

Women in Prison Advocacy Network

Preliminary submissions to the New South Wales Law Reform Commission

Review of Sentencing

The main point that WIPAN wishes to raise in relation to the NSWLRC review of sentencing is that it is crucial that this Review acknowledges and addresses the specific needs of women in the criminal justice system.

Part 1: Specific Issues Raised by the NSWLRC

A. The ways in which sentencing law as a whole can be simplified and made more transparent and consistent

Transparency is important in judicial decisions on sentencing in order to make clear the basis on which decisions are made, and importantly the extent to which the specific subjective circumstances of a defendant have been taken into consideration. This is particularly important for two reasons.

1. There is the potential to highlight the particular life experiences and criminal justice pathways of women that renders criminalisation and punishment problematic and which suggests the inappropriateness of custodial orders for women.
2. To ensure that political influence, law and order agendas and popular opinion informed by racist, sexist or classist views or stereotypes do not impact on sentencing, particularly to the disadvantage of a vulnerable, traumatised and marginalised defendant.

Related to both points above, while consistency in sentencing is important the system must also have an appropriate degree of flexibility to ensure an individual's subjective circumstances are taken into account in sentencing.

WIPAN acknowledges that whilst transparency is important, transparency needs to be balanced against the privacy of the individual defendant. Sentencing laws do not exist in a vacuum. Rather they are part of the range of responses to offending available to prosecutors and judges. For sentencing laws to be simplified and effective, emphasis needs to be placed on establishing and using diversions away from the criminal justice system for offending behaviour, before the sentencing stage.

B. The priority issues in sentencing law that require investigation and reform

As discussed in the Appendix to these submissions, women are a growing prison population with specific experiences and needs that are not appropriately acknowledged in the present operation of the criminal law and the criminal justice system. On this basis the following are considered by WIPAN to be priority issues:

1. The growing female prison population: As discussed in the Appendix, women are a fast growing prison population. Indigenous women are particularly overrepresented in the prison population. This is particularly problematic given the cycles of violence, trauma, substance use and disadvantage that characterise the pathways of many women into and then back into the criminal justice system and prison (please see Appendix for further discussion). The NSWLRC must engage with the role of sentencing law in this gendered phenomenon, and in turn how sentencing law can be reformed to reduce the use of custodial orders in relation to women.
2. The extent to which sentencing law exacerbates the underlying issues of women's criminalisation: An overwhelming percentage of women have been victims of violence and abuse, and this is linked to women's pathways into the criminal justice system (see Appendix). In exacerbating the underlying issues of women's criminalisation, sentencing women to custodial sentences often only facilitates a continuum of violence, trauma, disadvantage, offending and imprisonment for these women.
3. Prison and post-release services do not provide appropriate support for women in addressing trauma and mental health issues and related substance use issues: A custodial order can exacerbate the issues underlying women's criminalisation. The NSWLRC must engage with the question of *if (and if at all) and when* custodial orders are appropriate: in what circumstances *should* the criminal law authorise the imprisonment of women in light of its violent, disabling, impoverishing and traumatising effects? What will the relevance of prison abolitionist arguments be to the NSWLRC review of sentencing law and specifically its review of custodial orders?
4. Diversionary options: A large proportion of women are convicted of minor offences. A large proportion of women have substance use issues linked to trauma and victimisation. The NSWLRC must consider the extent to which existing court diversion programs meet the needs of women, including issues of trauma and mental health, and child caring issues, and in turn whether women are being excluded from these programs or are not able to gain as much as men from the programs.

These issues are particularly pertinent in relation to the Drug Court and CREDIT. WIPAN recommends that NSWLRC consider the roll-out of diversionary mechanisms in order to encourage their accessibility to women in different geographical locations (particularly because women might be less geographically mobile due to caring responsibilities).

WIPAN recommends the NSWLRC consider the development of other diversionary mechanisms that are appropriate to the particular and diverse needs of women.

