UNIVERSITY OF TECHNOLOGY SYDNEY

Jumbunna
Indigenous House of Learning

Response to

NSW Law Reform Commission – "Bail – Questions for Discussion"

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8 August 2011

Dear Mr McKnight,

RE: SUBMISSION REGARDING THE OPERATION OF BAIL LAW IN NEW SOUTH WALES

Thank you for the opportunity for to comment on the NSW Law Reform Commission's reference into the operation of Bail Law in New South Wales.

As you may be aware, Jumbunna Indigenous House of Learning, Research Unit ("**Jumbunna**") undertakes research and advocacy on Indigenous legal and policy issues of importance to Indigenous people, their families and their communities. Our current projects explore, inter alia, issues related to Indigenous people's contact with the criminal justice and legal system. Jumbunna staff have experience as researchers, academics and practicing solicitors.

Currently, one of the projects that Jumbunna is engaged in is an ARC funded research project aimed at identifying factors – positive and negative that impact on rates of crime in certain Aboriginal communities in New South Wales. That project has involved substantial consultation with community members, legal service providers, local government representatives and police in those communities. A number of the research findings are addressed below, but the entirety of those reports are relevant to the reference and form part of these submissions. Copies of the finalised reports in relation to Bourke, Menindee and Wilcannia are annexed to these submissions as annexures A and B. In addition to those reports, the content of the following submissions has been drawn from Jumbunna's research work, and the experience of its staff in legal practice.

Introduction

1. Twenty years on from the *Royal Inquiry into Aboriginal Deaths in Custody* ("**RCIADIC**") and Indigenous people across Australia are 14 times more likely to be in prison than non-Indigenous Australians. The position is acute in New South Wales, which jails more Indigenous people than any other state in Australia, and in particular amongst Indigenous youth, who are 28 times more likely to be incarcerated than non-Indigenous youth. The effect of incarceration upon prisoners is extreme and the uniquely deleterious effect of incarceration upon Indigenous people has been recognised since the release of the RCIADIC findings. The incarceration of generation after generation of Indigenous people has led to the mass disruption to, and trauma within, Indigenous communities.

2. The presumption in favour of unconditional bail for persons accused of crimes is a fundamental tenant of our legal system and yet it has been consistently compromised in New South Wales, with Governments adopting a 'tough-on-crime' approach in response to singular, highly publicised, crimes. As noted in the submissions of the Office of the Chief Magistrate of the Local Court;

> "*The traditionally primary objects of a bail determination – ensuring the appearance of the accused person before the court and the protection*

of the community whilst also having regard to an accused person's interests in being at liberty - have been intermittently truncated or affected in response to artificially created political reaction to publicised concerns that have had more to do with media campaigning than the product of empirical evidence."[1]

3. As a consequence of this approach, between 1986 and 2010 eighteen amending acts have removed the presumption in favour of bail for one or more offences.[2] This has been done through the characterisation of offences into different categories of offences, with those categories attracting presumptions either for, against or neutral in regard to bail. These presumptions have been referred to as "*highly problematic*" and "*difficult to interpret and apply in conjunction with the criteria for bail*".[3]

4. Inevitably, the adoption by the State of a 'tough on crime' approach impacts most severely upon the disadvantaged in society, with Indigenous people most impacted. Two decades ago the *Royal Commission into Aboriginal Deaths in Custody* ("**RCIADIC**") noted the;

> *"susceptibility of policing to become more intense in relation to Aboriginal people as a result of local law and order campaigns"*[4]

5. Amendments to the Bail Act, and the adoption by state governments of 'law and order' rhetoric have seen a substantial increase in the punitive character of the bail regime, notwithstanding that the regime is, in the majority of cases, applied to accused persons rather than convicted offenders. Between 2001 and 2008, the adult Indigenous imprisonment rate in NSW rose by 48%.[5] Shockingly, the increase in the remand population over this time was 72%, an increase that was notwithstanding that there has been no increase in the number of Indigenous defendants brought before the Courts (indeed, there were 1500 less). Research has concluded;

> *"the substantial increase in the number of Indigenous people in prison is due mainly to changes in the criminal justice system's response to offending rather than changes in offending itself."*[6]

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[1] Submission received from the Office of the Chief Magistrate of the Local Court dated 1 July 2011, page 1.

[2] Snowball, Roth and Weatherburn, Don; New South Wales Bureau of Crime Statistics and Research, '*Bail Presumptions and the Risk of Bail Refusal: An analysis of the NSW Bail Act*; Issues Paper No. 49, July 2010 page 2.

[3] Submission received from the NSW Law Society dated 18 July 2011, page 3.

[4] *Report of the Royal Commission Into Aboriginal Deaths in Custody*, paragraph 21.2.2.

[5] Fitzgerald, Jacqueline; New South Wales Bureau of Crime Statistics and Research, '*Why are Indigenous Imprisonment rates rising?*', Issues Paper No. 41, August 2009, page 1. In addition, between 2000 and 2010, the number of both Indigenous men (55%) and women (47%) in custody increased markedly (see also Standing Committee on Aboriginal and Torres Strait Islander Affairs, House of Representatives, Canberra, *Doing Time - Time for Doing, Indigenous youth in the criminal justice system.* (2011) June 2010, page 8).

[6] Ibid, page 1; see also *Two Ways Together: Report on Indicators 2009*, NSW Department of Aboriginal Affairs, page 102.

6. Of particular recent concern is the growing evidence of juveniles either refused police bail, or remanded on court bail, for offences that do not carry penalties of imprisonment, or for offences for which they do not in fact receive custodial sentences. As noted in the Criminal Law Review conducted by the former government;

> *"76% of (Aboriginal and Torres Strait Islander) young people remanded in custody do not receive a control order (custodial sentence) within 12 months following a remand period".*[7]

7. In contrast to the imposition of punitive bail conditions, the Courts have demonstrated a tendency to impose bail conditions as part of a welfare approached, directed not to the objects of the Bail Act, but as incentives to changes in the behaviour of individuals on bail. This approach has nonetheless had significantly negative effects, resulting in the imposition of unrealistic bail conditions which lead to inevitable breaches by the recipient and further arrests and charges for those breaches.

8. As is clear from the evidence contained in Annexures A and B, the causes of crime, clearly relevant to the current reference, are numerous and complex, and issues of employment, alcohol and drug use (and the lack of services to treat such conditions) and a strong and vibrant Indigenous culture involved in self-determination must be foremost in any effective approach to addressing Indigenous incarceration rates.

