



Submission to the Cultural Review of the Adult Custodial Corrections System

29 November 2021

Introduction

The Centre for Innovative Justice at RMIT University (CIJ) welcomes the opportunity to provide a submission to the Cultural Review of the Adult Custodial Corrections System ('Cultural Review'). This submission is not intended to be a comprehensive document, but rather a brief introduction to some of the key issues the CIJ has highlighted in our work relating to women (specifically Aboriginal and Torres Strait Islander women) and persons with disability in the Adult Custodial Corrections System. We hope that the identification of these issues and further resources will assist the Cultural Review explore the issues further in your consultations.

The CIJ recognises that this Cultural Review provides a unique opportunity to recommend ways of working differently and responding to people within the Victorian custodial corrections system, so that we can address the overrepresentation of First Nations, women, and people with disability in prisons and throughout Victoria's criminal justice systems.

About us

The Centre for Innovative Justice

The CIJ was established in 2012 to explore innovative ways to improve the justice system, with a focus on people's lived experiences. The CIJ's objective is to develop, drive and expand the capacity of the justice system to meet and adapt to the needs of its diverse users.

CIJ brings together an experienced team of multi-disciplinary researchers and practitioners to develop solutions to complex problems through research and innovation that is strategic, accessible and practical. Our approach is centred on the experiences of those people and communities who are affected and brings stakeholders together to work collaboratively on designing solutions. The Centre's work includes research on therapeutic jurisprudence, restorative justice, victim services, family violence, women's decarceration, and disability in the criminal justice system, as well as the application of human-centred design to legal issues and processes. The CIJ includes Open Circle, a service that provides restorative justice consultancy and research as well as delivering restorative justice conferences. The Centre is also co-located at RMIT University's Social Innovation Hub with two community legal centres – Youth Law and the Law and Advocacy Centre for Women – providing opportunities for research to practice, and practice to research insights.

Through our work across the interrelated themes of the incarceration of women, family violence, disability, Aboriginal people in the justice system and support for victims of crime, the CIJ has gained insight into the experiences and needs of people in the justice system. Our work on criminal justice reform is enriched by the contributions of our colleague Dorothy Armstrong, a Lived Experience Expert employed by the CIJ since 2019.

The following section highlights the key issues the CIJ has identified in relation to the Adult Custodial Corrections System and further submissions and publications that provide our detailed research for the Cultural Review.





Key issues

People with disability in custody

Since its establishment, the CIJ has engaged in work to highlight and address the overrepresentation of people with disability in the criminal justice system. This work was initiated in response to a 2011 study that found 42 per cent of men and 33 per cent of women in Victoria's prisons have an acquired brain injury (ABI), while the prevalence of acquired brain injury in the general population is under 3 per cent.¹ The CIJ's work prioritises the voices of people with lived experience of the justice system and disability, including in our recommendations for change.

The report, [*Recognition Respect and Support: Enabling Justice for people with an Acquired Brain Injury*](#),² lists thirty-five recommendations that were formulated, 'road-tested' and workshopped with people with lived experience. These recommendations reflect the participants' need for a system that delivers recognition, respect and support to people with ABI and disability in the Adult Custodial Corrections System. These recommendations call for a criminal justice system that:

- listens to the voices of people with ABI;
- that focuses on responding to their support needs, not only to their perceived risk;
- that provides holistic support;
- that links justice and health services more effectively; and
- provides people with ABI with access to stable and affordable housing, linked to support.

In our later project Supporting Justice, the CIJ also worked with people with lived experience to map out the experience of people with disability in the justice system and understand opportunities for systemic change. Our learnings from this project about custodial environments include:

- People with disability are frequently not offered or asked what supports and adjustments they need; they may also not be aware of their entitlement to supports or know what supports might be available.³ This is particularly the case for those 'hidden disabilities', such as ABI, autism spectrum disorder, ADHD and mild intellectual disability. Lack of access to appropriate adjustments and communication support for people with disability has the effect of limiting access to programs necessary for parole, rehabilitation or full participation in prison life leading to prolonged detention, poor post-release outcomes and social isolation.⁴
- Many people conceal their disability in custodial environments where there is a perceived risk of exposing vulnerability and a reluctance among prisoners to ask for help.
- There are low levels of disability awareness among criminal justice system workers, such as lawyers, judicial officers, correctional and court staff. Most prisoners with disability are reliant on custodial staff to meet their needs, but custodial staff are not well-trained or supported to perform this role.
- The ongoing lack of clarity about the interface between the NDIS and the justice system is limiting the implementation of disability supports for people in prison.

¹ Martin Jackson et al., 'Acquired Brain Injury in the Victorian Prison System' *Corrections Victoria Research Paper Series* (2011) Paper No. 4.

