

Mental Health Legal Centre/Inside Access/Centre for Innovative Justice

Submission to Family Violence Royal Commission

Friday, 29 May 2015

Summary

The purpose of this submission is to highlight the way in which family violence features in the lives of women in Victorian prisons. Correspondingly, it highlights the opportunity that exists for authorities to support this particular group of women and, in doing so, mitigate not only the violence's damaging effects on the individuals concerned, but the broader impact of their offending.

The submission explores research which indicates the sizeable proportion of women in custodial environments who are or have been victims of family or sexual violence, including as children. It notes the way in which complex trauma – which is often the result of such experiences - contributes to women's offending and imprisonment, as well as compounding the negative effects of the prison environment, and disadvantage and poverty upon release. It further notes the way in which family violence can be a direct cause of offending, as well as a direct impediment to women's successful reintegration into the community.

The submission then briefly documents an analysis of 50 randomly selected case files concerning civil legal matters with which women at the Dame Phyllis Frost Centre have sought assistance from the Mental Health Legal Centre's Inside Access program. The histories documented were not taken for the purposes of gaining information about family violence specifically. Rather, clients sought legal assistance with a range of civil legal matters, including divorce and property settlement, housing and infringements, as well as applications for victims of crime compensation.

Family violence emerged as a factor in 44% of the files. That this information was gleaned from legal case notes alone suggests that its prevalence is even higher than the bare figures reveal. More detailed interviews with Inside Access's lawyers, meanwhile, revealed family violence as a significant underlying factor across the breadth of the service's work - confirming the need not only for essential programs like Inside Access, but for a broader investment in targeted and informed support for women in the Corrections environment.

Contributors to the submission

This submission has been developed through collaboration between the Inside Access program (run by the Mental Health Legal Centre) and the Centre for Innovative Justice at RMIT University. The Inside Access lawyers are Margot Powell (Inside Access Coordinator) and Shani Williams (lawyer). Staff from the CIJ who collaborated with Inside Access to produce this submission are Elena Campbell, Stan Winford and Jessica Richter, with important contributions from criminology, social work and international studies placement students.

Mental Health Legal Centre

The Mental Health Legal Centre (MHLC) promotes the rights of people who experience mental illness and provides a free legal service to anyone who has a legal problem relating to their mental illness. The MHLC assists with telephone legal advice and referral, as well as general inquiries about mental health and the law. The MHLC also assists with representation at Mental Health Tribunal hearings, either through staff lawyers or external lawyers acting pro bono.

Inside Access

Inside Access is a program run by the MHLC which provides free civil legal services to people experiencing mental health issues in Victorian correctional and forensic facilities. The aim of the service is to support the eventual transition of inmates back into the community and reduce the likelihood of reoffending. With the support of Corrections Victoria, the program visits Port Phillip, Thomas Embling Hospital, Metropolitan Remand Centre, Barwon and Hopkins correctional facilities, as well as the Melbourne Assessment Prison on an as-needs basis. In particular, however, Inside Access is the only civil legal service that routinely visits the Dame Phyllis Frost Centre (DPFC), attending on a fortnightly basis to provide advice and case work. Inside Access has provided this service for approximately six years. Neither Inside Access nor the MHLC currently receive state government funding. The quotes highlighted in colour throughout this submission are from Inside Access lawyers interviewed by the CIJ for the purposes of this submission.

Centre for Innovative Justice

The Centre for Innovative Justice (CIJ), based at RMIT University, advocates, conducts research, translates this research and participates in teaching and student supervision, all to find innovative and workable solutions to complex problems in the justice system. The CIJ's focus is on identifying alternatives to the traditional approaches to criminal justice, civil dispute resolution and legal service provision. Its aim is to develop and promote strategies that address the factors which propel people into contact with the justice system.

The Link

The CIJ and MHLC have formed a collaborative working relationship, with the organisations now co-located. RMIT provides accommodation for the MHLC, while the MHLC in turn provides clinical experience for RMIT students from a range of disciplines such as law, criminology and social work. Some of this includes visiting clients at DPFC through the Inside Access program. The CIJ and MHLC both aim to prevent unnecessary interaction with the justice system, as well as to facilitate opportunities for people to resolve disputes, assume control of their own lives and avoid further offending behavior. In particular, the CIJ and MHLC believe that the number of people with mental health problems in Victoria's prison systems signals a challenge that policy makers *must* address.

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Women in prison – a snapshot

Many factors bring people into contact with the criminal justice system and, ultimately, into the custody of the Corrections system. Victoria's prison population has rapidly increased in recent years and, while this is partly the result of legislative change and sentencing practices, the impact of any changes of this nature are usually felt by certain sectors of the population.

Far from the serious offenders that usually come to public attention, the majority of individuals contributing to this increase have been convicted for reasonably low level re-offending - the convergence of mental illness, Acquired Brain Injuries (ABIs), homelessness, alcohol and substance abuse and other forms of disadvantage increasing the likelihood that people will fall into anti-social and, ultimately, criminal behaviour.

This means that in Victoria, as elsewhere, prisons are largely populated by individuals experiencing a spectrum of social and economic disadvantage. For example, one survey of NSW prisons revealed that:

- around half of the inmates did not finish Year 10 of schooling
- just over one in ten were homeless immediately prior to incarceration
- half of the male population and two-thirds of the female population were unemployed
- a third overall had been placed in care as juveniles
- just under one in five had a history of parental incarceration
- the majority had used illicit drugs and a substantial number used alcohol at high risk levels
- almost half reported having been assessed by a doctor or psychiatrist for a mental health problem.¹

These figures are reflected in the Victorian context. A recent study indicated that an extraordinary 42% of Victoria's male prison population and 33% of Victoria's female prison population had an ABI.² The number of prisoners with mental health problems is also well documented, with rates of major mental disorders in offender populations estimated to be three to five times higher than in the general population.³

Meanwhile, a recent report by the Victorian Ombudsman on the rehabilitation and reintegration of prisoners also found that, in general terms, the state's prison population has lower levels of literacy, numeracy and educational achievement than the broader population. Specifically, over half of those voluntarily assessed had literacy and numeracy levels requiring intensive support, while Year 12 completion rates amongst

¹ D Indig, L Topp, B Ross, H Mamoon, B Border, S Kumar & M McNamara (2010) *2009 NSW Inmate Health Survey: Key Findings Report*, Justice Health, Sydney.

