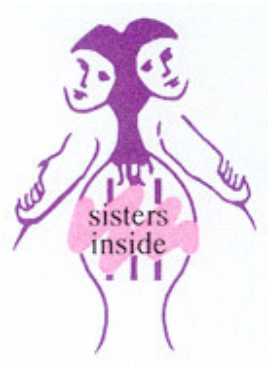
RIGHTS OF WOMEN PRISONERS

Submission to the National Human Rights Consultation



Sisters Inside Inc.

Sisters Inside is an independent community organisation which exists to advocate for the human rights of women in the criminal justice system in Queensland.

We work alongside women in prison to determine the best way to achieve this, and to address gaps in the services available to them.

Street Address - Level 2, 53 Tribune Street, South Brisbane Qld 4101, Australia
Postal Address - PO Box 3407, South Brisbane Qld 4101, Australia
Phone - (07) 3844 5066
For Further Information: www.sistersinside.com.au
Contact - deb@sistersinside.com.au

The majority of … women do not need to be in prison at all. Most are charged with minor and non-violent offences and do not pose a risk to the public. Many are imprisoned due to their poverty and inability to pay fines. A large proportion is in need of treatment for mental disabilities or substance addiction, rather than isolation from society. Many are victims themselves but are imprisoned due to discriminatory legislation and practices. Community sanctions and measures would serve the social reintegration requirements of a vast majority much more effectively than imprisonment.

(United Nations Office on Drugs and Crime 2008, p3)

Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.

(United Nations Basic Principles for the Treatment of Prisoners, Principle 5)

People are sent to prison as punishment not for punishment. Prison systems should ensure that prisoners are not further punished for their crimes over and above the sentence imposed by the Court.

(Revised Standard Guidelines for Corrections in Australia 2004, Clause 1.21)

Contents

Glossary 4

This Submission … At a Glance 5

Recent Reviews of Women Prisoners' Human Rights in Australia 6

In Queensland 6
In Other States/Territories 7
Nationally 8

Violation of Women Prisoners' Human Rights in Queensland 9

Sex Discrimination & Gender Inequality
- Women's Access to Justice 9
- Treatment of Women who are Detained 13

Multi-Discrimination Against Minority Groups
- Race Discrimination & Indigenous Rights 22
- Race Discrimination & (Other) CALD Women's Rights (including immigration) 29
- Disability Discrimination 33
- Age Discrimination 39

Women's Right to Health (and Safety) 43
Women's Right to Education 56

Human Rights Violations Against Children and Families of Women Prisoners 65

Toward the Solution - Legislating Human Rights 76

Endnotes 85
References - United Nations Human Rights Instruments (and their status) 89
References - Australian Policies & Guidelines 90
References - Other 91

Glossary

Acronyms:

ABS	-	Australian Bureau of Statistics
ADA	-	Anti-Discrimination Act 1991 (Qld)
ADCQ	-	Anti-Discrimination Commission Queensland
AIC	-	Australian Institute of Criminology
AMA	-	Australian Medical Association
BWCC	-	Brisbane Women's Correctional Centre (Qld)
CAIR	-	Coalition Against Inappropriate Remand (Qld)
CALD	-	Culturally and Linguistically Diverse
CAT	-	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	-	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	-	International Convention on the Elimination of All Forms of Racial Discrimination
CMC	-	Crime & Misconduct Commission (Qld)
CROC	-	Convention on the Rights of the Child
CSA-2000	-	Corrective Services Act 2000 (Qld)
CSA-2008	-	Corrective Services and Other Legislation Amendment Act 2008 (Qld)
CSU	-	Crisis Support Unit
DCS	-	Department of Corrective Services (Qld - recently renamed QCS)
DU	-	Detention Unit
EOCV	-	Equal Opportunity Commission Victoria
GM	-	General Manager (of each prison in Qld)
HREOC	-	Human Rights & Equal Opportunity Commission
ICCPR	-	International Covenant on Civil and Political Rights
ICESCR	-	International Covenant on Economic, Social and Cultural Rights
LOA	-	Leave of Absence
OESR	-	Office of Economic and Statistical Research (Qld)
OP-CAT	-	Optional Protocol to CAT
ORNI-R	-	Offender Risk/Needs Inventory (Revised)
PLS	-	Prisoner's Legal Service (Qld)
QCS	-	Queensland Corrective Services (formerly known as DCS)
SIS	-	Sisters Inside Inc. (Qld)
RCADIC	-	Royal Commission into Aboriginal Deaths in Custody
TWCC	-	Townsville Women's Correctional Centre (Qld)
YANQ	-	Youth Affairs Network of Queensland