5. Sentencing options that recognise women's caring roles: A large proportion of women are convicted of minor offences. The overwhelming majority of women who are convicted have child or other caring responsibilities. It is vital that there are non-custodial (preferably), *and* custodial options available to women (if the NSWLRC recommends that the criminal law should continue to authorise the imprisonment of women through custodial orders) that enable them to continue in their caring roles.
6. Remissions: WIPAN recommends the NSWLRC give consideration to the reintroduction of remissions.
7. Sentencing, social justice and justice reinvestment: WIPAN recommends the NSWLRC consider the relationship between sentencing law and a focus on social justice and a reconfiguring of the allocation of resources and support in society beyond the criminal justice context, as well as a broader understanding of early intervention and prevention. One approach that the NSWLRC could consider is justice reinvestment, where money spent on prisons is diverted to provide resources focused on early intervention and social support which would address some of the underlying causes of crime in communities.
8. Greater resources and support services for persons subject to sentencing law, including in the post-release period: WIPAN acknowledges that the NSWLRC construes the scope of its reviews to strictly 'the law' abstracted from its social and economic contexts (and in this Review, strictly 'sentencing law') and not to issues of resources and support services. This approach, however, potentially amounts to indirect discrimination. This is because access to justice, including the equitable access to legal processes and diversionary mechanisms, requires the appropriate provision of resources and support services to meet the particular experiences and needs of women (particularly if these processes and mechanisms are modelled on the life experiences and needs of men). It also means that sentencing law can operate to affirm existing gender, social, racial and economic inequalities between subjects of the criminal law. WIPAN thus recommends that the NSWLRC consider the issue of greater resources and support services to women in the criminal justice system.

C. Any sentencing options in addition to those that currently exist that could be provided as an alternative to imprisonment, either generally, or in relation to particular categories of offenders.

WIPAN recommends that:

- as well considering any *additional* sentencing options, the NSWLRC give serious consideration to the continued use of custodial sentencing per se and the extent of the use of custodial sentencing (ie the criminal legal authorisation of imprisonment) because sentencing women to custodial sentences, often only facilitates a continuum of violence, trauma, disadvantage, offending and imprisonment for these women (ie work from a starting point that *does not* take for granted the necessity and legitimacy of custodial sentences and prison),
- the NSWLRC consider and address non-custodial sentencing options that acknowledge the circumstances of trauma, violence, disability and disadvantage of many women within the criminal justice system,
- the NSWLRC consider and address the extent to which existing or additional custodial and non-custodial options accommodate and support the parenting and caring roles of women,
- the NSWLRC consider and address the extent to which existing or additional custodial and non-custodial options accommodate and support the needs of Indigenous women,
- the NSWLRC review existing diversionary and alternative dispositional models (eg the Drug Court and CREDIT) be reviewed to ensure that they are appropriate for women (including Indigenous women), notably addressing the parenting and caring roles of women and the links between victimisation, trauma, substance use and criminalisation (eg if the Drug Court has an arrangement with Housing perhaps a similar arrangement can exist whereby the Department of Family and Community Services can assist women to reconnect with their children),
- the NSWLRC consider and address a range of diversionary and pre-conviction options focused on addressing the needs of women prior to sentencing which include peer mentoring, restorative and transformative justice,
- the NSWLRC consider and address the capacity within sentencing law to proceed without any punishment where women have participated in diversionary and pre-conviction options,
- the NSWLRC consider the lives of women (and their families) beyond the point of sentence to extend to the post-release and how women are being supported in their transition back into the community

- that the NSWLRC consider how the practice of sentencing could be accompanied by a strategy for the consistent and thorough practice of identifying and making recommendations for the reform of systemic issues that sentenced individuals experience, and
- if the criminal law is going to authorise the detention of individuals (and in circumstances where these women have been subject to victimisation, trauma and long term disadvantage) the NSWLRC must consider the responsibility of the government and the community to assist them in their return back into the community and consider how this responsibility can be reflected in sentencing law. Unless this is done effectively, one of the main goals of the sentencing law and the criminal justice system (rehabilitation) and one of the greatest concerns in society (safety) will not be addressed.

D. The operation of the standard minimum non-parole period scheme

- WIPAN recommends the NSWLRC consider how sentencing law should take into account the impact of minimum non-parole periods on women with caring roles, including the impacts on women and on these women's children.
- WIPAN also asks the NSWLRC to consider how non-parole periods can take account of the significance of imprisonment on the trauma and mental health impairments that many women convicted women experience.

Part 2: Preliminary Submissions on the Scope of the NSWLRC Review of Sentencing

The specific submissions WIPAN has made in relation to the issues raised by the NSWLRC in its 'Preliminary Outline of the Review' is supplemented by a number of submissions made in this part about the broader scope of the review.

WIPAN acknowledges that the NSWLRC is restricted to only reviewing the legal context of sentencing. WIPAN submits that in determining the scope of investigation and reform, the NSWLRC should take a broad and gendered approach to how it delineates the scope of this legal context.

