

Women in Prison in Australia

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Acknowledge the Tradition Owners of the land, the Ngunnawal, Elders Past and Present.

Introduction

The vast majority of women prisoners in Australia (and internationally) have committed minor, non-violent offences. This is evidenced by the fact that the average duration of stay in prison for women in South East Queensland (SEQ) during 2015 was 4.96 weeks, and 94% of women in custody in SEQ in 2014-15 served 12 months or less¹. The few serious violent crimes committed by women are usually against violent partners: women rarely commit serious violent acts toward strangers.

We are not talking about *major crime figures* or a *threat to community safety* here!

Women prisoners and victims of abuse

It is impossible to talk about criminalised women, without examining the factors that contribute to their offending. The criminogenic profile of women prisoners is profoundly different from that of male prisoners. Perhaps the most important difference relates to women's past experience of violence.

Repeated studies have found that at least 85% of women prisoners in Australia are *victims of abuse*, with most having experienced multiple forms and incidents of violence. This data is based on government and academic research figures – in my experience, many women are unwilling to share personal information with authorities, and I believe that the finding of Sisters Inside's own survey, where 98% of women prisoners in Queensland reported being a past victim of violence, is more accurate. In Queensland, independent surveys of women prisoners have found that up to 89% had been sexually abused and up to 85% had experienced childhood sexual abuse (with 37% of these having been abused before the age of 5). These findings are consistent with independent studies of women prisoners in other states and territories, and worldwide.

It has been widely demonstrated that Aboriginal and Torres Strait Islander women experience higher rates of domestic and family violence (DFV) than non-Indigenous women². Indigenous women prisoners generally report a significant history of trauma and abuse beginning in childhood³. Many face high levels of ongoing family violence which have been connected to their

offences and convictions⁴, with 80% of women prisoners in one NSW study stating that they believed their offending was a direct consequence of their victimisation⁵.

In other words, the term *victim of abuse* is almost synonymous with *woman prisoner*, when discussing the criminal justice system!

Our panel topic today is: *Can sentencing of women who are 'victims of abuse' accommodate the social problems that underpin the offending?* This implies that violence survivors are a sub-set of the wider cohort of women prisoners. In fact, our discussions must focus on all women prisoners, because (almost) all women prisoners are *victims of abuse*.

Women *victims of abuse* are increasingly being imprisoned

ABS data demonstrates that between over the past 10 years (2005 to 2015) women's imprisonment rate in Australia has increased by more than 50% (from 24 to 38 prisoners per 100,000 female adult population) – a much more rapid rise than the male imprisonment rate. 60% of women prisoners (compared with 2% of men) are first time offenders⁶. Of particular concern is decreasing use of alternative sentencing for women⁷.

Queensland data is instructive here. Women comprise approximately 10% of all prisoners in Queensland – up from less than 5% in 1998. According to Queensland Corrective Services (QCS)⁸ the number of women in custody in SEQ has increased by 65% over the past 3 years alone (2012 to 2015).

The imprisonment rate amongst Aboriginal and Torres Strait Islander women is particularly horrifying. Indigenous women are the fastest growing cohort of prisoners in Australia, with imprisonment rates growing faster than both Indigenous men and non-Indigenous women. Indigenous women are even more likely to be imprisoned for minor offences than non-Indigenous women. According to the Law Council of Australia⁹, Indigenous women make up around 2.2 per cent of the overall Australian female population, but around 34 percent of all women prisoners.

Women prisoners are highly socially and economically disadvantaged

It is difficult to overstate how overwhelmingly disadvantaged, women prisoners are. Women prisoners represent the most socially, culturally and economically marginalised populations in Australian society. The literature universally recognises that the majority of women prisoners have a history of¹⁰:

- Poverty - with the majority being dependent on Centrelink benefits and most being in debt upon entry to prison.
- Housing insecurity – with many having been homeless immediately prior to imprisonment.
- Unemployment – with the few who were employed prior to imprisonment, generally having worked in low income jobs.
- Poor educational outcomes – with most having not completed secondary schooling.
- Poor health – with the majority experiencing mental health and/or substance abuse issues.
- Institutional intervention – with more than half having been in state care as a child (and up to 25% having spent time in youth prison).