Language Use: **The word *prisons*** rather than *correctional centres* is used throughout this submission. These institutions do not *correct* the wrongs that have occurred in women's lives. Nor do they lead to improved opportunities for disadvantaged women. Worse, prisons are detrimental to the health and well being of women and their families. Imprisonment of women particularly impacts the rights of their children. Commentary in this submission relates to adult prisons and imprisonment, except:

- For 17 year old children in Queensland adult prisons.
- Where juvenile prisons are explicitly mentioned.

The word *Australians* encompasses anyone within Australia's borders, including non-citizens, residents and visitors. All are equally entitled to have their human rights assured and protected.

This Submission … At a Glance

Sisters Inside Inc. (SIS) is uniquely placed to contribute to this consultation. We daily see the realities of prison life for women and girls in all (adult and juvenile) prisons throughout Queensland. We also work with women and girls following their release from prison. SIS also supports the children and wider families of women and girls in prison. We therefore see the wider consequences of policies and practices within the Queensland criminal *justice* system. Further, several SIS staff are former prisoners themselves and can contribute perspectives based on many years of experience 'on both sides' of the system.

Everyone in Australia is entitled to have their human rights protected and promoted. We believe that women and girls in the Queensland criminal *justice* system are being systematically denied their entitlements under many international human rights instruments. Queensland Corrective Services (QCS) treats human rights as a privilege, not a right, for women prisoners. The situation in Queensland has deteriorated significantly over the past 15 years, and all indications are that this trend can be expected to continue.

This problem is not unique to Queensland. SIS is closely associated with similar organisations in other states/territories, and has conducted 4 international conferences since 2001. Through our collaborative efforts to address violations of women prisoners' human rights, we have found that similar trends are occurring nationally.

Women are imprisoned as punishment, not for punishment. Yet, women's human rights are violated on a daily basis in Australian prisons. The treatment of men in Australian prisons is bad. The treatment of women prisoners is even worse. The treatment of specific sub-groups of women prisoners is simply horrifying.

It is important that this consultation addresses the rights of women prisoners. Despite little change in crime rates, women are the fastest growing prison population - nationally and internationally. Women have different criminogenic patterns to men. They have a different collective personal and social profile to men. They therefore have different needs and are impacted by criminal *justice* policies differently to men. Yet, prison systems are typically designed in response to non-Indigenous men's profile and needs. As a result, women prisoners are *doubly disadvantaged* in their access to their human rights whilst in prison. Women from minority racial groups (particularly Indigenous women), women with disabilities and young women prisoners are *triply disadvantaged*. For too long women have been forced to exist in a system where they are practically forgotten. It is not possible to make minor modifications to prisons to address women's needs. Yet, this is what governments have done for many years, and continue to do. Women with lived prison experience must be consulted with, their experiences heard and their expertise valued through this consultation.

The human rights of women prisoners must be protected and promoted. The current system, which relies on the good faith of governments to meet their human rights obligations, is clearly not resulting in adequate protection and promotion of women prisoners' human rights. Governments have been consistently unwilling to pursue and address violations of women prisoners' rights. This submission identifies breaches of human rights in almost every category listed in the *National Human Rights Consultation Submission Form.* Australia promotes itself internationally as a bastion of human rights practice. In fact, we have a demonstrably poor record in relation to women prisoners (and many other disadvantaged groups). Clearly existing arrangements have been inadequate to encourage Australian governments to adhere to agreed human rights standards.

It is therefore essential that the human rights of everyone in Australia are enshrined in formal legislation. Only then, will all Australians have genuine legal recourse when their rights are violated. In particular, stronger measures are required to protect the human rights of women in the criminal *justice* system and all other disenfranchised groups. All Australia's international treaty obligations (including CROC, CEDAW, CERD, ICCPR, ICESCR and CAT) must be implemented through a domestic Commonwealth human rights act.

