



Women and girls' experience of the criminal 'justice' system

Sisters Inside's response to Discussion Paper 2, Women's Safety and Justice Taskforce, Queensland

Introduction

Sisters Inside's response to Discussion Paper 1 (on coercive control) is detailed in our joint submission with the Institute for Collaborative Race Research¹.

This submission focuses exclusively on Discussion Paper 2. Consistent with the Taskforce's second Term of Reference, this submission explores the substantial intersection between the Taskforce's 2 main target groups - women and girls as *victims/survivors* of violence, and women and girls accused or convicted of crime. As per the Taskforce's Scope, we address the unique barriers faced by women and girls from particularly vulnerable and marginalised groups who are both *victims* and *offenders*. Sisters Inside strongly supports the Guiding Principles, and argues that the Taskforce's deliberations should take fuller account of:

- *Keeping victims safe ...* (Principle i);
- *A trauma-informed and evidence-based approach that takes into consideration the lived experience of women who are involved in the criminal justice system* (Principle ii); and
- *Efficacy, efficiency and value for money, including in relation to current investment across the system* (Principle iv).

Discussion Paper 2 pays significantly more attention to women and girls' experience of the criminal legal system as *victims/survivors* than as *accused persons*. This devalues criminalised victims/survivors of violence. Accordingly, this submission critiques and offers alternatives to 5 main weaknesses of Discussion Paper 2:

1. Treating criminalised women and girls with lived experience of violence primarily as *accused or offenders* (and only secondly as *victims/survivors*).
2. Underpinning the Discussion Paper with unfounded assumptions, and the consequent narrow (and ill-informed) range and type of questions proposed for exploration by the Taskforce.
3. Failing to recognise the central role of systemic violence as intrinsic to the criminal legal system, and to perpetuating race- and gender-based violence in the community.
4. Failing to critically analyse current expenditure on imprisonment of criminalised survivors/victims of violence.
5. Failing to propose cost-effective, evidence-based alternatives to imprisonment for criminalised survivors/victims of violence.

As identified in the Foreword, there is an urgent need to address the human rights of criminalised women and girls with lived experience of violence; identify and resource trauma-based responses; and consider alternative justice models. Therefore, this submission particularly focuses on solutions – that is, alternatives to the harmful effects of imprisonment for criminalised women and girls with lived experience of violence.

¹ ICRR & Sisters Inside (2021)

The context of this submission

The literature unequivocally recognises that the vast majority of Australian women prisoners have a history of gender-based violence in all its forms. Repeated studies have found that:

- Up to 98% of women prisoners had experienced physical abuse;
- Over 70% have lived with domestic and family violence (DFV);
- Up to 90% have experienced sexual violence; and
- Up to 90% have survived childhood sexual assault².

In other words, most criminalised women are survivors of multiple incidents and types of violence. In testimony to the Queensland Crime and Corruption Commission, the General Manager of the Brisbane Women's Correctional Centre (BWCC) recently acknowledged the very different profile of women prisoners compared to men and the central role of trauma in these women's lives:

... 80 per cent of women that come to gaol, or more, are victims before they're perpetrators.
It's just a different environment... (Darryll Fleming)³

Similarly, almost all girls in children's prisons have been sexually assaulted⁴. The vast majority of criminalised women have been routinely denied their most basic human rights, often since childhood – first in the wider community, then in prison. In addition to the more obvious types of violence (such as sexual assault and domestic violence), the violence that led to most women's repeated criminalisation has also come in the form of violation of their human rights and (as detailed below) state-sponsored violence in prison (including sexual assault and coercive control).

As widely acknowledged in sources cited in Discussion Paper 2 this violence and violation of human rights is massively disproportionately experienced by Aboriginal and Torres Strait Islander women and girls. Despite cursory acknowledgment of the disproportionate imprisonment and violation of First Nations women, this is not integrated into the Discussion Paper. The Discussion Paper is largely race-blind in its central analysis of women and girls' experience of the criminal legal system. First Nations women are generally *side-barred* as a minority population (e.g. pages 8-9), and recognised in the data (e.g. pages 10 and 23), but then barely mentioned in the main commentary. It is essential that any response to the impact of the criminal legal system on (criminalised and non-criminalised) women and girls with lived experience of violence takes equitable account of the gender-based and race-based dimensions of both individual and state-sanctioned violence. Both racism and sexism are dominant players in the systemic response to violence against women and girls in Queensland. It is essential that the Taskforce's considerations are driven by an intersectional approach.

Therefore, throughout this submission, use of general language such as *criminalised women and girls* and *women prisoners* should be taken to assume that these women and girls are survivors/victims of violence, and that they are very likely to be First Nations women and girls.

About Sisters Inside

Sisters Inside is an independent community organisation which exists to advocate for the human rights of criminalised women and girls, and their children, and address gaps in the services available to them. Sisters Inside was originally developed by, with and for women prisoners. Our ongoing success is substantially due to our continued commitment to being driven by criminalised women and girls. Criminalised women and girls contribute as participants (contributing to program development); workers and management (where possible); and at a governance level (advising the Management Committee). Since inception Sisters Inside's Management Committee has been

² Cited, for example, in Human Rights Law Centre & Change the Record 2017:13,17; Stathopoulos et al (2012); Kilroy 2016; Jailing is Failing (2020)

³ Crime and Corruption Commission 2018

⁴ Department of Justice and Attorney General n/d:4; Wordsworth 2014

driven by the voices of criminalised women and girls on all matters of direction, priorities, advocacy and service delivery.

Prisons cause further harm to women and girls with lived experience of violence – that is, the vast majority of criminalised women and girls. All our work is framed by the overwhelming research and lived experience evidence about the ineffectiveness and inefficiency of imprisonment. This is why all our endeavours work towards decarceration – to reducing the number of imprisoned women and girls, and reducing the return rate of those who have been in prison.

At a service delivery level, Sisters Inside has offered support to criminalised women and girls in (adult and child) prisons and post-release since 1994. Our programs based in the Brisbane City Watchhouse and arrest courts are our first line of defence against imprisonment, with separate support programs for women and girls to optimise their access to bail, and offer post-release support to meet their bail conditions. We work inside all women's prisons in Queensland, offering anti-violence support, counselling and education; and assistance to maintain family relationships, access Supreme Court Bail, apply for parole, and re-enter the community. Our community-based services include programs to address the full range of barriers to women and girls' ability to establish a safe, secure, violence-free life in the community, including their health, housing, survival, education, employment, parenting, social and emotional needs. Our youth programs support 12 – 25 year olds with criminalised parents and those who are already criminalised, and offer family reunification, education/training support and housing assistance. We also offer advocacy and support to deal with authorities impacting women and girls' capacity to move forward; resource their cultural engagement and development; and address the trauma which too often drove their criminalisation.

Sisters Inside's ability to attract participants from widely diverse backgrounds is critical to our success. We seek to employ workers who share lived experience with criminalised women and girls. With Aboriginal and Torres Strait Islander women and girls massively overrepresented in Queensland's adult and child prison populations, approximately half our staff are First Nations women and, largely as a result, at least 1/3 of our participants are First Nations women and girls. We also employ staff from a variety of culturally and linguistically diverse backgrounds; staff with lived experience of homelessness, poverty, violence and/or mental health issues; and staff with a personal or family history of criminalisation.

In short, Sisters Inside is totally immersed in the issues affecting criminalised women and girls on a daily basis. Accordingly, we are uniquely placed to provide informed advice on policy in relation to women and girls affected by the criminal legal system⁵. We offer unique, evidence-based perspectives based on what criminalised women and girls themselves have told us; and our real-life experience of supporting and diverting participants from the criminal legal system. Wherever possible, we act as a conduit for criminalised women and girls' own voices. Sisters Inside welcomes this opportunity to contribute to the deliberations of the Taskforce.

False dichotomy between women as 'offenders' and 'victims'

Both the structure and content of the Discussion Paper implies that criminalised women (and to some extent girls) who are victims/survivors should primarily be seen as accused/offenders and only secondly as victims/survivors of violence. This creates a fundamentally distorted context for the Taskforce's deliberations: rather than challenging misinformation the Taskforce risks perpetuating community ignorance.

This dichotomous positioning of criminalised women, particularly First Nations women, as either victims or offenders appears to underpin all the Taskforce's deliberations. The notion that *victims*

⁵ Note that we deliberately use the phrase criminal 'legal' (rather than 'justice') system, based on the unequivocal evidence that this system fails to provide justice for (particularly First Nations) women and girls in Australia.

are, by definition, powerless and require saving, while offenders are morally illegitimate and require control, functions to silence the voices of criminalised women.⁶ The Taskforce should forefront the voices of criminalised and imprisoned women and girls, rather than legitimise the voices of those who presume to speak on their behalf. Sisters Inside would be delighted to assist the Taskforce to document the experiences of criminalised women and girls with lived experience of violence across Queensland. (This is a larger task than we were able to undertake for this submission.) We also particularly commend Part 2 of the Wiyi Yani U Thangani Report⁷ for an overview of First Nations women's experiences of community safety, law and justice and child protection. Chapter 6 on the realities of the carceral system for First Nations women is particularly pertinent to this review, and includes the voices of women from throughout Australia.

Sisters Inside understands the need to separately address women's experiences of the criminal legal system in response to their experience of violence and when an accused person. We appreciate that the nexus between being a victim/survivor of violence and criminalisation is acknowledged in Part 2 of the Discussion Paper. However, by failing to treat criminalised women as a specific population disproportionately affected by violence in Part 1, the Discussion Paper implicitly treats criminalised women as 'lesser' victims/survivors.