A significant proportion of women prisoners also face other challenges including an intellectual or learning disability (with various studies finding between 12% and 50% of women prisoners living with one or both of these disabilities). 10% - 15% of women prisoners come from non-English speaking backgrounds. And, the significant majority of women prisoners are mothers of dependent children (with most having been heads of single parent households prior to incarceration)¹¹.

Over recent years, the social and economic pressures on disadvantaged women have increased:

- Measures to directly alleviate poverty have progressively diminished over the past 30 years. These include 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), reduced access to the Parenting Payment, and reduced access to emergency relief funds.
- With reductions in public housing throughout Australia over the past 30 years, most women and families on low incomes are forced to try to access housing through the private rental market.
- The increasing cost of education (and limited access to accredited education and training in women's prisons) has further reduced women's access to education, and consequently, employment.
- Health services are increasingly inaccessible to women, in particular to those with a *dual diagnosis* - both mental health and substance abuse issues.

And, the ongoing intervention of child protection authorities into the lives of women who are imprisoned, even for a very short time, bodes ill for the future women's prison population.

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

The extra disadvantage of Indigenous women prisoners

Aboriginal and Torres Strait Islander women prisoners generally face the same social and economic disadvantages experienced by non-Indigenous women prisoners, but at higher rates¹². Indigenous women continue to be punished for surviving historic oppression and ongoing DFV, racism, and severe disadvantage.

It has been widely recognised that Indigenous communities are over-policed. The impact of this on Indigenous women was highlighted in a 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 ... detention for outstanding warrants was ... 16.5 times (the rate) for Aboriginal women¹³.

Over-policing does not reduce crime in these communities or make them safer to live in, rather it creates a net-widening effect. Many low level crimes that typically remain undetected and untargeted in non-Indigenous communities, result in charges for women living in Indigenous communities. In addition, greater interaction with the police increases the risk of women facing additional charges such as obstruct and/or assault police.

The NSW Aboriginal Justice Advisory Council has highlighted the over use of *move-on* and arrest powers for intoxication with 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.¹⁴

The exercise of police discretion has also been documented to favour non-Indigenous individuals over Aboriginal and Torres Strait Islander people¹⁵.

Why are women *victims of abuse* being imprisoned?

The vast majority of women prisoners have committed, or been charged with, minor non-violent offences. Too often, these have been driven by their lived experience of abuse and the direct

consequences of this victimisation – in particular, poverty, mental health issues and substance abuse.

A clear majority of Queensland women prisoners are not serving substantive sentences. On a single *snapshot day* in 2015, 29% of all women prisoners in Queensland were on remand and 33% had been returned to prison on warrants for parole violations¹⁶. Further, Queensland Corrective Services (QCS) reports that on occasion during 2015, women on remand accounted for up to 40% of the women's prison population in SEQ¹⁷. This indicates that approximately 70% of women prisoners in Queensland at any given time may be in prison either on remand or for parole violations. This is consistent with the available data from other Australian jurisdictions.

Sisters Inside staff have observed many situations where women are being imprisoned on remand due to 2 key factors – homelessness and lack of access to mental health services.

Many criminalised women are homeless and do therefore not have a residential address. Whilst other institutions (such as Centrelink) routinely accept an *address for service* for homeless people, police prosecutors often oppose bail for homeless women, including women charged with extremely minor offences. This, it would appear, is largely a matter of convenience, rather than a proportionate response to the gravity of the charges. Whilst generally having discretion in these matters, the courts have too often remand women into custody for not having an address.

Prisons have also become *de facto* mental institutions, homeless shelters and 'dry out' facilities. The effects of repeated victimisation are well documented and can lead to low self-esteem, anxiety, depression, other mental health issues, and substance abuse. A significant proportion of women prisoners have a *dual diagnosis*. Too many survivors of abuse have found it difficult to access community mental health and substance rehabilitation services. In particular, these two types of services are generally 'siloes', with mental health services refusing to accept patients with substance abuse issues, and rehabilitation facilities refusing to accept patients with mental health issues.