Recent Reviews of Women Prisoners' Human Rights in Australia

As elsewhere in the world, there is a severe lack of comprehensive, gender-specific data about women in Australian prisons[1]. Whilst this lack of information has hampered efforts to achieve social justice for women prisoners, the existing data provides a consistent picture of the violation of women prisoners' human rights. This, combined with SIS's rich collection of anecdotal data, is more than adequate to justify urgent intervention.

The following briefly summarises key studies undertaken since 2000.

In Queensland

Sisters Inside Inc. (SIS) has been focused on the rights and needs of criminalised women for over 10 years. During this time we have published a large number of resources addressing breaches of women's human rights.

This submission is largely based on two more detailed pieces of work, recently produced by SIS:

1. **Human Rights in Action** (forthcoming - contact SIS for advance copy). Targeted at women in prison (and their advocates) this detailed resource is almost 200 pages long. It looks at the current situation in Queensland women's prisons, and the human rights instruments breached by current practice. The resource covers - entering prison, security classification, health services, mental health, children in prison, requests and complaints, breaches of security, segregation, searches, substance testing, contact with family/friends, education, prison labour, work camps, leave options, conditional release, parole and exiting prison. It also examines discrimination against particular groups of women prisoners - Aboriginal and Torres Strait Islander women, culturally & linguistically diverse (CALD) women, mothers and their children, young women prisoners, women prisoners with a disability and transgender prisoners.

2. **Submission to the United Nations Human Rights Council: Prisoners' Right to Education** (December 2008). This SIS submission examines educational opportunities for women prisoners and the nexus between education and prison labour in more detail than is possible in this submission. It identifies breaches of many international human rights instruments through - inadequacy of education (including sex-role stereotyping), discrimination against disadvantaged groups of women, inaccessibility of education, penalties for full time study, poor quality of education, limited educational value of prison labour, inappropriateness of prison-run programs for women and problems with transferring education to the outside.

This submission also draws particularly heavily on the **Anti-Discrimination Commission Queensland (ADCQ)** landmark report *Women in Prison* which was released in 2006. The ADCQ found many possible breaches of international human rights instruments - and, indeed, Australia's own guidelines and Queensland Government policies on the treatment of prisoners.

These more detailed accounts of the breaches of human rights summarised in this submission (and many more) are available on the SIS website at: http://www.sistersinside.com.au/reports.htm.

In Other States/Territories

Research, requests for investigations and/or investigations into the human rights of women prisoners have occurred in a number of Australian states and territories over the past 6 years. These suggest that similar patterns are occurring in prison systems throughout Australia. Key recent studies in other states/territories include:

- **Northern Territory:** In 2008 the NT Ombudsman released a substantial report of her investigation of complaints by women prisoners in Darwin prison. She identified many poor practices similar to those raised in the ADCQ Report, and found the Northern Territory Correctional Service '*improperly discriminatory' within the meaning of s26(1)(b) of the Ombudsman (Northern Territory) Act* (NT Ombudsman 2008:75).

- **Victoria:** The Federation of Community Legal Centres and The Victorian Council of Social Service wrote a detailed submission (Cerveri et al 2005) requesting a systemic review of discrimination against women in Victorian prisons. The submission included a focus on discrimination on the basis of sex, race and disability (particularly intellectual disability) in Victorian women's prisons. In response, the Equal Opportunity Commission Victoria (EOCV) called upon Corrections Victoria to perform an audit of the infrastructure, policies and procedures applying to women in prison to ensure compliance with the *Equal Opportunity Act (Vic),* and to consult with the Commission in the framing and monitoring of the audit. In requesting the audit, the Commission accepted that *at face value the Submission raises some allegations which may disclose breaches of the laws prohibiting discrimination on the ground of sex, parental status, disability, religious belief or race under the Act. The Commission also accepts that the alleged discrimination is of a systemic and serious nature …* (EOCV 2006:5).

- **New South Wales:** In 2000, the NSW Select Committee on the Increase in Prisoner Population released its *Interim Report: Issues Relating to Women.* This report similarly expressed concern about possible discrimination on the basis of sex, in NSW prisons. Following this, the Beyond Bars Alliance (Armstrong et al 2005) asked the Anti-Discrimination Commissioner in NSW to conduct a similar inquiry to that undertaken by the ADCQ. Again, they cited similar data in relation to discrimination against women. To date, the Commissioner has not undertaken an inquiry.

