAN submits that there is a need for further research into why ICOs are not being utilised for the majority of female offenders, given that the majority of female offenders are sentenced to under 2 years imprisonment and have complex needs that are clearly not being met by the prison system. The recidivism rates of female offenders in NSW are a testament to this, as are the increasing rates of female offenders being imprisoned, particularly the over representation of Aboriginal woman in prison in all states and territories of Australia.

Yours sincerely,

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