Too many women are also being imprisoned on a return to prison warrant for often minor parole violations. I am aware of many situations where women have been imprisoned for being late for a meeting with their parole officer, having a barely detectable blood/alcohol reading, or similar minor breaches. Decisions about whether or not to issue a warrant for a parole violation is an arbitrary decision and parole officers have little understanding of the severe consequences of their decision for women and their children. It is appalling that arbitrary breaches of parole may account for 1/3 of the women in our prisons.

And ... here's a quick *reality check*. In Queensland alone, imprisonment of women on remand or for parole violations is estimated to cost the Queensland taxpayer almost \$120,000 per day – that is, \$44 million in 2014-15¹⁸. And, this does not include the cost of women serving substantive (albeit short) sentences for minor non-violent offences. This only adds imperative to the question – *What would it take to more justly respond to offending by women victims of abuse?*

Consequences of imprisonment for women *victims of abuse*

In a surprisingly candid interview in last weekend's Guardian newspaper, the outgoing Chief Inspector of Prisons in the United Kingdom, Nick Hardwick, said¹⁹:

I didn't understand the degree to which, once you lock someone up, even in the best prisons for a short period of time, that is a very severe punishment indeed ... It's as bad as you could possibly imagine and possibly more so, and don't think a little flat-screen television in the corner is going to alleviate it, because it doesn't.

What a good prison does is teach you to be a good prisoner, so it teaches you to be compliant, not to use your initiative, to do what you're told, to rein in your emotions, and that isn't necessarily what you need to do to be a good citizen, or a good parent.

(Outgoing Chief Inspector of UK Prisons)

This certainly isn't what women victims of abuse need, in order to be able to establish a violence-free life following release from prison.

Prisons replicate characteristics of violent family situations²⁰. They are based on rigid rules, imposed by authority figures (often in an arbitrary manner), and requiring absolute obedience. Common prison practices, in particular strip-searching, often re-traumatise women with a history of abuse contributing to increased incidents of self-harm²¹. Prison staff typically respond to threatened or actual self-harm, by placing women in isolation – a practice totally contrary to the best medical advice²². And, in some jurisdictions, male officers undertake tasks such as inspecting women's cells at night, observing (often naked) women in isolation cells and participating in strip searches²³. Far from preparing a woman to return to society, they leave her more vulnerable to ongoing abuse than ever before:

- As a result of even a very short period in prison a woman may lose her housing and employment (if she had these prior to imprisonment).
- Many women 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 a woman was participating in education or training, she may permanently lose her place.
- Many (particularly women who went to prison unexpectedly) will have accumulated further debts and a poor credit rating, and have lost most of their household items and personal belongings.
- And, women leave prison with a new or extended criminal record which is an added barrier to accessing employment, housing and services.²⁴

For women leaving prison, these often appear insurmountable obstacles. Many will engage in self harm, and some will commit suicide²⁵. At least 40% will return to prison - 17% within 12 months and 27% within 2 years²⁶. (One major study found that 70% of Aboriginal and Torres Strait Islander women returned to prison within 9 months²⁷.) The prognosis for their children's future lives will have similarly deteriorated - particularly if they were taken into care. The lives of most women and their families will be significantly worse than when they first went to prison. It is hardly surprising that many women feel compelled to return to violent relationships following their release.

Criminogenic consequences of imprisonment

Imprisonment is, in and of itself, criminogenic.

QCS data indicates that 70% of women prisoners in SEQ during 2015 had been previously imprisoned²⁸. Imprisonment reduces women's prospects of employment, increases their vulnerability to homelessness and living in a violent setting, contributes to deterioration in their emotional health, and increases their risk of minor offending (e.g. substance abuse or theft). Imprisonment increases women's exposure to criminogenic factors and, therefore, the risk of recidivism. The Law Council provides evidence to demonstrate that imprisonment of Aboriginal and Torres Strait Islander women often has a criminogenic effect, and highlights the intergenerational transmission of the same criminogenic factors²⁹.

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 children³⁰. This, in part, is likely due to the number of children taken into state care as a result of their mother's (even brief) imprisonment and the associated increased risk of youth and adult criminalisation.