A 'once-off' acknowledgement that *many of the women and girls who are involved in the criminal justice system as victim-survivors or as accused persons have lived experience of domestic and family violence and coercive control* (page 8) is totally inadequate in its failure to both recognise the breadth of forms of violence overwhelmingly experienced by criminalised women and girls, and the impact of criminalisation on their vulnerability to continuing violence.

The section on *Cross-cutting Issues* (pages 8-9) provides a perfect opportunity to reframe this issue. Women's experience of the criminal legal system – as both victim/survivor and accused/convicted – is profoundly impacted by criminalisation. Criminalisation could be added to each list of the cohorts likely to have a varied experience, alongside characteristics such as being Aboriginal and Torres Strait Islander, having a disability, being a member of the LGBTIQ+ community, etc. When discussing *Intersecting disadvantage*, criminalisation is a critical compounding factor which can reduce women and girls' likelihood of reporting violence.

Similarly, criminalised women and girls should be added to the list of groups over-represented in the sexual assault data (pages 10-11). For example, a study referenced in the Discussion Paper demonstrates that:

- Child sexual abuse has been experienced by at least 1 in 2 women prisoners, with indicators of significantly higher rates amongst First Nations women prisoners; and
- Various studies find that between 57% and 90% of women prisoners have experienced sexual violence.⁸

A substantial paragraph on why criminalised women and girls may be unwilling to report a violent crime similar to those about CaLD and First Nations women and girls, those with a disability and older women (pages 13-14) should be included in the Taskforce's final report. The following 3 common reasons are covered in more detail below:

1. Their legitimate fear of being disbelieved due to their criminal record.
2. Their legitimate fear of being criminalised or further criminalised when they report a violent crime.
3. (For First Nations women and girls in particular) their legitimate fear of dying in custody.

By failing to recognise criminalised women and girls as a particularly disproportionately violated minority group in Part 1, the Taskforce effectively isolates, 'others' and further demonises this cohort of victim/survivors.

⁶ ICCR & Sisters Inside 2021:3-4

⁷ Australian Human Rights Commission 2020:165-210

⁸ Stathopoulos & Quadara 2014:10-21

Narrow focus and unsupported assumptions

Sisters Inside is concerned that the main themes, and in particular the Taskforce's proposed approach to these, is heavily based in unfounded (and, we would argue, inaccurate) assumptions and is unduly narrow and inward looking in its approach to possible solutions. As a result, the range and type of questions proposed for exploration by the Taskforce risk bolstering an evidently ineffective, inefficient system which does further harm to many survivors, rather than genuinely exploring its impact on affected women and girls.

The Foreword (page 5) sets the scene for this:

... we suggest the following possible focus areas for the second discussion part of our work:

- *Women as victim-survivors of sexual offences, including obstacles to reporting and the woman's path through the criminal justice system; and*
- *Why women come into contact with the criminal justice system as offenders and their journey through it, including sentencing options and prison experiences.*

Focus on reporting crime as the primary response to violence

The Discussion Paper appears to assume that the best way for women and girls to respond to being assaulted is through reporting to police and pursuing charges through the courts. The Discussion Paper provides no evidence in support of this assumption - that engaging with the criminal legal system is helpful for victims/survivors of violence. To the contrary, we contend that there is overwhelming evidence of the harm this commonly causes, particularly to victims/survivors who are criminalised or at risk of criminalisation. At one end of the spectrum, too often criminalised women have been particularly disbelieved or their claims discounted by authorities, due to their criminal record. At the other end of the spectrum, criminalised women and girls report being arrested themselves for minor offences or for unpaid fines or outstanding warrants on minor matters, when they seek help related to sexual, family or domestic violence. Girls and young women report being forced into the child protection system and isolated from the support of their family and community, when they report being a victim of violence, particularly sexual assault. Aboriginal and Torres Strait Islander women report being afraid of going to the police following violent assault due to the fear of dying in custody if arrested on an unrelated matter. (The legitimacy of this fear is underlined by the recent deaths in custody of Ms Dhu, Rebecca Maher, Auntie Tanya Day and Ms Wynne, who were taken into police custody respectively for unpaid fines, 'protective custody', public drunkenness and mistaken identity.)

Sisters Inside has worked alongside many First Nations women prisoners from remote communities who have called on police for assistance with a family violence situation and have instead been issued a domestic violence order (DVO). Too often, the gender basis of all forms of violence against women is not recognised by authorities, particularly where the legislation originally intended to protect women is expressed in gender neutral terms. This enables the law to better protect 'good victims', whilst giving racist police the discretion to demonise Aboriginal and Torres Strait Islander women. Many First Nations women, particularly those from remote communities, are issued a DVO by police, break the order (e.g. when the order affects their ability to care for their children or leaves them homeless) and are then charged with breaching the DVO. This is not a rare occurrence – breach of DVO's is now amongst the top 10 reasons for women's imprisonment in Queensland⁹. It is not unusual for 20% of the (almost all First Nations) women prisoners on remand in the women's prison in Townsville to be charged with domestic violence-related crimes¹⁰. These same women are survivors of extreme personal violence and abuse. And,

⁹ Breach of domestic violence protection orders was the tenth most common offence type for women in Queensland prisons in both 2014–15 and 2015–16, either on remand or sentence. In 2015–16, women in prison had two hundred and twenty-seven offences for these breaches on their records. (Data provided by Queensland Corrective Services, Performance and Reporting Unit to Sisters Inside on 13 December 2016 in response to an informal data request.)

¹⁰ Between February and August 2017, Sisters Inside's Supreme Court Bail program has assessed 141 women on remand at Townsville Women's Correctional Centre. Through our assessments, we have identified that 28 women (almost 20% of the women assessed) are remanded in custody for contraventions.

we expect that the 12/27 women murdered by an intimate partner in Queensland in 2017 who were previously misidentified by police as the perpetrator in a DFV situation¹¹, were mainly First Nations women. (If this is the case, we call on the Taskforce to name this as an example of systemic racism and misogyny.)

Returning to the Taskforce's Guiding Principles, it is clear that for many women, reporting violent crimes does not *keep them safe*. Police don't prevent violence against women – they become involved after the violence has happened, and then, too often, exacerbate its harmful effects! Far from a *trauma-informed and evidence-based approach*, interaction with police too often leads to the trauma of imprisonment (including routine practices such as strip searching, shackling and solitary confinement that are known to particularly retraumatise women and girls with lived experience of violence). And, once imprisoned (whether sentenced or on remand) the evidence is clear that most women will return to prison, generating massive costs for the Queensland economy.

Focus on why women come into contact with the criminal legal system (rather than how to address the issues)

The Foreword, and text in Part 2 of the Discussion Paper, appears to prioritise a descriptive exercise over problem-solving.

There is no need for further research on why women come into contact with the criminal legal system as *offenders*. We already know that the vast majority of women prisoners have been charged with minor, non-violent crimes. We already know that most crime committed by women is driven by poverty and trauma¹². We already know that approximately 40% of the women in prison in Queensland have not been convicted of any crime: they are on remand due to poverty and homelessness, rather than the severity of their alleged crime.

We already know that First Nations women are massively over-represented in the criminal legal system and that this is driven by far more than over-policing alone. Whilst the Discussion Paper identifies over-policing as a *possible* factor in the criminalisation of First Nations women (page 23), this is a cursory mention. The Discussion Paper fails to recognise the many forms of systemic racism and misogyny that have been widely documented in the literature as contributors to the disproportionate imprisonment of First Nations women and girls. We already know that First Nations women are more likely to be arrested, charged, detained and imprisoned on remand for the same offences, and are less likely to receive a non-custodial sentence or parole, than other women¹³. The depth of racism in Queensland Police Service (QPS) culture represents a continuation of colonial values implicit in the organisation since its inception¹⁴. These have been recently highlighted in evidence that 1,700 current or former Queensland police officers are members of a private Facebook page which has included racist, sexist and homophobic posts¹⁵. QPS's tolerance of sexism is evidenced by their failure to sack any of the 84 front line police officers who are DVO respondents¹⁶. This, on top of QPS's failure to accurately identify the perpetrator in almost half the situations where women were murdered by intimate partners in 2017¹⁷, with the cost paid for generations by these 12 families.

The nexus between being a victim/survivor of violence and criminalisation is beyond dispute – and has been briefly acknowledged in the Discussion Paper. We agree that a direct causal relationship cannot be established for every crime committed by every woman or girl. However, the Discussion Paper's implication that there is no evidence of a causal link (page 24) is inaccurate. There are

¹¹ Cited in the Discussion Paper, page 23.

¹² This is far from the totally understated comment in the Discussion Paper (p 23) – *Contact with the criminal justice system can be directly related to circumstances of poverty and disadvantage, such as homelessness.*

¹³ Most recently, for example, Australian Human Rights Commission (2020); and Human Rights Law Centre & Change the Record (2017)

¹⁴ ICRR & Sisters Inside 2021:8

¹⁵ Jenkins 2021

¹⁶ Smeed 2020

¹⁷ Cited in the Discussion Paper, page 23.

many situations where a causal relationship can be readily demonstrated, the most obvious being breach of DVO and reactive violence following prolonged lived experience of family violence. In other jurisdictions, ongoing family violence has been connected to many women's crimes in Victoria¹⁸, with 80% of women prisoners in one NSW study believing their criminalisation was a direct consequence of family violence¹⁹. According to the Aboriginal and Torres Strait Islander Social Justice Commissioner, following the largest single national consultation with First Nations women since 1986 (the Wiyi Yani U Thangani engagement process):

*In every prison and juvenile detention facility I visited, I heard similar stories of violence and abuse leading, indirectly and directly, to an offence ...*²⁰

And, too often women are imprisoned, particularly on remand, for the failures of the state to adequately support women leaving violent homes, particularly in relation to income support and housing.

