

**Submission to the Parliamentary Inquiry  
into the Criminal Justice System**

**The Women's Leadership Group  
Women Transforming Justice Project  
Fitzroy Legal Service Inc**

## **The Women's Leadership Group**

The Women's Leadership Group ('WLG') is a group of women with experience of incarceration and/or criminalisation and are employed by Fitzroy Legal Service to undertake systemic advocacy. The advocacy of the WLG aims to draw attention to the increasing incarceration of women, including the rise in women remanded to custody in the wake of the 2018 bail reforms. The WLG also undertakes advocacy that seeks to broaden understanding of women's experiences of incarceration and other aspects of the criminal justice system. The WLG receives funding from the Victorian Legal Services Board and has received grants from the Inner North Community Foundation.

### **Members:**

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### **Acknowledgements**

The work of the WLG is undertaken on the unceded land of the Kulin Nations. Always was, always will be, Aboriginal Land.

The Women's Leadership Group condemns, in the strongest possible terms, the expansion of prisons and the increased incarceration of women and expresses outrage and abhorrence at the Victorian governments continued incarceration of First Nations people and in particular, failure to prevent deaths in custody. The WLG would like to express solidarity to the families of First Nations people who have died in custody.

The women's leadership group would like to acknowledge and give thanks to:

- The women who agreed to undertake interviews (Part B)
- Georgia Egan-Griffiths, research volunteer who contributed to the development of this submission and whose time and efforts are greatly appreciated
- Megan Pearce for assisting with interviews and supporting the development of the submission
- Fitzroy Legal Service
- The WLG would also like to acknowledge and express gratitude to the activists, communities, researchers, workers and others that have laid the groundwork of resisting carceral violence that has made possible our work. We would also like to thank those who have wholly supported us along the way.

### **Endorsements**

The WLG supports and wholly endorses the submission by the campaign 'Homes not Prisons'- stop the expansion of Dame Phyllis Frost Centre

The WLG supports and endorses the submission by Fitzroy Legal Service

## Introduction

Since commencing in 2018, the WLG has contributed to government inquiries, royal commissions, conferences, forums, and consultations within the legal and social services sector. The aim of this work has been to provide advice and undertake advocacy work aimed at decreasing the incarceration of women in Victoria. The WLG maintains that the reformed bail laws, like other aspects of the CJS represent the Victorian governments willingness to consign women as collateral damage to patriarchal violence. By failing to sustainably fund and strengthen support in housing, welfare, health and mental health care, alcohol and other drug services, family violence services and initiatives that challenge and dismantle patriarchy, government responses have offered only superficial support and reformist responses to the incarceration of women. Leaving services and organisations to compete for funding, expecting projects to be delivered in small timeframes, with insecure and uncertain futures, has decimated capacity for long-term support and care.

The government, in its wilful abandonment of women, and total disregard for the support and agency needed by criminalised women is not a past or theoretical exercise for the WLG. In October of 2020, a former and much-loved member of the group, Jasmine Crawford-Nobels ('Jazzy') died shortly after being released from the Dame Phyllis Frost Correctional Centre. Jazzy died from a drug overdose, in a motel room- one of the few paltry offerings for women when they are released from prison. We remember Jazzy as a strong and dedicated woman, who was committed to the lives of incarcerated and criminalised women. We remember her and honour her, and the impact she has had in our journey together. Jazzy was under no illusions of the fate of many incarcerated women, she was clear in her determination that women die when we fail to act. At the time of writing this submission, the first-year anniversary of Jazzy's passing was fast approaching, and to date, no one has stood up to be accountable for her death, not one of the many involved agencies has taken responsibility.

There is yet to be a reckoning with the deaths of women who have been incarcerated. The deaths of women in custody, and after leaving custody bring to mind Judith Butler's suggestions that; 'specific lives cannot be apprehended as injured or lost if they are not first apprehended as living'.<sup>1</sup> It is our claim that the lives of women, particularly at the intersections of incarceration and drug use are positioned politically as 'ungrievable' – because to make them into grievable lives, would require a reckoning of conscience, it would require government, society and the media, to 'apprehend' the lives of criminalised women. By the time women reach the CJS, these women's lives have been relegated to be undeserving of humanity. Part of our resistance must be to remember women like Jazzy and continue to fight against carceral violence.

**The Victorian government owes an apology for Jazzy's death, and the deaths of thousands of other women who have overdosed or died from the violence inflicted by prisons and carceral systems. The government is liable. The government's punitive approach makes them culpable - their behaviour is criminal.**

Again and again, the Women's Leadership Group have made clear that prisons are not about rehabilitation, but about disappearing women. Prisons do not achieve that governments continually assert they do.

The increasing numbers of women being swept into Victoria's prisons speaks also to the failure of 'gendered' responses, policies and frameworks employed across government and the non-profit sector, and it is worthy to remind the committee that the increase in incarceration of women has still failed to decline despite prior commitments by the Victorian government to 'gender responsive

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<sup>1</sup> Judith Butler, *Frames of War: When is Life Grievable?* (Verso, 2016), 1.

reform within policies and, programmes and practices'.<sup>2</sup> This requires, in our view, an interruption to mainstream and institutional feminism and gender responsive programming. This requires disruption to 'structural and systemic causes of women's criminalisation and serial incarceration'.<sup>3</sup>

Finally, we feel it is worth making clear our reservations in writing this submission. The information and testimony outlined below does not contain any information the Victorian government does not already know. There has been no shortage of inquiries, research, media or activism that has not clearly outlined the violence of prisons and carceral systems. Despite this, incarcerated and formerly incarcerated women are expected to make their case time and time again. Why continue to advocate if the government has no intention of taking the criminalisation and incarceration of women seriously, as it has repeatedly demonstrated. It seems pointless to have to continually make contributions and submissions when the government will continue to invest in the existing system.

This submission comprises of two parts.

Part A comprises of themes and critical insights from interviews with women with lived experience of incarceration, who have spoken to the brutality of incarceration and the carceral systems in Victoria. Incarceration is state sanctioned violence and the views of women who have experienced and been witness to this violence must be centred and respected in any attempt to address incarceration. Part B discusses the systemic negligence that causes the criminalisation and incarceration of women. For this submission the WLG has chosen to focus on how these issues result in violence and other harms experienced by women and highlight how the Victorian government has demonstrated no commitment to slowing down the incarceration of women, the lack of political will or courage to reverse the 2018 bail reforms or take responsibility for the devastating consequences of these reforms.

### **Incarceration of Women in Victoria**

Between 2010 and 2020, the number of women incarcerated has increased by 173%,<sup>4</sup> and the number of Aboriginal women incarcerated increased by 231%.<sup>5</sup> As demonstrated in the findings of the report, *A constellation of Circumstances: the drivers of women's increasing rates of remand in Victoria*, published by Fitzroy Legal Service and the La Trobe Centre for Health, Law and Society, the increased use of remand has contributed significantly to growth of women 'cycling' through the prison system, with many women experiencing a form of incarceration categorised as 'dead time' - time which women spend on remand before they are granted bail or sentenced, with some women receiving time served prison sentences.<sup>6</sup> Women also experience significant barriers when applying for bail, as courts view women's marginalisation through a prism of 'risk' and as such, women are routinely refused bail for experiencing the disadvantage of housing instability, or if a woman has support needs around mental health, substance use, or family violence.<sup>7</sup>

A key cause has been the disproportionate growth in the number of women who are denied bail and held on remand, and the decrease in the proportion of women offered parole. Reforms to Victoria's

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<sup>2</sup> Bree Carlton & Maree Segrave, 'They Died of a Broken Heart': Connecting Women's Experiences of Trauma and criminalisation to Survival and Death Post-Imprisonment, (2014) *The Howard Journal* 53 (4), p. 273.