- **Western Australia:** One of the few substantial studies on criminalised women in recent years was conducted through Murdoch University. Whilst it does not explicitly address human rights breaches, Dot Goulding's 2004 study on the impact of imprisonment on *women's familial and social connectedness* is one of the richest sources of data available.

Details of each of these documents are included at the end of this submission.

Nationally

There has never been a national review explicitly focused on the human rights of women prisoners (nor, indeed of prisoners as a whole). The 1991 Royal Commission into Aboriginal Deaths in Custody (RCADIC) was the most recent major review of breaches of the human rights of Indigenous prisoners.

More recent national reports which have touched on some aspects of the breaches of human rights of women prisoners are:

- The Palmer Inquiry into the immigration detention of Cornelia Rau. The Inquiry was highly critical of BWCC's ability to respond to a prisoner with a major mental illness, and said it *might be necessary … to radically reorganise existing relationships, training and clinical pathways … in the Queensland mental health system* (Palmer 2005:129).
- Regular Social Justice Reports by the Aboriginal and Torres Strait Islander Social Justice Commissioner. These have mapped the dramatically escalating rates of imprisonment of Indigenous women, and some of the consequences of this.
- The Senate Select Committee on Mental Health (2006). The Committee mainly heard evidence on issues for women prisoners.

Annual Prisoner Census Data produced by the Australian Bureau of Statistics, provides clear and growing evidence of the deterioration of women's access to their fundamental human rights whilst in prison.

There are particular imperatives for Australia to undertake more comprehensive review of Australian prisoners' human rights, most recently:

- The Anti-Discrimination Commission Queensland (ADCQ) has called on the Human Rights and Equal Opportunity Commission (HREOC) to conduct *a review into how the justice and prison systems across Australia are dealing with women with mental health issues* (ADCQ 2006:Recommendation 68).
- Australia has (during the past month) signed the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. This protocol calls on State Parties to establish *National Preventative Mechanisms* (Part IV - Articles 17-23) to ensure compliance with the CAT.

Sex Discrimination & Gender Inequality
- Women's Access to Justice -

Quick Facts

- There is no evidence of increased crime rates amongst women over the past 10 years[2]. In fact, the Queensland Government claims that overall crime rates decreased by 19% between 2001 and 2008[3].
- Women commit fewer and less serious crimes than men[4].
- Yet, between 1998 and 2008 imprisonment rates for women rose in all states/territories. Nationally, the number of women prisoners increased by 72% (compared with a 37% increase for men)[5]. In 1998, women comprised 4.8% of Queensland prisoners; by 2008, this had risen to 7.7%[6].
- Of particular concern is continuing growth in the number of unsentenced prisoners - which increased by a staggering 4% last financial year alone (2007 - 2008)[7]. The percentage of total remandees in Queensland prisons almost doubled from 12.5% of prisoners in 1998 to 22.3% in 2008[8]. Women are more likely to be imprisoned on remand than men[9].
- Most women are imprisoned for minor offences. According to the QCS, the average period served by women prisoners (including women on remand) is about 2 months[10]. This is in marked contrast with a mean aggregate sentence length for all prisoners in Australia of approximately 3 years[11].
- According to a SIS survey, the majority of women were imprisoned for breaching an order, fines and drug possession[12].
- Women receive heavier sentences for equivalent first offences, than men[13]. An AIC study found that a staggering 60% of imprisoned women in Australia (compared with 2% of men) are first time offenders[14].
- Imprisonment appears to contribute to the likelihood of recidivism amongst women - 32% of women who had been in prison either returned to prison or a community based order within 2 years, whereas only 14% of women sentenced to a community-based order re-offended[15].

SIS believes that the over-incarceration of women demonstrates inadequate access to justice, and therefore constitutes sex discrimination. This breach of women's fundamental human rights is reflected at all stages of the criminal *justice* system.

Some Relevant Human Rights

SIS contends that many practices within the Queensland criminal justice system are in breach of international human rights instruments and Australian guidelines based on these undertakings. The following list is by no means exhaustive.

Universal Declaration of Human Rights

Article 2: Everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3: Everyone has the right to life, liberty and security of person.

Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11 (1): Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

Convention on the Elimination of All Forms of Discrimination Against Women

Article 2: States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
(g) To repeal all national penal provisions which constitute discrimination against women.

