



Leaving custody behind: A fact sheet on drivers and alternatives to women's incarceration

July 2021

Introduction

Australia is locking up women in increasing numbers. In Victoria, the rate at which women are being imprisoned, especially Aboriginal women, has risen sharply in recent years and is increasing at a faster rate than for men.

This problem is not new. For decades, researchers and advocates worldwide have drawn attention to the increasing criminalisation of women, the reasons behind it and the need to find alternatives to prison. We know that:

- Women enter prison for less serious offences than men and spend short, disruptive periods in custody;
- Women are more likely than men to be the primary carer of dependent children when they're imprisoned;
- The majority of women in prison are themselves victims of violent crime;
- Trauma from high rates of sexual assault and family violence push women into poverty, homelessness, drug use and contact with the justice system; and
- Imprisonment doesn't reduce crime. By cutting women's access to housing, services, medication and family contact, incarceration increases the likelihood of further contact with police and prisons.

Most women charged with criminal offences require support, rather than incarceration. Prisons – designed primarily for men – only act to derail women's lives and those of their children.

In recognition of the different profiles of women charged with criminal offences, in 2010 the United Nations established international standards for the treatment of women in the justice system. The **Bangkok Rules**¹ require governments to cater more effectively for women's needs and to make laws and policies that divert them from prison.

Despite these international obligations – and even though the crime rate in Australia is falling – Victoria has increased the use of prison for women. While it's welcome news that the Victorian Government has committed to an upgrade of facilities at the Dame Phyllis Frost Centre, Victoria's maximum-security prison for women,² the scope of work announced in March 2021 includes an increase in bed capacity. This suggests that women's incarceration rates are not expected to reduce.

This fact sheet tells the story of criminalised women, their experience of the justice system, and the disproportionate harm caused to individuals, families and the wider community when women are imprisoned. It offers suggestions for more effective and humane ways to respond to women, and ultimately, other vulnerable people appearing before our courts.³

Developing specific justice responses for women would minimise the disproportionate harm, or 'double punishment' which women currently experience in the criminal justice system. It would also increase the likelihood of reducing or avoiding women's repeat engagement with police, courts and prisons.



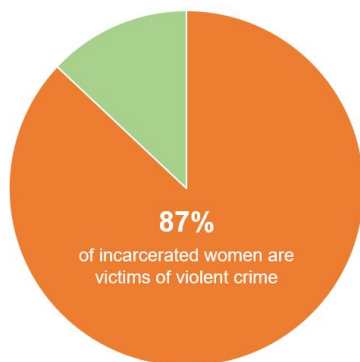
Drivers of women's contact with the justice system

Women's complex and interrelated support needs often intersect, compounding disadvantage for women experiencing trauma and poverty.

Women as victims of crime

Almost all women in the prison system have histories of sexual, physical or emotional abuse occurring in childhood and as an adult. Experiences of trauma are nearly universal among women in prison, with an estimated 77% to 90% having prior trauma exposure.⁴

Figure 1: Proportion of women in prison who have been victims of sexual, physical or emotional abuse



Source: Johnson, 2004

These experiences of victimisation are directly linked to high rates of trauma, and when left untreated, to the reasons for women entering, and re-entering prison.⁵

Aboriginal women who are in custody have sustained more physical injuries from violence than non-Aboriginal women and are more likely than men in prison to have acquired brain injuries (ABIs), in part related to family violence.⁶

Trauma and mental ill-health

Women entering Victorian prisons, especially Aboriginal women, have high rates of mental ill health and substance dependence, both of which are associated with past experiences of violence and abuse.

We have known since the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) report in 1991, that mental health is a critical factor in Aboriginal criminal justice system involvement.⁷ Recent research suggests that, three decades on, little has changed and that Aboriginal women carry a particularly heavy mental ill health burden.⁸

In one study, 92.3% of a sample of Aboriginal women presented with a form of mental illness,⁹ and 46% met one criterion of PTSD (compared to 14.7% of Aboriginal men).¹⁰

Criminalised women are more likely to experience suicide attempts and substance overdoses,¹¹ and face an increased risk of premature, unnatural death following their release from prison.¹² Women in UK prisons have been found to have five times the rate of self-harm as men.¹³

Drugs and alcohol

The link between women's justice involvement and substance dependence is a particularly strong one.¹⁴ Research confirms strong links between childhood sexual abuse, mental illness, lack of housing and substance dependence – suggesting that substance dependence may be one step on the path from victimisation to offending, rather than a “cause” of offending.¹⁵

Women in prison are more likely than men to have committed offences while under the influence of substances, or to support their substance dependence. For women serving a second or subsequent sentence, 90% of their offences have been found to be related to drug and alcohol dependence.¹⁶

Substance related female offending is also fast becoming an entrenched issue. The proportion of women whose imprisonment is associated with a drug-related offence increased from nearly 15% in 2008 to 24.4% in 2018 and is associated with increased use of ice.¹⁷

This is an issue of significant concern for Aboriginal women and is linked with experiences of trauma. A 2013 Victorian study found that 93.9% of Aboriginal women in prison reported current substance dependence.¹⁸ Rising rates of crystal methamphetamine or 'ice' use, alongside very high prevalence of serious mental illness, have been found to be associated with Aboriginal women's contact with the criminal justice system.¹⁹

Poorer physical health

According to the Australian Institute of Health and Wellbeing (AIHW), women entering Australian prisons have considerably poorer physical health with close to half (45%) found to have a chronic health condition, compared to 28% of men. They are also less likely than men to have consulted a doctor in the previous 12 months, and given they are in custody for shorter periods, find it harder to access treatment and support while in prison.²⁰

Aboriginal women involved in the justice system are also likely to experience other health issues, including diabetes, heart attack and stroke,²¹ as well as high rates of reproductive health problems, many of which were associated with gendered violence.²²

Housing needs

Difficulties accessing safe and affordable housing, including for their children, is a key factor in the 'constellation of circumstances' driving women into criminalisation.²³ In Victoria, the state with the lowest proportion of social housing stock in Australia,²⁴ this is a long-standing and deepening issue facing women.