A selection of findings of the Rates of Crime Research Project

9. The following themes were recurrently raised with Jumbunna Researchers;

A. Police and Community

The relationship between Police and Indigenous people has a long and problematic history, as outlined by RICIADIC. The history of the relationship between Indigenous people and the police, as well as the manner in which communities were policed was raised with Jumbunna researchers on numerous occasions.

Jumbunna acknowledges that the relationship between the police and Aboriginal communities, especially in rural towns, is complex and deeply impacted upon by historical circumstances. Some of the research conducted by Jumbunna concerns Aboriginal communities with high rates of crime and in particular, high rates of violent crime, which of course must be addressed. Thus, police have a crucial role in a challenging environment. However, relationships are frequently affected by poor historical relationships, acknowledged by police themselves in some instances to be terrible. Police

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[7] *Review of the Bail Act 1978 (NSW): Criminal Law Review*, NSW Department of Justice and Attorney General, October 2010, page 74.

involvement in enacting policies of dispossession and child removal, and overtly racist incidents are not easily forgotten. One description that may neatly sum up the relationship was that of Aboriginal people simultaneously needing but resisting police involvement in their lives.

The importance of the role that Police play in the bail regime is significant, some would say even determinant. They are the 'gate-keepers' to the criminal justice system, and have the discretion whether to charge, what and how many charges to lay, whether to grant police bail and if so, on what conditions. As such, Police exercise great discretion as to how to response to 'criminal' behaviour, and their decisions resonate throughout an individual's progress through the criminal justice system (for example, the number of concurrent offences charged has been found to be a more determinative factor than the presumption which applies).[8]

In 1991, RCIADIC noted that there are;

> *"significant factors within police control or responsibility which bear on the intensity and mode of police response"*[9]

Worryingly, the evidence establishes that;

> *"over-policing of Indigenous communities continues to be an issue affecting not only relations between Indigenous people and the police, but also the rate at which Indigenous people come into contact with the criminal justice system"*[10]

Further, when Police exercise their broad discretionary powers, it is usually to the detriment of Indigenous people. In particular;

A. *"Research has shown that young Indigenous offenders are more likely than non-indigenous offenders to be referred to Court, rather than receive a caution from Police*[11]*"; and*

B. "*the types of offences for which Indigenous people appear before courts also differ significantly from non-Indigenous people. A study of Indigenous youth in New South Wales found that their rate of court appearances for public order offences was more than 10 times the rate for non-indigenous youth". Furthermore, as New*

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[8] Snowball, BOCSAR: *Bail Presumptions and the Risk of Bail Refusal,* page 5.

[9] RCIADIC, *National Report,* paragraph 21.2.1.

[10] *Doing Time* Report, page 200.

[11] L Snowball, Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice no. 355, June 2008, '*Diversion of Indigenous juvenile offenders*', page 2.

South Wales Ombudsmen noted, since 'Aboriginal defendants are more likely to be dealt with by arrest, they are more likely to face a bail determination and the possibility of being unable to meet bail conditions, breaching bail conditions or being refused bail";[12]

C. The same inference of bias that is evident in the above observations exists also in the issue of what bail conditions police impose, with the Office of the Chief Magistrate of New South Wales noting that;

"Overly complex or onerous reporting requirements that go beyond those reasonably necessary to secure an accused person's attendance at court are commonly seen in conditions or police bail or are being sought in applications for bail before the court."[13]; and

D. There is also evidence that Police enforce extremely strict compliance with bail conditions, disregarding cultural nuances in those conditions and/or arresting individuals for 'technical' bail breaches.[14]

Further, evidence provided to Jumbunna staff whilst in criminal practice suggests that Police often use the prospect of Bail as a negotiating tool for police enforcement strategies, a purpose clearly beyond the objects of the Act. In one case, a young Indigenous man wrongly admitted to an offence because he had been told that the Police would release him on bail if he did so, and that, otherwise he would be remanded in custody. Frightened of the prospect of being refused bail, he said he falsely confessed to the offence. Whilst one would hope that such events are rare, the fact remains that it is the nature of the broad scope of the discretion given to police, and the limited scope for review of the exercise of that discretion, that results in the capacity for its abuse.

During their consultations, the issue of Police and their relationship with the community was a recurrent topic. For example, in Bourke[15]:

"*Over policing and the large number of police in Bourke were raised by a number of people and notably by some working in the criminal justice system as a factor contributing to the high rate of crime. Bourke has 30-40 police, which was said to result in crimes being detected and acted upon that would not be detectable in big cities. As one person*

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[12] *Doing Time* Report, page 217.

[13] Submission received from the Office of the Chief Magistrate of the Local Court dated 1 July 2011, page 2.

[14] Submission received from the Youth Justice Coalition dated 27 October 2010, page 6.

[15] Vivian, Alison and Schneirer, *Factors affecting crime rates in Indigenous Communities in NSW: a pilot study in Bourke and Lightning Ridge; Community Report*, Jumbunna Indigenous House of Learning, Research Unit, University of Technology Sydney, November 2010, page 18.

described, "the mechanical effect of the numbers and the transparency of the Aboriginal population to the police is a big issue."

...

There were both positive and negative comments about police and their relationship with the Aboriginal community in Bourke. Unfortunately, it is apparent that the relationship is primarily negative, which appears to have a strong historical dimension...

At the same time, the important role of the police was identified in a very challenging environment. The police were commended for using their discretion and utilising cautions under the Young Offenders Act but it was also recognised that "there comes a point where they can't do any more and it has to be brought before the court." It is clear that the relationship between the Aboriginal community and police is complex and difficult where people simultaneously rely on but resent the police:

> *"When there are problems in the community, a lot of times people would come straight to the police. But then they have a great hatred for the police. I think that's a generational thing too, with everything that has happened with the stolen generation and everything like that. They just have this real negative feel for the police, hatred for the police. But then, when things go wrong, the first people they really depend on are the police. Any complaints or issue they have with other families within the community they'll come to the police."*
> Aboriginal Community Liaison Officer, NSW Police, Bourke

The history of policing in Bourke was a recurrent theme. It was acknowledged by one police officer that the police have a "terrible history" of policing in Aboriginal communities and that there is "some ground to make up".