² Martin Jackson, Glen Hardy, Peter Persson and Shasta Holland, 'Acquired Brain Injury in the Victorian Prison System' Corrections Victoria Research Paper Series Paper No. 04 April 2011, p 6. At https://assets.justice.vic.gov.au/corrections/resources/36d7e731-e819-4ed3-972d-269b829b952d/acquired_brain_injury_in_the_victorian_prison_system.pdf

³ James RP Ogloff, Michael R Davis, George Rivers and Stuart Ross, 'The Identification of Mental Disorders in the Criminal Justice System' *Australian Institute of Criminology: Trends and Issues in Crime and Criminal Justice* 2007 no 334.

prisoners have sat between five and seven per cent in the last decade compared with completion rates amongst the general population between 20-24 years, which sat at 90.1% in 2013.⁴

Despite similarities, however, the profile of female and male offenders is fundamentally different in a number of significant ways. In fact, studies from a range of international contexts identify that ‘when compared to male offenders, women offenders demonstrate higher levels of previous victimisation, poor mental health and serious mental illness, substance misuse, unemployment and low educational attainment’.⁵

Women’s Health Victoria notes that:

*Women prisoners have been found to be 1.7 times more likely to have a mental illness than men prisoners, and non-Aboriginal women are significantly more likely than non-Aboriginal men to have attempted suicide. One Victorian study found that 84% of women prisoners interviewed met the criteria for having a mental health problem.*⁶

Studies also reveal that women generally differ from male offenders in further ways, in that ‘their time in custody is different, with shorter but more frequent periods of imprisonment’.⁷ Certainly, research suggests that women commit fewer and less serious crimes than men, with non-violent offences, drug offences, fraud and property theft identified as the most common offences amongst women,⁸ although ABS figures indicate that robbery, assault and homicide are on the increase in recent years.⁹

Corrections Victoria’s *Standards for the Management of Women Prisoners in Victoria* explain that:

- women are more likely to be convicted of crimes involving property or drugs which are motivated by poverty, gambling or substance abuse
- women are more likely to have committed their offence whilst under the influence of drugs or to support their drug use
- men’s offending often develops through peer associates while women’s offending develops through relationships with family, partners, colleagues and friends.¹⁰

⁴ Victorian Ombudsman, *Investigation into the Rehabilitation and Reintegration of prisoners in Victoria*, Discussion Paper, October 2014, p 16. At <https://www.ombudsman.vic.gov.au/getattachment/280f4a06-5927-4221-bf64-d884ba6abaf9//publications/discussion-papers/discussion-paper-investigation-into-the-rehabilita.aspx>

⁵ M Stathopoulos, A Quadera, B Fileborn & H Clark, ‘Addressing women’s victimisation histories in custodial settings’, *ACSSA issues*, Australian Centre for the Study of Sexual Assault, No. 13, 2012 p 6-7.

⁶ Women’s Health Victoria – Women and Corrections Gender Impact Assessment 2008. At http://whv.org.au/static/files/assets/ed8eaf9a/Women_and_corrections_GIA.pdf

⁷ Stathopoulos et al, above note 5, p 11.

⁸ Australian Government, Department of Family and Community Services, *Families of Prisoners: Literature Review on Issues and Difficulties*, Occasional Paper No 10 2003. At https://www.dss.gov.au/sites/default/files/documents/05_2012/op10.pdf

⁹ Stathopoulos, above note 5, p 8.

¹⁰ See Corrections Victoria, *Standards for the Management of Women Prisoners in Victoria*, Department of Justice, July 2014, p 10.

Particular groups of women, such as from diverse cultural or linguistic backgrounds, often exhibit types of offending that can be traced to their specific experiences. For example, one Australian Government review noted ‘a marked difference in offending patterns of Indigenous and non-Indigenous women, with Indigenous women frequently being jailed for not paying fines and drunkenness.’¹¹

Notably, in 2011, 17.9% of women prisoners in Victoria were born in Vietnam – a three-fold increase on the proportion in 2007. Drug-related offences such as trafficking and cultivation of cannabis are reported to feature heavily amongst this sector of the prison population, with the main pathways identified as being servicing a gambling debt incurred through gambling addiction, funding a heroin addiction or servicing another form of debt.¹²

Many women offenders, whether in this or other categories, ‘[cycle] in and out of prison’ on short sentences,¹³ with a significant proportion also on remand. Being on remand precludes prisoners from accessing most rehabilitation or treatment services that would otherwise be available.¹⁴ Prisoners formally sentenced to short periods of incarceration are also precluded on a practical basis from accessing these services.¹⁵

To this end, a NSW Parliamentary Select Committee investigating the increase in the state’s prison population in 2002 found that, increasingly, more women and Aboriginal people were serving short sentences for non-serious offences such as driving offences, theft and minor assaults. The Committee calculated that simply abolishing prison sentences of six months or less would immediately bring about a 60% drop in the number of prisoners received into custody weekly.¹⁶

¹¹ Australian Government, above note 8. Indigenous women comprise almost 90% of women in prison in the Northern Territory and 43% in Western Australia. Australian Bureau of Statistics, *Prisoners in Australia*, 2011, Corrective Services Australia, December 2011 (ABS 2012), cited in L Bartels, ‘Painting the picture of Indigenous women in custody in Australia’, *Queensland University Technology, Law and Justice Journal*, 12 (2012), p 1-17. At http://heinonline.org/HOL/Page?handle=hein.journals/qutlj12&div=13&g_sent=1&collection=journals

¹² More than half of the women in this particular study reported that they started drug trafficking to service a gambling debt incurred at Melbourne’s Crown Casino. Roslyn Le, *Risky Business: understanding Vietnamese women’s pathways into the Australian illicit drug trade*, Swinburne University of Technology, Faculty of Health, Arts & Design. At <http://researchbank.swinburne.edu.au/vital/access/manager/Repository/swin:40527>

¹³ Stathopoulos et al, above note 5, p 11.