A Victorian Parliamentary Inquiry in 2010 identified housing as "the most overwhelming problem" facing criminalised women, and one closely linked to women's offending and reoffending. The Committee referred to evidence of women being placed on remand or having release from prison postponed purely due to lack of available housing.²⁵ Ten years later, little has changed²⁶ except perhaps the scale of the problem.

We know from research in the UK, USA and Canada that accommodation is essential for women to transition successfully from prison and to be reunited with children placed in care during their incarceration.²⁷ However spending even a short period in custody can result in loss of housing and even possessions. Estimates from the UK suggest this is the case for around a third of all women in prison.²⁸

UK researchers have also estimated that stable accommodation could reduce the risk of re-offending by 20%.²⁹ This is supported by women interviewed in prison who indicate that early support to find housing would have prevented them from offending or reoffending.³⁰

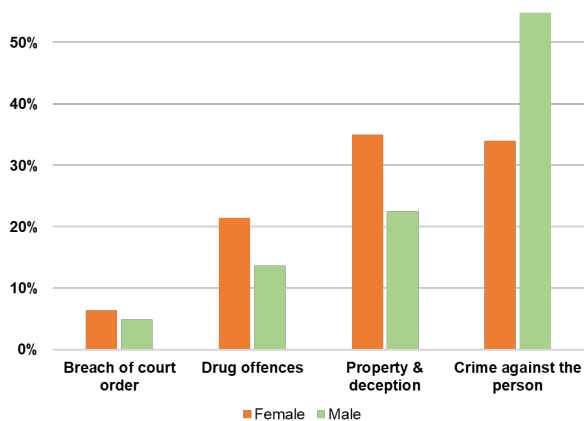
As well as housing stock being limited, women with a criminal record, multiple support needs and little or no record of stable tenancy, face additional barriers when seeking appropriate accommodation. A study of women leaving Silverwater Prison in NSW over a 12-month period found that only 12% had stable housing on release from prison.³¹

In Victoria, men have access to a residential program to help in the transition from prison to the community but there is no equivalent service for women. Women also have limited access to gender-specific and culturally relevant residential treatment programs that accommodate children.

The context of women's offending is very different to men's

Women tend to be charged with less serious offences - such as property or economic crimes and low-level drug offences and have fewer previous convictions.³² This makes women good candidates for programs that divert them from short, damaging periods in prison and link them with supports in the community.

Figure 2: Comparison of most serious charge for male and female prisoners at June 2019



Source: CIJ analysis of prison data³³

Wider community harm results from imprisoning women

Incarcerating women is in effect a “**double punishment**”, both in terms of the impact of incarceration of women,³⁴ and the wider impact that the disruption of women’s child rearing and other caregiving roles has in the community.

In 2018, the Prison Reform Trust estimated that 17,240 children are separated from their mothers as a result of incarceration every year in the UK.³⁵

Even short periods of separation can have profoundly devastating impacts on the mother-child bond.³⁶ Women in prison who lose custody of their children are at higher risk of self-harm,³⁷ and are more likely to return to custody than women whose connection with their children had been supported.³⁸

There are, of course, significant consequences for children separated from their mothers, particularly where a woman who is the sole or primary caregiver is imprisoned.³⁹

In addition, wider social impacts of the disruption in children’s lives include where children separated from their mothers are placed in out of home care – a well-recognised pathway to the youth justice system and a lifetime of dependence on the justice and social service systems more broadly.⁴⁰

Imprisonment is also likely to impact disproportionately on Aboriginal women’s responsibilities for other children and extended family across kinship networks.⁴¹ This has significant down-stream implications for child welfare and family cohesion.

Doing things differently

- **Housing**

Women leaving prison or at risk of imprisonment need priority access to public housing, combined with case managed supports responsive to their multiple needs. Studies in the UK indicate that even resource-intensive housing support costs less than the expense stemming from imprisonment and associated harms.⁴²

- **Integrated support in the community**

The Together Women Project in the UK and the Miranda Project in NSW are initiatives that provide early, holistic and practical support in the community for women experiencing multiple, co-occurring needs.

These hubs link women with the services and supports required to avoid criminal justice involvement, establish safe and stable lives after release from prison, or successfully complete bail, parole or court ordered, community-based sentences.

Victoria’s gendered prison problem is growing

While making up only a small percentage of the Victorian prison population (around 7%), women, are being imprisoned at a much faster rate than men.

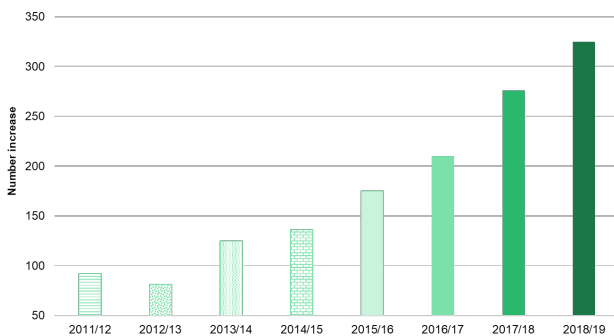
In the 10 years to June 2018, the number of women in prison in Victoria increased by close to 138%, compared to an 81% increase in the male prison population over the same period.⁴³

In 2020, a temporary drop of almost 30% in the female prison population occurred following the introduction of COVID-19 risk management measures in prisons.⁴⁴ However, the number of women in prison in Victoria is again on the rise.⁴⁵

Aboriginal women are the fastest growing group in Victorian prisons.