> *"The dislike of Police that Aboriginal people have, other people can't understand it. It goes a long way back to things like segregation and the Stolen Generation and it has just gone on from there, people are still living with the effects of those events."*
> Indigenous Community Worker, Bourke

In the community of Wilcannia, there are around twelve police stationed in the town with a population of approximately 600 people. Differing views were provided about the likely effect of such a high percentage of police officers[16]:

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[16] McCausland, Ruth and Vivian, Alison, *Factors affecting crime rates in Indigenous communities in NSW: a pilot study in Wilcannia and Menindee; Community Report*, June 2009, Jumbunna Indigenous House of Learning, Research Unit, University of Technology, Sydney, page 22.

"Opposing views were expressed about on the one hand, incidents that would pass without notice elsewhere being prosecuted, contrasting with a perception that anti-social behaviour was accepted in Wilcannia that would not be acceptable in other rural communities:

> *There is over policing in Wilcannia and over charging. They aren't using any discretion. If no one is being hurt, do they have to charge? Verbal altercation, breach of AVO, they've had a problem; they are sorting it out, and are getting on better. Do they have to charge? Why not just let it go?*
> *Community Service Provider, Wilcannia*

We note that these comments accord with the conclusions of the *Doing Time* Report at page 200 where it notes that;

> *"Over-policing, through increasing police number or patrols and surveillance, results in higher contact between the police and community members, which potentially leads to greater opportunities for cautions or arrests. Some of these arrests can be made for very trivial matters".*

In Wilcannia, concerns were also raised in relation to the imposition of fines upon people who cannot afford them. Such concerns apply equally to the imposition by Police or the Courts of financial sureties on bail;

> *The biggest problem there is if you get a fine on the street and you can't pay, even if it's a first offence, a lot of people elect to bring it to court and they'll get a Section 10 without a record. But then the second one, you've got a record.*
> Aboriginal Client Service Specialist, Broken Hill, Wilcannia Local Courts.[17]

Of particular relevance to the current reference is the degree to which the relationship between community members and the Police is dependent upon the idiosyncrasies of individual police officers personalities:[18]

> *In a place like Wilcannia, it depends on who the cops are; the personalities of the police. If you get someone there who is a little bit more relaxed and laid back and a little bit more experienced, they tend to build a relationship with people - and that's the way to do it with Aboriginal people. You've had instances there where the police would get out and do walking patrols, and just wander around the town, and that's good, because people see them, kids see them, they talk to them: they sort of become less of an ogre or a mystery to people. But it just depends on who's running the local police force.*
> Community Service Provider.

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[17] Ibid.

[18] Idem, page 23.

Some [police] pick it up easier than others. I don't expect police to be punching bags for people to lay in to but the reality is that in Wilcannia… they use the 'c' word with a capital 'K'. In Wilcannia, you only need to sit in the car in the main street for 5 minutes with the windows down and you will hear that it's how people speak to each other. Is it offensive language? Most definitely. Should everyone who uses it end up in the dock for it or end up with an infringement notice? I don't believe so.
Duty Officer, NSW Police, Broken Hill[19]

In conclusion, in our view, it remains the case today that the "*significant factors within police control or responsibility which bear on the intensity and mode of police response*" identified by RICIADIC still exist.

B. Safety within Communities.

A further recurrent issue raised with Jumbunna Researchers is that many Indigenous people who are on bail have no safe place to go at night; [20]

Breach of bail was consistently raised as a problem, especially among youth. According to BOCSAR statistics, Bourke has ranked highest in the state for breach of bail conditions for the past seven years. These figures are for reported incidents of breach of bail conditions for both Indigenous and non-Indigenous persons.

"There are large numbers of breach bail relative to other places. Kids don't want to be home. There's nothing for them and they are safer with their mates roaming the streets. Police are well aware of who is on bail and they have an obligation to act. They can't ignore it ad nauseum and I understand that, but there are a lot of police in Bourke. We are trying to get a bail safe house for kids, which would cut down on breaches of bail. They could go stay there, be fed and be happy. But we haven't got any money for that yet."

Solicitor, Aboriginal Legal Service, Bourke

It's hard for a magistrate to look at a kid's record and see so much and give them another go. They breach bail over and over again. Bail addresses often do not work because the kids don't have stable homes to go to. Current bail laws are not adjusted to the ways in which Aboriginal people live – kids often reside with their mothers, grandparents and sometimes uncles and aunties. They are given a bail address by the court but find that they are in

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[19] Idem, page 24.
[20] Vivian and Schneirer, *Bourke and Lightning Ridge Community Report*, page 20.

breach after a couple of days because someone else is looking after them.
Solicitor, Aboriginal Legal Service

A significant number of participants working in the criminal justice system observed major problems with young people breaching bail. Lack of structure and discipline at home, substance abuse and violence were identified as factors driving young people from their homes and rendering a specific bail address ineffective:

"I am a believer in the concept of curfew and bail. I do agree with it, but in some cases it doesn't work, because their home life it too unsatisfactory. You're setting them up to fail. We need to consider the idea of a Safehouse / bail house."
Youth Case Manager, NSW Police Force Youth Command, Bourke PCYC

Several people suggested a youth bail house would have the dual benefit of ensuring child safety and cutting down the number of breach bail offences. Some participants went further and suggested a youth hostel or safe house, comprising both long-term and short-term accommodation for children and young people at risk.

Similar observations were made to researchers Alison Vivian and Ruth McCausland in relation to research conducted in the Wilcannia and Menindee communities;[21]

Of particular concern is the lack of safe places for children and young people to go. While some are able to go to another family member when it is not safe for them to return home, others have nowhere to go:

My biggest concern is the kids. There's nowhere for kids to go any time of the day where they can feel safe. I'm not talking about a drop in centre... Somewhere for the kids to go and I don't mean until just 9 o'clock. If kids are fearful, they only have two places to go – the police and the hospital. Both are problematic.
Duty Officer, NSW Police, Broken Hill

Sadly, once within the criminal justice system, several people described custody as an attractive option for some young offenders as providing meals, a warm bed and safety:

In one case, an Aboriginal kid aged 12 was refused bail on pretty serious property related offences relating to the theft of firearms. He had no criminal history and seemed as though he had been led on by older kids in relation to this offence. The only problem for the court was that mum's address was not good enough - there was too

[21] McCausland and Vivian, *Wilcannia and Menindee Community Report*, page 18.

much alcohol and violence there. The DOCS approved residence was the only option the court would entertain. When I asked the young fella whether he wanted to go there he broke down into tears. He said that he would rather do the two weeks at JJ's [juvenile detention] and be allowed to go back to mum after being sentenced. It was very unlikely that he would have received a control order - but in any event, he was bail refused and quite happy to go back to JJ's as opposed to the DOCS approved residence.

