



Submission to the Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters

March 2023

For further information in relation to this submission please contact:

Engender Equality



Given Engender Equality's specialisation in working with women and families who have experienced family violence, this submission primarily considers their specific experiences. People who have experienced abuse are often significantly disempowered and may not be able to engage in the kind of community participation that is necessary to ensure that their voices are heard and their concerns addressed. This call for submissions is an excellent opportunity to advocate on their behalf. Therefore, we believe it is our role to address the specific issues that are faced by women, gender-diverse people and children who are disproportionately disadvantaged because of current and historical family violence and gender inequality.

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This report was produced on the lands of the muwinina people, who due to the impacts of colonisation, did not survive invasion. Engender Equality pays its respects to the present Tasmanian Aboriginal community and pledges its commitment to fighting for Tasmanian Aboriginal justice and rights. This always was, and always will be Tasmanian Aboriginal land.

This submission was prepared for Engender Equality by [Advocate for Change](#), Caroline Noulton.

Summary of Key Messages

Key Message 1	Women should not be imprisoned.
Key Message 2	Disadvantaged populations need resources, not imprisonment.
Key Message 3	Women are disadvantaged by legal systems including the criminal justice system.
Key Message 4	Incarcerating mothers destroys the lives of children.
Key Message 5	Damage from imprisonment is long lasting for women.
Key Message 6	Transgender women and non-binary peoples' needs must be considered.
Key Message 7	Health care and support in prisons should be gendered.

Introduction

Engender Equality is Tasmania's state-wide specialist family violence service, providing frontline counselling and support to all people affected by family violence and abuse, alongside advocacy, community education and training to address gender inequality and gender-based violence. We welcome and strongly support developing new ways for supporting women who engaged in criminalised behaviour and actions.

This submission promotes the need for the matters pertaining to imprisonment and detention be considered via a gendered lens that will illuminate the experiences of women in the criminal justice system.

Women in prison in Australia

There are approximately 3000 women imprisoned in Australia at any given time, representing around 7.5% of the total prison populationⁱ.

Despite their relatively low numbers overall, female prison populations are increasing at a faster rate than male prison populations, which is reflected both in Australia and globallyⁱⁱ.

There are several potential reasons why this is happening. According to the World Health Organisation, global factors include economic crisis, social unrest, displacement due to war, and criminal justice systems that disadvantage women (WHO 2014)ⁱⁱⁱ. It is also clear that prison populations comprise people from disadvantaged and marginalised backgrounds, and this is particularly true for women and speaks to the grow disparity between advantages and disadvantaged people^{iv}.

Key Message 1: Women should not be imprisoned

Given the data on women's offending, criminalisation of women is essentially criminalisation of the most vulnerable and marginalised people in society. Increasing rates of incarceration can and should be viewed as a failure of public health and social policies that do not address the factors that underpin women's offending.

The reasons behind women's offending differ from men, with the majority of women being incarcerated due to non-violent crimes such as drug offenses and property crime. When women use violence, it is most often in the context of a family violence setting where it is either retaliatory or pre-emptive (Chay Brown, Research and Partnerships Manager for The Equality Institute, and Postdoctoral Fellow at the Australian National University)^v.

Drug use often precipitates women's offending, and females in prison tend to have experienced higher levels of abuse, economic hardship and other adversity in their lives than men^{vi}. This phenomenon requires a judicial and system response that thoroughly understands drug use patterns in women and describes gender differences in drug use and help seeking for drug dependency.

The Global Partnership on Drug Policies and Development^{vii} explains; "women who use drugs suffer greater stigmatisation and discrimination by their families, social environment and society. Drug use is perceived as immoral and incompatible with their attributed roles as wives and mothers. Stigma is often more severe where strict gender hierarchies and clear expectations of acceptable behaviour by women persist."

According to Silke Meyer, former Deputy Director of the Gender and Family Violence Prevention Centre and Associate Professor of Criminology at Monash University, it is estimated that 85% of incarcerated women in Australia have experienced violence at some stage in their life, and 98% have experienced victimisation and trauma^{viii}. This is also reflected globally in prison populations where incarcerated women often have histories of poverty, domestic violence, social deprivation and childhood trauma (Hatton & Fisher 2009^{ix}; WHO 2014^x).

First Nations women, while comprising only 3% of the total female population in Australia, comprise one third of the female prison population, again illustrating how incarceration disproportionately effects Australia's most marginalised and disadvantaged populations^{xi}.

Little is known about the prevalence of physical disability in prisoners. However, intellectual disability is thought to be over-represented (Hellenbach, Karatzias & Brown 2017^{xii}). Disturbingly, acquired brain injury, which is linked to violence, impulsiveness and impaired judgement, within the female prison population is thought to be within the ranges of 40-73%. (Jackson et al. 2011^{xiii}), which is alarmingly high.