Family breakdown during a mother's imprisonment is further exacerbated by the relatively small number of women's prisons and their typical location in areas inaccessible by public transport. This particularly impacts on Indigenous families from remote communities - who, in addition to

being hundreds or thousands of kilometres from women's prisons, are limited by the small number of phones in many communities.

Over the past 20 years, Sisters Inside has engaged with up to 4 generations of some criminalised families. Many of these families have members involved in 3 systems - the child protection system, the youth 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 subsequently been criminalised.

With every new generation of women prisoners the net widens. Increasing numbers of individuals and families are being drawn into the cycle of adult and youth criminalisation, child protection, violence, poverty and despair - at great cost to the state³¹. At the same time, these women are being drawn away from economic productivity and social contribution.

The economic implications of sentencing decisions

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 realistic costs for a single family over a 10 year period (2000–2010):

Over 15 years ago, I 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?* I had a particular Aboriginal family in mind when I replied. This family was headed by a single mother with 4 school age children. I 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 secure funding on the basis that it 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 youth justice and criminal justice systems. All 4 children had been in the care of the State for significant periods. All 4 had been victims of violence. 3 had been imprisoned as both juveniles and adults. 2 had been imprisoned more than once. 2 were 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 a 10 years period, family members had collectively spend a total of at least one year in adult prison at a national average cost of almost \$70,000 (based on the 2010-11 costs). 3 of the children had collectively spent at least one year in youth prisons, at a cost of almost \$200,000 (at the then NSW estimate of the cost of youth imprisonment).

In other words, the immediate family's imprisonment costs alone 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.

So ... what does imprisoning women currently cost us as a nation?

According to the latest Productivity Commission Report on Government Services³² in 2014-15, it cost an average of \$300 per prisoner per day to keep someone in prison. A total of \$4.4 billion was spent on correctional services – with 94%³³ of this spent on imprisonment. In other words, *corrective services* cost each Australian resident (of all ages) an average of \$155.83 in 2014-15 ... over \$600 annually for a family of 4. And, these are just the direct costs of corrective services. They do not include costs associated with police and courts. They do not include the collateral

costs of imprisonment, particularly for women and children, in the child protection, health, welfare, education and youth justice systems. Nor do they include the cost of lost productivity to our nation.

Alternative sentences are significantly cheaper than imprisonment. In 2014-15, it cost \$24 per day to manage someone in community corrections. Yet, only 6% of the overall *corrections* expenditure was in this area.

Can sentencing of women *victims of abuse* accommodate the social problems that underpin the offending?

I recognise that courts are the 'last point of call' in a long process of systemic failures for criminalised women, and are often constrained by the law when making sentencing decisions. On the other hand, there are many areas in which the judiciary holds discretion, which are currently contributing toward the growing rates of imprisonment of women victims of abuse, particularly on remand.

In her earlier panel presentation, Felicity Gerry³⁴ provided a valuable overview of some of Australia's international obligations relevant to charged and convicted women. In particular, the United Nations Bangkok Rules (to which Australia is a signatory) highlight the importance of 2 principles:

- *Judges should approach sentencing a woman to prison as exceptional.*
- *Judges can approach a sentencing exercise differently when the offender is a woman.*

As Felicity noted:

- *True gender equality does not mean treating everyone the same. Treating women offenders in the same way as men will not achieve gender equality and the circumstances in which women commit criminal offences are different from men.*
- *A considerable proportion of women offenders are in prison as a direct or indirect result of multiple layers of discrimination and deprivation.*

A human rights approach to sentencing could play a valuable role in improving justice for women (and their children) who have already faced so much injustice in their lives. Criminalised women, almost universally, have begun life from an unjust starting point and have generally lived with severe disadvantage all their lives. There are many situations in which the judiciary can contribute to reducing the number of women prisoners – particularly through approving bail and giving non-custodial sentences for offences.