The number of Aboriginal women entering prison in Victoria more than tripled between 2012 and 2018,⁴⁶ and the rate at which they are imprisoned has more than doubled in the last 20 years.⁴⁷

Figure 3: Increase in the number of Aboriginal and Torres Strait Islander women received into prison, 2012 - 2019



Source: CIJ analysis of prison data⁴⁸

By 30 June 2019, close to 14% of all women entering custody identified as Aboriginal or Torres Strait Islander, up from 7% in 2007.⁴⁹ This is despite Aboriginal people constituting 0.8% of the Victoria's general population.⁵⁰

Australia's track record on female imprisonment rates does not compare favourably with comparable countries.

While the increasing rate of imprisoning women is part of a world-wide trend, the most recent data from the World Prison Brief shows that Australia imprisons more women per 100,000 head of population than Canada, the UK, and many European countries.

In fact, the Australian prison population is increasing at a faster rate than many other developed countries,⁵¹ doubling in size between 2000 and 2019.

Victoria recorded the highest annual increase of inmate numbers between 2012 and 2019 than any other state or territory in Australia.⁵² This has seen Victoria move from having one of the lowest incarceration rates in the world in 1992 to one of the highest in 2018.⁵³

High rates of imprisonment across Australia is associated with disproportionate rates at which Aboriginal Australians are incarcerated. Researchers have concluded that **Australian Aboriginal people are the most incarcerated group in the world.**⁵⁴

A culture of incarceration – How did we get here?

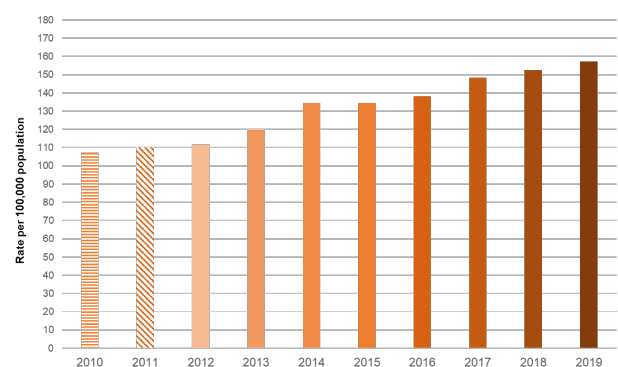
Why are we locking more women up when the crime rate is dropping?

While there are complex and inter-related reasons for the growing female imprisonment rate, there is no evidence to suggest that women are committing more crime, or that their offending is becoming more serious.⁵⁵

In fact, the proportion of women entering Victorian prisons on remand who were charged with violent crimes or 'offences against the person' dropped by 7% between 2012 and 2018.⁵⁶

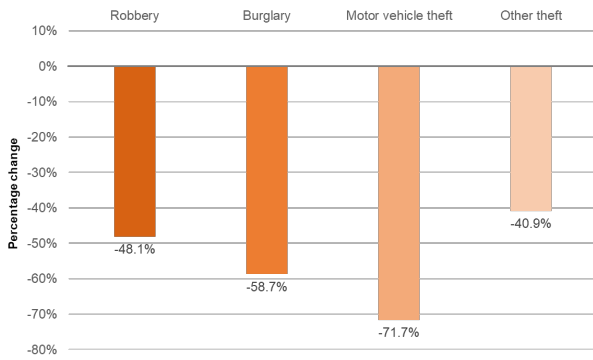
The irony is that imprisonment continues to increase even though the crime rate in general is falling.⁵⁷

Figure 4: Adult imprisonment rate per 100,000 adult population, Victoria 2010 - 2020



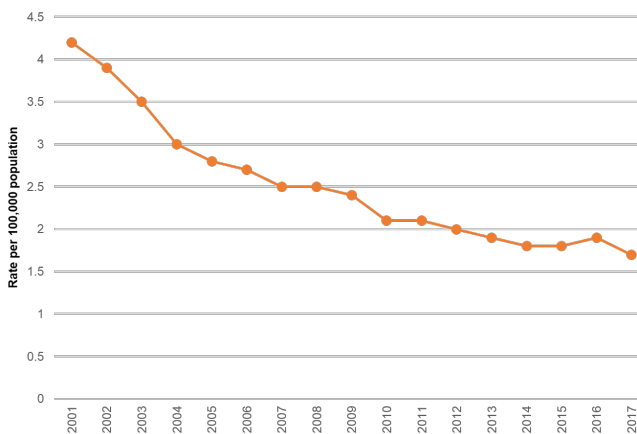
Source: CIJ analysis of prison data⁵⁸

Figure 5: Percentage changes in rates of recorded theft offences, Victoria, 2001 – 2017



Source: Adaptation of Figures 1.9 to 1.12, Weatherburn, 2021⁵⁹

Figure 6: Recorded rates of homicide and related offences, Australia 2001 - 2017



Source: Adaptation of Figure 1.8, Weatherburn, 2021

Community fear of crime is high despite evidence of a falling crime rate

As is the case in many other countries, most Australians believe the crime rate is increasing despite evidence to the contrary,⁶⁰ and almost a third believe it is increasing a lot.⁶¹ Media coverage of high-profile incidents of violent offending contributes to this misconception.