¹⁴ Ibid.

¹⁵ Ibid. This challenge mirrors a similar one in the male corrections environment in which men sentenced on the basis of family violence related offences are often incarcerated for comparatively short periods of time, thus precluding them from access to the rehabilitation that other violent offenders receive. See Centre for Innovative Justice, *Opportunities for Early Intervention: Bringing perpetrators of family violence into view*, March 2015, RMIT University. At <http://mams.rmit.edu.au/r3qx75qh2913.pdf>

¹⁶ B Lind and S Eyland, NSW Bureau of Crime Statistics and Research, ‘The impact of abolishing short prison sentences’, *Crime and Justice Bulletin*, September 2002.

Certainly, the incarceration of women is on the rise. In the US, the number of incarcerated women has risen significantly faster than the number of incarcerated men, resulting in an 825% increase of women incarcerated since 1973.¹⁷ Closer to home, imprisonment rates for women in Australia increased by 110% and by 343% for Indigenous women over the decade to 2003,¹⁸ while in Victoria the rate of women's imprisonment has grown by 41% in the last decade.¹⁹

¹⁷ B Zust, 'Partner violence, depression and recidivism: the case of incarcerated women and why we need programs designed for them'. *Issues in mental health nursing*, 30 no. 4 (2009) 246-251. At <http://informahealthcare.com/doi/abs/10.1080/01612840802701265>

¹⁸ Human Rights & Equal Opportunity Commission, Aboriginal & Torres Strait Islander Social Justice Commissioner (2004). *Social Justice Report 2003*, Sydney, Australia, p 15. At http://www.humanrights.gov.au/social_justice/sjreport03/index.html

¹⁹ Australian Bureau of Statistics, Prisoners in Australia, 2014. At <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2014~Main%20Features~Sex~10002>

The nexus between family violence, other trauma and female prison populations

Very few of our clients would have come from stable family backgrounds. There's a high incidence of DHS involvement when they're children and...leading on to domestic violence situations in their adult lives....

Studies vary in terms of empirical findings, or the figures that are put forward in terms of experience of family or other forms of interpersonal violence. Some authors suggest that 'exposure to traumatic events is nearly universal among incarcerated women, with studies showing ranges of trauma exposure to be between 77% and 90%'.²⁰

Certainly, a high prevalence of repeated victimisation is acknowledged in Victoria's female prison population, with Corrections Victoria noting that women have greater experience of sexual, physical and psychological abuse than men which tends to impact on their pattern of offending.²¹

Nationally, too, the impact of family violence on female offenders is acknowledged:

*The typical female offender is young, economically and socially disadvantaged, may have been diagnosed with a mental health problem before imprisonment and has dependent children. Life before jail for many women and their children is characterised by unsettled housing, low incomes, social isolation, substance abuse and domestic violence.*²²

A 2004 Australian Institute of Criminology study, meanwhile, found that 87% of incarcerated women were victims of sexual, physical or emotional abuse either in their childhood (63%) or adulthood (78%).²³ A survey of women in the Brisbane Women's Correctional Centre in mid-1993 similarly found that 85% identified as survivors of abuse,²⁴ while a NSW study revealed that approximately 80% of Aboriginal women in NSW prisons had been victims of domestic/family violence as adults, with 70% victims of child abuse.²⁵

²⁰B Green, M Jeanne, A Daroowalla & J Siddique, 'Trauma exposure, mental health functioning and program needs of women in jail', *Crime & Delinquency*, 51, no. 1 (2005), 133-151, p 134. At <http://cad.sagepub.com/content/51/1/133.full.pdf+html>.

²¹ Corrections Victoria, above note 10, p 27.

²² Australian Government, above note 8, p vii.

²³ H Johnson, *Drugs and crime: a study of incarcerated female offenders*. Vol 63, Australian Institute of Criminology, 2004, Canberra.

²⁴ Sisters Inside (1994) *The women behind the walls*. Brisbane, Australia, cited in P Easteal, 'Women in Australian prisons: the cycle of abuse and dysfunctional environments'. *The Prison Journal* 81, no. 1 (2001), pp 87 – 112. At <http://tpj.sagepub.com/content/81/1/87.full.pdf+html>

²⁵ R Lawrie (2002) *Speak out speak strong: Researching the needs of Aboriginal Women in custody*, Sydney, Australia, New South Wales Aboriginal Justice Advisory Council. Cited in Stubbs et al, p 54.

Although they vary, international figures are similarly high. While a national survey in the US in 1990 found that 53% of incarcerated women survey respondents reported being physically abused,²⁶ a 2005 study estimated that 98% of the women prisoners surveyed had been exposed to at least one category of trauma, the most common being violence perpetrated by husband, partner or boyfriend, with 71% reporting this experience.²⁷

A study of incarcerated women in the US state of Georgia recorded 78.4% of respondents as reporting physical abuse by a partner, 60.3% threats of being killed, 57.3% family violence as a child, 47.1% of being stalked and 42.9% child sexual abuse. The study further noted that women who had been without a place to live for at least 7 days were between 2.19 and 5.62 times more likely to have experienced 14 of 21 traumatic events – most being interpersonal violence.²⁸

International studies also confirm that the experience of trauma of this kind differs for male and female prison populations. A European study notes that imprisoned women are far more likely than imprisoned men to have been physically or sexually abused,²⁹ while a US study notes that women in prison are nearly three times more likely than men in prison to report having been physically or sexually abused before the age of 18.³⁰ PTSD prevalence found in imprisoned women exceeded that of the general population by a factor of six or ten in studies from New Zealand and Australia respectively.³¹ The rates of depression in incarcerated women is three times the incidence of depression in male offenders and often a direct result of exposure to violence.³²

We had one woman who wanted information about her [out of home care] childhood placements...[S]he had suffered shocking sexual abuse throughout her young life...[I]t was so traumatic she had no memory of where she was as a child as she was moved around.

Because of the effects of family violence, including trauma, women affected by family violence are very likely to reoffend upon release. This is also contributed to, of course, by factors such as mental illness, low educational attainment and employment, drug and alcohol abuse and homelessness.