Unless the government dedicates funding and resources to mental health, substance use, disability support, housing and violence prevention within communities, the rate of women being incarcerated will likely only continue to surge^{xiv xv xvi}.

Key Message 2: Disadvantaged populations need resources, not imprisonment

Imprisonment is yet another way that disadvantaged people in Australia, particularly women, are victimised. Given what we know about the vulnerability of our female prison populations, more needs to be done to support women throughout their lives, rather than to punish and traumatise them further with incarceration.

The factors that underpin the marginalisation and oppression of women who are incarcerated need to be meaningfully addressed by governments.

Such actions should include:

- Adequately resourcing specialist women's services to support them through experiences of violence and abuse.
- Preventing violence against women by implementing education and policy changes which address the drivers of this violence.
- Funding and support for housing, health services and family and income support.
- Robust funding for specialist services providing family and intimate violence prevention, education and counselling.
- Targeted and evidence-based programs to support men not to commit violence against women.
- Working with First Nations people to improve health and social outcomes.
- Addressing discrimination towards women, gender diverse and First Nations populations.

Primary prevention is key to reducing risk factors which cause women to offend and ultimately lead to their incarceration^{xvii}. Specialist services offer early intervention for women who have been impacted by violence and abuse during their lives.

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Key Message 3: Women are disadvantaged by legal systems including the criminal justice system

According to the World Health Organisation, women are disadvantaged by legal systems globally, including within Australia^{xviii xix}.

One of the ways in which this occurs is that women are generally less able to afford legal representation and are increasingly required to self-represent in Court. Community legal services are underfunded and unable to meet demand, meaning that women are often not able to access legal advice and support to assist them in legal matters^{xx}.

It is also known that there is a widespread issue with law enforcement mis-identifying the primary aggressor in intimate and family violence^{xxi}. This arises from a general and serious misunderstanding of the dynamics of intimate and family violence by law enforcement professionals including police and judicial officers. One example of this is the gender-stereotyping around the "perfect victim".

One victim-survivor of family violence told Engender Equality, "I appeared strong and articulate in Court and I believe that this disadvantaged me. The Judge did not believe me to be a victim, and even interpreted my setting of boundaries for my abuser as me being abusive. He seemed to think that abuse victims should be a broken, weak, blubbering mess."

Women who fight back are also at risk of misidentification. We know that when women use violence, it is most often in the context of a family violence setting where it is either retaliatory or pre-emptive^{xxii} but the complex dynamics and nuances around family violence are still not well understood by those enacting laws.

We need to increase our sophistication around interpreting the actions for women and sentencing to make sure that we are not incarcerating misidentified women.

Key Message 4: Incarcerating mothers destroys the lives of children

The Australian Institute of Health and Welfare examined the National Prisoner Health Data Collection (NPHDC) and found that more than half (54%) of the prison entrants surveyed reported having at least 1 dependent child^{xxiii} and these women are often the primary carer for their children. The separation of women from their children due to imprisonment can contribute to mental health problems for the prisoner (WHO 2009), as well as to worse outcomes throughout the lifetime of children whose mothers have been incarcerated.

Research out of the UK shows only five per cent of children with a mother in prison stay in their family home during their mother's prison sentence^{xxiv xxv} (Caddle and Crisp, 1997). This means that children are either forced into foster care or kinship care situations which create additional challenges and risks for children, as well as increasing the burden on the already strained out of home care system.

In some circumstances, children are allowed to stay with their mothers in prison until a certain age (WHO 2014). In Australia, this age varies by state and territory, but is generally the age when the child would start attending school. In the 2017 calendar year, 69 children were living in custody. 114 women were pregnant when they entered prison 25 women gave birth while in custody 69 children were living in custody.

Children are more likely to become involved with the criminal justice system if their parents have been involved in the system (Troy et al. 2018^{xxvi}). Parental imprisonment can exacerbate, or lead to, financial, social, and psychological challenges and disadvantages that may perpetuate a cycle of criminal justice system involvement within a family (Troy et al. 2018).

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Key Message 5: Damage from imprisonment is long lasting for women

Women are generally imprisoned for non-violent crimes and for a shorter duration than males, however the stigma associated with imprisonment is often more challenging for women once they leave prison. The stigma experienced by women is often different to the stigma that men experience. This is due in part to the fact that women being incarcerated means that they are stepping outside of the gender norms of femininity and into the masculine world of criminality and incarceration.

The stigma of incarceration on women can be severe and debilitating, impacting relationships, housing, custody of children and future employment prospects.

Women are still more likely to seek employment in caring roles such as nursing and childcare, which often require criminal history checks as a pre-condition of employment. If women are unable to return to or find employment following a period of incarceration, this negatively impacts their economic independence going forward, and subsequent access to housing, health care and their ability to provide support for any dependents.