² Centre for Innovative Justice and Jesuit Social Services, *Recognition, Respect and Support: Enabling Justice for People with an Acquired Brain Injury* (2018);

³ Australian Human Rights Commission, *Equal before the law* (2014) 24.

⁴ *Ibid*, 29.



- People with disability, and those with dual diagnoses in particular, experience degrading and abusive responses in custody. An example of this is the refusal of medication for remandees with mental ill-health leading to a rapid decline which was related by both Kevin and John, members of the Voices for Change, and recorded in the podcast 'Our Voices' (see excerpts below).

"I don't think it's fair when you go to prison, you're taken off your medication and stuff. It happened to me a few times. I've gone to custody and not been given my medication, so then you fall ill and you end up in AAU. It's a psych unit within the Melbourne Assessment Prison. When you get arrested, you go to the police cells. You can wait there up to 28 days, then they remove you onto the map, where they try and sort your medication out. Yeah, it's hell. When I went to the AAU once, I wasn't on medication and I felt very sick. I slept under the bench for three months. I thought I was getting poisoned by the water. They don't understand it at the prison, the mental health. They don't understand the importance of taking your medication. The most important thing, biggest thing for me is medication in prisons. What needs to change in the prison population is that medication and ABIs need to be more recognised so people aren't suffering."

- Kevin Maloney, Voices for Change

"You know, within the prison system and police cells especially, I was just a number thrown in the cell. Well, the jails can take care of him. I've been on medication and stuff and then get arrested and put in the cells. I asked them for my medication or anything like that. And then I'm spinning out because I'm not feeling right again, even less. I was horrible and becoming a bit psychotic. I'm spinning out and calling out for help and I ended up as a spastic in the cells. I had my neck go all stiff and my hands cramp up and my left foot turned in. I was dragging it. Yeah, it was, eventually I was given an injection in the bum and it made me come good again. Eventually. But I've had experiences in the cells that, I'm asking for help because I don't feel well and I'm getting no help. And then I'm losing it because I'm not feeling well and next thing you know, I'm getting more charges and it's because of my behaviour. Because I wasn't right in my mind, in my body."

- John Tjepkema, Voices for Change

Our comprehensive findings and recommendations for change can be found in:

- [Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#);
- [Submission to the 'Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability' – NDIS interface with criminal justice](#);
- [Recognition, Respect and Support: Enabling Justice for People with an Acquired Brain Injury](#) (2018);

Accounts of the experience of people with disability in a custodial environment are documented in the Our Voices podcasts, which feature interviews with members of the Voices for Change self-advocacy group who have lived experience of disability and justice involvement: Our Voices Podcast [Episode 1](#); [Episode 2](#); [Episode 3](#); [Episode 4](#); [Episode 5](#); [Episode 6](#).

The CIJ continues to work closely with people with lived experience to understand opportunities for systemic reform and change, including ways to improve recognition, respect and support for people with disability across the justice system and improving awareness of disability and trauma across the justice workforce.

The CIJ would be happy to discuss with the Cultural Review any further insights into these areas.



The Just Voices Project

The CIJ has been funded to deliver the “Just Voices Project: Building mainstream justice workforce capability around the NDIS through lived experience”, commissioned by the Department of Justice and Community Safety. This project will work with people with disability and experience of the justice system to design and develop workforce initiatives for the mainstream justice workforce.

Just Voices aims to build the capability of the justice workforce to:

- understand the lived experience of people with disability;
- be aware of disability and able to identify associated behaviours;
- communicate and interact effectively with people with disability
- better understand and engage with the NDIS

The CIJ will work with our partners in disability advocacy and self-advocacy networks to draw lived experience and disability expertise into the project, as members of the Project Advisory Committee and participants in co-design activities. This project will draw from our recent experience and learnings from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, working with disability self-advocates and developing innovative approaches to embedding lived experience in service design. Just Voices is a wonderful opportunity to continue our work with people with lived experience of the criminal justice system to improve outcomes for people with disability in the justice system.

Women in Custody

Through our research into the incarceration of women and women’s experiences of the justice system, the CIJ has developed insights into the drivers behind the escalating female imprisonment rate in Victoria. The CIJ has engaged with women with lived experience and with frontline service agencies working with justice involved women. in numerous projects. These have included:

- A feasibility study into a Residential Program for Aboriginal women in contact with the criminal justice system as an alternative to prison;
- An evaluation of the Women Transforming Justice project, a multiagency collaboration providing legal and outreach support to women in contact with the criminal justice system;
- The delivery of financial counselling services into Dame Phyllis Frost Centre’s Women’s Prison and the subsequent development of a practice guide for integrating financial counselling in a legal service; and
- A project investigating women’s experiences of bail and sentencing since COVID-19 restrictions were imposed, to track patterns of subsequent contact with the criminal justice system and associated support needs during this time (the Lessons from COVID-19 project, pending).