To elaborate, WIPAN makes the following submissions:

A. Specific focus on women

WIPAN urges the NSWLRC to acknowledge women as a distinct population in the criminal justice system and prison system and that they are a specific population subject to sentencing.

WIPAN recommends:

- the NSWLRC review the application of sentencing law to women by reference to the distinct experiences and pathways that are common to many women in the criminal justice system, as well as the diversity within this population (as discussed in the Annexure),
- that the NSWLRC review the application of sentencing law to women by reference to the role women play as mothers and carers, particularly the impact of custodial orders on women's parenting and caring roles and the impacts on their children,
- that the NSWLRC review the application of sentencing law to Indigenous women, and
- that the NSWLRC consider the specific issues in relation to sentencing law for women with mental health and cognitive impairments and women from culturally and linguistically diverse backgrounds who have particularly diverse needs and might experience multiple and complex disadvantage.

B. Appropriate engagement and consultation with women in prison and women with lived experience of the criminal justice system

Women in the criminal justice system or with lived experience of prison and the criminal justice system must be involved in determining the solutions that will guide policy and law reform and service development relating to sentencing.

WIPAN recommends that the NSWLRC should actively work to include women in the sentencing law reform process through a community development approach, that engages and involves women in the processes that build the frameworks of their communities.

This approach must engage a broad and diverse range of women in the criminal justice system or women with lived experience of prison and the criminal justice system. In particular, it must engage with women who are *currently* incarcerated. This is significant because many women in the criminal justice system have been subject to social exclusion and rarely given opportunities for participation in political and legal decision making processes. WIPAN believes it is highly significant and problematic that women in prison and women with lived experience of the criminal justice system are currently excluded from policy and law reform debates about criminal justice issues and the debates are dominated by professionals and organisations that do not directly engage with women and seek their views.

Further, WIPAN believes it is the role of the NSWLRC to provide realistic, appropriate and accessible opportunities for women to be part of the consultation processes, and part of the solutions. Whilst the NSWLRC might have limited resources, WIPAN is of the view that the law reform process will be disappointingly exclusionary and discriminatory if it does not provide accessible information and appropriate opportunities for involvement and participation. These processes all ensure that women feel included and valued in the consultation process.

Thus, WIPAN urges the NSWLRC to:

- consult with women in the criminal justice system (including women currently in prison) and women with lived experience of the criminal justice system, including sessions within prison with women,
- provide plain English information about the review in acknowledgement of the low literacy levels and/or cognitive impairments of many women in the criminal justice system, and
- consult with relevant advocacy and support organisations,

C. Relevance of human rights to review

The NSWLRC's 'Preliminary Outline of the Review' does not identify whether human rights will be a specific consideration in the review. WIPAN emphasises the importance of human rights in the criminal justice and prison context, particularly because women in the criminal justice system represent some of the most vulnerable, marginalised and disadvantaged women in our communities and hence some of the least likely to have their human rights recognised.

In requesting that the NSWLRC engage with the human rights context of sentencing, WIPAN asks that this not only cover human rights relating to the criminal process and access to justice and the conditions of imprisonment, but also to a consideration of human rights as they relate to community inclusion, social and economic wellbeing and freedom from violence and to any other human rights that might be breached in the act of sentencing and punishing women who are marginalised, impoverished, vulnerable and traumatised.

The issue of discrimination is also important for the NSWLRC to consider. Current understanding of imprisonment and criminal justice pathways are largely based on male life experiences and fail to address the diverse experiences and needs of women, particularly those from Indigenous, disability and CALD backgrounds.³

WIPAN recommends the NSWLRC:

- review compliance of the sentencing law, including the *Crimes (Sentencing Procedure) Act 1999* (NSW), with international human rights instruments, and
- review the capacity for the discriminatory application of sentencing law, including the *Crimes (Sentencing Procedure) Act 1999* (NSW), particularly if women's circumstances are not taken into consideration in determining sentences, if custodial orders will have particularly disproportionate and negative impacts on women, or if non-custodial orders or diversionary/alternative disposition options are not appropriate to the needs of women (notably trauma, substance use issues and parenting roles).

D. The Broader Legal Context of Sentencing

It is commendable that the NSWLRC is reviewing the legal context of how society determines the specific terms and processes of sentencing, or to put it differently the legal framework for punishment (ie the legal authority and legitimacy to punish). WIPAN submits, however, to the extent that the NSWLRC might be concerned with addressing the social impact of sentencing that this focus on the legal context of sentencing is narrow and potentially counterproductive if it does not extend to the problematic social, cultural and health consequences of sentencing law on the subjects of punishment (and their families).