Nick Hardwick (outgoing Chief Inspector of Prisons in the UK) accepts that some minor offenders can be a *nuisance*, but he still insists that they should not be in prison for minor crimes, proposing that a *very large proportion of the prison population* in England and Wales should not be in prison at all:

*It is striking the number of people in prison who are obviously ill, who have either got mental health problems or substance-abuse issues. ... At one end of the spectrum, you have people who are clearly ill who definitely shouldn't be in prison, and we need to find ways of diverting them out of the criminal justice system. ... Then there is a bigger group in the middle who may not be ill 'per se', but certainly struggle to cope. If we had better care in the community ... then some of those people could be managed much better in the community than prison.*³⁵

(Outgoing Chief Inspector of UK Prisons)

This is equally the case in Australia. The over-imprisonment of women for disadvantage (often driven by being a victim of violence) and, for many, their inequitable treatment under the law, has produced a self-perpetuating system which will continue to 'spiral out of control' and 'drain the

public purse dry' without active intervention to address this issue. The judiciary can play a valuable role in this intervention.

Further, the majority of criminalised women are mothers of dependent children, many of whom are already traumatised by DFV. Sentencing decisions have a profound short and long term effect for these children. The multi-generational impact of the imprisonment of mothers (including ultimate disproportionate imprisonment rates amongst their children) could be dramatically reduced if primary parenting 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 dependents³⁶, some courts have seen this as only applying to *exceptional circumstances*³⁷. At a state level, judges and magistrates have repeatedly asserted that they either cannot, 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*³⁸. There is clearly a need for judicial education about the realities of imprisonment, the over-imprisonment of women, and the effect of imprisonment as punishment for children.

Is enough being done to keep women from returning to prison?

Rising imprisonment rates for women victims of abuse clearly demonstrate that not enough is being done to keep women from being initially imprisoned and/or returning to prison. Prisons are inherently criminogenic. The best way to reduce recidivism is not to send women to prison in the first place! Similar strategies can be employed to avoid the harm of imprisonment from the outset and to reduce the risk of women returning to prison. The main difference is that more intensive, and therefore costly, services are required for former women prisoners, due to the harm already done by their prison experience.

The so-called *transition support* available to women post-release is entirely inadequate to meet the complex and inter-related needs of women, let alone their children³⁹. These include new needs directly resulting from imprisonment - practical consequences (e.g. accumulated debt or homelessness as a result of unexpected imprisonment) and emotional consequences of the trauma of imprisonment (e.g. re-engagement with past experiences of violence and sexual assault).

There are viable, evidence-based alternatives to imprisonment which are demonstrably more effective in reducing crime. These alternatives generally have the added benefit of short and long term cost savings. The Aboriginal and Torres Strait Islander Commissioner, for example, 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 children of their mother's imprisonment carried a cost of more than £17 million over a 10 year period⁴⁰.

A variety of diversion courts exist across Australian jurisdictions, with some demonstrating significant success. In Queensland for example, (prior to its cessation by the former LNP Government) the Drug Court alone was found to have diverted 155 people from prison, saving the equivalent of 588 years of imprisonment⁴¹. Similarly, the Sisters Inside Special Circumstances Court Program, which (in partnership with the SCC) assisted women to access housing, substance abuse and mental health services *in lieu* of imprisonment, achieved a 96% success rate in diverting women from prison. 239 of the 240 women involved (30% of whom were Indigenous women) did not reoffend, or had a reduced rate of offending, over the 3 year life of the project. This Program saved at least \$250,000 in imprisonment costs alone⁴².

The effects of repeated victimisation are well documented and include financial dependency, mental health issues and substance abuse. These factors are also associated with an increased risk of offending (and, in the case of substance abuse, can constitute an offence in itself). Therefore many women are concurrently stuck in 2 cycles - of abuse, and of offending in an effort to cope with this abuse.

Too often, the effectiveness of diversion courts (and alternate sentencing options more widely) is limited by the very thing that contributed to women's offending in the first place:

- Lack of appropriate housing, drug rehabilitation programs and mental health services, and/or
- Services which are unwilling to work alongside women with complex, interrelated needs.
- Limited resourcing of flexible, holistic, DFV-informed, women-friendly services with which women willingly engage.

Substantial reinvestment of justice funds into preventative services would optimise the capacity of specialist diversion courts, and courts more widely, to contribute to better outcomes for women and child victims of abuse.