Governments commonly respond to community fears about crime – even when these fears are based on misconceptions – with ‘tough on crime’ policies.⁶² This results in increasingly harsh laws and policies that can sweep people charged with low-level offences into prisons.

Aspects of the way the criminal justice system works is contributing to the growing female imprisonment rate

Despite having a women-specific correctional policy in place in Victoria since 2005, laws, policies and practices in various parts of the justice system are contributing to the increased criminalisation of women.⁶³

Policing: Police policy and practice⁶⁴ has a direct impact on the number of people being arrested and prosecuted, and the rate at which particular groups of people interact with the legal system, rather than receiving a caution, a fine, or being referred to a diversion scheme.

For example, there is clear evidence of discriminatory policing practices involving the disproportionate use of prosecution against Aboriginal people in Australia. A recent NSW study found that over 80% of Aboriginal people arrested for possession of small amounts of cannabis were prosecuted, compared with just over 52% of non-Aboriginal people arrested for the same offence.⁶⁵

Similarly, Aboriginal women are more likely to face imprisonment for minor offences such as disorderly conduct; minor property and traffic offences; and breach of court orders.⁶⁶

There are also growing concerns that reforms to improve family violence policing practices that have resulted from RCFV recommendations⁶⁷ may be having a *counterproductive* effect for women more generally. Women’s Legal Service Victoria has reported that, in a sample of client case files involving women who were initially named as perpetrators on police applications for Family Violence Intervention Orders, 57% were found to be victim/survivors.⁶⁸

Getting bail: Victoria’s restrictive bail laws, passed in response to a series of high-profile violent crimes, have had the unintended effect of making it harder for people charged with non-violent offences to qualify for bail.

For women, high rates of homelessness and substance addiction increase the likelihood of being refused bail due to a perceived risk of reoffending.⁶⁹ This means more unsentenced women are sent to prison to wait for their case to be heard in court (known as 'remand').⁷⁰

Breaching bail: Unlike some states, when someone in Victoria breaches a condition of their bail, even when that is simply missing their court date or residing at another address, they commit a criminal offence.

This means that women with mental ill health and substance dependence who struggle to comply with bail conditions can be subject to the highest legal test for bail – the same threshold that applies to people charged with murder and terrorism offences.⁷¹

By 2015, half of all unsentenced women in prison were charged with one of these new offences.⁷²

There is a strong case for gender-specific bail support programs to help women with multiple and intersecting needs to successfully complete bail, including by facilitating access to housing⁷³ and vital support services.

Tougher sentences: Laws that introduce more severe penalties result in an increased use of imprisonment over other community-based sentencing options. Victoria has the lowest use of community-based sentencing of all states.⁷⁴

Limited opportunities for rehabilitation: There is limited scope for women navigating the criminal justice system to access services which meet their immediate practical needs, as well as providing more long-term, therapeutic support.

In addition, women are commonly imprisoned for short sentences and therefore have less opportunity to get the support they need in prison and after release to address the issues that led to offending. Instead, prison acts to disrupt women's lives, making it harder to get back on their feet and increasing the likelihood that they will return to prison.

Doing things differently

- **Diversion**

A women's police caution program in the UK that linked women with supports and community services resulted in a 46% reduction in the likelihood of participants being rearrested in a 12-month period.⁷⁵

- **A different approach to bail**

Recent changes to bail laws in New York City have banned pre-trial detention for most people charged with non-violent crimes. This is projected to reduce the remand population by 43%.⁷⁶

- **Bail support for women**

In Victoria, the Women Transforming Justice Pilot provided gender-informed legal advice, representation and outreach-based case management to women making applications for bail. The program helped improve women's prospects of being granted bail, as well as to support them to remain safe and stable in the community while on release.

Community-led, culturally appropriate and targeted approaches for Aboriginal women

Dramatic increases in the number of Aboriginal women being imprisoned does not appear to be driven by a rise in offending by Aboriginal women, but by systemic drivers which have particular impacts on their lives.⁷⁷

These act to compound the continuing impacts of colonisation and the individual and collective trauma from "dispossession of land, disruption of culture and kinship systems, removal of children, racism, social exclusion, institutionalisation and entrenched poverty."⁷⁸

To bridge the ever-widening justice gap for Aboriginal women, immediate action is needed to implement meaningful criminal justice reform as recommended by numerous government commissioned reviews and inquiries.

Changing the story

By adopting a *Women's Justice Reinvestment Strategy*, Victoria could meet its international obligations, reverse the rates of women's incarceration and stem the harm being caused to individual women, their children and communities.

A *Women's Justice Reinvestment Strategy* could drive increased investment in:

- **Trauma-informed** programs and services that are tailored for women in the justice system and those at risk of involvement. This would include piloting community-based support hubs that are independent of courts and correctional services;
- **Guidance** on the practical and therapeutic needs of women in the justice system for police, prosecutors, judicial officers, correctional services and service providers;
- **Meeting targets** for the rehabilitation and integration of women in prison, with specific targets for Aboriginal women; and
- Establishment of a **residential transitional release facility for women**, with case-managed support to address the full range of their needs.

Just as importantly, a *Women's Justice Reinvestment Strategy* could drive reforms in a more coordinated and evidence-based way. The Strategy would bring attention to the reasons behind women's involvement with the justice system and make changes that will help women avoid prison.