<sup>3</sup> Ibid, p. 273

<sup>4</sup> Corrections Victoria (2020) *Annual Prisoner Statistical Profile 2009-10 to 2019-20*, State Government of Victoria, Table 1.2: Overview of female prisoners at 30 June.

<sup>5</sup> Corrections Victoria (n 2) Table 1.4: Overview of Aboriginal and Torres Strait Islander prisoners.

<sup>6</sup> Emma Russell, Bree Carlton Danielle Tyson, Hui Zhou, Megan Pearce, Jill Faulkner (2020) *A constellation of Circumstances: The Drivers of Women's Increasing Rates of Remand in Victoria*, Fitzroy Legal Service and the La Trobe Centre for Health, Law and Society, p. 5.

<sup>7</sup> Ibid, p. 5

bail and parole laws were enacted in 2013<sup>8</sup> and 2018<sup>9</sup> in response to several high-profile instances of violent male offending, however women have disproportionately borne the cost. More than half the women held in Victorian prisons are currently on remand,<sup>10</sup> and 89.2% of Aboriginal and Torres Strait Islander women entering prisons are unsentenced on reception.<sup>11</sup> The proportion of women being released on parole has reduced dramatically – currently only 5% of women being released from prison are released on parole, compared to 24% prior to the 2013 reforms.<sup>12</sup>

Women are now the collateral damage of male violence.

The WLG does not believe that the expansion of DPFC is an appropriate response to this.

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<sup>8</sup> Key changes included the introduction of two new bail offences. See also: Ian Callinan (2013) *Review of the Parole System in Victoria*, Melbourne.

<sup>9</sup> Key changes to the reverse onus provisions have meant that a greater number of people are required to show that there are exceptional circumstances that justify their release on bail. See also: *Bail Amendment (Stage One) Act 2017* (Vic).

<sup>10</sup> Corrections Victoria (2021) *Monthly Time Series Prisoner and Offender Data*, State Government of Victoria.

<sup>11</sup> Corrections Victoria (n 2) Table 2.3: Aboriginal and Torres Strait Islander Prisoner Receptions, By Sex and Legal Status on Reception.

<sup>12</sup> Corrections Victoria (n 2) Table 3.10: All Prisoner Discharges, By Sex and Discharge Type.

## Part A

Part A comprises of semi-structured interviews undertaken by Fitzroy Legal Staff and members of the Women's Leadership Group. Four interviews were conducted in September 2021, with women who have experienced imprisonment. A significant number of women were initially contacted to be interviewed, and despite agreeing to participate, circumstances prevented them from doing so. Of critical importance is the gratitude we would like to extend to the women who participated; for their time, insights and their commitment to the safety and rights of other women subjected to the violence and cruelty of the criminal justice system. The WLG also seeks to emphasise that criminalised women have their own discrete experiences of incarceration and there are many different perspectives on how the CJS should respond to women. Preparing for these interviews raised a number of tensions that required careful consideration.

We did not expect consensus from the women interviewed on what needs to change in order to reduce the incarceration of women or how the harms of the CJS should be responded to. As such we approached the interviews with the understanding that all women who have been incarcerated or criminalised hold important knowledge and expertise, and a commitment to bringing those insights to the forefront of this submission. Further, we feel it is important to approach women with such experiences in a way that makes space for the varied and at times, conflicting views and that also captures the complexity of their experiences. We also wish to note that some women interviewed were 'close' to their experiences of incarceration, and others had some 'distance', and we understand that views change and shift over time. We attempted to undertake the interviews in a way that supported women to consider their experiences -balancing their own views and perspectives but being mindful of not wanting women to feel they had to justify the existence of prisons or excuse the violence of prisons or the carceral system.

Further, members of the WLG have observed over the course of our work, that many 'lived experience' or 'peer' advocates are co-opted into dominant discourses around prisons and the criminal justice system. We hold a particularly strong view that it is abhorrent to recruit women into undertaking advocacy in the legal and social sectors that not only fails to challenge or critique the existence of prisons, but also support the expansion of the carceral system into social, community and health services. We assert that the organisations are failing to create opportunities for women to critique both the carceral system and locate their own experiences within this system. We also believe more consideration of this is needed across the legal and social sector who have driven this approach, and think it is harmful to expect women to prop up the same system that has inflicted terrible violence against them.

With all of this in mind, we asked interview participants these questions:

- What do you wish people knew about your experience of being criminalised and incarcerated?
- How does the criminal legal system harm women?
- What needs to change to stop women cycling through the system?
- What was your experience of navigating criminal law proceedings?

Overwhelmingly, the women interviewed felt that public perceptions did not align with their experiences and realities of incarceration. The interviews identified the following areas of concern by women who have been incarcerated.

- Prisons, Police and Carceral Systems are Violent
- Women's Violence in Context

- Medical Care and Health Rights in Prison,
- Bail, Remand and Parole
- Psychological and Practical Damage of Incarceration
- Systemic Neglect and Disadvantage
- Women Always Resist the Violence of Prisons

The women interviewed identified that they wanted the committee to take seriously their views about prisons, and there was consensus that prisons do not rehabilitate, do not prevent crime, and that they are violent. Violence is sewn into the fabric of the prison's existence. It is inherent in policies, procedures and staff conduct.

“What I wish people would understand is that for women in particular, the prison system is full of women who have committed non-violent offences. They're in there for short periods of time, which can be so disruptive to women's lives” - **Whitney**

“People go to prison for so many different reasons and it doesn't make them bad people, doesn't make them something that can just be thrown away and pushed to the side” - **Joan**

“I think that one of the things that sticks out in my mind is probably the treatment that you receive in prison...I do believe that the prisons really rely on the fact that what happens in the compound stays in the compound ...it doesn't come out really” - **Cyndi**

“Locking people up isn't the solution and it doesn't fix any problems, and prisons are actually not set up to stop cycles of addiction, they're not set up to stop cycles of violence. If anything, they create more of that in people, they create more fear, they create more trauma and then they just push people back into society and say - “deal with it”-**Joan**

“It wasn't about bettering my life, it was just about taking my freedom, saying you're a bad person, we're going to take your freedom, we're not going to do anything about how we prepare you for society when you get out , we're going to treat you like shit and send you back out there, and hope society does the same thing...because that's what you deserve...and that's the message” - **Joan**

We asked one interviewee, do you think that women can get better in a violent place?