Whilst the NSWLRC has stated that the present Review does not extend to the administration of sentences, WIPAN recommends that the NSWLRC, in reviewing sentencing law, extend this Review to a consideration of the administration of

³ See generally Armstrong, K, Chartrand, V & Baldry, E 2005, 'Inquiry into the discrimination experienced by women prisoners within the criminal justice system in New South Wales', submission to the *Anti-Discrimination Commissioner, Beyond Bars Alliance NSW*, May.

sentences (ie of punishment and notably of imprisonment), on the basis of the role of sentencing law as *central to authorising and legitimising* punishment and imprisonment (and, as such, as inseparable from the NSWLRC review of sentencing).

In addition, WIPAN also recommends the NSWLRC extend its Review beyond the common law and legislative framework of sentencing itself to the criminal legal framework for the criminalisation and conviction of defendants, that is, the laws that enable a defendant to be within the jurisdiction of sentencing. Drawing a distinction between the criminal laws relating to criminalisation and conviction, and those of sentencing, and choosing to only reform the latter, is problematic. This is because even if sentencing law is reformed this will not address the fundamental issue of the legal basis on which individuals become legally capable of being subject to punishment (whether it sentencing law itself is reformed or not). It is WIPAN's view that any reforms to sentencing laws will be limited in their effectiveness in addressing the social inequalities inherent in our system of punishment and the over-representation of vulnerable, socially and economically disadvantaged groups (particularly women), if the NSW Law Reform Commission does not engage with the legal basis for criminalisation and conviction. This distinction between criminalisation and conviction on the one hand, and sentencing on the other also affirms the general exclusion of subjective social, gender and cultural factors from the determination of criminal liability which is itself highly problematic in the context of the issue of the punishment and particularly imprisonment of women.

In relation to women, although WIPAN sees the question of whether specific modes of punishment are gender-appropriate as being an important consideration for the NSWLRC, this in itself is not enough: the Review must seriously question whether it is morally and socially defensible to arrest, detain on remand and convict women whose criminalisation is linked to sexual and physical violence, trauma, mental and cognitive health impairments, substance use, homelessness and poverty. WIPAN believes that any reforms to the sentencing legislation can only go so far in addressing core issues relating to the high number of disadvantaged and traumatised women who are sentenced if it does not also investigate and reform these preliminary legal stages of the criminal law.

On this basis, WIPAN recommends:

- that the NSWLRC acknowledges that a review of sentencing law and the *Crimes (Sentencing Procedure) Act 1999* (NSW) is inseparable from the Review to the extent to which the law *should* authorise and legitimise punishment and of the legal context of the criminalisation and conviction of women (i.e. the laws that bring women to the point of sentencing), and
- that the NSWLRC consider the relationship between the sentencing legislation and the legal processes of criminalisation and conviction that bring women into the jurisdiction of the sentencing legislation.

Further, WIPAN requests the NSWLRC give consideration to the distinct experiences and pathways common to many women in the criminal justice system (as discussed in the Appendix) and how the legal processes preliminary to sentencing can keep women *out* of the jurisdiction of the sentencing legislation completely (ie to prevent them being convicted, rather than only to minimise their sentences within this jurisdiction).

WIPAN also requests that the NSWLRC engage with the question of *if and when* punishment (and criminalisation) is appropriate in light of this social context. This is particularly so in relation to custodial sentences. If and when should the criminal law authorise the imprisonment of women through the making of custodial orders (particularly in light of the disabling, impoverishing, traumatising and violent circumstances of prison)? What will the relevance of prison abolitionist arguments be to the NSWLRC review of sentencing law? What is the relevance to the NSWLRC's review of sentencing law (including the purposes of sentencing and the relevance of subjective factors) of the actual circumstances surrounding the administration of punishment, the conditions of imprisonment and the problems encountered by women in the post-release period that encourage the re-cycling of many women back into the criminal justice system?

E. The Relevance of the Operation of Punishment

WIPAN is aware that the NSWLRC generally restricts its reviews to 'the law' to the exclusion of issues of resources and social support. This closure of the law from its social context is problematic because there *are* insufficient resources and social supports to assist individuals in prison and on release. These issues impact on the ability of sentencing law to meet its stated purposes (notably rehabilitation) which in turn brings into question its legitimacy and also raises questions about what in fact sentencing law is authorising in the name of the law. On this basis WIPAN recommends the NSWLRC to:

- review sentencing law in acknowledgement of and in light of the present conditions in prisons, the levels of resources and social support for women during the period of punishment (including in prison) and in the post-punishment (notably post-release) period.