The Discussion Paper also assumes that the best way to address the significant harm currently done to criminalised women and girls with lived experience of violence across the criminal legal system is through minor systemic reforms and education – this, despite overwhelming evidence that the carceral system profoundly exacerbates the trauma already experienced by criminalised women with lived experience of violence.

State-sanctioned violence against women

It is critical that the Taskforce focus on the enormous harm done to women and girl prisoners who are survivors of violence, as a result of carceral policies and practices. State-sanctioned violence and the role it plays in keeping women 'victimised' and in the criminal legal system, is at the core of the intersection between women and girls who are survivors and women and girls who are criminalised. Sisters Inside's recognition of coercive control by the state, particularly against Aboriginal and Torres Strait Islander women and girls, has already been detailed in our joint submission on Discussion Paper 1²¹.

State-sanctioned violence against criminalised women and girls causes enormous harm, perpetuating all forms of gender-based and race-based violence, and driving high prison return rates. The Discussion Paper fails to acknowledge or address these women and girls' experience of violent practices, and the violation of their human rights, in the criminal legal system. Violent QPS policies and police practices and their impact on women with lived experience of violence are never explicitly raised. The impact of violent policies and practices in the prison system is vaguely raised in a list of considerations related to women's experience of the criminal legal system: the Discussion Paper proposes considering the *nature of the custodial environment* for these women and girls (page 27). Of particular concern is the Discussion Paper's apparent assumption that the prison environment is suited to *support and healing*, by leaping to the conclusion that *opportunities* should be explored.

This is wholly inconsistent with key principles which are supposed to underpin the Taskforce's considerations. Does the criminal legal system *keep victims safe*? Are current policies and practices *trauma-informed*? Do they take into consideration women's lived experience of violence? Sisters Inside's answer, supported by the evidence, to each of these question is *No*.

Far from operating in a manner consistent with these principles, imprisonment (whether in police custody or prison) places survivors of gender-based and race-based violence at severe risk of retraumatisation and a return to a subordinate, powerless *victim* role.

¹⁸ Victorian Department of Justice 2006

¹⁹ NSW Aboriginal Justice Advisory Council 2001

²⁰ Australian Human Rights Commission 2020:228.

²¹ ICRR & Sisters Inside 2021:9

A variety of common prison practices profoundly impact the vast majority of prisoners with lived experience of violence, disproportionately Aboriginal and Torres Strait Islander women and girls. Some amount to torture under the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Many are inconsistent with other international human rights instruments and agreements.

Torture and other cruel and degrading treatment of prisoners is intrinsic to the functioning of women's prisons in Queensland. Overt violence by prison officers is commonplace in Queensland women's prisons and is repeatedly reported by women prisoners, civil society organisations, prison staff and investigative bodies. This includes use of excessive force; ogling, touching or making lewd or humiliating comments about women during strip searches; strip-searching women within sight of others; bullying women; sexually assaulting women; using bodily restraints such as strait jackets, body belts and handcuffs; and tying women to mattresses. Strip searching and solitary confinement play a leading role in re-traumatising women with a history of abuse.

Strip searching is sexual assault by the state

Behaviour that is considered abhorrent (and is a criminal offence) in the wider community is routinely carried out by the state with impunity behind the closed doors of our police stations and prisons. Strip searching is often deeply traumatising for criminalised women and girls, particularly those with lived experience of sexual assault, and particularly when undertaken or observed by male officers²². Routine strip searching also undermines women's human rights through reducing their ability to engage with the wider world whilst in prison. Women prisoners are often required to undergo strip searches before and/or after visits with their children, family members, friends and, in some cases, their lawyer. They may also be strip searched on return from court or hospital. Women repeatedly report refusing visits from their children due to the distress caused to the child, and the trauma of strip searching after the visit. Strip searching functions as a barrier to maintaining relationships between women and their children, pursuing legitimate legal claims or having women and girls' health needs met.

Justifications for this sexual assault by carceral authorities focus on preventing contraband (especially drugs) entering the prison – and, ironically, to protect women from harm²³. These claims do not stand up to scrutiny: strip searching is evidently ineffective in detecting illicit drugs. Data received from Queensland Corrective Services following a Sisters Inside RTI request showed that women in Queensland prisons were strip searched 16,258 times during 2017²⁴. It appears that contraband was recorded on fewer than 200 occasions (i.e. in 0.01% of cases). Much of the so-called *contraband* was items such as unauthorised hair clips, clothing or tattoos – not harmful to anyone's safety. Some entries listed no items at all, for example *suspicious behaviour*, *non-compliant* and *cuts to forearm*. When reception and visits data is separately recorded, almost no contraband was found and none of it was significant. On the 3,376 occasions, women were strip searched after contact visits with their children, family and friends, the only contraband found was three cotton buds and a non-prison-issued singlet. This is how women pay for being able to maintain their relationship with their children (and how children are punished for their mother's imprisonment).

Whether undertaken by police or prison officers, strip searching has little to do with the detection of contraband, and more to do with exercising social control, degrading women and meeting quotas²⁵.

Solitary confinement ... as protection and punishment

Too often the cruelty of solitary confinement is obscured by the use of euphemisms such as 'separation', 'segregation', 'management units', 'confinement', 'safety units' or similar. Most

²² This is contrary to the Bangkok Rules: Rule 19 *personal searches ... shall only be carried out by women staff who have been properly trained ...*

²³ See, for example Queensland Ombudsman 2014:4; Department of Corrective Services 2006:10-11.

²⁴ Data disclosed to Sisters Inside under RTI request 180931 (28 February 2018).

²⁵ Young 2020

recently, Covid-19 has provided an opportunity to further torture women through so-called 'medical isolation' or 'quarantine'.

The purpose of solitary confinement is incongruous: it is used for both 'protection' (of the prisoner or others) and as punishment; for demonstrating both 'weakness' ('protecting' women with 'mental health' issues) and 'strength' (punishing women whose behaviour displeases prison officers). This enables prison officers to make arbitrary decisions for their own convenience. The physical environment and women's treatment in solitary confinement is similar – whether she is being kept for hitting a prison officer, walking on the grass, threatening (or attempting) self-harm, or arriving in prison on remand during a pandemic²⁶.

Reports of Ombudsmen throughout Australia cite repeated examples of women being kept in solitary confinement for more than 15 days (in breach of the *Nelson Mandela Rules*)²⁷. The Queensland Office of the Chief Inspector reported that at the time of a 2015 inspection of BWCC, several women had been segregated for inordinate lengths of time (one woman for 18 months and 4 for over 2 years)²⁸.

According to the Australian Human Rights Commission:

*...isolation can increase or exacerbate trauma, contribute to the deterioration of mental health and limit participation in rehabilitative programs, all of which increase the likelihood of prisoners struggling in prison and on their release. These effects are particularly felt by those that are vulnerable or have mental illnesses or cognitive disabilities.*²⁹

And, in Queensland:

The adverse health effects of solitary confinement have been well-established ... More recent studies have reaffirmed that solitary confinement has a profound, adverse impact on the health of prisoners. Research indicates that many who have been subject to solitary confinement are at a risk of long-term psychological damage. The most widely reported effects of solitary confinement are its psychological effects.

(Justice Applegarth, Queensland Supreme Court³⁰)

Use of solitary confinement for women and girls with mental health issues can be expected to have a cumulative effect; to compound their trauma. Responding to threatened or actual self-harm, by placing women in isolation is totally contrary to the AMA's best medical advice³¹. Despite this, the General Manager of BWCC expected a 24% growth in the number of *safety orders* 'for women's own safety' and a 42% increase in consecutive *safety orders* in the year following his testimony to the Crime and Corruption Commission (2017-18)³².

The harm of solitary confinement is exacerbated by more frequent strip searches. Women prisoners repeatedly report excessive use of force and restraint against women in these 'back' areas of the prison, where prison staff are subject to even less scrutiny than elsewhere. For example, the inspection team for the Victorian Ombudsman were rare 'outsiders' who had the opportunity to observe examples of this cruelty – including incidents where prison staff handcuffed women who were already incapacitated or unconscious after self-harming, before medical assistance was provided³³. These reports are entirely consistent with what we frequently hear from women and girls who have been in prison in Queensland.

²⁶ Despite being described in medical terms, women repeatedly report that spending their first 14 days in prison in solitary confinement due to Covid-19 was traumatic, with even less access to legal services, family contact and means of personal recreation than other prisoners (during lockdowns). (Change the Record 2020:13)

²⁷ For example, in Clause 185 the Ombudsman NT (2017:34) cited an example of a woman with a disability kept in male maximum security in Darwin for an unbroken 4 month period.