Male dominated employment sectors may be less concerned with a criminal history, therefore allowing males to access employment at a higher rate than women following periods of incarceration. This is true in Tasmania where former prison inmates are often able to find employment on fishing trawlers, in abattoirs and on building sites where criminal history checks are not routinely required^{xxvii}.

Key Message 6: Transgender women and non-binary peoples' needs must be considered

Gender diverse populations face increased discrimination and mental health issues, including alarmingly high levels of suicidality^{xxviii}. As such, gender diverse populations should be afforded additional consideration, support and protection while in prison to ensure they can safely complete their imprisonment periods without increased risk of harm.

Transgender women should be in women's prisons and non-binary people should be individually considered on which prison they should be sent to.

There is a dearth of research into the prevalence and experiences of gender diverse people in prison in Australia. One study of transgender prisoners in US prisons in 2007 by the University of California, found that transgender inmates were more likely than not to have experienced sexual assault while incarcerated — at a rate more than 13 times higher than their male counterparts^{xxix}.

In the limited Australian research available, trans women incarcerated in male prisons reported being sexually and physically assaulted and verbally harassed by other inmates^{xxx}. Prisons currently present unacceptable safety risks for gender-diverse people and this needs to be urgently addressed.

Key Message 7: Health care and support in prisons should be gendered

Prisons and justice systems have traditionally been designed by men and for men. Prisons globally tend not to meet the specific needs of women and gender diverse populations^{xxxi}.

Due to the complex trauma backgrounds of women and gender diverse populations in prison, prison staff need to be trauma informed and trained to manage and work with people with complex trauma. While women tend to serve significantly shorter sentences on average than men, they tend to have high rates of recidivism^{xxxii}. If the triggers for women's offending such as trauma and addiction are not appropriately addressed while they are in prison and on their release, these recidivism rates will likely remain high.

Conclusion

Engender Equality is concerned about the lack of gender analysis behind the current practice of sentencing and incarceration in Tasmania. Considering the many gender nuances in criminalised behaviours and how women come to break the law, the legal and judicial response must have a gendered lens to respond in a way that reduces ongoing harms that are disproportionately burdened by women.

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- ⁱ **Corrective Services Report on Government Services 2023, PART C, SECTION 8:** RELEASED ON 31 JANUARY 2023. [8 Corrective services - Report on Government Services 2023 - Productivity Commission \(pc.gov.au\)](#)
- ⁱⁱ **Law Society Journal Online, Women in Prisons, by Cat Woods, Jan 17, 2023.** [Women in prison - Law Society Journal \(lsj.com.au\)](#)
- ⁱⁱⁱ **World Health Organisation, 2014.** [Prisons and Health \(who.int\)](#)
- ^{iv} **Silke Meyer Deputy Director, Gender and Family Violence Prevention Centre, Associate Professor (Research), Criminology at Monash University: 30 July 2021** [Why more women are doing time in Australia's prisons – Monash Lens](#)
- ^v **Law Society Journal Online, Women in Prisons, by Cat Woods, Jan 17, 2023.** [Women in prison - Law Society Journal \(lsj.com.au\)](#)
- ^{vi} **The female criminal: an overview of women's drug use and offending behaviour, Australian Institute of Criminology, Catherine Rushforth, Katie Willis, 2003.** [The female criminal: an overview of women's drug use and offending behaviour | Australian Institute of Criminology \(aic.gov.au\)](#)
- ^{vii} **The Global Partnership on Drug Policies and Development, Germany** <https://www.gdpdp.org/en/drug-policy/for-gender-sensitive-drug-policies/women-and-drug-use>
- ^{viii} **Silke Meyer Deputy Director, Gender and Family Violence Prevention Centre, Associate Professor (Research), Criminology at Monash University: 30 July 2021** [Why more women are doing time in Australia's prisons – Monash Lens](#)
- ^{ix} **Fisher AA, Hatton DC. Women prisoners: health issues and nursing implications.** Nurs Clin North Am. 2009 Sep;44 <https://pubmed.ncbi.nlm.nih.gov/19683097>
- ^x **World Health Organisation, 2014.** [Prisons and Health \(who.int\)](#)
- ^{xi} **Australian Government, Australian Institute of Health and Welfare Report, The health and welfare of women in Australia's prisons, Published November 2020** <https://www.aihw.gov.au/getmedia/32d3a8dc-eb84-4a3b-90dc-79a1aba0efc6/aihw-phe-281.pdf.aspx?inline=true>
- ^{xii} **Hellenbach M, Karatzias T, Brown M. Intellectual Disabilities Among Prisoners: Prevalence and Mental and Physical Health Comorbidities.** J Appl Res Intellect Disabil. 2017 Mar;30(2):230-241. doi: 10.1111/jar.12234. Epub 2016 Jan 18. PMID: 26775928. <https://pubmed.ncbi.nlm.nih.gov/26775928/>
- ^{xiii} **Jackson M, Hardy G, Persson P & Holland S 2011. Acquired brain injury in the Victorian prison system. Corrections Research Paper Series (4).** Melbourne: Victorian Department of Justice https://files.corrections.vic.gov.au/2021-06/acquired_brain_injury_in_the_victorian_prison_system.pdf
- ^{xiv} **Pursuit by University of Melbourne online, By Professor Cathy Humphreys and David Gallant, University of Melbourne** [Vulnerable women trapped by changes to bail laws | Pursuit by The University of Melbourne \(unimelb.edu.au\)](#)
- ^{xv} **Australian Government, Australian Institute of Health and Welfare Report, The health and welfare of women in Australia's prisons, Published November 2020** [https://www.aihw.gov.au/getmedia/32d3a8dc-eb84-4a3b-90dc-79a1aba0efc6/aihw-phe-](https://www.aihw.gov.au/getmedia/32d3a8dc-eb84-4a3b-90dc-79a1aba0efc6/aihw-phe-281.pdf.aspx?inline=true)
- ^{xvi} **Law Society Journal Online, Women in Prisons, by Cat Woods, Jan 17, 2023.** [Women in prison - Law Society Journal \(lsj.com.au\)](#)