F. Acknowledgement of the violent, disabling, impoverishing and traumatic context of imprisonment

WIPAN also acknowledges that the NSWLRC has specifically excluded from this review the administration of sentences (including parole and prisons).⁴ This separation is problematic because the current operation of prisons is problematic (eg it has violent, disabling, traumatising, and impoverishing effects) and it is the sentence which gives the legal authority and the legitimacy to the subsequent imprisonment and the circumstances of this. WIPAN thus asks that the NSWLRC in reviewing the legal basis for making a custodial order pursuant to *Crimes (Sentencing Procedure) Act 1999* (NSW), consider whether the legislation should provide that:

- a relevant consideration in making decisions relating to custodial orders should be the inherently violent and traumatising nature of prison and its capacity to instigate or exacerbate trauma, physical and mental health issues and cognitive impairments, and in turn the inappropriateness of custodial orders particularly for women who have a history of sexual and physical abuse, trauma and mental health and cognitive impairments.

⁴ [1.3].

Annexure: Women in Prison: Consideration of a Gendered Approach in Sentencing

1. Increasing Women Prison Population

Women are a fast-growing prison population group. A recent report released by the Australia Bureau of Statistics (ABS) demonstrates that there has been a 60% increase in female prisoners over the past decade.⁵ In 1982, women represented only 3.8% of all inmates in full-time custody in NSW. This had increased, however, to 6.2% in 1990 and in 2009 had increased to 7.5%.⁶

While female prisoners constitute only 7.7% of the NSW prison population,⁷ recent evidence indicates that female incarceration is increasing at a faster rate than males.⁸ This phenomenon is also reflected in nationwide data – between the 2008 and 2009 ABS Prisoner Census dates, the number of male prisoners increased by 6% whilst the number of female prisoners increased by 9%.⁹

Notably, Aboriginal women are significantly over-represented in the NSW female prison population, representing 29.4% of all women in full-time custody,¹⁰ yet representing only approximately 2.1% of the NSW female population.¹¹ Baldry noted in 2009 that Aboriginal women are ‘the most rapidly growing group in prison, having increased disproportionately against both Aboriginal males and non-Aboriginal females over the past two decades’.¹²

2. Women as a specific and vulnerable population group

On the basis of our own experience working with women in prison and post-release, coupled with the abundant policy and academic literature, WIPAN is of the view that

⁵ Australian Bureau of Statistics 2010. ‘Women in prison rise by 5%’, media release, accessed 31 January 2011, <<http://www.abs.gov.au>>.

⁶ Corben, S 2010. NSW Inmate Census 2009: Summary of Characteristics, Corrective Services NSW, No.34, 68.

⁷ Corben, S 2010. NSW Inmate Census 2009: Summary of Characteristics, Corrective Services NSW, No.34.

⁸ Australian Bureau of Statistics 2010. ‘Women in prison rise by 5%’, media release, accessed 31 January 2011, <<http://www.abs.gov.au>>.

⁹ (Australian Bureau of Statistics, 2009).

¹⁰ Corben, S 2010. NSW Inmate Census 2009: Summary of Characteristics, Corrective Services NSW, No.34, 22.

¹¹ Baldry, E 2009. Mother Seeking Safe Home: Aboriginal women post-release. *Current Issues in Criminal Justice*, 21(2), 288-300, 290.

¹² Baldry, E 2009. Mother Seeking Safe Home: Aboriginal women post-release. *Current Issues in Criminal Justice*, 21(2), 288-300, 290.

while all prisoners experience significant levels of disadvantage, women prisoners constitute a minority group with specific needs both in prison and in the post-release period. There are many common features to the life experiences and pathways through which women enter and re-enter the criminal justice system. Although there are many features shared by women in the criminal justice system, it is important to note the diversity between women and to note that some women, notably Indigenous women, women with mental health and cognitive impairments and women from culturally and linguistically diverse backgrounds can encounter particularly complex disadvantage.

Contrary to this, unfortunately, prison and post-release services remain largely male-centred in their approach and fail to address the specific needs of women. The criminal justice system's responses to women in the criminal justice system are modelled largely on gender-neutral (but implicitly male) notions of life experiences, criminal offending and support needs.