²⁸ Office of the Chief Inspector 2016:26

²⁹ Australian Human Rights Commission 2020:269

³⁰ Cited in Queensland Ombudsman 2016:35

³¹ Australian Medical Association 2012

³² Crime and Corruption Commission 2018:25-26

³³ Victorian Ombudsman 2017:53, Clause 361

Prisons serve to perpetuate race-based violence

Carceral violence against Aboriginal and Torres Strait Islander women has an additional historical and current dimension: it must be seen in the context of ongoing colonisation. Colonial practices continue to be reflected in the added systems of surveillance and control imposed on our First Nations peoples. Since invasion, Australian criminal legal systems have served to order, control, regulate and dispose of Aboriginal and Torres Strait Islander lives and bodies³⁴.

During the first two centuries of colonisation in Australia, First Nations people were rounded up and forced to live on missions when their Country was stolen. Similarly, contemporary prisons draw together large numbers of First Nations men, women and children, from unrelated family groups and Nations, and force them to live together under the control of white authorities. In the 'mission days', recalcitrant people were removed to prisons: today, they are removed to prisons with a higher level of security where they can be more readily violated, or penalised in other ways such as being moved further from their Country and family. This adds significant trauma for First Nations women prisoners, most of whom are mothers.

Continuing genocide is evident in at least 475 deaths in custody of First Nations people since the Royal Commission into Aboriginal Deaths in Custody (1991), for which no-one in authority has ever been convicted. The recent wave of coronial inquests, inquiries and royal commissions³⁵ has done nothing to change the structural racism that is the bedrock of our unjust, racist, criminal legal system.

Prisons play a critical role in the continuing exercise of state-sanctioned violence against First Nations survivors of violence. The horrifying rate of growth in imprisonment amongst First Nations women and girls in Queensland is no accident: this continuation of violent colonial patterns of behaviour is happening by design.

Prisons serve to perpetuate gender-based violence

Prisons were designed by the white 'worthy' wealthy for the (often coloured) 'unworthy' poor: they are designed to show the most disadvantaged and marginalised community members their place. It is hardly surprising then, that women's previous experiences of disadvantage (including violence, poverty, mental health issues, substance abuse and cultural background) are treated as 'risk factors' when their security level is assessed. As a result, women with no history of committing violent crimes are often classified as high security prisoners³⁶, and placed in more isolated settings where they are at greater risk of systemic violence. Despite the minor, non-violent crimes for which women prisoners in Queensland are charged or convicted, the majority live under high security conditions.

The capacity for carceral officers to exercise arbitrary authority, as far as possible away from the gaze of others, is fundamental to the functioning of carceral settings. Authority figures can make use of the isolation of rooms, prison cells and police cells to assert their power over women and treat them as they wish, justly or unjustly, with contempt or (rare) kindness, just because they can. Being subject to the arbitrary authority of the prison officers is part of the ongoing violence of prison life. It mimics the experiences of violence most criminalised women and girls have lived with for much of their lives.

Prisons function as a training ground for continuing violence against women. Women prisoners are required to unquestioningly obey any direction from an officer, no matter how unreasonable. Women are taught how to better conform to the demands of their perpetrators. Like a violent family setting, prison officers (too often men) have enormous levels of arbitrary power, which they routinely exercise against women prisoners, (e.g. through inconsistent imposition of 'discipline'),

³⁴ Mbembe 2003:11-40; Wolfe 2006:387-409

³⁵ For example, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (2017) and a myriad of coronial inquests into deaths in custody of First Nations people detailed in McQuire 2020 & McGowan 2019

³⁶ Sisters Inside 2004:18

with many Aboriginal and Torres Strait Islander prisoners reporting being disproportionately targeted for punishment by prison officers³⁷.

In short, the carceral system in general, and prisons in particular, function to train women to accept violation as 'their lot in life'. Women and girls are taught to be compliant, and certainly not to begin to build a positive perception of themselves. The system functions to teach these women and girls that they are not worthy of safety – or, in fact, of the most fundamental human rights (such as adequate food, health care and respect, which are often withheld in the Queensland prison system).

If we are to truly address gender-based violence, we must stop training women for a lifetime of powerlessness and compliance – with failures incurring the wrath of both men they know, and hidden faces in the patriarchal system.

Opportunities for *support and healing* in women's prisons

Imprisonment is inherently violent. Prisons operate to slowly kill the mind through loss of a sense of self and privacy. Beyond the systemic violence detailed above, covert violence is exercised through mechanisms used to strip women of their identity include constant monitoring; living under inhumane conditions; being reduced to a number; excessive rules and regulations; arbitrary application of rules; and punishment for minor (or imagined) 'offences'. However, few in the general community have an understanding of what this really means in practice.

Given the multi-layered exercise of violence against women and girls in prison settings, prisons cannot possibly offer *healing*. Genuine *support* cannot be offered by the systemic and individual perpetrators of that violence – prison officers, or the 'corrections' system more widely. (The notion that they can, is somewhat reminiscent of men bringing their partner flowers or chocolates the day after beating them.) If the Taskforce is truly committed to reducing violence against women, *keeping victims safe*, and taking a *trauma-informed and evidence-based approach*, you will look beyond the prison walls for solutions.

Cost-benefit analysis of imprisoning victims/survivors of violence

Imprisoning women and girl victims/survivors of violence continues to grow at an alarming rate ... and is seriously expensive! Yet, the Discussion Paper minimises the pace of growth by providing examples of small increments of time; and fails to identify the escalating costs or propose any cost-benefit analysis of this expenditure. It is critical that the Taskforce fulfil your primary brief, which requires consideration of the *efficacy, efficiency and value for money of current investment across the system*.

Despite an 8.4% reduction in crime (and even greater reductions in serious crime)³⁸, the number of women in prison in Queensland, has grown exponentially over recent decades. In 1986, there was a daily average of 76 women prisoners in Queensland³⁹. Numbers have increased 11-fold since then, and more than tripled over the past two decades alone: in 2000 there were a total of 273 women prisoners (5.8 per cent of the prison population) and by 2019-20, 847 women prisoners (9.5 per cent of the prison population)⁴⁰.

Structural racism continues to feed the growth in imprisonment rates amongst Aboriginal and Torres Strait Islander women. The number of First Nations women in Queensland prisons more than doubled between 2010 and 2020 (from 132 to 303 women; from 30% of the women's prison population to 40%), compared with a 50% increase in the number of other women prisoners⁴¹. The

³⁷ Australian Human Rights Commission 2020:275

³⁸ Queensland Productivity Commission 2019:32

³⁹ Bogga Road Historical Society n/d

⁴⁰ Comparative Youth Penalty Project n/d; Productivity Commission 2021: Table 8A:4

⁴¹ ABS 2020: Table 40

evidence suggests that this was largely due to racial-profiling, over-policing and targeting in First Nations communities reported Australia-wide. In particular, low level crimes that remain untargeted and undetected in other communities result in charges for First Nations women; First Nations women are more vulnerable to crimes of poverty; and police are less likely to exercise discretion in favour of First Nations people.⁴²

The cost of imprisonment

In 2019-20, Queensland spent over \$668 million on prisons, and over \$915 million on 'correctional' services as a whole⁴³. It costs over \$300 per day (\$110,000 per annum) simply to keep one woman in prison in Queensland⁴⁴. A senior Queensland Government official suggested that the 'real' direct carceral cost (including police, courts, prison, probation and parole) was \$500,000 per prisoner per annum. (This this does not include the costs to other systems such as child protection, health and youth justice; nor the longer term intergenerational costs.)⁴⁵

The cost of imprisoning girls is even greater. In 2019-20 the imprisonment-only costs of a child in Queensland was \$1,640 per day⁴⁶ (almost \$600,000 per annum) – that is, more than 5 times the per capita cost of adult imprisonment. (Based on the 'real terms' estimate above, this would equate to over \$2.5 million per child prisoner per year, plus the associated costs to the education, health and child protection systems.) By contrast, in 2019-20 community-based supervision cost \$271 per child per day⁴⁷. Queensland wasted \$284 million on youth 'justice' in 2019-20: of this, youth prisons cost \$125 million⁴⁸.

Imprisonment is a failure!

Since colonisation, Australian prisons have served to 'keep women in their place'. Far from achieving the standards outlined in international human rights instruments, Queensland women's prisons fail to meet the most basic human rights standards. This includes entitlements outlined in the Human Rights Act 2019 (Qld), particularly:

- Humane treatment when deprived of liberty (s30)
- The right to education (s36)
- The right to health services (s37)

Prisons fail to achieve their stated purpose. Most women prisoners in Queensland have previously been in prison. This is hardly surprising since:

- **Prisons entrench poverty:** As a result of even a very short period in prison a woman may lose her housing and employment (if she had these prior to imprisonment).
- **Prisons destroy families:** Many women lose custody of their children - with their children, too often, going into state care.
- **Prisons undermine medical treatment:** Any treatment women were receiving for mental health issues or substance abuse will have been stopped, or, at best, suspended.
- **Prisons reduce access to education:** If a woman was participating in education or training, she may permanently lose her place, and few are allowed to continue their studies inside prison.
- **Prisons compound poverty:** Many women (particularly those who went to prison unexpectedly) will have accumulated further debts and a poor credit rating, and have lost most of their household items and personal belongings.