A *Women's Justice Reinvestment Strategy* will require long-term commitment across politics and coordination between government departments to:

- **Set targets** for reducing the female prison population;
- **Drive change** to laws and processes that are funnelling women into prisons;
- **Invest in services and programs** to support women in the community; and
- Ensure **research and data collection** increases understanding about what works in reducing women's contact with the criminal justice system.

Through this Strategy, Victoria can reduce the use of imprisonment against women and other vulnerable people. Victoria can do this by:

- **Raising the age of criminal responsibility** from 10 years to a more internationally acceptable level and develop alternatives for younger children who offend. This would mean fewer girls graduate to adult prisons in the longer term;⁷⁹
- **Changing policing practices** and develop programs that ensure police divert women and others charged with low-level offending from prosecution;
- **Amending bail laws** to return to the situation where people charged with non-serious offences are released on bail until their matter is heard by the court;
- **Expanding sentencing options** by increasing opportunities for courts to impose community-based sanctions and banning short damaging sentences of imprisonment; and
- **Increase access to services in the community** to address the issues that result in women becoming involved in the justice system, including women-specific bail support programs

Finally – and crucially – Victoria can place Aboriginal communities at the centre of reform by implementing the recommendations of a significant raft of inquiries and investing more in community-led and culturally safe interventions.

Victoria has an opportunity to lead again and:

- **Implement recommendations** from the ALRC report and identify issues specific to women not addressed in the recommendations.
- **Use the Aboriginal Justice Agreement** as the main vehicle to drive reforms relevant to Aboriginal women in the justice system and adequately resource the Koori Justice Unit to do this.
- **Invest in programs** that are appropriate and culturally safe for Aboriginal women and are based on the concept of Aboriginal Social and Emotional Wellbeing.
- Bring a focus on the provision of culturally safe early intervention **support for victims of crime**.

Conclusion


The research evidence is overwhelming that custody is neither appropriate nor effective as a justice response to the vast majority of women charged with criminal offences.

In Victoria, the imprisonment of women appears to be no longer used as a measure of last resort. Instead, Victoria's women's prisons are increasingly functioning as a substitute for the social and community support that women – many who are responsible for raising children – need to overcome histories of trauma and acute disadvantage.

To halt the escalating female imprisonment in Victoria, a targeted, cross government and evidence-based approach is needed. Focussing on women as a sub-set of the Victorian prison population provides an opportunity to test reforms that can potentially be applied more broadly across the criminal justice landscape.

In doing so, Victoria can draw on the recent experience of what some have referred to as a 'moment of decarceration',⁸⁰ whereby courts acknowledged the risk of contracting COVID-19 in closed environments, leading to women's prison numbers temporarily reducing by around a third, without any discernible impact on community safety.⁸¹

Ultimately, emptying women's prisons is likely to offer wider lessons about more humane ways to respond to offending that *increase community safety* in the longer term – not by increasing rates of custody but by leaving custody behind.



¹ United Nations Office on Drugs and Crime (UNODC), (2010) *The Bangkok Rules. United Nations Rules for the Treatment of women prisoners and non-custodial measures for women offenders with their commentary.*

² Media Release 19 March 2021. Construction set to start on Women's Prison upgrade <https://www.premier.vic.gov.au/construction-set-start-womens-prison-upgrade>

³ For a full discussion on this issue, see *Leaving custody behind: Foundations for safer communities & gender-informed criminal justice systems.* CIJ Issues Paper, May 2021.

⁴ Stathopoulos, M. & Quadara, A. (2014) *Women as offenders, Women as victims: The role of Corrections in supporting women with histories of sexual abuse*, Corrective Services NSW; Johnson, H. (2004) 'Drugs and crime: A study of incarcerated female offenders' AIC: Research and public policy series, xiv; Prison Reform Trust, (2017) *There's a reason we're in trouble: Domestic abuse as a driver to women's offending*, United Kingdom.

⁵ Bartels, L., & Easteal, P. (2016) 'Women prisoners' sexual victimisation: ongoing vulnerabilities and possible responses' 2(3) *Journal of Criminological Research, Policy and Practice*, 206-216; Swavola, E., Riley, K., & Subramanian, R. 'Overlooked: Women and Jails in an Era of Reform' (New York: Vera Institute of Justice, 2016); Fuentes, C.M. (2014) 'Nobody's Child: The Role of Trauma and Interpersonal Violence in Women's Pathways to Incarceration and Resultant Service Needs' 28(1) *Medical Anthropology Quarterly*, 84-104; Wright, E. M., Voorhis, P. V., Salisbury, E. J., & Bauman, A. 'Gender-responsive Lessons and Policy Implications for Women in Prison: A Review' (2012) 39(12) *Criminal Justice and Behaviour*.

⁶ Jackson, M., Hardy, G., Persson, P., & Holland, S. (2011). Acquired Brain Injury in the Victorian Prison System. In. Melbourne: Corrections Victoria; Kendall, S., Lighton, S., Sherwood, J., Baldry, E., & Sullivan, E. (2019). Holistic Conceptualizations of Health by Incarcerated Aboriginal Women in New South Wales, Australia. *Qualitative Health Research*, 29(11), 1549-1565.

⁷ Commonwealth of Australia (1991) *Royal Commission into Aboriginal Deaths in Custody* Final Report, Vol 1-5.

⁸ Heffernan, E., Anderson, K., McEntyre, E., & Kinner, S. (2014), 'Mental Disorder and Cognitive Disability in the Criminal Justice System' in Dudgeon, P., Milroy, H. & Walker, R. (eds), *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice*, Commonwealth of Australia 165.