“For the majority of women, no...it depends on your personality as well, as to whether you're willing to submit to the power plays that go on in prison. Not just between the officers and prisoners, but between prisoners as well” - **Whitney**

When we asked one woman if she thought prisons were an effective deterrent to crime, she stated;

“Nah! Well, it didn't deter me...you know, they think that jail rehabilitates people, it definitely doesn't” – **Donna**

Another woman described her incarceration as an entirely inhuman experience;

“I felt like my whole prison sentence was a big box ticking process. I don't feel there was any space for humanness” - **Joan**

When we asked women what they felt needed to change, one woman stated;

“Everything! Everything from a societal level upwards, like everything. It’s not just about women being in prison, it’s the battle and issues that are happening at the moment- it’s about violence against women, it’s about drugs and alcohol, it’s about fucking people being oppressed and staying oppressed because systems keep them oppressed”- **Joan**

### **Prisons, Police and Carceral Systems are Violent**

What became clear very quickly was that all the women interviewed wanted the committee to be aware of their treatment within Victoria’s prison system. All of the women interviewed identified specific experiences of violence, abuse of power and punishment within the prison system.

One woman spoke to the violence and aggression of policing.

“Speaking from my own experience, as a female, I’ve had male police officers throw me to the ground, and put their knee on my back and handcuff me...like I’m tiny...and I’ve got a grown man that’s like 100 kilos on me with his knee in my back, just to handcuff me when I’m not even resisting arrest”-**Donna**

“Like if a person—a male, another male, who wasn’t a police officer -was to throw me to the ground that’s automatically assault”- **Donna**

Another woman spoke about her fear of policing, and the state of vigilance she has to live in to try to keep herself safe;

“Since I’ve come home, I will not go near them, I don’t want a bar of them. If I see them down the road- my anxiety levels go through the roof and I don’t want them anywhere near me”- **Cyndi**

Joan spoke about how her first experience with police. They refused to protect her from a man who was committing violence against her;

“I never felt like I could rely on the law or police. I felt like I just had to endure the shit that was done to me...all because of that first moment with police...where they were like, “you’re a drug addict, you’re shit in court. You’re nothing, your credibility isn’t there, you’re not a person”- **Joan**

### **Prison Officers and Violence**

The women interviewed identified that prison guards embraced tactics of punishment, control and psychological violence. Most women mentioned meeting a small number of prison officers who they felt were respectful and treated them well during their time of incarceration, but overwhelmingly women experienced punishment, psychological violence, and abuses of power at the hands of prison officers.

“...these particular officers that I’m talking about... I feel like when you go into the prison system, they really want to remind you who you are, and you are somebody that’s coming in and you are a number and you’re no better than anyone else. And you know...you know you gotta bend and part, you’re gonna get strip searched, you’re gonna do this, your gonna do that. If you’ve walked in there with self-esteem and your head held high, for a woman, it comes crashing down.... they don’t want women walking around with confidence. They want

you to remember who you are, and you know-you'll do as your told, when you're told"-  
**Cyndi**

"Treatment that I received off particular officers in there that, you know, they've got that power head on them and want to twist and fuck in people's brains"- **Cyndi**

"I think there was only a handful in the five years...five and a half years I was at DPFC and Tarrengower, I could count the officers on one hand...that I adored, and I trusted, and I felt like they had my best interests at heart, and that was in five and half years! The rest of them...I don't know why they get into the job really; I don't know why? I think sometimes it's just sadistic"- **Joan**

"Some of the prison officers were fantastic, you know, really empathetic and treated you like a person, but you also had the occasional officer who was dismissive, who was rude, and you know that power, they had power over you. They infantilise you as women, you know "ladies", "girls", that sort of language. I think there needs to be a lot more training to staff to understand that a lot of women are coming from very poor socio-economic backgrounds, they've primarily been victims of abuse, whether it be domestic violence, child abuse, neglect, things like that"- **Whitney**

### **Punishment and Abuse of Power**

Joan described being seriously assaulted by several other incarcerated women when she was at Dame Phyllis Frost Centre, and that she was did not receive appropriate medical attention until she was taken to a hospital. For Joan, it was obvious that she was denied medical care as an insidious form of punishment.

"I was on remand at the time, I didn't want to go into protection, I wanted to stay in the compound because there's more opportunity in the compound, for education, for counselling, for sport, for Christian discussion group. There's more liberty to move around, so I wasn't going to tell them who did that to me. They knew someone had done it to me even though I said I did it to myself. I said I slashed up and smashed my face into a wall multiple times, and they just kept pressing me, pressing me, pressing me to try and get me to tell them"- **Joan**

"The first thing that happened, they didn't take me to medical, I had a concussion, and I had an infection ...and then they left me sitting in the slot for 2 days, until one of the mental health care nurses came on shift....and I was lying down, and he came to the little slot to give me my medication and I couldn't get up. ...he looked at my injury and it was seeping out. They were so intent on getting that information out of me, and I felt like because I didn't tell them, that was the way they were punishing me"- **Joan**

Joan was further punished by the prison after she returned from the hospital, when the prison moved her into a unit with one of the women who had assaulted her.

"They knew who did it right, but I wasn't going to tell them, and they said that "since you did this to yourself and no one did it to you, we're going to pop you in a unit with this girl", and they popped me in a unit with the girl who had assaulted me. And I got fucking terrorised...even though they kept bringing the police into the jail to try and get me to talk.... I said (to the police and prison officers)- "I've don't this to myself"- I did not want anything to do with it. They fucking terrorised me, this girl and her friends, they fucking terrorised me.

And I was like, you've slotted me with someone who you know did this. This is next level punishment for me not conforming to your fucking rules"- **Joan**

Cyndi stated that prison officers would often treat women in abusive and controlling ways, akin to intimate partner or family violence.

"When you go into jail, and you (have) experienced domestic violence, all it takes ...is a male officer having a bad day and speaking down to you, like how does that make you feel when you've just spent your whole life being spoken down to and controlled? ...they go to work and treat the women like crap"- **Cyndi**

In regard to the overall lack of boundaries and the abuses of power in the women's prisons in Victoria, Joan stated;

"DPFC uses more power and control tactics...I think the boundaries were really fucking blurred at that place (Tarrengower prison). And medical information about other inmates was shared with me personally by one of the nurses...while DPFC was an extremely traumatic place for me to be and it was hard to be there, I found the insidiousness of Tarrengower a lot harder to deal with"- **Joan**

"If an officer didn't like you, it's like they would go out of their way to sneakily make your life hard....by talking shit about you to the other inmates.... I would actually go back and do my 2 ½ years back at DPFC rather than Tarrengower"- **Joan**

Joan also spoke about abuses of power in the form of sexual relationships between prison officers and incarcerated women.

"I have personally seen male officers having sexual relationships with female inmates"- **Joan**

"Having people working in those positions of power, that can't maintain professional boundaries and using that power to disempower people is fucking disgusting, its criminal....and it's happened on multiple fucking occasions"- **Joan**

Whitney also spoke to the violence of strip-searching.

"I had trauma, but it wasn't huge, this is my big, big bug-bear about the prison system. There's no consideration about the trauma that women are re-experiencing through strip-searching, because it's a violation of your body, and that can bring up previous traumas that you've had"- **Whitney**

Some women we spoke to also felt personally targeted and punished by high-level prison staff such as governors or prison managers. One woman was refused requests as punishment.

"I got punished, not overtly, but I got things taken away. I got privileges taken away from me...then I got my leave for when I was transitioning out of prison. I'm a good writer, I always have been and I wrote them (the letters) up so beautifully and they made perfect sense, and I justified my reasoning for doing everything, but she (the prison manager) just wouldn't approve them "- **Joan**

Another woman said that she experienced direct intimidation by a prison governor.