⁴² Australian Human Rights Commission 2020; Human Rights Law Centre & Change the Record 2017

⁴³ Productivity Commission 2021: Tables 8A.2 & 8A.4

⁴⁴ Productivity Commission 2021: Table 8A.20

⁴⁵ In private conversation with Debbie Kilroy

⁴⁶ Productivity Commission 2021b: Table 17A.20

⁴⁷ Productivity Commission 2021b: Table 17A.19

⁴⁸ Productivity Commission 2021b: Table 17A.9

- **Prisons permanently stigmatise:** Women leave prison with a new or extended criminal record which is an added barrier to accessing employment, housing, violence support and other services.
- **Prisons compound trauma:** The overt and covert violence routinely practiced in prisons in Queensland (detailed above) mean that many women and girls leave prison with new or exacerbated mental health issues.

If a community-based organisation had a 60% - 80% failure rate, they would be rapidly defunded, and their model of service promptly discredited. Yet, in 2020 at least 58% of women prisoners (and 72% of First Nations women prisoners) had been in prison before⁴⁹. According to the *Youth Justice Strategy*, 82% of child prisoners in Queensland return to prison within 12 months⁵⁰. The notion that the prison system has any potential to develop *opportunities for support and healing* is laughable. And any service developed in collaboration with the prison system can be expected to simply repeat and extend the same mistakes. Even independent organisations like Sisters Inside (whilst providing some services women and girl prisoners find useful) are severely limited in the services we can provide within prisons, due to the priority given to surveillance and control. The failure of the system to provide any genuine *healing* is transparent in the return rate of women and girls to prison.

By contrast, Sisters Inside can demonstrate significant success in keeping women out of prison. We offer a varied and unique range of services, underpinned by a model of service developed alongside criminalised women and girls which has proved itself over time.

Evidence-based alternatives to prison for survivors of violence

Police don't prevent crime or violence – they show up after it has happened.

Prisons don't prevent crime or violence – they release traumatised women and girls, at even greater risk of poverty and other drivers of crime.

Crime and violence prevention start with addressing the human rights of women and girls and their children - income support, housing, health services, child support, cultural opportunities, education, training, employment and advocacy.

Throughout Australia, prisons are increasingly functioning as a *substitute for social and community infrastructure*⁵¹. Despite overwhelming evidence of the damage even short periods of imprisonment cause to women, girls and their children, imprisonment is not being used as a measure of last resort in Queensland.

Sisters Inside is driven by the clearly evident failure of the criminal legal system, which prevents neither crime nor gender-based violence. In fact, as demonstrated above, prisons are criminogenic and also serve to increase violence against women and girl survivors, particularly Aboriginal and Torres Strait Islander women and girls.

It is essential that the Taskforce explore cost-effective, trauma-responsive, culturally-competent alternatives to prison for women and girls with lived experience of violence. Over the past 30 years, Sisters Inside has progressively developed and refined evidence-based alternatives to imprisonment for survivors of gender-based violence.

Almost every woman and girl we have ever worked with wanted to stay out of prison. Almost every woman and girl we have ever worked with wanted to live a safe, secure, violence-free life. The

⁴⁹ ABS (2020), Tables 8 and 29. An AIHW study cited in the Discussion Paper (p 27) found even higher return rates – that 72% of surveyed women entering prison had a history of adult or child imprisonment.

⁵⁰ Cited in Queensland Government n/d:8

⁵¹ Caruana et al 2021:13

criminal and youth legal systems have evidently failed to deliver these outcomes for survivors of violence. By contrast, Sisters Inside has had greater success in achieving these outcomes for the women and girls we work with.

We offer examples of Sisters Inside's successful programs as possible models and approaches which can inform the Taskforce's recommendations. Most of our services are over-subscribed and/or limited to only part of Queensland. Women and girls would benefit from services like these being adequately resourced, and available to criminalised and violated women and girls throughout Queensland.

Substantial evaluations of several Sisters Inside programs have been published⁵². Each includes detailed case studies and many quotes from women and girls about the nexus between lived experience of violence and criminalisation; and the effectiveness of the Sisters Inside approach to service delivery. If we had replicated these here, they would have tripled the length of this submission! These evaluations are readily available on the Sisters Inside website at <http://sistersinsidereasearchhub.com.au/index.php/sisters-inside-service-program-evaluations>. A quote from one of our Aboriginal Health Support Workers probably best summarises the realities of the nexus between being a survivor of violence and a criminalised First Nations woman:

In the past, prison has reignited 'Mary's' trauma arising from sexual assault, and her grief at the loss of her children. These are the key drivers of her offending – using and stealing to pay for drugs. The intensive support we've provided has enabled her to recognise, for the first time, the link between trauma and her criminalisation. I was able to explain this to Murri Court, and they've set up a system of monthly reviews for 12 months. 'Mary' KNOWS she won't return to prison if she keeps addressing issues ... and this gives her hope.

The critical role of the approach taken to service delivery

Sisters Inside's primary commitment is to reduce the number of survivors traumatised, and retraumatised, by their experiences of police and prisons. Accordingly, our first priority is always to keep women and girls out of the carceral system wherever possible. In our experience, the best way to develop successful approaches to decarceration is to be guided by the wisdom and experience of criminalised women and girls. Our participants themselves (individually and collectively) know what it would take for them to be able to live a safe, secure, violence-free, crime-free life.

Criminalised women have driven all aspects of Sisters Inside since our inception in the early 1990's. In 1999, our underpinning *Values and Vision*⁵³ were developed by a group (of mainly women prisoners) inside BWCC, through a series of workshops held within the prison over several months. These values continue to drive all our work as an organisation, and have stood the test of time. Our model of service, *Inclusive Support*⁵⁴, was initially developed alongside several hundred criminalised women using Participatory Action Research, as part of a National Homelessness Demonstration Project (2006-8). In particular, we focused on identifying the specific service delivery practices that women found most helpful and least helpful, and built our model of service around these. Inclusive Support was subsequently tested for its efficacy with criminalised girls and young women, and found to work equally well with that cohort. This model continues to be updated and refined in response to participant and worker feedback.

Most of the women and girls we work with have experienced high levels of intervention in their lives from a variety of authorities, most commonly the criminal legal, youth 'justice', child 'protection', and education systems; and their agents in the non-government sector. As a result most are enormously wary of any welfare service providers, and generally avoid welfare services wherever possible. Their involvement in Sisters Inside is a rare exception (along with, for example, some Aboriginal community-controlled organisations). Women and girls willingly engage with Sisters

⁵² See, in particular, Sisters Inside 2007 & 2017; Quixley, S. 2011 & 2018

⁵³ Sisters Inside 1999

⁵⁴ Sisters Inside 2021

Inside due to our reputation within affected communities – particularly criminalised families. (Most of our programs and services are continually over-subscribed.) As evidenced in the evaluations of Sisters Inside programs, women and girls repeatedly tell us that they trust Sisters Inside because of our respect for them, their decisions and their privacy.

Our *Values and Vision* largely describe the ‘big picture’ of Sisters Inside – our overall meaning and direction. However, participants in the values-development process identified 2 key areas of practice which were absolutely critical to building trust and engaging successfully with criminalised women and girls, and insisted that they be articulated in Sisters Inside’s framework from the outset. These two unique commitments distinguish us from most other organisations:

1. We treat all participants’ personal details and communications as confidential, and do not share any personal information with other organisations or authorities without their express permission.
2. All involvement in Sisters Inside is 100% voluntary. Criminalised women and girls can leave and return at any time, for life.

Accordingly, we do not collaborate with authorities through ‘case conferencing’ or development of ‘case plans’ which pressure women and girls to accept others’ priorities for their lives. Our services are designed to add value to those provided by authorities and other agencies, or fill the gaps in services available to them.

Our work with women and girls is driven entirely by each participant’s perceptions of her own priorities and needs. Criminalised women and girls face complex, interrelated needs: these can vary significantly over time and usually include multi-dimensional and intergenerational/transgenerational trauma. We work toward meeting the full range of each participant’s needs.

Whilst all our programs ultimately work toward decarceration, this is sometimes immediate and sometimes longer term. For example,

- We support children and young people whose mothers are in prison to try to break the cycle of criminalisation within families;
- We engage with women and girls who have already been arrested and charged, to reduce their risk of imprisonment;
- We support women and girls post-release, to reduce their risk of returning to prison; and,
- We provide support services inside prisons, to help women, girls and their children to survive imprisonment and begin to contemplate a better future.

We also argue for the need to provide police with an alternative to arresting or charging women and girls.

Evidence-Based Alternatives - Preventing criminalisation and violence amongst at-risk children and young people

Studies have found that the children of prisoners are at particular risk of being criminalised or living with violence. Too often, children and young people are severely traumatised by the manner of their mother’s arrest, their sudden (often unexplained) separation, and a dramatic change in their life circumstances, when their mother goes to prison. According to the Youth Justice Strategy, 31% of children in the Queensland youth legal system had a parent who had been in an adult prison⁵⁵. Sisters Inside seeks to break the intergenerational cycle of trauma, criminalisation and violence through engaging with the children of women prisoners.

Our core youth program in Brisbane, **Crucial Connections**, has been continuously funded through the Commonwealth Reconnect Program since 2001. Each year, the program provides customised

⁵⁵ Queensland Government n/d:6

(often intensive) support for approximately 40 young people aged 12 to 18 affected by criminalisation, who are homeless or at risk of homelessness. This includes children and young people with a history of parental imprisonment and those who are criminalised themselves.

A detailed analysis of Crucial Connections participant data over a 3 year period (2013-16) found that approximately 80% of participants were young women, all of whom lived with significant risk factors for criminalisation. 59% of participants were Aboriginal and Torres Strait Islander, and 21% came from CaLD backgrounds. 93% had lived experience of violence - 91% reported family violence, 18% police violence, 20% sexual violence and 10% peer violence. 90% had a family history of criminalisation and 60% were criminalised themselves.