⁹ Ogloff, J.R.P., Patterson, J., Cutajar, M., Adams, K., Thomas, S. & Halacas, C. (2013) *Koori Prisoner Mental Health and Cognitive Function Study: Final report* Department of Justice, Victoria.

¹⁰ Ibid.

¹¹ Stone, U. B., (2013) 'I'm still your Mum: Mothering inside and outside prison' (Masters of Arts thesis, Royal Melbourne Institute of Technology); Wright, et al., above n 5; Segrave, M., & Carlton, B., (2010) 'Women, Trauma, Criminalisation and Imprisonment.' *Current Issues in Criminal Justice* 22(2), 287-305.

¹² Davies, S. & Cook, S. (2000) 'Dying out, dying outside: women, imprisonment and post-release mortality' Conference Paper, Women in Corrections: Staff and Clients Conference convened by the Australian Institute of Criminology in conjunction with the Department for Correctional Services SA, 31 October – 1 November 2000.

¹³ Ministry of Justice, United Kingdom, *Female Offender Strategy, 2018.*

¹⁴ Bartels & Easteal, above n 5; Day A, Casey S, Gerace A, Oster C, O'Kane D. (2018) 'The Forgotten Victims: Prisoner experience of victimisation and engagement with the criminal justice system' (Research to policy and practice, No 1/2018, ANROWS); Prison Reform Trust, 2017, above n 4; Johnson, above n 4.

¹⁵ Stathopoulos, M. (2012) *Addressing Women's Victimisation Histories in Custodial Settings*, No. 13, Australian Centre for the Study of Sexual Assault, 6-7; Day et al., above n 14.

¹⁶ Drug and Crime Prevention Committee, Parliament of Victoria, (2010) *Inquiry into the Impact of Drug-Related Offending on Female Prisoner Numbers* (Parliamentary Paper No 371, October 2010).

¹⁷ Prisoner Profile (date unknown). Retrieved 9 April 2021 from: https://www.corrections.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2020/06/aa/114d40f57/infocv_prisoner_profile2019.PDF.

¹⁸ Ogloff, J.R.P., Pfeifer, J.E., Shepherd, S.M. & Ciorciari, J. (2017) 'Assessing the Mental Health, Substance Abuse, Cognitive Functioning, and Social/Emotional Well-Being Needs of Aboriginal Prisoners in Australia' 23(4) *Journal of Correctional Health Care* 398, (although we note that the numbers in the study were small).

¹⁹ Goutzamanis, S., Higgs, P., Richardson, M & Maclean, S. (2018) 'Increasing amphetamine use and forensic involvement among clients of three residential Indigenous alcohol and other drug services in Victoria, Australia' *Drug Alcohol Review* 37, 671-675, 673; Australian Institute of Health and Welfare (2019) *The health of Australia's prisoners 2019*. Australian Government.

²⁰ Australian Institute of Health and Welfare, Ibid.

²¹ Meehan, T., Jones, D., Stedman, T., Johnson, D., Suetani, S., Foreman, E. (2017) 'The physical health of Indigenous and non-Indigenous patients participating in residential rehabilitation programs: a comparison study' 25(2) *Australasian Psychiatry*, 164-167.

²² Kendall et al., above n 6, 1557.

²³ Russell, E, Carlton, B, Tyson, D., Zhou, H, Pearce, M and Faulkner, J., *A constellation of circumstances: The drivers of women's increasing rates of remand in Victoria.* Fitzroy Legal Service and the La Trobe Centre for Health, Law and Society, 2020