“I also think that the governor, because she had it in for me, was really trying to label me like that (as a bully) .....and I was quite scared”- **Cyndi**

## **Women’s Violence in Context**

The women interviewed observed that most incarcerated women have, often extensive experiences of violence prior to incarceration. They also identified the need for a much better understanding of women who have used violence or harmed others. The women’s insights demonstrate that there is an important context that makes clear the reasons why women use violence, and this challenges the legal system’s binary categorisation of ‘victim’ vs ‘perpetrator’.

## **Experiences of Violence Prior to Incarceration**

“I did so much mental work to not fall back in the realms of my ex when I got out...there was a lot of manipulation, a lot of drama still going on, and I cut him off when I had a year left, and it really rocked me, like I had to do a lot of hard work.... he just had such a strong hold of me mentally”- **Cyndi**

“My ex and I, it was, you know, a toxic, toxic relationship. And before I committed my offense, he had already had priors for violence, had priors for stabbings, broke into my house, stabbed a guy at my home, I was then classed as the victim. Within 12 months you know, there was constant mental stuff going on. I turned, I attacked him. I attacked his partner, I wasn’t the victim no more, I was the perpetrator”- **Cyndi**

“It’s not acceptable for women to be violent, to go to jail for a violent matter”- **Cyndi**

Cyndi did not recognise that she had also experienced intimate partner violence until she was told by a counsellor from the Centre Against Sexual Assault (CASA).

“It wasn’t until I got my CASA worker. We were sitting down one day and were talking about everything, and she looked at me and goes, “you know that you’re a victim, right?”. Well, that was the first time someone in the whole prison system had looked at me and said, you’re a victim as well...”- **Cyndi**

“But it took that, it took *her* to say it to me...and that’s why I think every woman in the system is a victim at some stage of their life”- **Cyndi**

Cyndi also did not think that the prisons or the criminal justice system helped women who had experienced family violence.

“The only domestic violence course they preach is ‘Out of the Dark’, which I did twice in my sentence. And at first, I go- yeh like I get that, that was good. But the second time I was like, nah, I’m not into this. But that’s the only one they’ve got”- **Cyndi**

Cyndi also recalled the time she shared a unit with another woman who was categorised as a “serious violent offender” and how she came to trust her to help care for her daughter, who was residing with her at the prison.

“It was really strange actually, because it just goes to show you don’t judge a book by its cover, because a few weeks into it, we ended up being really close, I could trust her with my daughter”-**Cyndi**

“Like, I had murderers and you know, women that had been in for manslaughter...and the outside world would go- how is that even possible? But it is possible because 9 times out of 10, most of these women are mums, “- **Cyndi**

Joan also had similar reflections.

“I shared a room with them, and they were beautiful, they were kind, they were generous, and I wasn’t scared of them, but society turns them into a monster to be scared of. Society compounds the shame, compounds the trauma - the media, the court system, the jails - it tears people apart”- **Joan**

Joan also had experiences of violence prior to being incarcerated. She had been in an abusive relationship when she was about 18 years old and spoke about one incident when her boyfriend had attempted to strangle her.

“I called the police, and I didn’t have a criminal record, but I had “notes” against my name, about people I consorted with, that I was a drug addict. I hadn’t been caught with anything, but I was known to police. ...I went down to the station and they, in a roundabout way said to me, before I even had a chance to fight for myself or speak for myself, they said to me, “because you’re known to police, and he isn’t, this won’t hold up in court, so there’s no point”- **Joan**

“I feel like that was the beginning of all the trauma to come, all of the feeling alone, feeling like I didn’t have a voice, feeling like there was no safe space to be, feeling like I couldn’t call on the law to help me” - **Joan**

Joan, like Cyndi, was also labelled as a “serious violent offender” and was sentenced to defensive homicide.

“I was charged with murder straight off the bat, murder- because I’ve killed someone, and I was like - I didn’t murder this person, I didn’t go in there with intent, I can’t even remember going in there, there’s pictures of me slumped next to this person, but because he died, he’s the victim and I’m the perpetrator. It took me a long time, and a lot of therapy to own my part and give him back his. But the system just turned me into a perpetrator, *they* turned me into that, and it nearly killed me. I tried to take my life so many times in prison because I was a fucking murderer, because that’s what they needed to call me” – **Joan**

“I pled to it because I didn’t want to fight anymore, I didn’t want to drag my family through those court proceedings, and I didn’t want to drag his family through those court proceedings...I just felt like I couldn’t do anything but plea, but I look back now and I wish I would have fought it, but I was so broken and so scared and I had no faith in the legal system. I had no faith in the police, or the legal system”- **Joan**

## **Medical Care and Health Rights**

The women interviewed identified that prisons interfered and denied them their health rights. For some women, this began at the point of arrest and detention by the police, and for others it was an ongoing issue for them while they were incarcerated.

For Whitney, she had her medication removed from her when she was taken from court to police custody and was not seen by a doctor at the Dame Phyllis Frost Centre despite having health needs around blood pressure, sleep apnoea, diabetes, and depression.

She says that;

“A lot of work needs to be done at Dame Phyllis Frost in terms of medical care...waiting times, being taken off your medication with no explanation...you know, medications that you shouldn't stop suddenly”- **Whitney**

She also experienced poor treatment from the doctor.

“The doctor himself, he made me cry...I told him the medications I was on but couldn't remember the doses and he just kept raising his voice at me, harping on me, “what doses? what doses?” and I gave him my doctor's contact information and he said, “right, I'll contact your doctor”. I found out afterwards from my doctor when I got out, the prison never contacted him”- **Whitney**

Whitney describes being without her medication for 11 days and struggled to access any information or assistance from prison and medical staff.

“They just kept saying come back tomorrow, come back tomorrow.... at the time, I didn't know I had any rights, I didn't even know I had healthcare rights”- **Whitney**

### **Bail, Remand and Parole**

Some of the interviewees were acutely aware of the impact of the reforms to both bail and parole for women. Whitney stated the following.

“I understand why the Victorian government changed the bail laws, because of ...the violent crimes that were occurring whilst people were on bail and parole. But what they inadvertently did, and I'm not sure whether it was because they used gender-neutral language or whatever the policies - but it's inadvertently caught women into that” - **Whitney**

“The laws surrounding bail are really onerous on women....it was a knee jerk reaction to the violence of some men on parole or bail, but women just got caught in the net. Same with the war on drugs...but my gut feeling is that men are generally at the centre of drugs, importation and all that stuff. I do know first-hand that some of the women who were at Tarrengower for drugs were taking the rap for their partners. So, women have been caught up in the war on drugs as well”- **Whitney**

“I don't think the (the Victorian government) really looked at the consequences of their policies. You know, they were very focused on public perception...it was a knee- jerk reaction”- **Whitney**

### **Experiences of Parole**

Two women interviewed spoke extensively of their experiences of parole. One woman noted the connection to male violence and that women are now being punished for the violence men commit. Both women also spoke of how parole officers and the parole board exercised extreme control over their lives, and of living in fear that they could be sent back to prison at any time.