²⁶ A Browne, B Miller and E Maguin, 'Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women'. *International Journal of Law and Psychiatry*, 22, no. 3 (1999), 301-22.

²⁷ Green et al, above note 20, p 141.

²⁸ S Cook, S Smith, C Poister Tusher & J Raiford, 'Self-reports of traumatic events in a random sample of incarcerated women'. *Women & Criminal Justice*, 16, no. 1-2 (2005) 107-126.

²⁹ K Moloney, J van den Bergh & L Moller, 'Women in prison: the central issues of gender characteristics and trauma history'. *Public Health* 123, no. 6 (2009), p 426 – 430.

³⁰ CW Harlow, *Prior abuse reported by inmates and probationers*, April 1999. Bureau of Justice Statistics, Office of Justice Programs. US Department of Justice. <http://www.ojp.usdoj.gov> Cited in J Babcock, S Miller & C Siard, 'Toward a typology of abusive women: differences between partner-only and generally violent women in the use of violence'. *Psychology of Women Quarterly*, 27 no. 2 (2003) 153-161 at p 153.

³¹ A Goff, E Rose, S Rose, D Purves (2007) 'Does PTSD occur in sentenced prison populations? A systematic literature review', *Criminal Behaviour Mental Health*, 17, 152-162.

³² J Laishes (2002) 'The 2002 mental health strategy for women offenders,' Correctional Services, Canada. Cited in Züst, above note 17. The mortality rate for women post release was noted by one study to be almost three times higher than for men. S Davies & S Cook (1998) Women, imprisonment and post release mortality. *Just Policy*, 14, 15-21.

The act of cycling in and out of prison itself, however, also cements housing instability, child protection concerns, and lack of access to relevant treatment. For example, neither Medicare nor the PBS follow people into prison.

...Often we get people who have been on a certain medication for many years outside that might be helping to alleviate depression or anxiety and then it is changed in prison...People can spend a long while with their doctors getting the right drug that will help and that doesn't have the side effects.

Where a woman has been arrested and placed on remand, she has no opportunity (let alone capacity) to retrieve any personal property or pay any outstanding debts.

We're often caught up trying to retrieve property on behalf of the women because given the way in which they have left their premises or have led their lives, they often suffer great losses of personal property and things. It often all goes missing.

Similarly where debts – many of them accumulated in the context of family violence – go unresolved prior to a woman's release, many women face an uphill battle in terms of establishing stable lives.

Centrelink have started putting debts like that into the hands of a recovery agency.....they wouldn't normally proceed against somebody in jail. Now that's all changing.

Equally, women who have had housing problems – again, often in the context of family violence – are effectively precluded from accessing public housing upon release until those issues are resolved.

It is really common for a woman's partner to have done something damaging to the property and she being on the lease, being the one who needs the stability perhaps for children as well, cops the blame of the damage that has been done...We are normally able to resolve the issue for our clients...

There are a number of different community based services facilitated by Corrections Victoria that assist with pre-release planning, and others that assist with women's reintegration into the community once released from prison, providing short term post release case management for eligible inmates. Some community based services explicitly require an address on release to allow a woman to be referred, even to a waiting list. This means that women who are facing homelessness or housing insecurity upon release are also missing out on timely referral to needed services that would help them get the support they need when exiting prison. Even women who receive a measure of pre-release planning and support are often unable to secure appropriate housing.

One client, she is well and truly eligible to leave prison on parole, but they cannot house her...[H]er absolutely dreadful life resulted in a reduced sentence... however she probably will [serve the full sentence] because she can't be released. She looks so much better...she's ready to go, but there is nowhere to put her.

Perhaps most profoundly, women's incarceration usually separates them from their children.³³ Where these women have experienced family violence, it is likely that their children have also been exposed to this violence, if not directly experiencing it themselves.³⁴

The effects of this exposure can be damaging enough, but where their mother has functioned as a protective influence, separation puts these children at additional risk. Some studies report, for example, that inmates' daughters had been sexually assaulted since they [the women] had been in prison, other daughters had become pregnant, while inmates also believed that their children were being neglected and physically and emotionally abused in the custody of their father, but felt unable to protect them from within custody.³⁵

While the Department of Human Services and Corrections Victoria work together to facilitate contact for women prisoners with their children who are under the care of child protection, legal aid for women prisoners wishing to be represented in court in relation to child access matters is restricted. Difficulties encountered in arranging access to children who are the subject of child protection orders are a major source of distress for Inside Access clients.

In combination all of the above means that women cannot always access the services that they need when in prison because they receive comparatively short sentences, nor can they get what they need outside prison either – ensuring that the cycle of incarceration continues. This entrenched disadvantage into which many women are released increases the likelihood that they will be exposed to further violence, substance abuse and mental health problems. Poverty then puts them at risk of experiencing violence, as well as being a predictable outcome of violence.³⁶ It is crucial to note here that the experience of disadvantage, criminalisation and incarceration can have a compounding effect on the existing marginalisation of women from diverse cultural backgrounds or women with a disability.³⁷

This said, of course, the prison environment can provide some respite for female offenders from their violent partners, even if it manifests in an impermanent and somewhat artificial form. Inside Access lawyers report that many women simply do not want to be released because they fear what awaits.

More and more women want intervention orders in place before they set foot outside prison....There was a woman who was frightened of getting out because there was nowhere she could go without this guy knowing she was there...He followed her everywhere and just seemed to know where she was all the time. And when she was on the outside, he would turn up outside the refuges where she was housed that were undisclosed...[the] fear [was] that he'd be waiting for her and never let her go.

³³ The Mothers and Children Program allows prisoners who are pregnant or who are the primary carers of young children to receive pre and ante natal care while in custody and to keep their young children with them in custody. Corrections Victoria. At

<http://www.corrections.vic.gov.au/home/prison/going+to+prison/pregnancy+and+childcare/>

³⁴ D DeHart and S Altshuler, 'Violence exposure among children of incarcerated mothers'. *Child and Adolescent Social Work Journal* 26, no. 5 (2009) 467-479. At <http://link.springer.com/article/10.1007.s10560-009-0184-y>

³⁵ Australian Government, above note 10, p 21.