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- xvii **Monash Lens online: Why more women are doing time in Australia's prisons**, Silke Meyer, [Why more women are doing time in Australia's prisons – Monash Lens](#)
- xviii **World Health Organisation Report, Prisons and Health**, Edited by: Stefan Enggist, Lars Møller, Gauden Galea and Caroline Udesen [Prisons and Health \(who.int\)](#)
- xix **GSDRC Legal framework and Access to Justice**, July 2015 [Legal framework and access to justice - GSDRC](#).
- xx **GSDRC Legal framework and Access to Justice**, July 2015 [Legal framework and access to justice - GSDRC](#).
- xxi **Law Society Journal Online, Women in Prisons**, by Cat Woods, Jan 17, 2023. [Women in prison - Law Society Journal \(lsj.com.au\)](#)
- xxii **Chay Brown and Michael Flood, Who is perpetrating domestic, sexual and family violence?** February 8, 2023 <https://theconversation.com/who-is-perpetrating-domestic-sexual-and-family-violence-192606>
- xxiii **Australian Government, Australian Institute of Health and Welfare Report, The health and welfare of women in Australia's prisons**, Published November 2020 <https://www.aihw.gov.au/getmedia/32d3a8dc-eb84-4a3b-90dc-79a1aba0efc6/aihw-phe-281.pdf.aspx?inline=true>
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- xxv **Imprisoned women and mothers, Great Britain. Home Office**. Research and Statistics Directorate, Diane Caddle, Debbie Crisp
- xxvi Troy, V., McPherson, K.E., Emslie, C. *et al.* The Feasibility, Appropriateness, Meaningfulness, and Effectiveness of Parenting and Family Support Programs Delivered in the Criminal Justice System: A Systematic Review. *J Child Fam Stud* **27**, 1732–1747 (2018). <https://doi.org/10.1007/s10826-018-1034-3>
- xxvii **ABC News online Report: Nearly half of Tasmania's released prisoners are locked up again within two years**, by Phoebe Hosier, 2020. [Nearly half of Tasmania's released prisoners are locked up again within two years - ABC News](#)
- xxviii **How common are mental health conditions among transgender people?** by Louise Morales-Brown on May 20, 2021 [How common are mental health conditions among transgender people? \(medicalnewstoday.com\)](#)
- xxix **Transgender Inmates in California's Prisons: An Empirical Study of a Vulnerable Population**, presented at the The California Department of Corrections and Rehabilitation Wardens' Meeting by Valerie Jenness, Ph.D. Center for Evidence-Based Corrections Department of Criminology, Law and Society University of California, Irvine April 8, 2009 [Slide 1 \(bpb-us-e2.wpmucdn.com\)](#)
- xxx **ABC News online report: Why are transgender women jailed in men's prisons around Australia?**, by Meghna Bali, 2020. [Why are transgender women jailed in men's prisons around Australia? - ABC News](#)
- xxxi **World Health Organisation Report, Prisons and Health**, Edited by: Stefan Enggist, Lars Møller, Gauden Galea and Caroline Udesen [Prisons and Health \(who.int\)](#)

^{xxxii} **SBS News online report: Women in prison: histories of trauma and abuse highlight the need for specialised care**, Silke Meyer. [Women in prison: histories of trauma and abuse highlight the need for specialised care | SBS Insight](#)