The program's first priority is to reduce participants' risk of homelessness through building family connections, facilitating family reunification or otherwise ensuring safe, secure living arrangements. It also seeks to improve their capacity to live a life free of violence, poverty and criminalisation. The support provided is often very practical – helping young people to enrol in school (particularly flexi-schools); providing daily transport to education or training until they have established a routine; arranging and/or paying for safe accommodation until longer term arrangements are made; helping them to register for Centrelink benefits; covering the costs of public transport or food; or supporting young people to visit their mother in prison (or, during Covid-19, access video calls). It can also include running cultural healing camps for Aboriginal and Torres Strait Islander girls (or, during Covid-19, providing one-on-one sessions with an Aboriginal Healer); supporting young people in negotiations about their living arrangements or with authorities; enabling young women to enrol in accredited training (through our Work Pathways program); or providing work experience (through Barista Sistas, Sisters Inside's social enterprise coffee cart).

Criminalisation and imprisonment rates amongst participants reduced significantly following involvement with Crucial Connections. In marked contrast with the 82% return rate within 12 months amongst child prisoners in Queensland⁵⁶, almost 50% of our participants who had been in prison did not return during the 3 year survey period. And, following their involvement, the number subject to Youth Justice Community Orders almost halved.

Engagement with education and training increased significantly following involvement with Crucial Connections. Whilst 50% of all participants had disengaged from (generally mainstream) school by age 16, over 3 years all but one re-engaged with some form of education or training whilst involved with the program.

Our weekly **young women's art group** has been functioning with enormous success in Brisbane for over a decade. It provides a soft-entry to Sisters Inside's youth programs, and ongoing individual and peer support for participants. Facilitated by a well-known First Nations artist, the group has been particularly valuable for First Nations girls – many of whom (and their parents) attribute their ability to 'stay out of trouble' to the group. Sisters Inside believes that this model is highly transferable, and we are currently piloting a similar approach to developing violence prevention education/support and family reunification/support programs in North Queensland – with dance/sports groups for First Nations boys; mixed and single sex art groups; and healthy relationships playgroups with criminalised women and their children, both inside prison and post-release.

Several other Sisters Inside programs (detailed below) take a preventative approach to work with children and young people. Our BOWS (Building on Women's Strengths) Program enables under 12 year olds to maintain their relationship with their mother in prison and facilitates family reunification post-release. Our Yangah Program works with girls in watchhouses and the children's prison in Brisbane. Our Work Pathways Program particularly supports First Nations girls to engage with training and employment.

⁵⁶ Cited in Queensland Government n/d:8

Evidence-Based Alternatives - Early intervention (direct decarceration) strategies

Sisters Inside runs separate support programs for women and girls to optimise their early access to bail and offer post-release support to meet their bail conditions. These are our first line of defence against the harmful effects of even a short period of imprisonment for women and girls. Both the Yangah Program and the Decarceration Program are funded by the Queensland Government.

Our **Yangah Program** works with 10 – 17 year olds who identify as female, and are either on remand or at risk of remand. It aims to reduce the number of 10 – 17 year old girls being held on remand in the Brisbane Youth Detention Centre (BYDC) and/or police watch houses in the Greater Brisbane Area. The program is responsible for improving the likelihood of a successful bail application, through ensuring girls' access to suitable and stable community-based services and support. It also provides post-release support via outreach to enable girls to continue to meet their bail conditions, and builds relationships with girls in BYDC prior to release through a twice-weekly art group. This includes helping girls identify their needs; ensuring girls' access to legal representation and appropriate accommodation; optimising their family support, education, training, employment and other community opportunities; ensuring access to services and other means to meet their health and wellbeing needs; and advocating with and for girls as required.

Yangah worked with a total of 58 girls during 2020, and was successful in supporting 78% of participants (45 girls) to access and/or maintain bail. The program had a 100% success rate in keeping these 45 girls out of youth prison, with none returning to BYDC during 2020. (Whilst not fully comparable, this success is in marked contrast with an 82% expected return rate in the 12 months post-release⁵⁷.)

Our **Decarceration Program** primarily aims to reduce the number of women imprisoned on remand in SEQ through improving their likelihood of a successful bail application. The program engages with women as early as possible to minimise their risk of imprisonment, with priority given to women in police watchhouses and at initial court appearances. (Workers also support women at risk of imprisonment for minor breaches of probation or parole.) Women are frequently refused bail due to homelessness (often a result of DFV) and trauma-associated health needs (such as substance abuse and mental health issues). We work alongside women to identify their support needs, navigate processes and systems, and ensure their access to the likely requirements of bail or parole – particularly legal representation, accommodation, and health and wellbeing support. The program also advocates with and for women with police, court authorities, prosecutors, defence lawyers and prison authorities to optimise the likelihood of a successful bail application. Post-release support is offered to women released on bail through the program.

The Decarceration Program is present in the Brisbane City Watchhouse and arrest courts each weekday (and on weekends as required). In 2020, 60% of participants were first seen in the Watchhouse, 16% in the arrest courts, 22% in the wider community and 2% elsewhere. Most in the outside community self-referred to the program. The remainder were variously referred by lawyers/ATSILS, other Sisters Inside staff or probation/parole staff. The program is increasingly receiving requests from Magistrates to provide support to women appearing in other courts in the Greater Brisbane Area, and some have even made engagement with the program a condition of bail.

During 2020, the Decarceration Program worked with a total of 214 new participants, 49 of whom were referred from outside the Watchhouse (from the community or prisons in the Brisbane region) and 165 of whom were women passing through the courts or watchhouses. Some were already sentenced or returned to prison for breach of parole, whilst others were at risk of remand. Most women opted to access ongoing support, with approximately 2/3 of women supported in any given quarter having been rolled over from the previous quarter or having re-engaged with the program.

⁵⁷ Cited in Queensland Government n/d:8

The Decarceration Program supported an average of 152 women per quarter. Whilst 25% of total participants were Aboriginal and Torres Strait Islander women, First Nations women tended to receive more ongoing support, accounting for 37% of women receiving support in an average quarter.

Of the 51 women supported in the Brisbane arrest courts by our Decarceration Program in 2020, 32 (62%) were granted bail. Anecdotal evidence suggests that many of these women would previously have been remanded in custody.

Once women have been imprisoned on remand, Sisters Inside works quickly to try to secure their release on bail where possible. Since 2003, our **Supreme Court Bail (SCB) Support Program** has worked with women remanded in custody in BWCC. Originally, this was a volunteer program run in conjunction with the School of Law at University of Queensland. Since 2016, Queensland Corrective Services has progressively funded and extended the program, which is now available in all Queensland women's prisons. This program aims to reduce the number of women imprisoned in Queensland through enabling women prisoners eligible for the Sisters Inside program to apply for SCB. Our workers visit the 3 main women's prisons at least weekly (and other prisons as required) to offer assessment for our SCB Support Program to all newly remanded women. They then support eligible women to apply for SCB, with much of the groundwork undertaken by Peer Bail Clerks (who are trained and supported by our workers) inside prison. Our workers ensure that women have access to the supports required to fulfil their bail conditions, and refer women to services to assist them to prepare for bail as required. The program also has brokerage funds available to address women's barriers to bail (such as emergency accommodation, rehabilitation or transport assistance).

100% of all Supreme Court Bail applications facilitated by Sisters Inside since 2003 have been successful.

We urge the Taskforce to also consider a highly successful model that operated from 2007-2010 in Queensland. The **Special Circumstances Court (SCC) Diversion Program** was one of a number of innovative programs run by the Brisbane Magistrate's Court which aimed to minimise the risk of people newly involved with the criminal legal process becoming entrenched in the system. It was targeted at people charged with crimes related to homelessness and/or drug and alcohol addiction. The Court used bail and sentencing options to place people with support services to help them deal with issues which contributed to their charges (e.g. unmet housing and health needs) and enable them to make life changes.

The Sisters Inside SCC Program offered support services to all women who appeared before the SCC. We always had at least one support worker present when the SCC was in session. Women who opted to access support through the Sisters Inside program received a customised service to address the complex interrelated issues that generally underpinned their criminalisation. This program was thoroughly evaluated in 2011⁵⁸, and demonstrates how easily and successfully significant numbers of women with lived experience of violence could be diverted from the criminal legal system.

239 of the 240 women involved in our Special Circumstances Court program had a reduced rate of crime during and following their involvement. Over a 3 year period, the program had a 96% success rate in diverting women from prison.

⁵⁸ Quixley 2011

Evidence-Based Alternatives - Preventing women's return to prison

Sisters Inside's community-based services are generally provided via outreach – we engage with women and girls in the environments in which they feel most comfortable. Our programs aim to address the full range of barriers to women and girls' ability to establish a safe, secure, violence-free life in the community, including their health, housing, survival, education, employment, parenting, social and emotional needs. We also offer advocacy and support to deal with authorities impacting women and girls' capacity to move forward; resource their cultural engagement and development; and address the trauma which too often drove their criminalisation.

Sisters Inside services were primarily available in SEQ, until establishment of our NQ office in Townsville in 2017. Wherever possible within available resources, we now provide services to women and girls throughout Queensland.