³⁶ Green et al, above note 20, p 147. At <http://cad.sagepub.com/content/51/1/133.full.pdf+html>

³⁷ Victorian Equal Opportunity & Human Rights Commission, *Beyond Doubt: the experiences of people with disability reporting violence*, 2014.

Seeking this protection, however, is not always straightforward for incarcerated women.

These women might have had various reasons for not reporting violence or abuse at an earlier time – they might have been afraid, or financially dependent on the perpetrator, or worried about losing their children. Some of them, when we see them, are finally in a position to talk about these things, but they are not free to walk down to the nearest police station and have a chat. There are barriers to reporting crimes and getting support in following through with that process, including the Victims of Crime Assistance Tribunal [VOCAT].

Unlike people living in the community, prisoners' access to services such as policing and medical care are limited to what is provided within the prison setting, while their ability to make contact with the outside world is restricted. Inside Access lawyers have found that prisoners wishing to report being the victim of a crime often require concerted support and have therefore assisted women in reporting violent crimes to police and pursuing VOCAT claims by preparing affidavits. This would have been difficult for prisoners to do without the support of a lawyer.

Reporting family violence and seeking protection, however, is not always completely successful. Just as imprisonment of a perpetrator does not always guarantee that he will not breach an intervention order by contacting his former or existing partner,³⁸ imprisonment of the partner does not always prevent her from being on the receiving end of this prohibited contact.

...We did have one client where, even though letters from her ex-partner were being intercepted, the prison inadvertently ended up facilitating him contacting her. This was a case where an active intervention order was in place.

This kind of experience can be compounded by the controlling nature of the prison environment – including strip searches - which commentators note can reduce women's autonomy and often replicate the dynamic of abusive relationships and family violence.³⁹

This is particularly the case when the small number of women prisoners overall means that maximum security is usually the only environment available. The nature of this environment, therefore, not only replicates the family violence, but means that women are not capable of taking control of their lives once they leave. Prison, some commentators argue, by its very nature, excludes normal society, promotes prison living skills and actively erodes community living skills.⁴⁰

Finally, and somewhat astonishingly to those unfamiliar with the dynamics of entrenched family violence, the experience of having been incarcerated can directly contribute to women's vulnerability to subsequent violence from their partners – the disconnection caused by incarceration not only propelling them back to their violent partners upon release, but actually acting as a threat to an abusive man's sense of control.

³⁸ Centre for Innovative Justice, above note 15.

³⁹ Stathopoulos, above note 5 p 11 & p 9.

⁴⁰ Ibid, p 13.

'Having been in prison was a big issue, he would get violent and say: "You think you're good? You think you're tougher than me because you've been in prison?" He needed to beat me to make himself feel more powerful, this was his power trip'.⁴¹

The incarceration of women who have experienced family violence or who are at risk of experiencing it, therefore, would seem not only to compound its damaging effects, but increase the potential of this risk in the future.

⁴¹ Women in Prison Advocacy Network, *The long road to freedom: women affected by domestic violence and the criminal justice system*. (2012) Broadway, NSW, p 17. At https://www.wipan.net.au/publications/WIPAN_DV_Report_WEB_v2.pdf

From victim to offender – family violence a pathway to offending

While the prevalence of family violence and other forms of victimisation amongst women prisoners has been understood for some time, perhaps less widely articulated is the way in which the experience of family violence can be a pathway to offending in itself. In other words, while the convergence of a spectrum of disadvantage is understood to contribute to offending, what is not as well understood in the community is the pathway that exists from victim to offender.

People are either victims or offenders and the possibility that women can be both of these challenges this core dichotomy, [as well as] society's response... The division between criminalisation and victimisation fails to capture [the] complex interplay of violence and vulnerability and might go some way to explain the absence of literature, policies and services for women in the criminal justice system that experience domestic violence.⁴²

This is particularly the case for certain sectors of the community, with 'Aboriginal women in custody... victims of violent offences long before they are 'offenders' themselves'.⁴³

Policy makers are well aware, of course, that the primary reason for women seeking homelessness assistance is in relation to domestic and family violence.⁴⁴ Where that homelessness then propels women into criminal behaviour, such as drug or theft offences, however, this experience of family violence is what has set women onto a pathway of offending.

'Even if society understands that women might have to kill their abusers in self-defense to save their lives or the lives of their children, society finds it incredulous that abused women may commit theft because of domestic abuse'.⁴⁵

Women can accumulate debt and infringements as an indirect result of the violence, such as their exclusion from employment or, as noted above, propulsion into homelessness. Debt accumulation, however, can also occur as a direct and deliberate element of the violence itself.

⁴² Ibid, p 11.

⁴³ J Stubbs & J Tolmie, "Battered women charged with homicide: advancing the interests of Indigenous women". *Australian & New Zealand Journal of Criminology* 41, no. 1 (2008), 138-161. At <http://anj.sagepub.com/content/41/1/138.short>

⁴⁴ Homelessness Taskforce (2008) *The road home: a national approach to reducing homelessness*: Commonwealth of Australia, Canberra.

⁴⁵ S Moore AB, 'Understanding the connection between domestic violence, crime and poverty: how welfare reform may keep battered women from leaving abusive relationships', *Texas Journal of Women & Law* 12 (2002) 451. At http://htinonline.org/HOL/Page?handle=hein.journals/tjw12&div=19&g_sent=1&collection=journals

We had a client with a huge Centrelink bill. That was directly related to her domestic violence situation because over the years she certainly didn't see her relationship as being one of a couple, because he was so abusive and didn't live with her but just sort of came and went as it suited him. They did have children together. All the bills are in her name, the car was in her name and he lived elsewhere and was on a DSP (disability support person). ...I first saw this woman when she presented with a bill from Centrelink [for many thousands of dollars] Centrelink presumed that they were in fact a couple and therefore she should not have been getting single mother payments... We started a [social security] appeal process... Her children were fully supportive of her as is her father. It was just years of absolute torture for her.....