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- ²⁴ Social housing in Victoria currently sits at 3.2% of all housing stock – one percent less than the national average. Topsfield, J. & Millar, R. (15 November 2020) \$5.3b blitz on new public housing to ‘change lives’ *The Age*.
- ²⁵ Drug and Crime Prevention Committee, above n 16.
- ²⁶ Russell et al., above n 23.
- ²⁷ Sheehan, R. ‘(2013) Justice and Community for Women in Transition in Victoria, Australia’ in *Women Punishment and Social Justice: Human Rights and Social Work* (eds.) Margaret Malloch and Gill McIvor (Routledge).
- ²⁸ Prison Reform Trust & Soroptomist International, (2014) *Transforming lives. Reducing Women’s imprisonment*, 14.
- ²⁹ Social Exclusion Unit, Office of the Deputy Prime Minister, (2002) *Reducing re-offending by ex-prisoners*; See also Stathopoulos, M. (2012) *Addressing Women’s Victimisation Histories in Custodial Settings*, No. 13, Australian Centre for the Study of Sexual Assault, 6-7.
- ³⁰ Prison Reform Trust, 2014, above n 28.
- ³¹ Legal Aid NSW, (2015) *Aboriginal Women Leaving Custody: Report into Barriers to Housing 4*.
- ³² However, Corrections Victoria data indicates that women received into prisons in Victoria are facing more numerous charges. Walker, S., Sutherland, P. & Millsted, M. (2019), *Characteristics and offending of women in prison in Victoria 2012-2018* (Crime Statistics Agency, Melbourne).
- ³³ Corrections Victoria, (2019) Annual Prisoner Statistical Profile 2018-19. All prisoners, by sex and most serious offence/charge (Table 1.11).
- ³⁴ Moloney, K.P. & Moller, L.F. (2009) ‘Good Practice for Mental Health programming for women in prison: Reframing the Parameters,’ 123(6) *Journal of Public Health* 431-433.
- ³⁵ Beresford, S., (2018) *What about me? The impact on children when mothers are involved in the criminal justice system* Prison Reform Trust: United Kingdom.
- ³⁶ Women’s Centre for Health Matters, (2019) *The stories of ACT women in prison: 10 years after the opening of the AMC*, Canberra, ACT.
- ³⁷ Mitchell, B.K. & Howells, K. (2002) ‘The Psychological Needs of Women Prisoners: Implications for Rehabilitation and Management’ 9(1) *Psychiatry, Psychology and Law* 34-43; Hooper, C.A. (2003) ‘Abuse, interventions and women in prison: A literature review’, Literature Review, London: HM Prison Service, Women’s Estate Policy Unit.
- ³⁸ Shlonsky A., Rose, D., Harris, J., Albers, B., Mildon, R., Wilson, S., Norvell, J., Kissinger, L. (2016) *Literature review of prison-based mothers and children programs: Final report*.
- ³⁹ In one US study, 88% of fathers in US state prisons reported that at least one of their children was in the care of the child’s mother, while only 37% of mothers reported that the father was their child’s current caregiver.³⁹ Glaze, L. E., & Maruschak, L. M. (2008). *Parents in prison and their minor children*. (NCJ 222984). U.S.: Bureau of Justice Statistics Retrieved from <<http://www.bjs.gov/content/pub/pdf/pptmc.pdf>>.
- ⁴⁰ Children who were the subject of attention from statutory child protection services are at least nine times more likely than other young people to offend and come under the supervision of youth justice services. Sentencing Advisory Council, (2019) ‘Crossover Kids’: *Vulnerable Children in the Youth Justice System Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children’s Court*. See also: Victoria Legal Aid, (2016) *Care not custody. A new approach to keep kids in residential care out of the criminal justice system*; Australian Institute of Health and Welfare, (2018) *Child Protection Australia 2016–17*, Child Welfare Series no. 68 Australian Institute of Health and Welfare.
- ⁴¹ Jones, J., Wilson, M., Sullivan, E., Atkinson, L., Gilles, M., Simpson, P.L., Baldry, E. & Butler, T (2018), ‘Australian Aboriginal Women Prisoners’ Experiences of Being a Mother: A Review’ 14(4) *International Journal of Prisoner Health* 221.
- ⁴² Sheehan, above n 27.
- ⁴³ Corrections Victoria, (2020) *Annual Prisoner Statistical Profile 2018-19. Overview of female prisoners at 30 June* (Table 1.2). By June 2019, that 10-year percentage increase dropped to 104%.
- ⁴⁴ This compared to only a 10.4% reduction in the male prison population over the same period. Corrections Victoria (2021) *Monthly Prison and Offender Statistics*, Table 1.12.
- ⁴⁵ Corrections Victoria (2021) *End of month prisoner numbers by gender and warrant status*, Table 1.
- ⁴⁶ Walker et al., above n 32, 15.
- ⁴⁷ Hilde Tubex, H. ‘Prisoner numbers in Australia may have decrease, but we’re not really sure why yet.’ *The Conversation*, 21 January, 2020) <<https://theconversation.com/prisoner-numbers-in-australia-have-decreased-but-were-not-really-sure-why-yet-129696>>
- ⁴⁸ Corrections Victoria, (2020) Annual Prisoner Statistical Profile 2019-20. Aboriginal and Torres Strait Islander prisoners, by sex and legal status (Table 1.9).
- ⁴⁹ As at 30 June 2019, the proportion of the male prison population that identifies as Aboriginal was 10.4%. Corrections Victoria, (2020) *Annual Prisoner Statistical Profile 2009-10 to 2019-20. Table 1.4 – Overview of Aboriginal and Torres Strait Islander prisoners at 30 June*.
- ⁵⁰ Australian Bureau of Statistics, (2017) *Census of Population and Housing: Nature and Content, Australia, 2016* Catalogue No 2901.0.
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- ⁵¹ Australia's current imprisonment rate is higher than that of Canada, the UK and numerous other European countries. World Prison Brief, Highest to Lowest – Prison Population Total (web page) <https://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All>
- ⁵² Weatherburn, D. (2020) "Is Tougher Sentencing and Bail Policy the Cause of Rising Imprisonment Rates? A NSW Case Study." 53(4) *Australian & New Zealand Journal of Criminology*, 563–584, 565. However, there is evidence that unsentenced women are entering Victorian prisons with more extensive histories of offending and more charges. Walker et al., above n 32.