The families of women prisoners overwhelmingly face social disadvantage and inequities in areas such as income, housing, employment and health. A direct investment in these areas can be expected pay a dividend over time through reduced imprisonment rates amongst women and children. For example:

Sisters Inside's *3-2-1 Transition Support Program* was an 18 month pilot diversionary project funded by the POCA Crime Prevention Fund to work with highly criminalised families. In order to participate in this program, the woman had to be a victim of violence, have at least one dependent child, have been imprisoned only once, and be at risk of recidivism. The project worked intensively with the mother and up to 15 *family members* nominated by the woman – both individually and as a whole family – for 6 months following the woman's release from prison. Support focused on addressing the factors known to place family members at risk of offending:

- Establishing the woman's identification, housing and income immediately upon release from prison.
- Advocacy with other service providers (e.g. housing, mental health, financial assistance, child protection, substance abuse, schools, family support/parenting).
- Rapid response intervention and support with individuals and whole families using Sisters Inside's *Inclusive Support* model⁴³.
- Targeted support to address the particular issues faced by the children, including loss of attachment bond with parents, mental health problems, physical health problems, behavioural issues and school-related problems.

Throughout the life of this project, no participating woman or family member returned to prison. Critical to this success was access to a flexible brokerage budget of \$15,000 per family to cover costs to address service gaps (e.g. accessing personal identification, debt assistance, education costs, respite, purchase of private health services or counselling). Families' voluntary participation in the project, and Sisters Inside's flexible, responsive, respectful model of service were also central: 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 Aboriginal and Torres Strait Islander Commissioner's 2009 report 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)

Justice reinvestment 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 the substantial resources needed for service delivery.

Conclusion

In 2014-15 imprisonment of women on remand or for (often minor) parole violations in SEQ cost the Queensland taxpayer almost \$120,000 per day – that is, \$44 million⁴⁴ ... and this doesn't take account of the women serving substantive sentences for minor, non-violent offences.

The evidence is clear ... this money could have been far better spent enabling women to avoid the causes of criminalisation – violence, poverty, homelessness, mental health issues, substance abuse ...

The judiciary can play a significant role in reducing the social and economic costs of counter-productive imprisonment in Australia – to women, their families, their communities, taxpayers and the wider Australian society.

So what can we do?

- Recognise that most criminalised women are victims of violent crime.
- Stop sending women *victims of abuse* to prison!

Endnotes

¹ Queensland Corrective Services (2015) *SEQ Womens Re-entry Services: Industry Briefing*, 17 December, Department of Justice and Attorney-General (ppt)

² Anti-Discrimination Commission Queensland (2006) *Women in Prison: A Report by the Anti-Discrimination Commission Queensland*, ADCQ, Brisbane at www.adcq.qld.gov.au/pubs/WIP_report.pdf

³ Aboriginal and Torres Strait Islander Justice Commissioner (2009) *Social Justice Report 2009*, Australian Human Rights Commission, Sydney at www.hreoc.gov.au/Social_Justice/sj_report/sjreport09/index.html

⁴ Victorian Department of Justice (2006) *Victorian Aboriginal Justice Agreement - Phase 2*, Victorian Department of Justice Melbourne

⁵ NSW Aboriginal Justice Advisory council (2001) *Holistic Community Justice: A proposal response to Aboriginal family violence*, NSW Attorney General's Department, Sydney

⁶ James cited in Cerveri, Pia; Colvin, Kate; Dias, Marika; George, Amanda; Hanna, Jiselle; Jubb, Greta; Vidyasagar, Arati; and Weigall, Claire (2005) *Request for a Systemic Review of Discrimination Against Women in Victorian Prisons*, The Federation of Community Legal Centres, and The Victorian Council of Social Service, Melbourne at www.sistersinside.com.au/media/VICComplaint.pdf

⁷ Quixley, Suzi & Kilroy, Debbie (2011) *Working with Criminalised and Marginalised Women: A starting point*, 2nd Edition, Sisters Inside, Brisbane at www.sistersinside.com.au/resources.htm

⁸ Queensland Corrective Services (2015) *SEQ Womens Re-entry Services: Industry Briefing*, 17 December, Department of Justice and Attorney-General (ppt)