Similarly, while Inside Access lawyers explain that many clients seeking help with toll fines or other infringements report that the debts have been attributed to them, despite their partner accumulating them, they also report that this attribution is sometimes deliberately engineered as a tactic to isolate them financially.

Beyond the civil sphere, however, women also indicate that the violence and coercion in their relationship forced them to assume culpability for their partner's offences.

One woman took a drug offence for [her partner]....even the police said they knew she hadn't done it. That's the other thing, they often take on offences for men they are frightened of.

Increasing the complexity, 'in light of their experiences of trauma, social isolation and histories of violence, [women offenders] might find themselves in conflict situations and having [protection orders] made against them, such that they might be both alleged perpetrators and victims of domestic violence'.⁴⁶

Sometimes this can be the consequence of long term trauma and disadvantage caused by exposure to family and other forms of violence. Many reports note that, for some victims, experiences of violence can become normalised, not only as behaviour with which they are inflicted, but as a way to resolve conflict.⁴⁷

'I physically fought back because it was all I knew. You had to know how to fight back in [the group home] or you might not survive'.⁴⁸

Those in the family violence and legal sectors will be well aware that allegations or complaints of violence can be used as another weapon by perpetrators of serious family violence against their partners – with police issuing orders against both parties to a relationship, for example, where they cannot establish who is the primary aggressor.⁴⁹

⁴⁶ WIPAN, above note 41, p 11.

⁴⁷ See, for example, A George & B Harris, *Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria*, Centre for Rural and Regional Law and Justice, Deakin University, 2014. At <http://www.deakin.edu/au/data/assets/pdf/0003/287040/Landscapes-of-Violence-online-pdf-version.pdf>

⁴⁸ WIPAN, above note 41, p 18.

⁴⁹ CIJ Report, above note 15, p 21 & 23.

This is despite the fact that women's use of violence can often be a response to an immediate threat – either to themselves or to other family members.

One of my clients said that her father had taken out an IVO against her because she used force to stop him from continuing to beat her mother.

Certainly, studies have found that the vast majority of women who used violence were also victims of family violence. Figures range from 65% to 92% but all note that women's violence usually occurs in the context of violence against them by male partners, including 75% noting that they used violence to defend themselves.⁵⁰

Most specifically, of course, a significant proportion of the women incarcerated for homicide have committed this in the context of defending themselves and their children against sustained experiences of family violence.⁵¹

In this and the other ways identified above, male family violence is a direct contributor not only to the increasing population of Victoria's male prisons, but its female prisons as well. Provocative though it may be, the question then becomes to what extent Victoria would need a women's prison were it not for its epidemic of family violence.

⁵⁰ S Swan, L Gambone, J Caldwell, T Sullivan and D Snow, 'A Review of research on women's use of violence with male intimate partners', *Violence and victims* 23, no. 3 (2008) 301. See also K Robertson and T Murarchver, 'Correlates of Partner Violence for Incarcerated Women and Men', *Journal of Interpersonal Violence*, 22, no. 5, 629-55.

⁵¹ Victorian Law Reform Commission, *Defences to Homicide*, Final Report, October 2004. <http://www.lawreform.vic.gov.au/sites/default/files/FinalReport.pdf>

Inside Access – how do legal services help?

...Women's issues are normally associated with the transition to release and preparing to clear the decks...there's a definite link to domestic violence in relation to this... separating oneself from the person...

The services that Inside Access provides range from assistance with internal prison matters through to the 'deck clearing' identified above. This assistance includes:

- Helping clients to access reasonable healthcare and medications in prison
- Negotiating outcomes for debt relief
- Navigating the infringements system
- Facilitating claims for victims of crime compensation
- Advising on housing and tenancy matters
- Referring claims for TAC compensation
- Assisting in relation to parental or family matters
- Seeking access to documentation through the Freedom of Information process
- Answering or challenging internal Governor's charges
- Objecting to or requesting prison transfers
- Responding to immigration and visa enquiries
- Agitating for visiting rights and
- Formulating parole submissions.

We do a lot of liaising between the clients and their case workers. I suppose being a bit of a conduit because they are so isolated and they have little contact with the outside.

Many of the matters for which Inside Access provides assistance are entirely pragmatic and immediate, such as assisting with applications for public housing and resolution of debts. These debts and the need for housing, however, frequently stem from a life steeped in trauma and victimisation.

Case study – ‘Sam’⁵²

Sam was removed from her mother and made a ward of the State from infancy into her late teens. She was placed with numerous foster families and was sexually abused while in out of home care. From then on, Sam frequently missed school and had started drinking as well as stealing. Her involvement with the criminal justice system started at the age of 13. By 15 years of age, Sam was pregnant. By 16, Sam had been charged with theft and burglary and became increasingly involved in illicit drug use. During the same period, Sam was involved in an intimate relationship with a violent partner. Sam’s involvement in the criminal justice system also continued to escalate and she was ultimately imprisoned a number of times. When Sam met with Inside Access she wanted to find out about the availability of victims of crime compensation and counseling in relation to the physical and sexual abuse she had experienced. Inside Access provided legal advice on this process and advocated on Sam’s behalf in relation to housing, outstanding debts and access to appropriate healthcare in custody. Sam sought help from Inside Access in the hope that she could sort out a number of her issues and achieve some stability and support before being released into the community again.

More directly related to the relationship with a violent offender, lawyers from Inside Access report that divorce is a specific legal issue about which more and more clients are seeking advice.

The last woman I had who wanted a divorce...was really concerned that she’d be stuck with his name...the last time she heard from him he was threatening to kill her....she doesn’t want anything to do with him. She thought divorce would be a good way to draw that line.

This is a challenge for the Inside Access lawyers, however, as the service is not resourced to provide the ongoing legal assistance required for family law matters, while the costs of the Family Law jurisdiction are prohibitive for clients.

... We can get them a divorce kit but there comes a point at which they need to pay money...the fees are a deal breaker..... To get documents costs money too. You can’t have the fee waived, I’ve tried...