The **Health Support Program (HSP)** is another state-wide service funded by the Queensland Government. It aims to optimise the health and wellbeing of criminalised women and their children, particularly women recently released from prison and women with complex health needs. The HSP supports women to access health (medical, dental, social, emotional and mental health) and substance abuse services, and to address any wider issues impacting women and children's wellbeing. It gives priority to providing intensive support with recently released women and women with a high level of complex health needs. At a practical level, the HSP facilitates appointments with doctors, dentists and other/allied health practitioners and services for women and their children. It also offers support to women, particularly those with complex pharmaceutical regimes, to maintain their treatment. The program also has the capacity to address wider wellbeing needs (e.g. housing, income support, education, family reunification) which impact the health of women and their children.

Our Commonwealth-funded **Child and Parenting Support (CaPS) Program** works closely with our BOWS Program (detailed below). CaPS aims to increase the parenting capacity of criminalised mothers living in the community, the vast majority of whom have lived experience of DFV⁵⁹. It focuses on providing highly intensive support to a small number of women (approximately 10 women with 25 associated children per year). Individual support is mainly delivered alongside women caring for their children, in their own home. The program also conducts parenting skills and support groups based on the *Circle of Security* model and supported children's play outings (e.g. after school, school holidays, weekends).

The **Next Step Home Pilot Program** is nearing completion in Townsville. Funded by the Queensland Government, this 3 year pilot aimed to reduce the number of women returning to prison due to homelessness in NQ, through optimising their access to safe, secure, affordable, independent housing. The program engages with women approximately 3 months prior to release. *Next Step Home* supports eligible women prisoners to access dedicated head-leases immediately post-release and maintain their tenancy for 12 months. Having secure housing for 12 months increases women's capacity to secure an ongoing, independent tenancy. The Department of Housing provided 15 head-leases annually (a total of 45 over the duration of the Pilot).

Another Queensland Government funded program, **Work Pathways** is open to criminalised women and girls in SEQ. Most criminalised women and girls have a negative experience of education. The Work Pathways program is designed to rebuild their confidence and ability to engage with education and training. Accredited training (currently a Certificate 1 in Foundation Skills) is delivered to a small group in a safe, friendly, non-institutional environment. The program approach allows for self-paced learning, and readily accommodates the many systemic demands on criminalised women and girls' time. In particular, inflexible reporting requirements from probation/parole/youth justice, child protection and Centrelink/employment agency make it almost impossible for participants to maintain regular hours in employment, education or training – the

⁵⁹ 96% of criminalised women who received intensive home-based parenting support through our CaPS Program in 2019-20 reported a history of DFV.

very things which have to potential to improve their economic future. In addition to a flexible learning process, individual tutoring and support to address any/all barriers to employment is available to all participants.

Our **Blue Card Advocate** is one of several positions at Sisters Inside which do not receive government funding, and address critical issues impacting criminalised women and girls. The *No Card No Start* legislation has a discriminatory impact on criminalised women and girls, and those with a history of imprisonment (even if they were never convicted). Many are refused a Suitability Card from the Queensland Commission for Children and Young People (Blue Card), even if they have lived successfully in the community for many years. This precludes women and girls from paid employment in education, childcare and similar premises (whether or not their job involves direct work with children and young people). Lack of a Blue Card particularly impacts Aboriginal and Torres Strait Islander women and communities, because it severely limits the pool of people available to be kinship/foster carers and to run (even unpaid) community sporting or cultural activities. Our Blue Card Advocate aims to increase the number affected women and girls who are approved for a Blue Card through providing information and support; assisting women to navigate the application process; and supporting women to appeal to the Queensland Civil and Administrative Tribunal.

Addressing women's health and wellbeing needs is critical to reducing crime and imprisonment rates. *Health needs* include medical, mental, social and emotional health needs. *Wellbeing needs* typically include housing, education, community engagement and employment.

For example, of the 466 women supported through the Health Support Program over a 24 month period (2019 and 2020), only 7% (35 women) were charged with new offences and only 4% (20 women) were imprisoned for crimes committed after they became involved with the program. This should be seen in the context of an expected return rate of approximately 47% within 2 years⁶⁰.

(These are women with high levels of need, many of whom had a long history of imprisonment and left prison with exacerbated health conditions. In 2020, 78% of SEQ participants had complex health needs, and 78% of NQ participants (53% First Nations women) required support for more than 3 months.)

Evidence-Based Alternatives - Supporting women both pre- and post-release

Demand for Sisters Inside's transition support services is enormous, and sometimes overwhelming, amongst women prisoners.

In a single 3 month period (Q1 2021):

- The 2 workers in the SEQ BOWS Program supported a total of 284 mothers, processed 77 new requests for program involvement, and ran a 3 day camp for mums and kids.
- The 2 workers in the NQ BOWS Program supported a total of 145 mothers of whom 103 (71%) were Aboriginal or Torres Strait Islander women.
- The 3 workers in the Gatton Re-entry Program provided a service to 224 women (33% First Nations women), developed release plans with 108 women, and supported 112 women post-release from SQCC.

⁶⁰ In 2017-18, a total of 58% of all prisoners in Queensland had 're-offended' and 47% had returned to prison within 2 years of release (QPC 2019:48), with men and women re-offending at similar rates and First Nations people being more likely to return to prison (QPC 2019:50).

Continuously funded by the Queensland Government since 2001, our **BOWS (Building on Women's Strengths) Program** has worked with criminalised mothers and their children. Sisters Inside currently provides this program in SEQ and NQ (not the women's prison in Gatton). Ultimately, the program aims to enable women to establish a violence-free life independent of statutory involvement for themselves and their children. BOWS builds on women's strengths to minimise their children's exposure to out-of-home care, to optimise family reunification and community integration, and to reduce intergenerational violence and criminalisation. It particularly focuses on children who are in the child safety system or at risk of the system. Our workers offer face-to-face counselling and support to women both pre- and post-release from prison, to increase their parenting confidence and capacity, and develop detailed post-release plans. BOWS facilitates family relationships whilst the mother is in prison (e.g. regular mother/child prison visits; negotiation with Department of Child Safety). Post-release we assist women to access secure safe, affordable, post-release housing; meet parole conditions; and access other services and support (e.g. DFV, mental health, substance abuse, educational, income support and employment services). The program also provides longer term and/or intensive support to families as required, including addressing historic abuse and its ongoing impact on mothers and children.

The Sisters Inside **Gatton Re-entry Program** aims to reduce the number of women prisoners released from Southern Queensland Correctional Centre (SQCC, Gatton) who return to prison. Commencing in 2019, this program focuses on providing up to 3 months' pre-release support to women prisoners; transport to accommodation on the day of release; up to 6 months' post-release advocacy and support; and ensuring each woman's access to support (through other programs) for as long as she wants. Whilst in prison, we work alongside women prisoners to identify their post-release needs, and ensure that each woman's immediate survival needs are able to be met on the day of release. Post release, the program provides flexible, responsive services, assisting each woman to navigate the service system to progressively address her perceptions of her medium and long term needs. This includes supporting women to meet their (often competing) obligations to statutory authorities (particularly Probation & Parole, Centrelink and Child Safety), and advocating with and for women as required.

Evidence-Based Alternatives - In-prison support services

Women consistently report that Sexual Assault Counselling and Anti-Violence Support helps them cope with being in prison. It improves their ability to manage their trauma because they feel less isolated. It increases their understanding of their trauma-driven response patterns, improving their ability to self-regulate their behaviour. It enables them to develop strategies to tolerate a broader range of emotions and experiences in the prison context. It provides an opportunity to begin to develop safety plans and envisage a non-violent future post-release. However, the constraints of the prison environment severely limit opportunities for therapeutic work or healing.

Sisters Inside provides support services inside all women's prisons in Queensland. We mainly offer anti-violence support, counselling and education; and support to maintain family relationships, access Supreme Court Bail (SCB), apply for parole, avoid deportation, and re-enter the community. Our BOWS and SCB Support programs have been detailed above.

Our **Sexual Assault Counselling Program** in BWCC is Sisters Inside's longest running program. It has been continuously funded by the Queensland Government since 1994. Feedback from women prisoners at the time was unequivocal – sexual assault counselling was their greatest single need whilst in prison. 25 years on, this service is still regularly over-subscribed. More recently, Sisters Inside **Anti-Violence Programs** offering women prisoners education, counselling and support in all forms of violence (particularly sexual, domestic and family violence), have been offered in all Queensland women's prisons. Our capacity to provide counselling or therapy related to women's experience of violence has been necessarily limited by the realities of the traumatic prison environment. An individual or group session can be summarily entered or ended by prison

officers at any moment, which severely limits the extent to which women can explore their emotional needs. After a session, women must return to a violent environment which mimics their previous experiences of violence, so it is critical that they do not become too deeply immersed in their emotions during a session, and are fully re-armed before leaving the session. Despite these (and many other) constraints, however, women continue to report that access to confidential, independent, situationally-appropriate anti-violence support, including crisis and longer term counselling, whilst in prison is a valuable support.