The breadth of our research and work into women’s incarceration is detailed in an Issues Paper recently released by the CIJ: [Leaving custody behind: Foundations for safer communities and gender-formed criminal justice systems](#) (*Issues Paper*) and accompanying [fact sheet](#). Our recent [Submission to Legal and Social Issues Committee Inquiry into Victoria’s Criminal Justice System](#) also focuses on the experiences and needs of the women, and more specifically, Aboriginal and Torres Strait Islander women, who are the fastest growing group in Victoria’s prison population.

Based on our research, we emphasise need to take a gendered approach to this Cultural Review. Women are being incarcerated at a faster rate than men. In the 10 years to June 2018, the number of women in prison in Victoria increased by close to 138 per cent, compared with an 81 per cent increase in the male prison



population over the same period.⁵ Aboriginal women are imprisoned at a rate that is disproportionate to both non-Indigenous women, and Aboriginal men. The number of Aboriginal women entering prison in Victoria more than tripled between 2012 and 2018,⁶ and the rate at which they are imprisoned has more than doubled in the last 20 years.⁷

In this review, we highlight the following findings related to custodial environments for women:

- **Crime victimisation from gendered violence:** Women in prison have near universal experiences of prior victimisation. Studies suggest that between 77% to 90% of incarcerated women having prior trauma exposure, predominately from family violence and sexual assault, both as adults and in childhood.⁸
- **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. In one study, 92.3 per cent of a sample of Aboriginal women presented with a form of mental illness, and 46% met one criterion of PTSD (compared to 14.7 per cent of Aboriginal men).⁹

Criminalised women are more likely to experience suicide attempts and substance overdoses, and face an increased risk of premature, unnatural death following their release from prison.¹⁰

- **Substance dependence:** 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 per cent of their offences have been found to be related to drug and alcohol dependence.¹¹
- **Poorer physical health:** Women entering Australian prisons have considerably poorer physical health with close to half (45 per cent) found to have a chronic health condition, compared to 28 per cent 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.¹²

Aboriginal women involved in the justice system are also likely to experience other health issues, including diabetes, heart attack and stroke,¹³ as well as high rates of reproductive health problems,

⁵ 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%.

⁶ Walker, S., Sutherland, P. & Millstead, M. (2019), *Characteristics and offending of women in prison in Victoria 2012-2018* (Crime Statistics Agency, Melbourne), 15.

⁷ 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>.

⁸ Green, B., Jeanne, M., Daroowalla, A., & Siddique, J. (2005) 'Trauma exposure, mental health functioning and program needs of women in jail', 51 (1) *Crime & Delinquency* 133-151, 134.

⁹ McEntyre, E. (2019) 'But-ton kidn doon-ga: Black women know - Re-presenting the lived realities of Australian Aboriginal women with mental and cognitive disabilities in the criminal justice system' 19 (2) *Australian Indigenous Health Bulletin*; Baldry, E., McCausland, R., Dowse, L. & McEntyre, E. (2015) *A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system* UNSW Sydney; 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.

¹⁰ Stone, U. B., (2013) 'I'm still your Mum: Mothering inside and outside prison', Master of Arts thesis, RMIT University; Australian Institute of Health and Welfare (2015) *The health of Australia's prisoners 2015* Canberra; Wright, E. M., Voorhis, P. V., Salisbury, E. J., & Bauman, A. (2012) 'Gender-responsive Lessons and Policy Implications for Women in Prison: A Review' 39 (12) *Criminal Justice and Behaviour*; Segrave, M., & Carlton, B., (2010) 'Women, Trauma, Criminalisation and Imprisonment.' *Current Issues in Criminal Justice* 22 (2), 287-305.

¹¹ 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.

¹² Australian Institute of Health and Welfare (2015) *The health of Australia's prisoners 2015* Canberra.

¹³ 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.



many of which are associated with gendered violence.¹⁴ Aboriginal women who are in custody sustain more physical injuries from violence than non-Aboriginal women and are more likely than men in prison to have acquired brain injuries, in part related to family violence.¹⁵

- **Housing needs:** Difficulties accessing safe and affordable housing for themselves and their children, is a key factor driving women into criminalisation.¹⁶ Imprisonment acts to disrupt women's access to housing further. Spending even a short period in custody can result in a woman losing housing and possessions.¹⁷

Housing is essential for women to transition successfully from prison and to be reunited with children placed in care during their incarceration.¹⁸ Despite this, a 2015 study of women leaving Silverwater Prison in NSW over a 12-month period found that only 12 per cent had stable housing on release from prison.¹⁹

- **Limited opportunities for rehabilitation and support:** Women are more likely to spend short, damaging periods in custody. Not only do these brief periods of detention act to compound disadvantage and disconnections from family and community, they also mean that women have less opportunity to get the support they need in prison, and following release, to address the issues that led to their offending. There is also a lack of gender-informed programs and supports at earlier points of the criminal justice pathway. Women have limited access to gender-specific and culturally relevant residential treatment programs more generally, particularly those that accommodate children.²⁰
- **Disruption of child rearing and caregiving:** Incarcerating women is, in effect, a “double punishment”. This is both in terms of the impact of incarceration on individual women and the intergenerational impact that the disruption of women's child rearing and other caregiving roles has in the community.