“Good old Adrian Bayley did his thing and that was all- because I remember when I first got sentenced, they said to me- don’t class your parole as that’s when you’re going home, because it’s not going to happen, it’s a waiting game. And the fact that you’re an SVO - you’re not going to get your earliest (parole date)”- **Cyndi**

“I left prison walking on eggshells and not wanting to talk up to my parole officer and going, ok well, I’m on parole and I just don’t want to breathe the wrong way in case they suddenly lock me back up and I’m put away and lose both my kids”- **Cyndi**

“When you’ve got parole, you are very vigilant on your behaviour, you don’t want to stuff up. Everything is documented, parole is god”- **Cyndi**

“I’ve had a handful of parole officers now...and they just didn’t want to give me up (cease working with) because I am a pretty easy case most of the time. But I don’t want to form a relationship because I don’t trust them, and most women don’t” - **Cyndi**

Joan had a similar experience of parole, she says; “parole was a fucking nightmare too”.

Joan was forced to advocate for herself when she received a urine test that read positive to opiates. Joan had been clean for years and as her parole officer didn’t believe her, she was forced to call upon an expert to provide a report on why her urine test had come back positive. Despite this and letters from counsellors and others, the parole board refused to believe her.

“They said to me, “you’ve killed a man, you killed a man, when you take drugs - you kill people”- **Joan**

“They wouldn’t even hear me out”- **Joan**

Joan was subsequently forced to wear an ankle bracelet for a year.

“I had to hide this ankle bracelet constantly. I had to buy clothes to make me feel less ashamed in society and fit in, and they wouldn’t even hear me out” -**Joan**

“I actually wanted to go back to jail, ...the system is so unfair...it’s all just so fucking degrading”-**Joan**

## **Psychological and Practical Damage of Incarceration**

Women gave examples of the different ways in which incarceration has had ongoing and pervasive impacts across many areas of their lives. This includes employment, stigma, shame, loss of identity, and surveillance and targeting by police.

“My criminal record now dictates pretty much everything I do in society, the jobs that I can go for, my privacy, having to disclose things to people who aren’t my therapist, to someone in a job interview who feels that they have a right to know my story because I have a criminal record”- **Joan**

“Even just applying for a job I really have to think, do I really want them to know what my criminal history is? Them having to do a criminal check, is it really worth me doing all this?

And am I even going to get the job in the end?...so I have to really weigh up my options”-  
**Donna**

“People say that “oh no, they don’t judge you for your past”, but that’s bullshit because they fucking do. They always judge you for your past. It doesn’t matter how good you are as a worker, or whatever”- **Donna**

### **Surveillance and Targeting**

One woman also talked about the impact of ongoing surveillance and targeting by police in her life. She had decided it was probably safer for her to have her car registered in another name, as she knew that police would be able to easily identify her from her number plates.

“I’m in the midst of purchasing a new car and I’m actually thinking about not even putting it in my name, purely for the fact that I know when my number plate gets ran...as soon as they (police) see my name, they’re going to pull me over. And really, like I’m not doing anything, but it’s just the hassle of it and I just think it’s wrong” - **Donna**

### **Stigma – Child Protection and Motherhood**

One woman identified the ongoing impact of stigma in her life, and in particular, the vilification with which child protection treated her and the stigma she experienced as a woman who had been criminalised and as a woman who had used drugs in her life.

“Because of my criminal history, they just automatically assumed the worst and... I think taking my son out of my care was probably the most damaging thing they could’ve done...because...yeah, I spiralled out of control after that” - **Donna**

“They expected me to do urines, they expected me to do all these things, and ...like how the fuck can I do all this shit? You’ve taken my one purpose in life”- **Donna**

“And the whole other part of it as well, with my son - being Aboriginal as well you know - like they say that back in the Stolen Generation, the kids getting taken away from their parents and stuff...it’s still happening!”- **Donna**

Donna has had 8 different child protection case workers within the last year and said that she and her son had been impacted by child protection workers’ lack of knowledge around substances and pharmacotherapy. She also felt they failed to communicate clearly, and she was often unsure of what was required of her to retain custody of her son. Donna was sure that child protection workers’ discriminated against her due to her history of being incarcerated and using drugs, and that child protection workers held women to a different and gendered standard.

“The mother is the one that gets all the responsibility, and all the blame gets put on the mother. You know, I hate to be talking shit about my partner, but all this started because of him. And I just felt like everything got put back on me...well fuck I didn’t know he had drugs in his pocket when we got pulled over”- **Donna**

“What about him when he gets out of jail, is he going to have to be doing urines and stuff like that? And like...it’s all in my report, it’s just like, “the mother, the mother, the mother”, it’s all on the mother...for females, we do cop the shit end of the stick”- **Donna**

## **Stigma and Shame**

Whitney identified that even short periods of incarceration are extremely impactful for women.

“The stress of the prison and the pains of imprisonment as they are quite often referred to, have long-term psychological impacts when you come out of prison. And that, even four months (of incarceration) was enough to make it difficult to integrate back into my family, because I was full of shame still. Even though my family was supportive, you know, there’s still that self-stigma that you have”- **Whitney**.

## **Loss of identity**

Women also spoke about the impact that prison had on their identity and sense of self. Loss of identity is not just about being incarcerated; it causes an ongoing psychic shift.

“The other thing is your loss of identity when you go in...you’re transformed into feeling like you’re nothing”- **Whitney**

“The minute they shut that cell door, which is very reminiscent of Prisoner, you know, the TV show. From the minute they did that, that for me was my transformation from mum, from trusted employee, hard-working person, into somebody who was not worth a pinch of shit”- **Whitney**

“The system just crushes your self-esteem, they just push you down and down, until you feel voiceless. And finding my voice again after going through 8 years of being in the system, I’m still silenced some of the time”- **Joan**

## **Systemic Neglect and Disadvantage**

### **Poverty or socio-economic status**

Several women spoke about the role that poverty and socio-economic status play for women who have been incarcerated. Both women felt this was a significant factor in why many incarcerated women continue to cycle in and out of prison.

“I really feel for these women, you know? The thing is, you go to jail, you get out and who’s going to employ you? What do you do? How do you make ends meet? Centrelink’s not that much and I mean, I live week to week with my kids”- **Cyndi**

“We’ve moved from a welfare state into this punitive state and the neo-liberalist approach to individuals, women in particular...so they put that responsibility of crime back on the individual...it is the neo-liberal approach that neglects the socio-economic, structural and systemic issues; homelessness, poverty and all that sort of stuff, as underlying factors of crime”- **Whitney**

Poverty and low economic status mean women often feel disenfranchised before they even encounter the criminal justice system.

“I have a real issue with the integration terminology. You know, where they say; “oh reintegration back into society, back into the community” ...because they may not have been

part of the community to start with, which might be part of the reason they committed the crime”- **Whitney**

### **Women always resist the violence of prisons**

Most women spoke to how they really had to “dig really deep” (Joan) when they were incarcerated. Nearly all of the women spoke to the ways they sustained their mental wellbeing. Dominant discourse often says these types of reflections “prove” that prisons work and are effective in their stated purpose to rehabilitate women. Rather, the women we interviewed proved that women often find ways to care for themselves in spite of the prison, not because of it.

Whitney spoke of her experience of accessing a psychiatrist in prison at the recommendation of a nurse. When she met with the prison psychiatrist her concerns were dismissed.

“I spent about 5 or 10 minutes with him and he goes, “ok there’s nothing wrong with you, off you go” ... and I’m like-I’m in here with mental health issues, that was why I committed my crime, I’m trying to get better, and I was just fobbed off”- **Whitney**

Whitney found she had to care for her mental health herself.