Solicitor, Aboriginal Legal Service, Broken Hill

We note that this concern has also been raised by the Youth Justice Coalition, which has noted that;

> "*Young people remained in custody because they were homeless and the government departments did not provide the support requested by the Court*"[22].

It is clear that it must be a priority of the NSW Government to establish and fully fund bail houses for Indigenous persons on bail.

C. *Unrealistic Police and Court Bail Conditions*

It is notable that the recorded criminal statistics indicate that 'breach of bail' is an area for which Bourke ranks highest in the state.[23] One likely cause of this is due to the fact that the bail conditions imposed by Police and the Courts are often entirely unrealistic, and imposed without any regard to the cultural appropriateness of those conditions, the dynamics of the community and the capacity of the individual to meet those conditions. Further, the conditions that are imposed are often done so in circumstances where they appear to be beyond the scope of the objects of Bail. One example raised on a number of occasions with Jumbunna staff is the imposition of a residential condition, in conjunction with a curfew condition, requiring in effect that an Indigenous person reside at a single residential address, and not leave the house unless in the company of a named individual (for example their mother). Such a condition is an absurd condition in the context of Indigenous culture, where the individual may reside with, and be in the company of, an auntie or uncle, to whom they owe the same social duties and hold the same reverence for, as the person named in the condition. In such cases, Courts and Police should be able to impose conditions requiring a person to reside at one of a number of addresses, or an address at which one of a class of people reside (for example aunties and uncles. A contact person might be named in those conditions who is required to be aware of the whereabouts of the person at the times of the curfew, should the police need to contact the person).

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[22] Youth Justice Coalition, *Bail Me Out; NSW Young People and Bail,* February 2010, Page 5.

[23] Vivian and Schneirer, *Bourke and Lightning Ridge Community Report,* page 8.

The imposition of bail conditions without due consideration being given to whether an accused is able meet such conditions has also been identified in the Courts, including the Children's Court. In research conducted by the Youth Justice Coalition, it was found that 60% of young people were in custody for breach of bail conditions, and that, of those in custody for such breaches, 60% were then granted further bail.[24]

As illustrated in the above section, there are significant issues with Police bail, including Police imposing Bail conditions that are unrealistic and imposed without any regard to individuals.

In addition to difficulties with Police Bail, Court imposed Bail conditions have been identified as being often unsuitable, leading to breaches of bail. In particular, as noted in the *Doing Time* report, Courts often use Bail conditions for objects outside the scope of the Act, namely 'welfare' purposes;

> "*The type of bail conditions imposed by the Children's Court reflect the adoption of a welfare approach, with conditions generally aimed at altering behaviour, rather than ensuring that the young person returns to court.*" [25]

And

> "*The number and type of bail conditions imposed also indicated a welfare-based approach to supervising young people on bail. Bail conditions were framed around what would normally be considered part of a case management plan (for instance, attending counselling, residing as directed). However, the conditions...were made with no consultation with families and little assessment of the young person. The appropriateness of the court or police imposing such conditions without any consideration of a young person's particular circumstances is questionable and may be especially disadvantageous to that individual*".[26]

These observations accord with comments made to Jumbunna researchers during their consultations. In addition, Jumbunna researches have received anecdotal evidence to the effect that many breaches of bail occur because young Indigenous people either cannot remember all of the bail conditions imposed, do not understand those conditions, or both. In addition, one of the issues that was raised in Wilcannia in particular is that Indigenous clients' matters are dealt with so quickly and in such a technical manner that they don't understand what has just happened. The lawyers and magistrate are so familiar with the technicalities of the act that they, at time, speak in shorthand to each other and not to the accused. The Indigenous accused are often too ashamed to subsequently ask what happened. ALS field officers try to bridge that gap but, usually, the young person just wants to be out of there so they'll

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[24] Youth Justice Coation, *Bail Me Out*, page V.

[25] Idem, page 9.

[26] Idem, page 16.

sign the bail taking and leave as soon as they are able, without understanding the conditions they must comply with.

D. Sentencing Options

This issue is addressed below in the section on 'other considerations'.

Responses to Specific Questions

We provide the following responses to the specific questions posed in the reference. We note that we have not addressed all questions, and have not repeated our position unnecessarily.

1. Over-arching Considerations

1. *What fundamental principles or concepts should be recognised and implemented by the Commission in reviewing the law of bail and the existing Bail Act;*

1.1 The Bail Act should include a statement of its objects.

1.2 The primary principle of concept that should be recognised and implemented is the right of all accused, including Indigenous accused, to the benefit of the presumption of innocence, and a right to bail.

1.3 As is evident from the evidence on incarceration, a failure to ensure that this presumption is recorded in the Act, given what has been identified as a "*culture that court bail should be opposed amongst prosecuting agencies*",[27] is likely to result in increased indigenous people being refused bail.

1.4 Further, as is also evident in the above information, both the Courts and the Police are failing to properly consider the cultural and socio-economic realities that differentiate Indigenous cases from non-Indigenous cases. It is clear that there has been an abject failure in Australia to properly address Indigenous incarceration rates. In our view, the best way to do this is to require decision makers under the Act to properly and honestly engage with Indigenous communities. Decisions about how the bail regime should be implemented in relation to Indigenous people, and about Individual cases, **must, if they are to be effective** be determined in genuine consultation with Indigenous communities. Twenty years after the handing down of the RCIADIC recommendations and both Police and the Courts are still imposing residential, curfew and financial surety conditions that take no heed of the way in which Indigenous families operate, and the culture of Indigenous people. To failure to rectify this approach is not only to disregard the reality of Indigenous culture, but to criminalise it.

1.5 Consequently, In our view, the objects of the Act should include the following:

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[27] Office of the Chief Magistrates Submission dated 1 July 2011, page 2.

1.5.1 The right of a person accused of a crime to remain at liberty, subject only to restrictions necessary to ensure their attendance before the Court and the protection of the community; and

1.5.2 The need to address the over-representation of Indigenous Australians in custody in Australia and, in that regard, for decision makers exercising powers or functions under the Act be required to consider;

1.5.2.1 Article 9(3) of the *International Covenant on Civil and Political Rights*;

1.5.2.2 The principles outlined in the United Nations Declaration on the Rights of Indigenous Peoples including, in particular, the principle of self-determination;

1.5.2.3 The recommendations outlined in the *Royal Commission into Aboriginal Deaths into Custody;* and

1.5.2.4 The special vulnerability of Indigenous people detained in custody.

1.5.3 The provisions of this act are to be interpreted and applied in a manner that is consistent with that declaration, and must, in every relevant case, be applied by each person exercising a power or performing a function under this Act.