In relation to the New South Wales Law Reform Commission's review of sentencing law, women's life experiences and criminal justice pathways problematise the criminalisation, conviction, and punishment of many women, as well as implying particular support needs specifically during imprisonment and in the post-release period, and the need to be mindful of the possible assumptions around gender, (as well as other factors such as class, race and ability) that are embedded in the purportedly neutral criminal law.

These submissions will now turn to provide a brief overview of women's experiences.

3. Inter-relationship of criminalisation, victimisation and trauma

There are numerous common features to the pathways that many women have taken through the criminal justice system. An overwhelming proportion of women in prison experience sexual and physical victimisation as a child and in adulthood (particularly in intimate relationships). Women prisoners constitute some of the most vulnerable women in the community.

Domestic violence

Women in prison are much more likely to have experienced domestic violence than women in the broader community.¹³ Women ex-prisoners were 27 times more likely to die unnatural deaths as compared to females of the same age within the general population.¹⁴ Eighty-five percent of women prisoners have been subjected to sexual abuse while the number of women physically and emotionally abused is thought to be higher.¹⁵

There is little discussion in the existing literature on the link between domestic violence and other criminal offences, perhaps because it involves reconciling two seemingly opposing notions of the victim and the offender.¹⁶ There is also an absence of literature specifically on the experience of prison as a factor in exacerbating the trauma relating to domestic violence, as well as being a domestic (albeit institutional) setting in which domestic violence itself occurs. Nor is there any government policy specifically on domestic violence in prison (or in institutional settings more broadly). That domestic violence could be contributing to the criminalisation, conviction and imprisonment of women is of extreme concern. It is also contrary to the commitment of government and broader society to address domestic violence and its consequences and is an affront to the human rights of some of society's most marginalised and vulnerable women. WIPAN strongly believes that women who have been victimised and put in a position of trauma, homelessness and poverty should not be criminalised and as a consequence imprisoned but rather should be provided with the support and services they need.

Trauma and Mental Health and Cognitive Impairments

The victimisation of women can result in trauma, as well as mental health and cognitive impairments. There are a high number of women with disability in prison. Over half (53.5%) of 2009 Inmate Health Survey female participants reported that they currently suffered from an illness or disability that had troubled them for six months or more,¹⁷ and 45.6% of 2009 Inmate Health Survey female participants had a self-

¹³ (Wybron & Dicker 2009)

¹⁴ (Vic, 2003)

¹⁵ (Leviore 2002)

¹⁶ Ferraro, K 2006. *Neither Angels Nor Demons: Women, Crime, and Victimization*, Northeastern University Press, Boston.

¹⁷ Indig, D, Topp, L, Ross, B, Mamoon, H, Border, B, Kumar, S, & McNamara, M. 2010. 2009 NSW Inmate Health Survey: Key findings report. Malabar: Justice Health Statewide Service, NSW Health, 51.

reported mental health condition.¹⁸ People with cognitive impairment and mental illness are overrepresented in the criminal justice system (including prison) and are particularly vulnerable and disadvantaged in their passage through the criminal justice system.¹⁹ An Australian Research Council Linkage project led by Associate Professor Eileen Baldry, 'People with Mental Health Disorders and Cognitive Disabilities in the Criminal Justice System in NSW', maps the human service and criminal justice pathways of prisoners identified as having a mental health disorder or cognitive disability. Relevant findings include that the higher rates of incarceration in relation to women in the sample are for women with complex needs, that is women with a cognitive disability together with a mental health and/or alcohol or other drug disorder, rather than a single diagnosis.²⁰ Indigenous persons with mental health disorder or cognitive disability are overrepresented in the criminal justice system.²¹ Findings from Baldry's ARC project indicate that Indigenous women represent a significant subset within the group of women prisoners with a mental health disorder or cognitive disability, their high rate of custodial episodes likely attributable to their complex needs.²²

Substance Use

Many women self-medicate through drug use. The 2009 NSW Inmate Health Survey found that 80% of female prisoners are current smokers, 38% consumed alcohol in a hazardous or harmful way in the year prior to incarceration, 16% showed signs of dependent drinking, 78% had used an illicit drug and 52% had injected an illicit drug at some point in their lives.²³ Compounded with these factors, are the gender-specific factors of victimisation and trauma underlying women's drug use which are not always

¹⁸ Indig, D, Topp, L, Ross, B, Mamoon, H, Border, B, Kumar, S, & McNamara, M. 2010. 2009 NSW Inmate Health Survey: Key findings report. Malabar: Justice Health Statewide Service, NSW Health, 135)

¹⁹ Dowse, D, Frohmader, C & Meekosha, H 2010 'Intersectionality: Disabled Women' in Patricia Eastaerl (ed), *Women and the Law in Australia*, LexisNexis, Sydney, 251, 266.