“I used that opportunity to write my feelings, connect with myself again”- **Whitney**

Joan reflected that she felt it was an “uphill battle” to get access to the programs she wanted to do and stated that she could not rely on the prison to help her do hard work of understanding her experiences.

“I realised that, what I needed to do to get well, is to dig really deep as to all the reasons why I fucking used in the first place, because drugs for me were the reason why I ended up in prison, so to take the drugs out of the equation, and probably I’m not going to end up in prison again. But take the drugs out of the equation and I need to figure out what’s underneath the drug taking behaviour, like what am I trying to cover up? What am I trying to self-soothe with substances”- **Joan**

Cyndi talked about isolating and keeping an emotional distance from the other women in the prison to keep herself safe.

“It was a coping mechanism, but I was just as vulnerable and scared as any other woman in the system...we handle it differently” – **Cyndi**

What was also made clear from the interviews was that women all resisted the violence of the prison, and made significant attempts to create safety for themselves, care for other women and demonstrated an impressive range of skills and knowledges around resistance and safety, even when they were punished for their resistance. Two women used letters to advocate for themselves or for protection purposes. Joan used letters to challenge the practices of prison officers.

“I did not make friends with a lot of officers, because the way they did things, their procedures, their protocols, I always had something to say about it. Like I think that’s where I put all my energy while I was in there. That- what you’re doing with that woman, is not ok, and I’m going to write a letter about it”- **Joan**

“Every time I wrote a letter and I used my voice, I did something productive”- **Joan**

“I didn’t conform to the girls, and I never conformed to the system with the officers...and I never owed anyone anything because I didn’t conform either way” - **Joan**

One woman stated that she wrote letters to her mother, documenting her treatment in the prison and telling her mother;

“If anything happens to me in Deer Park in the slot, you need to give this to (name redacted).” – **Cyndi**

## Part B

This section considers factors that directly contribute to the incarceration or criminalisation of women, to the expansion of carceral systems, and considers the impacts for incarcerated women.

### **Victoria's reformed bail laws have unnecessarily swept women up in consequences designed for violent men.<sup>13</sup>**

Majority of women currently on remand exceeds those sentenced,<sup>14</sup> resulting in an increase of incarceration rates. Women are being remanded for extremely minor offences<sup>15</sup> because police are leveraging the new bail laws to extract information and hand balling matters to the courts where prosecutors and judges are opposing bail.<sup>16</sup> This leaves women with a history of incarceration for something they would normally not be sentenced for.<sup>17</sup>

- Women experiencing homelessness, substance use, mental illness, economic disadvantage, or family violence are less likely to be granted bail by a judge, not because the woman is seen as a risk to the community, but because the judge perceives *her* as being at risk.<sup>18</sup> This presumption against bail for vulnerable and marginalised women only causes further disruption and instability, compounding their vulnerability.
- Between 2012 and 2017 there was a 630% increase in the number of women being remanded for procedural offences, such as breach of bail and breach of an intervention order.<sup>19</sup>

Under the current bail laws women experience discrimination, as carer duties such as caring for children or family is not considered exceptional circumstances.<sup>20</sup> The occupational status for men is highly regarded as exceptional circumstances in applying for bail. Women without legal representation or a fixed address are guaranteed to be incarcerated.<sup>21</sup> All these factors contribute to the growing population of incarcerated women causing a huge backlog in the system.<sup>22</sup> Which sees unsentenced women disproportionately incarcerated longer.

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<sup>13</sup> Reforms to the *Bail Act 1977* (Vic) were enacted in direct response to several high-profile incidents of violent male offending. Key changes were made to the reverse onus provisions and the range of offences captured by these provisions. As a result, when applying for bail many more people must now show that exceptional circumstances exist that justify their release on bail. These changes are disproportionately impacting women. See Russell et al (n 4).

<sup>14</sup> At 31 July 2021, 54% of women in prison were on remand. See Corrections Victoria (n 2).

<sup>15</sup> In 2020, for 31.6% of unsentenced female prisoners the most serious charge listed was a drug offence; 12.6% for property offences; 12.1% for burglary; 6.3% for fraud and misappropriation. See Corrections Victoria (n 2) Table 1.11.

<sup>16</sup> Russell et al (n 4) found that for women, homelessness and substance use are being associated with a higher risk of re-offending, leading to judges refusing bail. Systemic failures, such as the experience of poverty, are becoming inherently linked to the refusal of bail.

<sup>17</sup> 60.3% of women who were discharged from prison in 2020 had not been sentenced. These women should never have been sent to prison in the first place. This presumption against bail has led to many women who ordinarily would be granted bail, not applying because they believe that they will be refused. See Corrections Victoria (n 2); Corrections Victoria (2019) *Women in the Victorian Prison System*, State Government of Victoria.

<sup>18</sup> Russell et al (n 4).

<sup>19</sup> Corrections Victoria (n 15).

<sup>20</sup> 72.3% of women in prison were unemployed or performing home duties upon entry to prison. See Corrections Victoria (n 2) Table 1.15.

<sup>21</sup> 'Home environment' is a factor that the bail decision maker must take into account. See *Bail Act 1977* (Vic) s 3AAA.

<sup>22</sup> See Rick Sarre, Lorana Bartels, Toni Makkai (2020) 'We need to consider granting bail to unsentenced prisoners to stop the spread of coronavirus' *The Conversation* < <https://theconversation.com/we-need-to-consider-granting-bail-to-unsentenced-prisoners-to-stop-the-spread-of-coronavirus-134526> >; Greg Barns (2020) 'Victoria's criminal courts are critically backlogged. This is how we can speed up justice', *The Conversation* < <https://theconversation.com/victorias-criminal-courts-are-critically-backlogged-this-is-how-we-can-speed-up-justice-146761> >.

The ongoing emotional and mental impacts for women who have been incarcerated affects them for the rest of their lives,<sup>23</sup> this contributes to the complexities towards rebuilding their lives after incarceration.<sup>24</sup> Adversely affecting not only women but their children, family, friends, and their community.<sup>25</sup>

**Department of Families, Fairness and Housing ('DFFN') has become an extension of the carceral system and perpetrates harm against mothers and children.**

Child protective services, as it pertains to criminalised women- is tied to the criminal justice system and is carceral in practice and ideology. We view child protection services as distinctly different than other government services and departments, such as the Department of health, or department of housing. Child Protection is directly responsible for the care to prison pipeline, it is a carceral institution that removes (steals) and incarcerates children, leading to incarceration in adulthood.

Child protection workers wield authoritarian power over women and their families. CP workers will hold current or former drug use over women, and threaten women with removal if they don't comply, get clean and use AOD services to their satisfaction. Child protection put the responsibility on mothers, and rarely expect the same of fathers. Women are completely disempowered by child protection, they are expected to comply, to 'prove' their innocence. The consequences of not being able to totally demonstrate obedience and compliance to CP, has devastating consequences for women and their children.

We recognise and understand the role of mindsets of CP practitioners, the role of race, class, and gender in their assessments of us as mothers, their judgments of women who use or have used drugs, and their power over women who do not have the resources to defend themselves. Before child protection walk into our homes, practitioners have often already made their minds up about us and who we are due to service collusion and previously documented information. The context of a persons' situation is ignored and for this, services are never held accountable. Child Protection does not protect children. They behave like police, disrespect our time and our rights. They expect women to choose between staying with their partners or keeping their children. Through force and coercion child protection reinforces violence against women and children.