1.2 Should the Bail Act include objectives and, if so, what should they be?

Yes, see above.

2. Right to Release

2.1 Should a right to release on bail when charged with certain offences be retained in principle?

2.1. A right to release should be retained for any individual charged with an offence punishable by fine only, or, in the case of Indigenous defendants, any offence that meets the criteria outlined in response 3.1.1 below.

3. Presumptions

General Observations on Presumptions

In our view the concept of presumptions for or against bail should be removed altogether. As noted above, the presumptions have arisen in the NSW bail regime primarily as a result of political 'tough-on-crime' narratives, and without reference to any empirical evidence in support of establishing those presumptions.

In practice, the presumptions are often difficult to apply. More worryingly however, the presumptions, in practice, disadvantage Indigenous Australians. As noted above, one of the results from the way in which Indigenous people are policed is that Indigenous people are more likely to have significant criminal records.

Currently, section 8(c) of the Act removes the presumption in favour of bail in relation to persons who have been charged with 2 or more property offences and the person has been convicted of one or more property offences within the twelve months. Under this section, the onus falls on the Accused to prove that bail should not be refused. Similarly, section 9B of the Act removes the presumption in favour of bail for a person who, at the time of the allegation, was on bail, parole, serving a non-custodial sentence, was subject to a good behaviour bond or was in custody. Both of these sections, and in particular, section 9B of the Act, affect more severely Indigenous people. Indeed, the existence of a significant criminal record, as well as the existence of three or more concurrent offences (both of which are potential results from a punitive exercise of Police discretion), are even more determinative factors than the presumption.[28]

It is to be noted that anecdotal evidence obtained by Mr Longman in his capacity as a criminal solicitor in practice suggests that Indigenous offenders often have substantial criminal records. Often, this is because Indigenous defendants, particularly in remote areas, have limited access to legal services and advice at the time of arrest, leading to admissions, often obtained by Police in circumstances that give rise to concerns over the veracity of such admissions. In one case a young Aboriginal man, whilst discussing his criminal record with Mr Longman, indicated in relation to a number of those offences that he had plead guilty because the Police had promised that they would grant him bail if he just confessed to what he did. Researchers at Jumbunna have heard similar stories on numerous occasions. It is imperative that the NSW Government be sensitive to the dynamics at play between Indigenous accused and the Police.

Consequently, the current regime whereby different offences result in different presumptions should be removed. The following categories of offences should be inserted;

3.1. There should be an automatic right to release for offences not punishable by imprisonment or an offence under the Summary Offences Act 1988 and/or, in the case of Indigenous people, any offence carrying a maximum penalty of less than 2 years imprisonment unless:

3.1.1. There is a real threat of violence to witnesses or individuals related to the matter and such threat cannot be managed by the imposition of bail conditions;

3.1.2. There are exceptional circumstances to refuse bail.

3.2. In relation to all other serious offences, there should be a presumption in favour of bail, subject to the Court's discretion under section 32, however,

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[28] Snowball, BOCSAR: *Bail Presumptions and the Risk of Bail Refusal,* page 5.

the Crown should be required to call sworn oral evidence in support of any matter upon which it relies on against bail.

5. Police Bail

5.1 Should any change be made to the ability of Police to grant bail and the procedures that apply?

Yes. The procedures set out in response to question 10.2 below should apply to all bail determinations.

6. Court Bail

6.3 Should there be a provision that, where bail has been refused by the police or granted by the police subject to conditions, the court is required to make a fresh determination concerning bail at the first appearance of the person at court?

Yes. Such a provision is absolutely imperative, given the evidence previously discussed of a 'punitive' approach by police to bail conditions. Moreover, the Court should be required to satisfy itself, on the basis of sworn oral evidence, of any matter relied upon by the Crown against a grant of unconditional bail (including 'special' bail conditions, but excluding general bail conditions).

6.4 What provision, if any, should be made for mandatory reconsideration of the question of bail and of any conditions at subsequence appearances?

In relation to Bail there should be a mandatory requirement on the Court to raise the issue of bail with any person in custody on each court appearance. Where the person indicates that they wish to apply for bail, the Court should be required to conduct a fresh consideration of the issue of bail.

7. Repeat Bail Applications

General comments on section 22A

The insertion of section 22A into the Bail Act has resulted in soaring incarceration rates in NSW, including amongst Indigenous children and was a significant factor in a rise of 78% in the NSW remand population from 2001 to 2008. We join with the Law Society in expressing our concerns as to the difficulties with obtaining effective instructions from clients over AVL[29], a difficulty that is exemplified in relation to Indigenous defendants, with whom instructions may be difficult to obtain for cultural reasons. In addition, given the significant under-funding of Aboriginal Legal services in Australia, it is imperative that Indigenous people retain the ability to make bail applications should they be bail refused.

7.1 Should section 22A, Power to refuse to hear bail application, which limits repeat bail applications, be repealed or amended in some way?

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[29] NSW Law Society Submission dated 18 July 2011, page 7.

The section should be repealed. If retained the section should exclude Indigenous persons. Failing that, the section should exclude, in determining whether it applies, the first bail application made by a person.

7.2 If retained, should s 22A apply to juveniles, to juveniles but only in serious cases, or in some other way?

The section should not be retained. If the section is retained, it should not apply to children in any event.

7.3 What should be in the legislation to deal with unreasonable repeat applications while, at the same time, preserving a right to make such applications for bail as are reasonably necessary?

The starting point for the Court's treatment of unreasonable repeat bail applications should be the principle that people should be at liberty, unless there are compelling reasons for the restriction of that liberty.

If there are concerns as to unreasonable bail applications being made in the Local Court, a section in the following terms may be inserted:

> *A court may refuse to consider a bail application where it is satisfied that the application is unreasonable and vexatious.*

8. Criteria to be considered in Bail Applications

8.1 In relation to s 32, Criteria to be considered in bail applications, should there be prescribed criteria? If so, what should those criteria be?

Yes. The prescribed criteria should be required to be considered by the Court. The current criteria are suitable, subject to the answer to question 8.8 below.

8.3 Should an overarching test be applied to the consideration of the criteria such as?
'unacceptable risk' (as in the Bail Act 1977 (Vic) s 4(2)(d), or Bail Act 1980 (Qld) s 16(1)(a)) or 'reasonable grounds to suspect' (as in the Bail Act 1982 (WA) s 6A(4)) that a particular circumstance will arise?