Two unfunded Sisters Inside advocates also provide services to women prisoners:

- **Deportation Advocacy** – Increasingly, criminalised women who are not Australian citizens are being deported following completion of a prison sentence. This includes women with dependent Australian children. This is due to the combined effect of an exponential growth in the number of women in prison, and 2014 policy changes which make it easier for Minister for Home Affairs to cancel visas under the *Character Test*. One way of failing the Character Test is to have a *substantial criminal record*. A criminal record is now considered ‘substantial’ if someone has one or more prison sentence(s) totalling 12 months. A total of 12 months imprisonment can be readily accumulated through convictions for minor, non-violent ‘crimes’ such as street offences associated with homelessness or trauma (as a result of DFV). Our Deportation Advocate provides information and support to women at risk of deportation across Queensland. She assists women to respond to visa cancellation and offers intensive support to women who apply to the Administrative Appeals Tribunal for review of the ministerial decision.
- **Parole Advocacy** – We became aware that many women were remaining in prison well beyond their parole date. This full time position aims to reduce the number of women who remain in prison either on parole suspensions or who are eligible to apply for parole. It aims to ensure that women prisoners have access to the information and practical support they need to be able to navigate the corrections system. This includes assisting women in their parole application; arranging accommodation and other essentials for getting parole; liaising/advocating with the Parole Board Queensland; following up parole applications; and assisting women to respond to unsuccessful applications. Sisters Inside’s Parole Advocate supports women in all Queensland women’s prisons in relation to parole and sentencing matters.

And, Sisters Inside provides a **free phone call service** to women in prisons throughout Queensland (using the Arunta system). This critical service enables women to interact with a worker and (generally) leave messages for staff on matters as varied as requesting particular information or services; asking for a visit from a worker; providing information about court/parole dates; asking for assistance with bank, housing, parole or legal matters; requesting release support or brokerage; asking for updates on progress with housing or rehabilitation arrangements; and seeking help to remain in contact with their children. In NQ, for example, women can call Sisters Inside during a single timeslot each week: in May 2021, an average of 24 calls were received and required follow-up each session. Arunta played a particularly important role during Covid-19 lockdowns: during Q1 2021, for example, the Gatton Re-entry Service alone had 469 contacts with a total of 124 women through Arunta whilst SQCC was locked down.

The Glaring Gap – Early, early intervention

A critical gap in services remains unexplored and unresourced. Too often, police (and other emergency services) see themselves as having no alternative to charging women and girls and/or holding them in police cells. Most women and girls’ first exposure to the criminal legal system is as a victim of crime, or arrest for a minor, non-violent crime.

How can we better prevent the criminalisation of women and girls with lived experience of violence? How can we better respond to women and girls in the midst of trauma-induced behaviour? How can we begin to encourage alternatives to wrongly arresting women as ‘perpetrators’ in DFV situations? How can we adopt a better sense of perspective around our social response to poverty-driven and trauma-driven crimes?

In its recent study of recidivism, the Queensland Productivity Commission (QPC) highlighted the particular impact of short periods of imprisonment on the risk of recidivism and suggested that *the community may actually be made safer by reforming current practices*. It proposed that the Queensland Government should adopt more effective ways to deal with crime, including decriminalising some offences *where the costs of criminalisation outweigh the benefits* (e.g. *some regulatory, illicit drug and public nuisance offences*), and increasing alternatives to imprisonment, including diversionary options. Specifically, the Report argued that there should be reduced interactions with the criminal legal system, partly addressed through *fill(ing) the gaps in prevention and early intervention*.⁶¹

The Queensland Government has demonstrated a commitment to reducing the number of women and girls in prison – particularly through funding most of the Sisters Inside programs and services detailed above. These include our Decarceration and Yangah Programs, which work with women and girls who have already been arrested and charged. The majority of these are charged with minor, non-violent offences and would be better transferred to a facility which could meet the needs which drove their crime, than charged and kept in police custody. Data from these projects demonstrate that the level of demand for this project is significant and, on current trends, can be expected to continue to grow.

Sisters Inside proposes a pilot program which could be tested and refined in SEQ, and later rolled out more widely across Queensland. We propose development of a 24/7 facility in a central Brisbane location, which could accept women and girls detained by police (or referred by other emergency services). The facility would offer first response support services to women and girls (and their families) who come to the attention of authorities throughout SEQ. This would significantly reduce the number of women and girls held on remand in the Brisbane City Watchhouse, BWCC and BYDC.

The facility would address women and girls' immediate needs such as rest, food and other personal needs (e.g. showering). As an *emergency department for social services*, workers would triage participants and address the issues which led directly to their contact with authorities (e.g. DFV, residential care issues, homelessness, minor mental health/conflict situations, release from hospital, debt arrears or outstanding fines). We expect that most women and girls would be traumatised or retraumatised by the circumstances surrounding their interaction with authorities, and may want significant emotional support. We also expect that a significant proportion of participants would be homeless and at risk of charges associated with their homelessness. All participants would be provided with accommodation (in a hotel/motel if other options were not available). It is important to note that the cost of a motel bed, a day's food and incidentals should be seen in the context of the daily cost of imprisonment (\$300 per woman; \$1,640 per girl) and its collateral damage (priceless).

Workers would also offer women and girls supported referral to services to address the longer term issues which place them at risk of further criminalisation. Given that a significant proportion of women and girls are likely to be Aboriginal and Torres Strait Islander, the facility should employ as many First Nations staff as possible, at both a worker and management level. It is also expected that many women and girls attending the facility will have unmet legal needs which place them at risk of criminalisation or further criminalisation. These may include outstanding fines and associated costs (e.g. for poverty-related offences such as driving an unregistered vehicle or public transport fare evasion), issues associated with DFV, and criminal charges. Purchasing the services of a legal practitioner with the competencies required to work with both First Nations and non-First Nations participants will be critical to addressing previous lack of legal information or representation, and thus reducing their criminalisation risk.

Drawing on 2 years' experience with our Decarceration and Yangah Programs, Sisters Inside estimates that a substantial number of women and girls could be prevented from being

⁶¹ Queensland Productivity Commission 2019:1-3

criminalised, or recriminalised, through diversion from police custody to such a service. A reduction in the arrest rate amongst women and girls would reduce the collateral harm of criminalisation and imprisonment, particularly amongst women and girls involved in the criminal legal system for the first time. It would keep these victims safe; reduce pressure on our already over-crowded police cells and prisons; and provide better value for money than continuing to waste taxpayer's money on the carceral system.

Conclusion

This submission has proposed concrete, efficient, effective means to respond to criminalised women and girls with lived experience of violence, taking proper account of their human rights and collective history of trauma.

In answer to the Part 2 Discussion Questions:

- Yes, the Taskforce should identify the complex factors underlying women and girls' initial engagement with the criminal legal system, in particular systemic sexism, racism and violence. It should focus on acknowledging the shocking long term trends in women's imprisonment, rather than the soft data currently included in the Discussion Paper (which understates the issue through documenting relatively short term changes). The Taskforce should focus on addressing, rather than simply describing, these trends.
- Yes, the Taskforce should recognise and document the role of the police in perpetrating systemic sexism, racism and violence against women and girls. However, the number of women officers and the 'cultural capability' of the QPS are side issues, and co-response models will primarily serve to reinforce and extend the existing ineffective and inefficient approach. We are deeply concerned about the how the Discussion Paper underplays current systemic police behaviour as 'historic' (page 9). The focus should be on keeping women and girls safe through reducing their exposure to harmful routine police attitudes, behaviour and practices. This includes ensuring that sexual violence support services continue to be community-based, independent and 'on the side of the woman', rather than (a subordinate) part of the police response (as proposed on page 17) required to pressure women and girls to report violence.
- Yes, the Taskforce should examine women and girls' experiences of the wider criminal legal system. However, this should not be a navel-gazing exercise focused on lawyers, judicial officers and court staff. Rather, it should focus on detailing the systemic sexism, racism and violence which are fundamental to routine prison practices, and proposing *trauma-informed and evidence-based* means to divert women and girls from the criminal legal system.
- Yes, the Taskforce should examine sentencing options. However, we know that a wide variety of sentencing options already available to the courts are often not employed. The Taskforce should focus on why the available diversionary options are not being exercised more often, and what it would take for this to occur. One area of sentencing which should be explored by the Taskforce, is the need to recognise being a mother as a factor in sentencing, and the legislative changes required for this to occur (consistent with Recommendation 18 of *Women in Prison 2019*).
- Yes, the Taskforce should acknowledge the reasons for the spiralling imprisonment rate amongst women and girls, particularly First Nations women and girls. However, women and girls' experience of imprisonment in general has been widely documented. Given that breach of DVO's is now in the top 10 reasons for women's imprisonment, the Taskforce should focus on examining the contribution of gender-neutral DFV legislation on increased imprisonment of survivors/victims of violence, particularly amongst First Nations women (consistent with Recommendation 9 of *Women in Prison 2019*), and solutions to this injustice. The Taskforce should largely focus on demonstrating the inefficiency and ineffectiveness of imprisonment, and the failure of the carceral system to provide *value for money* to Queensland taxpayers. It should document the criminogenic role of imprisonment itself and the harm routine prison

practices do to women, girls and their children, particularly those with lived experience of violence.

- No, the Taskforce should not focus on reviewing implementation of *Women in Prison 2019*. The Queensland government must establish the Independent Chief Inspector for all prisons in Queensland. The Inspectors office must be well resourced to undertake investigations into individual and systemic complaints. Rather, this Taskforce should innovate, with a particular focus on advocating for alternatives to imprisonment, including proactively addressing key drivers of women's criminalisation such as race, violence, homelessness, trauma and consequent health issues (e.g. drug abuse and mental health issues), consistent with Recommendations 7, 10 and 11 of *Women in Prison 2019*. This would include reallocation of funding from police and prisons to a focus on women and girls' safety and security.

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