**Drugs; are a health matter and policing them neither protects the community, deters reoffending, nor improves the lives of "offenders".**

The crime here is within the criminal justice system. It is absurd to be criminalising people with a health matter. This perpetuates harm, often over a person's lifetime. While many people who use drugs recreationally can do so without surveillance, policing and criminalisation, this is not possible for people whose drug use is interwoven with multiple challenges.<sup>26</sup>

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<sup>23</sup> Research has revealed that criminalised women are more likely to attempt suicide and experience drug overdoses, and more generally, the life expectancy of those who spend time in prison is lower than in the general population. See Marie Segrave and Bree Carlton (2010) 'Women, Trauma, Criminalisation and Imprisonment...', *Current Issues in Criminal Justice*, 22(2): 287-305; Emma Colvin (2014) *Conditional justice: Therapeutic bail in Victoria* (Doctor of Philosophy thesis, Monash University).

<sup>24</sup> Whilst in prison on remand a woman does not have access to prison programs, such as rehabilitation programs, they risk eviction from their home, losing their job, and risk losing custody of their children. A Victorian study found that women who had been separated from their children were more likely to return to prison than those whose connection with their children had been supported via prison-based programs. See Aron Shlonsky et al (2016) Literature Review of Prison-based Mothers and Children Programs: Final Report.

<sup>25</sup> 69% of women entering prison on remand in 2017 had children, and 21% were primary carers before entering prison. See Corrections Victoria (n 15).

<sup>26</sup> Research has shown that drug use and dependence often result from sexual abuse, other experiences of victimisation, and mental illness. See Russell et al (n 4)

Criminalisation does not solve drug use and exacerbates existing problems. It is a health matter not a criminal matter or a “lifestyle choice”. In and of itself drug use is not criminal in intent or outcome.

- Drug offences are listed as the most serious charge for 31.6% of unsentenced women in prison<sup>27</sup>
- Drug offences are listed as the most serious charge for the highest proportion of sentenced female prisoners (26%)<sup>28</sup>

The CJS cannot provide a holistic, non-punitive and community led and robust response to drug use. The CJS further perpetuates violence and harm to women whilst failing to address the underlying causes.<sup>29</sup> It is ineffective and neither deters nor rehabilitates as increasing incarceration rates show. Criminalisation of a health matter prevents the necessary conversations about why people use drugs and how drug abuse should be treated.<sup>30</sup>

The system does not criminalise drug use it criminalises addiction. The visibility of minority communities makes them targets for this style of policing (Aboriginal people, people of colour, sex workers, LGBTIQ+, youth, people of low Socio-Economic status). Also, swept up are the disenfranchised members of non-minority communities. Drug users are targeted by police in a manner akin to predictive policing.<sup>31</sup> Such as targeting people by appearance or already known to police.<sup>32</sup>

The aggressive nature of policing has a kick-on effect on the children and families of the drug addicted woman. The system is designed to make women feel like they are shit parents, the worse mother in the world. It is hard for women and mothers to access services that are not abstinence based. Women do not reach out for health support in fear of severe consequences and punishment. This is a form of control. Compliance is expected but this sets women up to fail, to expect abstinence- highly unlikely to be maintained.<sup>33</sup>

Women are underrepresented in this conversation. Due to criminalisation, stigma and shame, our women are dying in the shadows and often their stories are either whitewashed or not told. OD

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<sup>27</sup> Corrections Victoria (n 2) Table 1.11.

<sup>28</sup> Corrections Victoria (n 2) Table 1.12.

<sup>29</sup> Women are more commonly imprisoned for shorter periods. This restricts their ability to access support programs whilst in prison and disrupts any support that they may have been receiving in the community. Of those women released from prison in 2020, 84.4% had served a sentence of under 12 months, and 48.4% of under 6 months. See Corrections Victoria (n 2) Table 1.15.

<sup>30</sup> Portugal decriminalised drugs in 2001 in favour of treating drug use as a health and social issue. Appropriate treatment and other intervention options has led to a reduction in problematic drug use.

<sup>31</sup> Studies have shown that Aboriginal people are more likely than non-Aboriginal people to be persecuted when found in possession of small amounts of cannabis, and that Aboriginal women are more likely to receive harsher prison sentences for drug possession. See Michael McGowan and Christopher Knaus, *NSW police pursue 80% of Indigenous people caught with cannabis through courts* (10 June 2020) *The Guardian*; Linklaters LLP and Penal Reform International (2020) *Sentencing of women convicted of drug-related offences: A multi-jurisdictional study by Linklaters LLP for Penal Reform International*.

<sup>32</sup> For women serving a subsequent sentence, 90% of offences relate to drug and alcohol dependence. See Drug and Crime Prevention Committee, Parliament of Victoria, (2010) *Inquiry into the Impact of Drug-Related Offending on Female Prisoner Numbers* (Parliamentary Paper No 371, October 2010)

<sup>33</sup> Therapeutic bail programs and post-release supports that are overseen by the court or Corrections Victoria have been found to further marginalise women, particularly those whose life circumstances result in non-compliance with punitive conditions. This only works to extend correctional control. See Colvin (n 21); Carlton, B. & Baldry, E. (2013) 'Therapeutic correctional spaces, transcarceral interventions: post-release support structures and realities experienced by women in Victoria, Australia' in Carlton, B. & Segrave, M. (ed), *Women exiting prison: critical essays on gender, post-release support and survival*, Routledge, 140-181.

deaths are a crisis in Victoria. Women die in custody; women die when they leave custody. Women die in their homes. Women die in their cars. Women die in street. Women die in public toilets.

The stigma and discrimination for women is a lot higher, women will hide more from the system, to protect their children from removal. Women are judged harshly for using drugs and viewed as choosing drugs over their children.<sup>34</sup> Women without children are often treated by the system as less of a priority and subjected to a hierarchy of who “needs” assistance. You can’t hide and be safe at the same time. This is the paradox of the CJS creates.

*“2020 – 21 has been the year of policy following health advice. The World Health Organisation says drug addiction is an illness. Policing and incarcerating women for illness is a travesty of justice and it’s time for the Criminal Justice System to be ashamed of this barbarism. Decriminalise substances and desist from propping up your carceral machinery with our misery. We do not consent. My addiction is mine. It doesn’t exist to make me an easy target for police, to provide jobs in the penal system, or to give you license to surveil my privacy into non-existence. Your Grange Heritage is my heroin. They’re both mood- and mind-altering drugs. Grow the fuck up.”* **Member of the Women’s Leadership Group**

## RECOMMENDATION

- Drug decriminalisation – current government policy neglects women’s health in favour of criminalising them. To stop the overdose crisis and save lives, the government must decriminalise illicit substances.
- STOP PUNISHING PEOPLE FOR USING DRUGS

**Poverty; should not be criminalised. The Criminal Justice System is an un navigable giant and favours those who can pay their way through it. This creates a criminal class.**

Poverty prohibits adequate access to housing, mental health services, health services, employment, and education and these are all precipitating factors for criminalisation.<sup>35</sup> Poverty is visible, what is visible is policed by a person’s appearance, where they live, and via data bases. Experiences of poverty have a direct relation to how women end up in the criminal injustice system.<sup>36</sup> Poverty makes it basically impossible for women to escape the CJS.<sup>37</sup> There is a perception that people in poverty are lazy, or a burden on government/taxpayers.