International Covenant on Civil and Political Rights

Article 9 (3): ... It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

Article 14 (2): Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

Article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour,

sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Standard Minimum Rules For the Treatment of Prisoners

Rule 58: The purpose and justification of a sentence of imprisonment or a similar derivative of liberty is ultimately to protect society against crime …

Breaches of these Rights

Crime rates in Australia are going down, or at worst, are remaining stable. It is difficult to find any reasonable, non-discriminatory explanation for the fact that women are being imprisoned at a significantly increasing rate. In particular, it is difficult to justify the increased imprisonment of women (particularly mothers of dependent children) for short sentences, for first offences and on remand.

The ICCPW clearly states that it should *not be not be the general rule that persons awaiting trial shall be detained in custody*. Yet, the percentage of women imprisoned on remand almost doubled between 1998 and 2008. The rate of incarceration of unsentenced women suggests that women in Australia are not, in practice, being *presumed innocent*. Even a very short period of imprisonment (1-2 weeks), can mean that a woman's children enter state care; she loses her housing, income and all personal possessions; and leaves prison with new debts.

CEDAW recognises women as being equal but different from men. This Convention acknowledges that women have with different needs, different vulnerabilities, and different strengths and in turn, unique human rights. Many of these are related to women's frequent role as the primary carers of dependent children.

Yet, current practices within the criminal justice system in Australia result in women being penalised more heavily than men. Nowhere is this more evident than in the indicators of average time spent in prison - 3 years for all prisoners; 2 months for women prisoners. Note particularly, the fact that 60% of sentenced women prisoners, compared with 2% of male prisoners, are first time offenders. Women are being locked up for very minor offences, which can hardly be seen as essential to *protect society against crime*.

The majority of women in prison were the primary carers of dependent children prior to imprisonment. Repeated research has found that the incarceration of mothers has major short and long term effects, on both women themselves and their children. There is mounting evidence to suggest that even a short period of incarceration of a mother can lead to profound effects on their children - including an increased propensity to commit crime in adulthood.

Through ratifying CEDAW, Australia has agreed that it should not engage in any act which has the effect of being discriminatory against women. Yet, on the face of it, all the evidence suggests that this is exactly what is occurring in the criminal justice system in Australia. If Australia takes its human rights obligations seriously, we must determine why the number of women prisoners, and the proportion of prisoners who are women, has increased so dramatically over the past 10 years.

All the evidence suggests that women are not equal before the law in Australia, and are not equally protected by the law. Public authorities at all levels in the criminal justice system must be required to take responsibility for this obvious discriminatory outcome, and take action to eliminate all policy and practices that contribute toward the direct, indirect and systemic discrimination against women throughout the Australian criminal justice system. This may include changes to legislation and regulations within the system.

Clearly the existing data raises serious questions as to whether Australia is meeting its obligations under Article 2 of the Universal Declaration of Human Rights. This and the following section of our submission look at discrimination on the basis of sex alone. Later sections will provide evidence to demonstrate that many women (particularly Indigenous women and women with mental health issues) are being further discriminated against on the basis of race, colour, language, religion and age.

Existing human rights expectations and processes have clearly been ineffective in *turning the tide* of unjust imprisonment of women in Australia - and addressing the problems women (and their children) face at all levels in the criminal justice system.

Sex Discrimination & Gender Inequality
- Treatment of Women Who are Detained -

Quick Facts

- Women are typically charged with less serious and violent crimes than men[16].
- Many less women than men are convicted of *violent* offences[17].
- The few serious violent crimes committed by women are generally against violent partners[18]. (Women rarely commit violent acts toward people they do not know.)
- Most women prisoners have no history of security breaches, no evidence of management concerns and are unlikely to re-offend[19].
- Women are less likely to re-offend after imprisonment, than men[20].
- Yet, in 2008, 65% of classified women prisoners in Queensland were classified as high security prisoners[21].
- The same security classification instrument (ORNI-R) is applied to both men and women, despite major differences in their criminogenic patterns. Non-Indigenous male prisoners typically rate better on ORNI-R than women and/or Indigenous prisoners and/or prisoners with mental health issues.[22]
- ORNI-R penalises women for their social, cultural and economic disadvantages. These are used as measures of the risk they pose to the community or *good security* of the prison. There is no evidence of a link between disadvantage and risk for women[23].
- As at August 2004, 23% of the available accommodation for women prisoners was in so-called *low security* beds and even these were not all filled. This was despite the fact that many women were accommodated in higher security facilities than their security classification.[24]
- The conditions in so-called *low security* facilities for women are often more restricted than those for men, particularly in prisons which house both male and female prisoners (Numinbah and Townsville)[25].
- Women's access to parole (conditional or community release) is reduced by this unjust security classification system, reduced access to low security facilities and limited places in mandatory programs[26].
- Future QCS plans for women's prisons focus on increased security in so-called *low security* facilities, more high security prison beds and added isolation from women's family and the wider community[27].