²⁰ Baldry, E, 2010. 'Women in Transition: From prison to ...'. *Current Issues in Criminal Justice* 22(2): 1-15; Baldry, E, Dowse, L et al. 2010. Background Paper: Pathways to prison for mentally ill and cognitively impaired offenders. NSW District Court Annual Conference 2010. Sydney; Baldry, E, with McComish, C & Clarence, M 2009. Punishing the Vulnerable: women with MHD & CD in the CJS, Keynote speaker, Sisters Inside Conference Brisbane, 22-4 September.

²¹ Calma, T 2008. Preventing Crime and Promoting Rights for Indigenous Young People with Cognitive Disabilities and Mental Health Issues, Australian Human Rights Commission, Sydney.

²² Baldry, E, with McComish, C & Clarence, M 2009. Punishing the Vulnerable: women with MHD & CD in the CJS, Keynote speaker, Sisters Inside Conference Brisbane, 22-4 September.

²³ Indig, D, Topp, L, Ross, B, Mamoon, H, Border, B, Kumar, S and McNamara, M 2010. 2009 NSW Inmate Health Survey: Key Findings Report, Justice Health, Sydney.

acknowledged and addressed in treatment programs. Women are inclined to use illicit drugs as a form of self-medication or as a coping strategy for psychological distress and/or historical trauma.²⁴

Poverty, Homelessness and Disadvantage

The combination of all of these factors can result in poverty, homelessness, poor physical health and social isolation.

4. Gender-Specific Needs in Prison and Post-Release

In light of these common features that characterise the pathways that many women make into the criminal justice system, women in the criminal justice system also have different support needs within prison and in the post-release period. Significantly, these pathways into the criminal justice system suggest that approaches focussed on early intervention and the provision of broader social support for women in the criminal justice system must focus on addressing girl's and women's subjection to violence, providing support for trauma and mental health disorders, access to support and services to address drug and substance use that integrates trauma and mental health support, and housing.

Housing

Our own experiences working with women in the criminal justice system (which are confirmed by the secondary literature) indicate that safe, suitable and long term housing is the most important (and yet the most difficult) factor for women in the post-release period. WIPAN sees this issue as being so significant that it has recently released a discussion paper on the issue.²⁵

Women prisoners are more likely to be homeless prior to incarceration than are men and at a greater risk of homelessness post-release than are men.²⁶ The evaluation of the WIPAN mentoring project found 60% of mentees upon release from prison had

²⁴ Forsythe, L and Adams, K 2009. Mental health, abuse, drug use and crime: Does gender matter? Trends and Issues in Crime and Criminal Justice, no.384, Australian Institute of Criminology, Canberra, pp.1-6.

²⁵ Women in Prison Advocacy Network 2011. No Exit Into Homelessness Still a Dream?: The Housing Needs of Women Leaving Prison, Women in Prison Advocacy Network, Sydney.

²⁶ Indig, D., Topp, L., Ross, B., Mamoon, H., Border, B., Kumar, S & McNamara, M. 2010. 2009 NSW Inmate Health Survey: Key Findings Report, Justice Health, Sydney; Paylor, I. (1995). Housing Needs of Ex-Offender. Aldershot, Atheneum Press Ltd.

insecure housing or were homeless. The women on the program found support services were severely overextended and as a result services could not meet the demand or the complex needs of these women. Women mentees attempting to secure long-term housing post-release attempted every avenue to find housing but their efforts were usually futile. The absence of such housing can result in a number of compounding factors that can result in the victimisation and criminalisation of women including re-entering violent relationships, increased substance use due to exposure to drugs on the streets or living in environments that give ready access to drugs, acute mental illness and failure to regain custody of children. Further discussion of this can be found in the attached housing discussion paper.