Women in prison are more likely than men to be the primary carer of dependent children or other family members.²¹ Imprisonment impacts disproportionately on Aboriginal women when responsibilities for the care of non-biological children and extended family across kinship networks are disrupted, resulting in significant down-stream implications for child welfare and family cohesion.

Women in prison who lose custody of their children have also been found to be at higher risk of self-harm and are more likely to return to custody than women whose connection with their children had been supported.²²

¹⁴ Kendall, S., Lighton, S., Sherwood, J., Baldry, E. & Sullivan, E. (2019) 'Holistic Conceptualizations of Health by Incarcerated Aboriginal Women in New South Wales, Australia' 29(11) *Qualitative Health Research*, 1557.

¹⁵ Jackson, M., Hardy, G., Persson, P., & Holland, S. (2011) *Acquired Brain Injury in the Victorian Prison System*, Research Paper Series No 04, Corrections Victoria, 6.

¹⁶ 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.

¹⁷ Prison Reform Trust & Soroptomist International, (2014) *Transforming lives. Reducing Women's imprisonment*, 2014.

¹⁸ 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).

¹⁹ Legal Aid NSW, (2015) *Aboriginal Women Leaving Custody: Report into Barriers to Housing 4*.

²⁰ CIJ, *Submission to Legal and Social Issues Committee Inquiry into Victoria's Criminal Justice System* (2021) 8.

²¹ CIJ, *Submission to Legal and Social Issues Committee Inquiry into Victoria's Criminal Justice System* (2021) 5.

²² 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', London: HM Prison Service, Women's Estate Policy Unit.



The Bangkok Rules

In light of clear evidence of gendered disadvantage in the prison population, and the broader social impacts resulting from the imprisonment of women, in 2010, the United Nations General Assembly adopted the United Nations Rules for the Treatment of Women Prisoners and Noncustodial Measures for Women Offenders (the Bangkok Rules).²³

The standards set by the Bangkok Rules envisage a holistic, trauma-informed, case-management approach to program planning and delivery in women's prisons. They stress the need for gender-informed, individualised assessment and reception processes that are geared to identifying and responding to the many vulnerabilities with which women received into prisons present, as well as the specific needs of Aboriginal and Torres Strait Islander women; women from CALD communities; women with a disability; and women who identify as LGBTQI+.

The Bangkok Rules stress the importance of prison staff having training that will better equip them to understand and respond to the significant support needs of the women in their care, including the disproportionately high number of women detained in remand. The Rules also set requirements for the development and implementation of classification methods that are gender-specific. This will help ensure that women do not receive security ratings that are unnecessarily high, particularly when women's experiences of violence and their resulting poor mental health are misinterpreted as a security risk, and thereby influencing their access to work and rehabilitative programs.

Research on incarcerated women's post-release needs has also highlighted the lack of pre-release planning²⁴ and the inadequacies of male-centred post-release programs as major reasons for poor community transitions for women. In particular, Baldry argues that conventional post-release programs and the 'throughcare' model of prisoner management²⁵ fail to deliver for women given:

- they are generally not available to people who are in custody for shorter periods of time, including those on remand, which is the most common experience of prison for women;
- the lack of specialist programs which accommodate high rates of mental health, cognitive and substance dependence disorders amongst women; and
- the disproportionate levels of disadvantage from which women enter prison and return to post-release.

The above points provide only a snapshot of issues relevant to women passing through the prison system. Further detail relating to women's experiences of the justice system, and recommendations for reform can be found in the *Issues paper* referred to above.

Further Assistance to the Cultural Review

We hope that this submission and linked resources assist the Cultural Review. The CIJ is available to provide further assistance to the Cultural Review if needed and please do not hesitate to contact us for additional information.

²³ United Nations Office on Drugs and Crime (UNODC), (2010) 'United Nations rules for the treatment of women prisoners and non-custodial measures for women offenders (The Bangkok Rules).'

²⁴ Trotter, C., & Flynn, C., (2016) *Best practice with women offenders: Literature Review* Monash University Criminal Justice Research Consortium.

²⁵ This is the policy of ensuring continuous and coordinated management of prisoners from their reception until their successful integration in the community on release and is the dominant correctional policy in Australia. Baldry, E. (2010) 'Women in Transition: From Prison to...' 22(2) *Current Issues in Criminal Justice*, 253, 256.