These fees are a particular impediment to women in prison. While most other family law fees are able to be waived in special circumstances, applications for divorce are not included in that exemption for women in prison. The program and its partners note with concern, therefore, the increase to Family Court fees flagged in the recent Federal budget.⁵³

⁵² Sam is a pseudonym. Case studies provided in this submission have been drawn from the file analysis and significantly de-identified, while retaining core relevant features of the case.

⁵³ S Whyte, ‘Divorce tax in budget as fees to rise significantly’, *Sydney Morning Herald*, 14 May 2015. At <http://www.smh.com.au/federal-politics/political-news/divorce-tax-in-budget-as-fees-to-rise-significantly-20150514-gh1kvm.html>

Divorce is just one of the relatively straightforward legal issues often associated with family violence which becomes seemingly insurmountable to address from the within the prison environment. Equally challenging, although perhaps not as expensive, are applications for victims of crime compensation, a legal matter which features heavily in the Inside Access workload.

...whenever we have held a VOCAT community legal education session at the prison, that has been publicised, we get a very strong turn-out.

Applications to VOCAT, however, must be justified according to a specific need related to an applicant's safety and recovery from the violence they have experienced. Preparation of an application often requires that a victim sees counselors and support workers who can detail their needs and make targeted recommendations. The victim then needs to provide VOCAT with quotes and invoices for the services that they require to address their trauma.

There is a huge amount of work involved which can't be done from prison... VOCAT could be an important piece of the puzzle in helping some of these women to heal, move forward, and to break the cycle of trauma. Planning for release from prison is an ideal time for these women to be submitting VOCAT applications, but because of their isolation and other difficulties they often need additional support to do so. This is particularly the case given the high rates of illiteracy or semi-literacy that we see among prisoners.

Rarely, of course, do clients see a lawyer from Inside Access about just one isolated matter. Many inmates have a web of interrelated legal problems that they seek to address in order for them to move onto a successful return to the community upon their release.

Case study – 'Janet'

Janet initially sought help from Inside Access lawyers to recoup funds removed from her bank account by her ex-partner, who was financially controlling and abusive, and had gained access to her account while she was in custody. Janet had attempted to notify the bank of this but they had failed to stop or investigate the removal of funds.

Janet also requested assistance from Inside Access to help her regain custody of her child from the Department of Human Services. To achieve this, Janet needed help in securing appropriate housing for her and her child upon her release. Janet had previously broken a tenancy agreement by leaving an Office of Housing property to escape a violent relationship. The rent had gone into arrears and this prevented Janet being able to have a new housing application processed. Inside Access assisted Janet by advocating on her behalf to DHS about the family violence circumstances of her previous tenancy and ensuring that an application was processed.

Janet herself had been in out of home care as a child and ultimately also sought advice regarding making a VOCAT application in relation to her childhood trauma.

This said, the nature of the lawyer/client exchange and the limited time in which it usually occurs means that it is unusual for a lawyer to record a full history of any trauma that a client has experienced. As with any conversation in which the participants do not know each other well, the context of an issue is unlikely to emerge until considerable time has elapsed, if it all. With both client and lawyer focused on addressing the immediate legal problem at hand, a history or background of family violence – which has often been normalised by the client in any event – is not always disclosed.

We don't necessarily find out a woman's background.... we only find out if it emerges incidentally in relation to the legal issues we are helping them with, although we have recently introduced a question about family violence to intake forms....

Of course, for the same complex reasons that victims of family violence do not always report their experiences in the wider community, women in prison environments are not always prepared to disclose.

If they've gone to the extent of assuming culpability, they're not going to disclose later on for the same reasons of fear or concern that something could happen to them or their children.

Conversely, the Inside Access lawyers noted that many of their clients do not disclose family violence simply because they have no one else to turn to upon release other than their violent partner.

Case file analysis

Fifty case files were randomly chosen for the purposes of the analysis, ranging from the year 2012 to current day. All case files concerned female clients incarcerated at Dame Phyllis Frost Centre. The majority of the files were closed or were in the process of being closed.

Experience of violence or abuse

Though the legal issues with which the files were concerned varied, experience of family violence and childhood abuse featured significantly. For example:

- **22 out of 50 prisoners, or 44%, had experienced family violence in general**
- **12 experienced physical violence**
- **10 experienced more than one form of abuse**
- **3 experienced family violence by multiple partners**
- **3 experienced intergenerational family violence**
- **6 identified that the perpetrator of the violence had been prosecuted or breached an order**
- **10 had experienced childhood trauma**
- **6 of these women had gone on to experience family violence as an adult**

More broadly:

- **8 had experienced homelessness due to family violence**
- **12 requested legal assistance with accessing housing**
- **5 were identified as being perpetrators and victims of family violence**
- **6 had an education deficiency**
- **2 of these women completed or were continuing some study while incarcerated.**

Of the legal matters for which clients sought assistance:

- **5 requested assistance or had in progress a VOCAT application due to family violence**
- **7 required or had in place an intervention order (IVO) in relation to family violence**
- **7 requested assistance for divorce proceedings, 3 of which also had IVOs in place; and**
- **5 requested assistance with divorce proceedings and had also experienced family violence.**

Discussion and opportunities

The notes from the Inside Access files included in this analysis were not recorded for the purposes of gathering evidence about family violence. Clients were not asked about their experience of family violence as a routine line of inquiry. Rather, clients led the discussions, seeking legal advice about the matters that were immediately affecting them and their future upon release.

Even in that relatively brief exchange, however, family violence emerged as a significant contributing factor – to women’s trauma, to women’s poverty, to women’s mental illness, to women’s concerns about their children, to women’s concerns about their release and, of course, directly to the cycle of women’s offending.

That this level of prevalence should emerge even in this context suggests a greater level of prevalence across the prison population. Given this, and given the wider evidence about:

- the disproportionate number of women prisoners who have experienced family violence and other forms of victimisation and trauma
- the way in which family violence indirectly contributes to women’s offending
- the way in which family violence *directly* contributes to women’s offending
- the way in which family violence contributes to women’s *re-offending*

the Corrections environment represents a unique opportunity to identify and address the effects of family violence on this cohort of Victorian women, and therefore on the broader level of crime in the community.