Support for Roles as Parents and Carers

The role of women in prison as primary caregivers of their children is also a significant characteristic that distinguishes the support needs of female and male prisoners. The 2009 NSW Inmate Health Survey revealed that 49% of all female prisoners had one or more children under the age of 16 years prior to their incarceration.²⁷ Further research indicates that children of female prisoners are unlikely to be cared for by their non-incarcerated father since they are often unreliable and unable to look after their children due to drug or alcohol addiction and mental illness and therefore many female prisoners were the sole caregivers to their children prior to imprisonment.²⁸ Consequently, mother-child relations can become severely strained as a result of the incarceration of these women. Research indicates 'prison inmates who maintain close links with their families and/or close friends during incarceration have lower rates of post-release recidivism than inmates who do not maintain these ties'.²⁹ While some prison parenting programs for mothers in custody in NSW exist, the number of women eligible to access these programs is incredibly low.³⁰ For example, between 1996 and 2000 only 21 women and 23 children were involved in the full-time Mother's and Children's Residency Program at the Jacaranda Cottages, Emu Plains Correction Centre and the Parramatta Transitional Centre.³¹ Although those children who are ineligible

²⁷ Indig, D, Topp, L, Ross, B, Mamoon, H, Border, B, Kumar, S and McNamara, M 2010. 2009 NSW Inmate Health Survey: Key Findings Report, Justice Health, Sydney.

²⁸ Indig, D, Topp, L, Ross, B, Mamoon, H, Border, B, Kumar, S and McNamara, M 2010. 2009 NSW Inmate Health Survey: Key Findings Report, Justice Health, Sydney; Quilty, S, Levy, M, Howard, K, Barratt, A and Butler, T 2004. Children of prisoners: A growing public health problem. Australian and New Zealand Journal of Public Health, vol.28, no.4, pp.339-343.

²⁹ Select Committee on the Increase in Prisoner Population 2000, Interim report: issues relating to women, NSW Legislative Council, Sydney.

³⁰ Select Committee on the Increase in Prisoner Population 2000, Interim report: issues relating to women, NSW Legislative Council, Sydney.

³¹ Select Committee on the Increase in Prisoner Population 2000, Interim report: issues relating to women, NSW Legislative Council, Sydney.

for engagement in the parenting program are able to visit their mother during weekend visitation periods this does not always prove a viable option for families/caregivers with limited resources, as they must travel great distances to do so. Consequently, women often have little or no access to their children during their period of incarceration, making it extremely difficult to maintain familial relationships and thus complicating reconnection post-release.³² Many women exiting prison feel ill prepared to resume their parenting role once released, a feeling only exacerbated by a period of deep uncertainty and significant re-adjustment.³³ Children often feel anger, resentment and anxiety at the reappearance of their mothers after a period of absence, further restraining relationships.³⁴

Related to this, there is a high need for post-release services, including housing, to support women seeking restoration with their children. This is particularly the case for Aboriginal women who are often 'invisible' to policy makers and program designers.²⁶ Current practices in post-release services do not address the reality of the majority of women prison releasees' lives.¹³ Women with children were one of the three family groups most likely to be turned away when requesting accommodation, however 78% of women releasees who lived with their children post-release did not return to prison compared with 32% who were not living with their children.³⁵

Treatment for Substance Use

Upon release women ex-prisoners face a unique cluster of barriers in an attempt to access treatment for their drug addiction, including stigmatisation associated with their substance use, poor social support, and an intense fear of losing their children to child protection agencies.

32 Woodward, R 2003. Families of prisoners: Literature review on issues and difficulties. Australian Government Department of Family and Community Services, Canberra.

33 Tresillian Family Care Centres 2010, 'Mothering at a distance', ongoing research, accessed 2 December 2010, <<http://www.tresillian.net/health-professionals/research.html>>.

34 Tresillian Family Care Centres 2010, 'Mothering at a distance', ongoing research, accessed 2 December 2010, <<http://www.tresillian.net/health-professionals/research.html>>.

35 AIHW, 2009. Demand for SAAP accommodation by homeless people 2007-8: summary. Australian Institute of Health and Welfare, 71, pp. 1-6; Baldry, E, McDonnell, D, Mapelstone, P, & Peeters, M 2003. Ex-prisoners and accommodation: what bearing do different forms of housing have on social integration? (Positioning Paper for the Australian Housing and Urban Research Institute); Baldry, E, McDonnell, D, Mapelstone, P, & Peeters, M 2003. Ex-prisoners, housing & social integration. Parity 16(5), pp. 13-15.

The Importance of Post-Release Support

It is WIPAN's view that the post-release period is a crucial period in supporting women to establish lifestyles, relationships and living conditions that can prevent re-entry into the criminal justice system. Support for women in the post-release period needs to focus on addressing underlying issues of trauma, mental health disorders, drug use, domestic violence, poverty and social isolation, and can include:

- trauma and mental health support,
- support and services to address drug and substance use,
- positive social support, including through mentoring,
- support in regaining custody of children,
- safe, appropriate and long-term housing,
- financial support, and
- physical health services.