No.

8.4 Should the currently prescribed primary criteria be amended or supplemented in any way?

It should be made clear that it is to the benefit of the welfare of the community under section 32(1)(c) that a strong and vibrant Indigenous cultural life be evident within the community. This may be done by the insertion of new subsidiary criteria to that effect.

8.5 Should prescribed primary criteria be exhaustive?

The criteria should be considered to be an exhaustive list of the factors that a Court may weigh against the granting of bail in a matter. The Court may however had regard to any factor in support of bail that is relevant to giving effects to the objective of the Act. Such an approach is particularly relevant to the object of the Act to reduce Indigenous incarceration rates.

8.6 If objects are included in the Act, should the primary criteria relate to the objects and if so, how?

Yes. Section 32 should be considered in the context of the objects of the Act. That section could read:

> *In a determination of bail a decision-maker shall give effect to the objects of the Act. In so doing the decision-maker must consider the following criteria, but may consider any criteria weighing in favour of that bail is relevant to the objects of the Act.*

8.7 Should there be prescribed subsidiary considerations in relation to each primary criterion?

Yes.

8.8 If so, should the subsidiary considerations currently prescribed in relation to each primary criterion be changed in any way?

Yes. It is imperative that the s.32 requires a decision maker under the Act to consider the issues which, uniquely, impact particularly upon Indigenous people. Consequently, in our view the subsidiary considerations should be amended in the following ways:

Probability of Appearance

- s.32(1)(a)(2) – This subsection should be amended to reflect the principle that Court's should in having regard to an Indigenous person's criminal record, disregard public order offences such as offensive language.

- s. 32(1)(a)(ii) – this section should not be applicable to Indigenous persons. Should the section remain applicable, the Court should be required to satisfy itself that any offences relating to breach of bail or failure to appear in fact indicates a genuine attempt to avoid the jurisdiction of the Court rather than a 'technical' breach or an inability to comply with an unreasonable condition;

- s.32(1)(a)(iv) – where evidence is adduced by the Crown as a basis for alleging it is not probable that the person will appear before the Court, the Crown should be required to call sworn oral evidence and the Court should be required to satisfy itself as to the veracity of that evidence. It should be made explicit that it is not sufficient in such a case for the Court to rely upon assertions from the bar table.

Interests of the Person

- The interest of the person should not be limited to the criteria set out in section 32(1)(b) though such considerations should be mandatory considerations.

- The section should include a requirement to consider the interests of Indigenous persons as set out in those principles referred to at 1.5 above.

- Section 32(1)(b)(iii) should be amended to require the court to consider, in relation to an Indigenous person, any submissions received by the Court from an Aboriginal Community Justice Group or community organisation that provides services to Indigenous people as to any issue that organisation considers to be relevant to the grant of bail to the person. Section 32(1)(c) should be likewise amended to require the Court to take notice of any information received from such a group as to the services available in the community, and any concerns of that organisation arising from the release of the individual into the community.

- Section 32(1)(b)(vi) should be removed, or, at the very least, should be inapplicable to Indigenous persons.

- Section 32(1)(b)(v) should be amended to explicitly require the Court to consider the fact that imprisonment is more uniquely damaging to Indigenous persons.

Protection and Welfare of the Community

- Section 32(1)(c)(v) should be amended to give the Court the ability to examine, in relation to Indigenous people on bail for a previous serious offence, the strength of the Crown case in relation to that previous offence, and the offence more recently alleged.

- Section 32(1)(c)(iv) and Section 32(2) should require that the Court should only make a finding adverse to the person where the Court has satisfied itself as to that finding on the basis of sworn oral evidence. In its application to police officers, the section should require Police officers to record in writing the basis upon which they have formed the view that the person is likely to commit the offences.

- Section 32(3) should be amended so as to exclude evidence adduced in relation to an Indigenous person adverse to that person's interests.

8.9 Respectively in relation to each primary criterion, should subsidiary considerations be exhaustive?

No.

8.10 Section 32(1)(b)(iv) allows the decision-maker to consider whether or not the person is incapacitated by intoxication, injury or use of a drug or is otherwise in danger of physical injury or in need of physical protection as one of the factors relevant to the "interests of the person".

(a) Should s 32(1)(b)(iv) be retained?

Yes.

(b) Should this consideration operate as a reason for granting bail, or as a reason for refusing bail, or either depending on the circumstances?

Either, depending on the circumstances. However, this section should be amended so as to stipulate:

A. That an Indigenous person is at a higher risk of harm in custody than a non-Indigenous person; and

B. That the placement of an intoxicated Indigenous person into custody should be a matter of last resort.

9. Bail Conditions

9.1 What should be the scope of the court or police power to impose bail conditions?

The only 'special' conditions (including residence or curfew conditions) which either the Court or police should be able to impose are conditions that;

A. On inquiry, the decision maker believe on reasonable grounds can be complied with; and

B. Are conditions absolutely necessary for the achievement of the objects of the Act.

A decision maker should be required to record in writing the evidence upon which they rely in forming the opinions outlined in A and B above, and what inquiries were made.

9.2 What should be the purposes of imposing requirements or conditions concerning conduct while on bail?

The only requirement for conditions whilst on bail should be that the conditions are necessary to ensure the attendance of the person before the Court, or to protect specific individuals connected to the alleged offence. In particular, 'welfare' conditions such as curfew conditions and residential conditions should not be imposed unless:

A. The decision-maker has made inquiry with the person (and where relevant the person's family, extended family, Aboriginal Community Justice Group and/or Community Organisation that provides services to Indigenous

people) and satisfied themselves that the person will have the capacity to comply with the condition;

B. The decision maker is satisfied that the conditions are necessary to achieve the objects of the Act. Where the decision-maker forms such a view they should be required to record in writing the basis for that view. Where the decision maker is a Court, the Court should impose such conditions only on the basis of sworn oral testimony received by it.

9.3 What matters should be considered before such requirements or conditions are imposed, and what limitation should there be on the imposition of such requirements or conditions?

See above.

9.4 Should the purposes for which such requirements or conditions may be imposed be any wider than the considerations which apply to the grant of bail under s 32? If so, what is the rationale for having wider considerations in relation to conduct on bail than the considerations relevant to whether to grant bail at all?

No. Indeed the purposes should be those of the Act, and not those of Section 32 criteria.

9.5 In particular, should the purposes of imposing such requirements or conditions (see s 37) include the promotion of effective law enforcement and protection and welfare of the community without further limitation?