- ⁵³ O'Neill, Deidre., Sands, Valerie., and Hodge, Graeme. 'Victoria's prison system: rising costs and population, little accountability' (Blog Post, 28 June 2019) <<https://lens.monash.edu/@politics-society/2019/06/28/1375605/victorias-prison-system-rising-costs-and-population-little-accountability>>
- ⁵⁴ Thalia Anthony, 'FactCheck: are Indigenous Australians the most incarcerated people on Earth?', *The Conversation*, 6 June 2017, <theconversation.com/factcheck-qanda-are-indigenous-australians-the-most-incarcerated-people-on-earth-78528>
- ⁵⁵ Weatherburn, 2020, above n 52.
- ⁵⁶ Walker et al., above n 32.
- ⁵⁷ To some people, this may suggest that locking more people up helps keep the crime rate down. However, research reviewed by the Queensland Productivity Commission tells us that this is not the case. Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (Final report, 2019), 85.
- ⁵⁸ Corrections Victoria, (2020) Annual Prisoner Statistical Profile 2019-20. Overview of all prisoners at 30 June (Table 1.3).
- ⁵⁹ Weatherburn, D., & Rahman, S. (2021). *The vanishing criminal. Causes of decline in Australia's crime rate.* Melbourne University Publishing.
- ⁶⁰ Davis, B & Dossetor, K 2010, *(Mis)perceptions of Crime in Australia*, Trends & Issues in Crime and Criminal Justice, no. 396, Australian Institute of Criminology, July.
- ⁶¹ Essential Research (2018), *Essential Report, Perceptions of crime* (Web Page. Reviewed 29 April 2021) <<https://essentialvision.com.au/?s=perceptions-of+crime&searchbutton=Search>>
- ⁶² Weatherburn, D. (1993), 'Strategic issues in criminal justice system management', in proceedings of the AIC conference on Criminal Justice Planning and Coordination, 19–21 April, Canberra.
- ⁶³ McMahon, M. (2019) *No bail, more jail? Breaking the Nexus between community protection and escalating pre-trial detention*, Research Paper No 3, Parliamentary Library; Russell et al., above n 23; Walker et al., above n 32.
- ⁶⁴ Changes in policing can be driven by a range of factors including crime reduction targets; police focus on specific types of offenders or offence types; and increases in police numbers. Weatherburn, 2020, above n 52.
- ⁶⁵ McGowan, M. & Knaus, C. (10 June 2020) 'NSW police pursue 80% of Indigenous people caught with cannabis through courts' *The Guardian* <<https://www.theguardian.com/australia-news/2020/jun/10/nsw-police-pursue-80-of-indigenous-people-caught-with-cannabis-through-courts>>.
- ⁶⁶ MacGillivray, P. & Baldry, E. (2015) *Australian Indigenous Women's Offending Patterns*, Brief 19 Indigenous Justice Clearinghouse; Anthony, T. & Blagg, H. (2013) 'STOP in the Name of Who's Law? Driving and the Regulation of Contested Space in Central Australia' 22(1) *Social and Legal Studies*, 43.
- ⁶⁷ See recommendations 41 to 59. State of Victoria, Royal Commission into Family Violence (2016). *Summary and Recommendations*, Parliamentary Paper No. 132 (2014 – 2016).
- ⁶⁸ Ulbrick, M. & Jago, M. (2018) '*Officer, she's psychotic and I need protection: police misidentification of the 'primary aggressor' in family violence incidents in Victoria.* Women's Legal Service Victoria, Monash University.
- ⁶⁹ Strict bail laws can also mean less women apply for bail, particularly if they have no legal representation. A recent Victorian study found 72% of remanded women made no application for bail. Russell et al., above n 23.
- ⁷⁰ There were more than four times as many unsentenced women entering Victorian prisons in December 2018 than December 2008, (Walker et al., above n 32) representing the largest numerical change in unsentenced prisoners in Australia (Australian Bureau of Statistics, *Prisoners in Australia, 2019* (Catalogue No 4517.0, 2019). Unsentenced women constituted 87% of all prison receptions in Victoria's women's jails in 2018, and 42.4 per cent of all women imprisoned in Victoria, up from 24.8 per cent in 2008 (Walker et al., above n 32).
- ⁷¹ Russell et al., above n 23.
- ⁷² Walker et al., above n 32, 23.
- ⁷³ Evidence from NSW suggest that as at 2016, breach of a residential bail condition was found to be third most likely condition to be breached. The proportion of breaches of this condition were found to be higher among Indigenous people, and that one fifth of defendants found to breach bail were subsequently remanded in custody. Donnelly, N., and Trimboli, L. (2018) *The nature of bail breaches in NSW* (NSW Bureau of Crime Statistics and Research, Crime and Justice Statistics Bureau Brief, Issue Paper no. 133, May 2018)
- ⁷⁴ Sentencing Advisory Council, Community-Based Sentences (Web Page, 14 July 2020a) <<https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-trends/community-based-sentences>>
- ⁷⁵ Easton, H., Silvestri, M., Evans, K., Matthews, R., & Walklate, S. (2010) Conditional Cautions: Evaluation of the women specific condition pilot. *Ministry of Justice Research Series 14*, 10.
- ⁷⁶ Rempel, M., & Pooler, T. (2020) *Reducing pre-trial detention in New York City: Data-driven strategies for decarceration.* Centre for Court Innovation.
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⁷⁷ State Government of Victoria, *Victorian Government Aboriginal Affairs Report 2019* (2019), Table 15.2.1 (see caveats regarding this data).

⁷⁸ State Government of Victoria, (2018) *Burra Lotjpa Dunguludja. Victorian Aboriginal Justice Agreement: Phase 4. A partnership between the Victorian Government and Aboriginal community*, 18; See also Parker, R. & Milroy, H. (2014) 'Aboriginal and Torres Strait Islander Mental Health: An Overview' in Dudgeon, P., Milroy H., & Walker, R. (eds) *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice* Commonwealth Government.

⁷⁹ Centre for Innovative Justice, (2020) Submission to the Council of Attorneys-General, *Review of age of criminal responsibility*.

⁸⁰ This phrase is attributed to Emma Russell in the webinar, hosted by the Fitzroy Legal Service on 10 July 2020, launching the 'Constellation of circumstances' report. Russell et al., above n 23.

⁸¹ Caruana, C., (8 May 2020) *COVID-19 and incarcerated women: a call to action in two parts – Part Two* Centre for Innovative Justice, <<https://cij.org.au/news-and-views/covid-19-and-incarcerated-women-a-call-to-action-in-two-parts-part-two/>>.