⁹ Law Council of Australia (2015) *Addressing Indigenous Imprisonment National Symposium – Discussion Paper* (Nov), www.lawcouncil.asn.au/lawcouncil/images/II_Discussion_Paper_23_11.pdf

¹⁰ Evidence detailed in Sisters Inside's submissions to the *National Human Rights Consultation* (2009) and the *Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia*, The Senate

Standing Committee on Legal and Constitutional Affairs (2013) at <http://www.sistersinside.com.au/reports.htm>

¹¹ Multiple studies cited in Quixley & Kilroy 2011 (ibid); ADCQ 2006 (ibid); and Cerveri et al 2005 (ibid).

¹² Queensland Child Protection Commission of Inquiry (2012), *Queensland Child Protection Commission of Inquiry: Emerging Issues*, State of Queensland, September at www.childprotectioninquiry.qld.gov.au/_data/assets/pdf_file/0007/162844/QCPCI_Issues_paper.pdf. 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%) - Heffernan, E.; Andersen, K.; Dev, A.; & Kinner, S. (2012) *Prevalence of mental illness among Aboriginal and Torres Strait Islander people in Queensland prisons*, Medical Journal of Australia, 39.
- Indigenous women prisoners are more likely to be a victim of a violence crime, including physical and sexual abuse than non-Indigenous women - ADCQ 2006 (ibid).
- At least 80% of the Indigenous women prisoners are believed to be mothers of dependent children - Behrendt, L.; Cunneen, C. & Liebesman, T. (2009) *Indigenous Legal Relations in Australia*, Oxford University Press, Melbourne.
- And, some had carer responsibilities for other family members prior to imprisonment - Goulding, Dot (2004) *Severed Connections: An Exploration of the Impact of Imprisonment on Women's Familial and Social Connectedness*, Murdoch University, Perth at <http://researchrepository.murdoch.edu.au/10995/>.
- ¹³ Newnam, K (2008) *Aboriginal deaths in custody: Protest to demand new justice*, Direct Action at http://directaction.org.au/issue4/aboriginal_deaths_in_custody_protests_to_demand_justice

¹⁴ NSW Aboriginal Justice Advisory Council (2001) *Holistic Community Justice: A proposal response to Aboriginal family violence*, NSW Attorney General's Department, Sydney

¹⁵ Cunneen, C. & Luke, G. (1995) *Discretionary decisions in juvenile justice and the criminalisation of Indigenous young people*, Youth Studies Australia, 14

¹⁶ 23 September 2015 – data via email from Ron McDonald (Principal Media Officer, Communication Services Branch, Department of Justice and Attorney-General) to Debbie Kilroy on 26 October 2015.

¹⁷ Queensland Corrective Services (2015) *SEQ Womens Re-entry Services: Industry Briefing, 17 December*, Department of Justice and Attorney-General (ppt)

¹⁸ Based on the snapshot day (23 September 2015). 405 women in prison in Queensland were not serving substantive sentences: of these, 189 were on remand and 216 had breached parole. According to the Productivity Commission (2016) *Report on Government Services 2016* (Volume C, Chapter 8 – Corrective Services), Australian Government at <http://www.pc.gov.au/research/ongoing/report-on-government-services/2016/justice/corrective-services> the cost of imprisonment in Queensland is \$296 per prisoner per day. It therefore cost \$55,944 on that day (\$20,419,560 annually) to imprison women on remand. It cost \$63,936 on that day (\$23,336,640 annually) to imprison women for breaches of parole. Total cost - \$119,880 per day (\$43,756,200 for 2014-15) assuming similar imprisonment rates for a full year.

¹⁹ Interview by Simon Hattenstone & Eric Allison, The Guardian, Saturday 30 January 2016

http://www.theguardian.com/society/2016/jan/29/prisons-inspector-nick-hardwick-interview?CMP=share_btn_fb

²⁰ Connor 1997 cited in Byrne, M. & Howells, K. (2000) *Key Issues in the Provision of Correctional Services of Women*, Paper presented at the Women in Corrections: Staff and Clients Conference, Australian Institute of Criminology and Department for Correctional Services, SA, Adelaide, 31 October - 1 November, 2000.