No. These are not legitimate reasons for refusing bail. Where an offence involves a specific, unique threat to the community (for example terrorism), this can be taken into account by the Court under section 32.

9.6 Should the question of whether to grant bail and the question of what requirements or conditions as to conduct to impose if bail is granted be seen as the one process, with the same considerations being applicable to both aspects of the process?

In practice it is difficult to see how this could be other than one process.

9.9 If so, should courts be required to provide reasons why conditions in addition to standard conditions are necessary? For example, in the case curfews, the need for and rationale for the timeframe of the curfew, or the need for and amount of money to be forfeited if the person does not comply with their bail undertaking?

Yes, see above. In particular, Police and Courts should prioritise the imposition of bail conditions that recognise and reflect the cultural practices of Indigenous people, including as to family and residence. Decision makers should not impose financial surety conditions without first being satisfied that the person is able to provide such surety. Where a person is remanded in custody for breach of such a condition, the Court should satisfy itself within 48 hours that the individual is able to meet the condition.

9.16 Should there be any other process, in place of or in addition to such a written undertaking, to ensure that the person knows and understands their obligations while on bail?

Yes. Amongst the advice given to Jumbunna during its research consultation was that many Indigenous people breach bail conditions which are so complex or numerous that they either cannot recall them all, or do not understand them.

Where Police are imposing 'special' bail conditions (including residence, surety and curfew conditions), they should be required to have the person repeat those conditions back to them in their own words, and record that communication

Courts should adopt a similar requirement with persons granted Court bail.

10. Breach of undertakings and conditions

The evidence outlined above demonstrates that there is a dire need to reform the way in breach of bail undertakings and conditions are dealt with.

10.1 Should s.50 specify the role and powers of a police officer under this section with greater particularity?

Yes. Evidence demonstrates that where Police are empowered with broad, unchecked discretion, their exercise of that discretion is usually to the detriment of Indigenous people.

10.2 Should the section specify the order in which an officer should consider implementing the available options?

10.2.1. Yes. The section should specify that, in relation to Indigenous persons, Police should;

a. Consider the nature of the breach and, in particular, consider whether the conditions that have been breached;
    i. Are genuinely necessary conditions to give effect to the objects of the Act; and
    ii. Are capable of being complied with by the person without undue burden;
b. If not satisfied that the condition that has been breached is genuinely necessary, remove the condition and release the person on amended bail;
c. If satisfied that the bail condition is genuinely necessary, release the person on the same bail with a warning;
d. Issue a Court Attendance Notice;
e. Arrest with a warrant; and
f. Arrest without a warrant.

The section should enact the RCIADIC recommendation stipulating that the power of arrest is used only as a last resort. In relation to determinations c to f, the officer

must record the decision in writing, including reasons why a more lenient approach is not adopted. In the case of an opinion formed under a (ii) above, the office should record any inquiries made by them, and the content of any conversations had by them, in forming that opinion.

The section should require the officers to take into account the objects of the Act, including the new object of exercising functions in accordance with those principles outlined in section 1.5 above.

10.3 Should the section specify considerations to be taken into account by a police officer when deciding how to respond under the section?

See above.

10.4 Should the section specify criteria for arrest without warrant?

See above.

10.5 Should the section provide that the option of arrest should only be adopted as a last resort?

Yes, see above.

10.6 Should the provisions of Part 7 be changed or supplemented in any other way?

The provision should be amended to apply the LEPRA safeguards to Police exercise of powers under section 50, in addition to the obligations under the Act.

In addition to the above, there should be the following general amendments:

(i) Currently the Act does not give Police the power to grant bail except where they do so in relation to a suspect 'in a police station'. Particularly in remote communities this can lead to hardship for Indigenous accused, who may need to be transported large distances to the nearest police station. Even where accused are then granted bail, Police are not under any obligation to assist the accused to get home again. Moreover, the inability for Police to bail Indigenous accused immediately, whilst in community, fails to enact the principle of imprisonment as a last resort, as recommended by RCIDIC. Indeed, the power to grant bail at or near the place of arrest without conveying the accused to a police station was one of the RCIDIC recommendations (s.91(c). It is unacceptable that this recommendation has still not been enacted.

11. Remaining in Custody because of non-compliance with a Bail Condition

11.1 In relation to s 54A, Special notice where accused person remains in custody after bail granted, should the time for notice be less than the 8 days prescribed? Should a shorter time apply only in the case of non-compliance with some particular bail conditions? Should a shorter time apply to young people?

Given the special vulnerability of Indigenous people held in custody, the time for notice should be 48 hours in the case of Indigenous persons and 24 hours in the case of juvenile persons. It is imperative that a person who remains in custody notwithstanding that bail has been granted is brought to the attention of the Court.

11.2 Should the Bail Act provide for further notices to be given periodically in the event that a person continues to be in custody because of such non-compliance?

Yes, notices should be given periodically in accordance with the periods outlined in above.

11.3 Should the Bail Act specify what steps the court should take on receipt of such notice?

Yes. Upon receipt of such a notice the matter should be listed before the Court and the Court must reconsider the bail conditions imposed and satisfy itself;

A. That the conditions are essential to achieving the purposes of the Act; and

B. In the case of an Indigenous person, the Court should satisfy itself that the condition is culturally appropriate and that the individual has the capacity to comply with the condition. In particular, where the condition relates to a residential condition or a curfew condition (where the curfew condition has been breached due to the individual leaving an unsuitable residential address), the Court should remove the condition, or alter the condition to allow compliance with it (for example by expanding the number or description of the places of residence, or individuals with whom the person must remain).

11.4 Should the Bail Act require steps to be taken other than by notice to the court, in the event of a person remaining in custody because of such non-compliance?

Yes, see 11.3 above.

11.5 If a particular agency is responsible for the relevant condition should the Act require the agency to provide a report or information to the Court addressing why the bail condition is unable to be met, and the steps being taken to meet it.

Yes, the agency must provide to the Court a reason that the condition has not been met and whether the condition will be able to met in the future, and if so, when.

14. Indigenous People

14.1 Should the provisions of the Bail Act in relation to Indigenous people be amended or supplemented?

Yes, as noted throughout.

14.2 Should the Bail Act provide that the Court in making a bail decision must take into account a report from a group providing programs or services to Indigenous people? If so, in what circumstances?

Yes. The Court should be required to give consideration to any report from a Aboriginal Community Justice Group or any other group providing programs and services to Indigenous people, a report from a Community Justice Advisory Group or any advice from an Elder or respected community member.