By allowing Inside Access to operate in the Dame Phyllis Frost Centre, Corrections Victoria is facilitating one vital avenue for women to access help, with many other crucial services provided to women prisoners through Corrections Victoria’s programs, as well as other external programs that operate in the prison setting. However, we note that many women continue to leave custody only to return to situations of homelessness and family violence, increasing their chances of returning to prison yet again.

More broadly, the experience of Inside Access, as well as the supporting literature, both point to the questionable value of *any* incarceration when periods of imprisonment are so short and are for relatively minor offences. This is particularly the case when there are such clear links between women’s experiences of victimisation and their offending behaviour, including their inability to break the cycle of disadvantage and recidivism in which they are trapped.

A more coherent policy response would be to invest resources in early intervention and support for these women – identifying those who need assistance to address trauma, poverty and dysfunction, in order that the trajectory to criminal behaviour not be completed.

Male family violence is the cause of a great deal of community dysfunction. It is the reason why so many men come before our courts. It is also the reason, however, why so many women come before our courts – victims of family violence who have been propelled by a range of associated factors onto the wrong side of the law. Addressing its effects on the cycle of women’s offending would therefore be a substantial step towards a reduction in recidivism, as well as an important step in meeting the community’s obligation not only to the women concerned, but to their children and subsequent generations.

Case study – ‘Natalie’

Natalie initially approached Inside Access for advice about recovering her personal belongings that she had been separated from during her arrest. She had no trusted family or friends to assist her with collecting and safeguarding her personal property while in prison. She also sought advice on lodging an application under an interstate victims of crime compensation scheme in relation to being raped prior to her incarceration. Inside Access assisted Natalie to prepare this application by obtaining clinical notes from a counselor that Natalie had seen via a freedom of information application. Inside Access were then able to use the records to help Natalie prepare her application. The process of obtaining just some of Natalie’s personal history revealed that she had been sexually and physically abused from childhood, and had started using illegal drugs during the same period. She attributed her criminal offending and opiate addiction to those early traumatic experiences. She was then a victim of family violence in multiple abusive relationships from adolescence onward. Violent relationships were only ever interrupted as a result of Natalie or her partner at the time being incarcerated. While family violence was not identified by Natalie as central to her legal problems, it was clearly at the heart of her poverty, isolation and criminalisation.

Recommendations:

1. The Commission should request that Corrections Victoria provide it with an account of all services available to women prisoners that address women prisoners' experience of - and ongoing risk of exposure to - family violence. The Commission should also request that Corrections Victoria identify the processes through which they ensure that women prisoners are not contacted by perpetrators who are the subject of an active family violence protection order. This would assist the Commission in identifying any opportunities to improve and strengthen the capacity of Corrections Victoria and other agencies and community organisations to make needed services available, and minimise the impact of family violence on women while they are in custody.
2. The Commission should ask Victoria Police to provide an account of its policies and processes for responding to incarcerated women seeking to report family violence and/or experiences of violent crime. Inside Access has examined the Victoria Police code of practice for the investigation of family violence and notes that while it does address the needs of diverse sections of the community, it does not address the issue of responding to victims of family violence who are incarcerated. We recommend that this policy be reviewed.
3. That women in prison who wish to report incidents in which they have been the victim of a crime are provided adequate support to do so, including access to relevant victim support agencies and legal assistance.
4. That Corrections Victoria establish a means of identifying as early as possible, and as often as possible, throughout their incarceration, women in custody who have experienced or are at risk of being exposed to family violence, and for this information to be used to guide service provision and case management.
5. That Corrections Victoria ensures that all women, whether they are on remand or serving a sentence of any length, receive pre-release planning that is integrated with post-release support and is delivered through an intensive case management model which secures adequate and safe housing arrangements for women exiting prison.
6. Corrections Victoria should be commended for facilitating the provision of a wide range of programs to women prisoners delivered by various community organisations (including Inside Access). The continued provision of these programs requires both adequate funding from Government and continued support from Corrections Victoria to enable these programs to be delivered within the prison environment. We therefore urge the Commission to recommend that all such programs, as well as those that support women following their release from prison, are and continue to be adequately funded, and that Corrections Victoria continue to support their delivery.

7. Inside Access is a member of the Federation of Community Legal Centres' Infringements Working Group and endorses the submission of the Group with respect to **expanding the definition of special circumstances in the Infringements Act 2006**.

We note that if the definition of special circumstances in the Act is expanded as recommended, women will continue to require legal assistance and advice, both to identify their eligibility to access this mechanism and to prepare their special circumstances applications.

8. The Mental Health Legal Centre (including Inside Access) has endorsed the Joint Submission on Family Violence, Homelessness and Affordable Housing, and endorses its recommendations, specifically:
- Improving **measures to sustain tenancies and prevent homelessness** for women who can safely stay in their housing, including strengthened programs such as Safe @ Home responses, the Social Housing Advocacy and Support Program, legal representation for women facing eviction, and private rental brokerage schemes. \$13.4 million per year could assist an additional 3800 families.
 - Establishing a **rapid rehousing** program to assist women and children escaping family violence to be quickly rehoused with appropriate supports in place. \$10 million per year could assist over 1000 women and their children.
 - Improving **affordable housing pathways for perpetrators** of family violence to ensure they remain engaged with relevant supports to help prevent the risk of further violence.
 - Developing a **long-term affordable housing strategy** to address the soaring public housing waitlist and increasing unaffordability of private rental for low-income Victorians. An affordable housing growth fund of \$200 million per year could build a minimum of 800 homes.
9. Inside Access has endorsed the submission of Flat Out Inc. and in particular supports its recommendations regarding the need to address the root causes of women's incarceration that include family violence, poverty and homelessness.
10. Inside Access is the only service that regularly visits Victoria's maximum security women's prison to provide a civil law service. This service, for the reasons set out in this submission, is a critical means of addressing the family violence related legal needs of women prisoners. However, the Mental Health Legal Centre, including Inside Access, currently receives no government funding. Government should therefore support the continued and strengthened provision of free legal services for Victorian women prisoners to maximise their opportunity to build stable lives in the community and avoid reoffending by funding the Inside Access program to provide services to all Victorian women prisoners.