The CJS is largely made up of upper-class and privileged people (money, status, education) to lower class people (people on welfare, working class people, people without income or stable income).<sup>38</sup>

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<sup>34</sup> The World Health Organisation has ranked drug dependence as the most stigmatised health condition worldwide.

<sup>35</sup> It is widely accepted that there is often a direct relationship between a woman’s circumstance and her offending. See Corrections Victoria (2019) ‘Women in the Victorian Prison System’, Report – State Government of Victoria.

<sup>36</sup> Women tend to be charged with low-level survival offences such as property, economic, and minor drug offences, committed as a direct result of economic marginalisation or need. This phenomenon has been labelled the ‘feminisation of poverty’. See Corrections Victoria (n 2) Table 1.11; Joanne Belknap (2007) *The Invisible Woman: Gender, Crime and Justice*, Thomson Wadsworth.

<sup>37</sup> Criminalised women are not given the support or opportunities, either in prison or in the community, to address issues underlying their offending. This leaves women caught in a cycle of reoffending which, ultimately, is caused by systemic issues of poverty. See Lorana Bartels, Patricia Easteal, Robyn Westgate (2019) ‘Understanding Women’s Imprisonment in Australia’, *Women & Criminal Justice*, 30(3): 204-219.

<sup>38</sup> Only 11.4% of women imprisoned are employed. 72.3% are unemployed or performing home duties. See Corrections Victoria (n 2) Table 1.15.

Getting services or assistance often depends on stability and poverty prevents stability.<sup>39</sup> Poverty is a barrier itself to accessing help because their dignity is stripped away, it is designed for you to self-destruct. When people are living into poverty this can exacerbate health issues, housing crisis, substance use and family violence.<sup>40</sup> When a person's economic conditions deteriorate, crime becomes an alternative to income.<sup>41</sup>

- It is estimated that more than half those released from prison will be homeless upon release<sup>42</sup>
- 44% of women were still homeless even after a period of supported accommodation after release<sup>43</sup>

Once in the system poverty is connected to women's court outcomes and their freedoms, with poor women routinely remanded (refused bail).<sup>44</sup> If women have 'no fixed address', they are automatically remanded. The courts are incarcerating women for being homeless. People who are not impoverished can access private law firms, lawyers with connections, can pay for rehab, which is looked upon favourably by the court. People with money can buy themselves a better court outcome and less or no time in prison.

Poverty can look very different across people and populations, across different geographical locations. People with their own homes or assets can have the experience of being 'cash poor', while some people live 'in the margins within the margins'. Periods of incarceration perpetuates further poverty. e.g. losing rental/ public housing and other possessions when incarcerated.

**How dare you spend \$1.8bn on building more prisons, while people do not have housing, or enough money to live without constraint. People need a living wage.**

**Surveillance and Corrections Reference Number's (CRN) are weaponised. This perpetuates the revolving door of incarceration.**

It is impossible to escape the CJS. Once known to police, entered multiple databases, tied to court orders, extraction from this system is for most, a continuous part of their lives. The CJS targets marginalised people, police racially profile and judge people on their appearance or presentation and punish those who challenge authority. Where databases intersect with the service systems surveillance for criminalised women is rife. This occurs with DFFH and Child Protection, Courts and Police, Medical Tracking, My Gov and Digital Identification.

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<sup>39</sup> Studies have shown that upon release, it is increasingly difficult for women to access support services due to circumstantial barriers, such as unaffordable travel. See Andrew Day et al (2018) *The forgotten victims: Prisoner experience of victimisation and engagement with the criminal justice system*, (Research report, 01/2018), Sydney, NSW: ANROWS.

<sup>40</sup> See Russell et al (n 4) for a detailed discussion on the 'constellation of circumstances' that underpin the criminalisation of women.

<sup>41</sup> There is a strong link between financial marginalisation and criminalisation, and it has been suggested that this disproportionately impacts women. See Centre for Innovative Justice (2020) *Women Transforming Justice: Final Evaluation Report*.

<sup>42</sup> Australian Institute of Health and Welfare (2019) 'The Health of Australia's Prisoners 2018', Canberra: AIHW, 22.

<sup>43</sup> Victorian Ombudsman (2015) Investigation into the rehabilitation and reintegration of prisoners in Victoria.

<sup>44</sup> A Victorian Parliamentary Inquiry acknowledged that women were being remanded in custody due to lack of housing availability. It also noted that housing was the biggest contributor to women's offending and reoffending. See Drug and Crime Prevention Committee (2010) *Inquiry into the Impact of Drug-Related Offending on Female Prisoner Numbers*, Parliamentary Paper No 371.

Surveillance is deeply impactful for criminalised women. Surveillance means we are restricted, by services, courts, corrections and bail or parole. We are forced to carry stigma with us, carry labels, usually for the rest of our lives. Our identities are made concrete by databases, no matter what changes we make we are historically tethered to this identity by the system. Criminalised women face considerable and sustained discrimination due to surveillance; it closes doors and forces compliance. Surveillance means we don't call the police or other emergency services due to avoiding contact with authorities and the potential repercussions.

Further, consequences of surveillance are that criminalised women avoid services and hide from systems. Avoiding surveillance, means women cannot access services they are entitled to. Surveillance means we will not engage in accessing mental health support, alcohol and drug services, parenting support and applying for jobs.

These systems perpetuate the very behaviours they are supposedly designed to prevent. Continuous surveillance is an abusive practice. Women with a history of being through the CJS isolate and segregate themselves from society in fear of the past being used against them, living constantly in a state of vigilance and unable to fully exercise citizenship. Surveillance is a human rights issue; it traps us in a system we have no control over. The impacts are emotional and traumatic leading to suicide and overdose.

### **Concluding Remarks**

At the time of writing this submission, the WLG was experiencing difficulty securing sustainable funding to continue to build on the work from the last three years. Subjected to the oppression of pilot projects and short-term funding, the group's openness, commitment, and hard work across the legal and social service sectors. This lack of reciprocated commitment to the WLG (and similar projects), demonstrates the capitalist nature of the sector that operates on a 'consultancy' basis with many marginalised, targeted, and abandoned communities. To date, legal and social sectors and funders have demonstrated collusion and failure to commit to long-term and ethical work with communities impacted by incarceration.

Upon regretful reflection, it appears that the work undertaken by the WLG has been unable to permeate beyond superficial responses for criminalised women, with funders, philanthropic groups, and the managerial class of the Non-Profit industrial complex<sup>45</sup> retaining a temporary view of criminalised women and related advocacy work. Many of our efforts it seems, have fallen on "sympathetic" but uncommitted ears. Our project has ridden the (brief) wave of 'interest' in criminalised and incarcerated women's lives, a fate that has befallen many projects. The change we would like to see cannot be realised within existing models that favour short term commitments, or polite and palatable approaches to advocacy work.

Criminalised women are not a problem to be solved. They are a force to be reckoned with.

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<sup>45</sup> INCITE! *The Revolution Will Not Be Funded: Beyond the Non-Profit Industrial Complex*, (2017, Duke University Press)