The Court should have regard to the factors in such reports identified by the authors of the report as relevant, in their view, to the question of the liberty of the person.

14.3 Are any changes to bail law required to facilitate administrative or support arrangements in relation to Indigenous people?

That the NSW Government ensure Community Justice Groups are sufficiently resourced to;

A. Provide submissions to the Court in relation to issues arising under the Bail Act, including but not limited to Bail Conditions, support, diversionary or treatment programs that are available in the community, and the "interests of the community" criteria contained in section 32; and

B. Provide assistance to Indigenous persons on bail in the community, including assistance to ensure their attendance at Court.

20. Other Submissions

20.1 Please make any other submissions that are considered to be relevant to the Commission's review.

Bail Accommodation

That the State Government finance and expand Bail Support Project Pilots and Bail Accommodation projects such as the Bourke Bail Support Project Pilot, which, importantly and rightly, is a community led project to address issues of bail in Bourke.

Establishment of a Police Protocol

As noted above, the manner in which Indigenous people are policed is extremely problematic. There are historical reasons for feelings of distrust and anger on both

sides of the equation. The role of Police as the 'gate-keepers' of the criminal justice system, and the effect that early contact with that system has on Indigenous people, are compelling reasons for establishing a protocol between Police and Indigenous people as to the circumstances in which Police approach Indigenous people. We understand that similar protocols exist in relation to homeless people in Victoria, and that they have been effective.

Whilst such a protocol should be negotiated between Indigenous community groups and NSW Police, we propose that its content may be that Police are not to approach an Indigenous person unless (in the absence of evidence of a crime in progress, or having been recently committed) their assistance is sought by an Indigenous person.

Retention of Police within rural communities and Police Liaison officers

A theme common to the communities visited by Jumbunna was that Police do not remain long enough within a community to establish effective rapport with members of that community:[30]

> *The vital role of Aboriginal Community Liaison Officers (ACLOs) and Aboriginal police was highlighted as critical to improving community relations. Several people emphasised the value of Aboriginal people in the police force and the benefits that can be derived from their expertise. Aboriginal police were said to manage things differently because they "operate in a different paradigm, with different focus". It was suggested that police reconsider their Indigenous employment strategies to include more ACLOs, with some of the ACLO's training to be police at the same time.*
>
> *Bourke was described as a "learning area for probationary constables". However, the importance of recruiting experienced police was highlighted by many people, particularly in their attitudes towards Aboriginal people and willingness to engage with the community. It was said that it is better for everybody if police get out to meet people and develop relationships:*
>
> > *"I don't really see a problem with too many police but I think it is about the sort of police they are. You've got to have the right sort of police out here to do any good. You get someone straight from the city and they've got different attitudes."*
> > Aboriginal Community Liaison Officer, NSW Police, Bourke
> >
> > *"I think our communication is very good. There are some police officers who work well in Aboriginal communities and the community has the confidence to report complaints against police and crimes which is important. It's never going to 100 per cent, given the history of police and Aboriginal people."*
> > Police Officer, NSW Police, Bourke

In our view NSW Police postings to such communities should be for a standard three (3) year term.

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[30] McCausland and Vivian, *Bourke and Lightning Ridge Community Report,* page 19.

Recognition of cultural differences in use of space – criminalising public drunkenness

We are extremely concerned about the proposal by this Government to re-criminalise public drunkenness in New South Wales, particularly in light of the recent broadening of 'move-on' powers in New South Wales. This proposal is in clear contradiction to the recommendations from RCIADIC that such laws unfairly target Aboriginal people, particularly given that offences under the Act would be essentially proven by a failure of an individual or group to obey a 'move on' direction from Police. These powers have always resulted in the criminalisation of Indigenous people, who have both cultural and economic reasons for celebrating in public. If, as we expect, the Government intends to enact this legislation notwithstanding the dangers involved, the State government must insert a requirement that Police record the race of any individual given a move-on direction and the reason for that direction.

Availability of Sentencing Options

There are significant concerns among the legal profession that many of the sentencing options that should be available to courts under the *Crimes (Sentencing Procedure) Act* are not available due to a lack of resources in the department of probation and parole. These concerns were echoed in communications with Jumbunna research staff;

> *A number of people we spoke to who worked in the criminal justice system identified the lack of available and appropriate options – both in terms of prevention and diversion in sentencing – as a serious shortcoming in Wilcannia.*[31]

...

> *As reported in other rural communities, magistrates are limited in their sentencing options as diversionary programs are largely not available and incarceration is a regular outcome.*[32]

It is imperative that the NSW Government fund Probation and Parole services sufficiently to ensure that non-custodial sentencing options are available to Magistrates. The consequence of failing to do so is that Courts are forced to impose sentences that are too harsh, or that lack the intended deterrence value. People should not be denied equal rights to justice merely because of their postcode.

In addition to ensuring that the sentencing options contemplated by the *Crimes (Sentencing Procedure) Act* are in fact available to Magistrates, we also support an amendment of that Act to reflect the suggestion of the NSW Bar Association that the sentencing Act be amended to reflect the principle of imprisonment as a last resort, and to emphasise, in the case of Indigenous people, treatment and rehabilitation over deterrence or punishment.

Independent Police Oversight Body

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[31] Vivian and Schneirer, *Wilcannia and Menindee Community Report*, page 26.
[32] Ibid.

The Government should establish a Police oversight body that is culturally, practically and legally independent of the Police. Given the huge significance of the Police's role as gate-keepers to the criminal justice system, and the established fact that the exercise by Police of their discretions as to charging and bailing indigenous people operates to their detriment, it is essential that the Police exercise of powers under the Bail Act be susceptible to genuinely independent oversight and review.

Police powers of Arrest

Police arrest powers should be limited to arrest for offences that carry penalties greater than fines, and neither the Police nor the Court should be entitled to refuse Bail on any grounds to individuals who have been charged with such offences. Where the legislature has determined the seriousness of an offence to warrant the imposition of a fine only, there is no basis for the taking of a person's liberty in relation to such an offence. Police should not have the capacity to arrest, detain and refuse bail to individuals who have missed court dates, where those court dates relate to offences for which the penalty is limited to a fine. If Police pick up individuals in such circumstances, their powers should be limited to the temporary arrest and an immediate requirement to transport the suspect to a Court.

These submissions were prepared by Craig Longman on behalf of Jumbunna Indigenous House of Learning, Research Unit. The author would be happy to provide the committee with further information on any of the matters raised above.

Yours Sincerely,

Professor Larissa Behrendt.

Craig Longman.