



*Most of the solutions to women’s offending lie outside prison walls – in treatment for addictions and mental health problems, protection from domestic violence and coercive relationships, secure housing, debt and financial management, employment, education and skills development.<sup>1</sup>*

## KWOOP Position

- The Bail Amendment Act 2014 took effect on 28 January 2015. There has since been a 5% increase in the average number of defendants refused bail by police, and an 11% increase in those being refused bail by the courts.
- Imprisonment carries significant human, cultural, social and economic costs, both short and long term, that are borne by individuals, their children, families and communities, as well as by government and society as a whole.
- Prison is an ineffective sentencing solution for most women given custodial sentences. In particular, there is unnecessary over-incarceration of vulnerable women who experience a wide range of social, cultural and economic issues and who pose minimal risk to the community. Much more can be done to tackle these issues before imprisonment becomes the only option.
- The reintegration of women into society after a custodial sentence is a whole-of-government issue and requires community support.

## KWOOP calls for

- A review of the Bail Amendment Act 2014 to be conducted with specific reference to the impact of the strengthened ‘show cause’ provisions on women who commit minor and/or non-violent crimes and to strengthen the presumption of innocence, a fundamental principle in the criminal justice system.<sup>4</sup>
- Individual circumstances to be considered when courts make a ruling on bail applications, taking into account the impact a refusal of bail could have on a woman and her family.
- Sustainable funding to be provided, on a three-year basis, to support the further development of diversionary programs which are currently operating effectively in NSW or which have been found to be effective in other jurisdictions. This would enable full implementation of the Crimes (Sentencing Procedure) Act 1999, Section 11.

## Rationale

- The considerable range of legislation covering women’s imprisonment is listed below.
- The 2014 bail policy change has affected Aboriginal people the most. There has been a 12% increase in Aboriginal people being refused bail by police and a 13% increase in the numbers being refused bail by the courts.
- 58% of women in prison are either on remand or serving a sentence of 12 months or less. When women go to prison, communities, family networks and relationships suffer.
- Services in prison are inadequate for addressing complex needs. Short periods of imprisonment and the high numbers of women on remand means that many women do not have access to any services at all while in prison.<sup>2</sup>
- The Crimes (Sentencing Procedure) Act 199, Section 11, enables the application of non-custodial sentences for women receiving a sentence of less than 12 months in Section 11: Deferral of sentencing for rehabilitation, participation in an intervention program or other purposes. Resources are currently inadequate to support state wide diversionary programs in NSW to enable full implementation of this section of the legislation.
- Imprisoning women further punishes an already vulnerable population and the lack of sufficient diversionary programs as alternatives to prison exacerbates this problem.
- 40% of women released annually reoffend within the first 12 months. Community-based sentencing options have a 40% lower re-offending rate.<sup>3</sup>

<sup>1</sup> Corston report (2007). A review of women with particular vulnerabilities in the Criminal Justice System. Home Office UK.

<sup>2</sup> Stathopoulos et al, 2012 cited in Research synthesis Women’s imprisonment and domestic, family, and sexual violence ANROWS 2020

<sup>3</sup> BOCSAR Database 2000 to 2018

<sup>4</sup> Section 16B of the 2013 Act contains a set of serious offences where bail is refused outright. A person charged with one of these offences must then ‘show cause, as to why they should not be refused bail, an attack on the ‘assumption of innocence principle.’

## Context – Women in prison in NSW

- There were 946 women in prison in August 2019. It is understood that since then there has been a 20% reduction due to COVID-related changes in policing and court procedures.
- There was a 33% increase in the number of women in prison between 2013 and 2019. This was not due to an increase in criminal activity.
- 58% of imprisoned women were on remand or serving a sentence of 12 months or less.
- 32% of women in custody were Aboriginal. This compares to 2.9% in the population as a whole.
- Around 40% of Aboriginal women were on remand, that is, awaiting court for bail or sentencing.
- 60% of women in prison were mothers.
- Almost 24% of women in prison grew up in care and 14% said their parents had been in care as children. 18% of the children of prisoners in NSW are in out-of-home care.
- It costs approximately \$110,000 to keep a woman in custody for a year compared with approximately \$6,495 for women to receive support services in the community.

*KWOOP Profile of women in prison in NSW, March 2020*

### Relevant Acts

- Crimes (Administration of Sentences) Act 1999
- Crimes (Sentencing Procedure) Act 1999
- Crimes (Interstate Transfer of Community Based Sentences) Act 2004
- Protected Disclosures Act 1994 No 92
- Summary Offences Act 1988 No 25
- Crimes Act 1900 No 40
- Prisoners (Interstate Transfer) Act 1982 No 104
- Parole Orders (Transfer) Act 1983 No 190
- International Transfer of Prisoners Act (New South Wales) 1997 No 144

### Relevant Regulations

- Crimes (Administration of Sentences) Regulation 2008
- Prisoners (Interstate Transfers) Regulation 2004
- Crimes (Interstate Transfer of Community Based Sentences) Regulation 2004