SIS believes that the treatment of women in prisons constitutes sex discrimination. Women's fundamental human rights are breached on a daily basis, in a prison system designed for men. This is particularly evident in the classification system, the number of low security beds and women's limited access to conditional and community release.

Some Relevant Human Rights

SIS contends that prison practices in Queensland are in breach of a number of international human rights instruments and Australian guidelines based on these undertakings. The following list is by no means exhaustive.

International Covenant on Civil and Political Rights

Article 10
1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2 (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.

Convention on the Elimination of All Forms of Discrimination Against Women

Article 2: States Parties condemn the discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
(e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
(f) To take all appropriate measures, including legislation, to modify or abolish existing law, regulations, customs and practices which constitute discrimination against women;
(g) To repeal all national penal provisions which constitute discrimination against women.

Basic Principles for the Treatment of Prisoners

Principle 5: Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.

Principle 10: With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

B. Victims of abuse of power

Article 18: "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

Article 19: States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.

Article 21: States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts.

Standard Minimum Rules for the Treatment of Prisoners

Rule 6 (1): There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Rule 8: The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;
(b) Untried prisoners shall be kept separate from convicted prisoners;
(c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;
(d) Young prisoners shall be kept separate from adults.

Rule 63 (2): It is desirable to provide varying degrees of security according to the needs of different groups. Open institutions, by the very fact that they provide no physical security against escape, but rely on the self-discipline of the inmates, provide the conditions most favourable to rehabilitation for carefully selected prisoners.

Rule 58: The purpose and justification of a sentence of imprisonment or a similar derivative of liberty is ultimately to protect society against crime. This can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law abiding and self supporting life.

Revised Standard Guidelines for Corrections in Australia

General Principle 5: The management of offenders should be based on an assessment of the security risk they present, their risk of re-offending, and be tailored to address their individual criminogenic and other needs.

Standard Guidelines for Prisons

Guideline 1.37: The Administering Department should provide a well-structured and transparent system of classification and placement of prisoners which has as its central aim; the safety of prisoners, staff and the community, while ensuring placement of prisoners at their lowest level of security appropriate for their circumstances.
Guideline 1.38: The security classification of prisoners should be based on an objective assessment of dangerousness and a risk management strategy that takes into consideration the nature of their crime, risk of escape and their behaviour in custody.
Guideline 1.40: Prisoners should be appropriately managed according to their individual needs in regard to: health, any intellectual disability; cultural or linguistic issues.

Guideline 1.41: The management and placement of female prisoners should reflect their generally lower security needs but their higher needs for health and welfare services and for contact with their children.
Guideline 1.42: Males and females shall in principle be segregated, although they may participate together in organised activities as part of an established programme.

(QCS) Women Offenders Policy and Action Plan 2008-2112

Policy Principle: Women offenders will be provided with rehabilitative and culturally-sensitive environments that acknowledge their diverse characteristics, needs and life experiences in accordance with assessed risks and needs.

Breaches of these Rights

According to many human rights instruments and Australian guidelines and policies, the primary purpose of prisons should be to *rehabilitate* prisoners. All advocate the use of humane practices which treat prisoners with dignity and respect. Most talk about the importance of culturally appropriate practices in prison management. Many talk about the need to treat different categories of prisoners in different ways. Many require that prisoners should be classified at the lowest possible level, in order to facilitate their reintegration into the community upon release.

Women's prisons in Australia fall far below these standards of practice. Women's dignity is undermined on a daily level, in a prison system designed for non-Indigenous men, which serves more as punishment than rehabilitation. Unsentenced women are in high security prisons. The majority of women prisoners are unjustly categorised as high security prisoners. Many women who are classified as low security prisoners are forced to serve their full sentence under high security conditions. Women are disadvantaged in their access to conditional release and parole.