<http://www.aic.gov.au/conferences/womencorrections/byrnhowe.pdf>

²¹ Pereira, C. (2001) *Strip Searching as Sexual Assault*, Women in Prison Journal, Volume 2, October 2001. (http://findarticles.com/p/articles/mi_hb6655/is_2_27/ai_n28885411/?tag=content;col1)

²² Australian Medical Association (2012) *AMA Position Statement on Health and the Criminal Justice System*, AMA at <https://ama.com.au/position-statement/health-and-criminal-justice-system-2012>

²³ ADCQ 2006 (ibid)

²⁴ Baldry, Eileen (2007) *Recidivism and the Role of Social Factors Post-release*, University of New South Wales at www.sydneyshove.org/Social_Factors_Post_Release.pdf. These align directly with the key predictors of recidivism amongst former prisoners, identified by Baldry 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.

²⁵ Goulding 2004 (ibid)

²⁶ 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 (ibid)); another found a 43% recidivism rate amongst women, which is lower than men (Johnson 2004 cited in Payne 2007). Return rates within 12 and 24 months were also findings by Johnson 2004 (cited in Payne 2007).

²⁷ Baldry 2007 (ibid)

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- ²⁸ QCS 2015 (ibid)
- ²⁹ Law Council of Australia 2015 (ibid)
- ³⁰ Shine for Kids (Children of Prisoners Support Group) cited in Aboriginal and Torres Strait Islander Justice Commissioner 2009 (ibid).
- ³¹ Queensland Child Protection Commission of Inquiry 2012 (ibid)
- ³² Productivity Commission 2016 (ibid - Tables 8A.1 – 8A.13)
- ³³ \$3.8 billion compared with expenditure of \$406 million, nationally, on community corrections.
- ³⁴ Gerry, Felicity (2016) *Women Offenders*, ppt presentation at National Judicial College of Australia Conference 6th and 7th February 2016 (see also Conference Paper)
- ³⁵ Interview by Simon Hattenstone & Eric Allison, The Guardian, Saturday 30 January 2016
http://www.theguardian.com/society/2016/jan/29/prisons-inspector-nick-hardwick-interview?CMP=share_btn_fb
- ³⁶ 29.25 Section 16A92) (p) cited in Flat Out Inc & VACRO (2006) *Children: Unintended Victims of Legal Process – A Review of Policies and Legislation Affecting Children with Incarcerated Parents*, Discussion Paper, Flat Out Inc and the Victorian Association for the Care and Resettlement of Offenders (VACRO), Melbourne.
- ³⁷ Australian Law Reform Commission cited in Flat Out Inc & VACRO 2006 (ibid)
- ³⁸ Cited in Flat Out Inc & VACRO 2006 (ibid)
- ³⁹ See, for example, Goulding 2004 (ibid) and Baldry et al 2007 (ibid)
- ⁴⁰ New Economics Foundation 2008 summarised in Aboriginal and Torres Strait Islander Justice Commissioner 2009 (ibid)
- ⁴¹ Magistrate's Court of Queensland (2011) *Magistrate's Court Annual Report 2010-11*, Brisbane. 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 diversion courts to be effective, they need access to services that address the underlying issues which lead to offending.
- ⁴² Quixley, Suzi (2011) *How We Do It: The SIS SCC Program*, Sisters Inside, Brisbane at:
www.sistersinside.com.au/reports.htm
- ⁴³ Sisters Inside (2010) *Inclusive Support: A Responsive Alternative to Case Management*, Sisters Inside, Brisbane at www.sistersinside.com.au/reports.htm
- ⁴⁴ 405 women in prison in Queensland on 23 September 2015 were not serving substantive sentences: of these, 189 were on remand and 216 had breached parole. The cost of imprisonment in Queensland is \$296 per prisoner per day. It therefore cost \$55,944 per day (\$20,419,560 annually) to imprison women on remand in 2015. It cost \$63,936 per day (\$23,336,640 annually) to imprison women for breaches of parole in 2015. Total cost - \$119,880 per day/\$43,756,200 for 2014-15.