Women are systematically discriminated against in a prison system designed for non-Indigenous men. It seems universally accepted that the vast majority of women prisoners do not need to be in prison at all, and do not pose a risk to the public. Few commit serious violent offences, and most only serve short sentences. Women are largely imprisoned as a result of poverty, mental health issues or substance abuse. Despite repeated calls for a community-based approach, women in Australia are being increasingly locked up in prisons.

Further (as will be detailed in the following sections) the majority of women prisoners are further discriminated against on the basis of race, language, religion and/or disability.

Yet, despite women's continuing individual and collective experience of abuse of power within prisons, remedies are almost non-existent and prison policies continue to reinforce and legitimise these abuses.

Prison Culture

Just like men's prisons, women's prisons have a strong focus on prisoner control. This inevitably results in a culture of punishment, despite the rhetoric about prisons as *rehabilitation*. Every aspect of a woman prisoner's life is controlled by prison staff. This includes her personal safety and her medical and psychological wellbeing. Apart from the

obvious structural power held by prison officers, there are many other dimensions to the exercise of power by some officers.

Some prison officers are fair-minded and humane. They consistently treat women prisoners with dignity and respect for their human rights, as far as the system allows. These officers have been known to defend the safety of women against abusive officers, and work to have particularly violent officers transferred to male prisons. Having said this, their ability to significantly affect the quality of life of women prisoners is limited by the fact that the prison system is, by design, violent. (That is, it is a system which *violates* women's human rights.)

Prison officers have significant individual discretionary power in their dealings with women. Whilst there are limits on officers' use of physical force, there are many other ways in which officers can exercise their structural power. They can use their power to pressure long term prisoners to *discipline* other women prisoners. They can apply the rules in arbitrary and inconsistent ways. They can encourage discontent between groups of women, encourage personal disputes between prisoners, pass on gossip, move women from cell to cell or give privileges to some women and not others. They can *breach* some women but not others for the same behaviour.

Many male prison officers are employed in women's prisons. Women prisoners (particularly women who have spent time in institutions as a child or have an intellectual disability, who are often well-institutionalised into compliance with authority) live with the fear of sexual assault by male officers. There are certainly some documented cases of male prison officers exercising their gender power in an arbitrary and/or brutal way. Again, it is important to remember that **most** women in prison have a history of abuse by men. This adds to their vulnerability in the presence of male prison officers.

Sometimes prison officers' use of covert power is based in a lack of knowledge, experience or skills. The ADCQ made a number of recommendations about the need for mandatory training for prison officers in the following areas:

- The different histories, behaviours and needs of male and female prisoners. Many treat women prisoners in the same way as they would men. They may have, for example, a (largely unfounded) fear of violence from women prisoners. They may act on this fear through repressive and controlling practices.
- Identifying and responding to women with mental health issues (psychological/psychiatric disability), intellectual disability, learning/cognitive disability or emotional issues. Some prison officers treat women with symptoms of disabilities as though they are being deliberately difficult, punishing them rather than seeking to understand their behaviour.
- The varied histories, needs, culture, religion and languages of Indigenous and CALD women prisoners. Unintentional communication breakdown and misunderstanding sometimes results in inappropriate attitudes and/or punishment.

Further, prison officers may not be aware of the high proportion of women prisoners who are mothers, and the added layer of stress this places on their imprisonment experience. They may not realise that use of the same penalty for breach of discipline for a prisoner who is a mother, has a very different impact than for a non-mother. Even routine day-to-day prison activities can function as *double-punishment* for mothers … and their children. Evidence suggests that most mothers spend a large proportion of their discretionary income whilst in prison, on their children. So, a financial penalty actually punishes both the mother

and their children. Contact visits are often treated as a privilege, and the threat of non-contact visits is used as a tool of control within prisons. Phone calls can also be withdrawn as punishment, often at the discretion of individual prison officers.

A key tool of control and punishment is the use of units and cells which are separated from the general prison population – administrative segregation. A woman can be placed in what is often effectively solitary confinement for her own protection, for the protection of others or for a breach of discipline. Different types of *administrative segregation* are called different things in different states/territories (eg. *treatment*, or *crisis support*, or *protection*, or *detention,* or *wet cells*). Whether women are housed in segregated settings as direct punishment or for other reasons, their experience is very similar. The facilities generally look very similar, and are mainly managed by prison officers. All segregation units and cells effectively function as punishment - whether women are locked up for a legitimate breach of prison discipline, an officer's lack of cultural/emotional understanding, for their own protection or for the protection of others.

Breaching is the main form of direct punishment. It describes punishment for breaking prison rules. Women prisoners are often threatened with being breached. Women may be breached for minor infringements such as sitting on the grass, hanging towels in the *wrong* place or buying soft drink from the *wrong* vending machine, changing their hair colour without permission; or major infringements such as assaults, drug use and attempting to escape. Punishment ranges from loss of privileges, to being sent to the Detention Unit (DU), to further criminal charges and sentences. The utter pettiness of some breaches creates an atmosphere of authority designed to regulate and control.

Women are also subject to arbitrary and routine searching, including strip searching. This is further discussed under Health and Safety.

Separation of Groups of Prisoners

Unsentenced women are in high security prisons. The main form of *differentiation* from sentenced prisoners is their more limited access to services and resources. Convicted women prisoners have access to programs and support services which are not available to women on remand. Women serving longer than average sentences (in Queensland, the average is 2 months) who have been classified, have the potential to move to low security classification. Women on remand are not classified: they are, by default, high security prisoners.

Further, untried prisoners are not separated from convicted prisoners. Civil prisoners are not separated from women convicted of criminal offences. Young women are not separated from adult prisoners. Many prisons throughout Australia continue to house both men and women, with women prisoners often being subject to higher levels of security and constraints than the men.

Over-Classification of Women Prisoners

The community does not need to be protected from women prisoners. Yet public documents released by QCS (eg. the Green Paper on Low Security Prisons 2008) function to market fear of women prisoners to the wider community. Most women are serving short sentences, for minor offences driven by poverty, mental illness and/or family violence. Most

women are low risk prisoners who should not be in maximum security at all, and are no threat to the good order of prisons … or, to the wider community.

Yet 65% of classified women prisoners in Queensland are classified as high security prisoners. SIS argues that the assessment tools being used are not tailored to address women's criminogenic and other needs. Further, we argue that this functions to discriminate against women prisoners. Even the (few) women who have committed murder, generally did so in the context of family violence and are unlikely pose a threat to the wider community. Clearly, women are not being managed and placed in a way that reflects *their generally lower security needs but their higher needs for health and welfare services and for contact with their children.* Current processes to not ensure placement of women prisoners at their *lowest level of security appropriate for their circumstances.*

The ORNI-R assessment is used with both male and female prisoners in Queensland - and in most cases, only those serving 12 months or more. It is meant to identify the risk prisoners pose to the community and what they need to do to reduce their chances of re-offending. The ORNI-R is supposed to help develop an appropriate *rehabilitation* program for each woman. It also influences prisoners' security classification. Similar assessment tools are used in other states/territories.

The ADCQ questioned the fairness and accuracy of the security classification system for all women prisoners. The ADCQ was particularly concerned that the current system in women's prisons might have a discriminatory effect on prisoners with mental health or intellectual disabilities, women from culturally and linguistically diverse backgrounds, and Indigenous women. The Commission also found that many women prisoners were confused about the security classification system.

The ADCQ questioned whether using ORNI-R (which was designed for male prisoners) gives an accurate risk assessment for women prisoners. Women have very different criminogenic patterns and personal histories from men. Recommendation 2 of the Report talks about the importance of having a classification system *based on the specific characteristics of women* and the need for research into the *reliability and validity of classification instruments*.

The ADCQ also recognised the potential impact of women's classification on her chances of parole. A woman with a high ORNI-R assessment is expected to complete more programs than someone with a low ORNI-R assessment. The Commission was concerned about the number of women prisoners who said they have to wait a long time for a place in a program, because failing to complete programs (especially mandatory programs) reduces their chance of parole. Further, these core programs were designed for non-Indigenous male prisoners. Given the very different criminogenic profiles of men and women, these *rehabilitation* programs are unlikely to be helpful in addressing women's *rehabilitation* needs.

Criteria used assess women's ORNI-R classification place a lot of importance on a woman's social history - including her education level, employment history, reliance on government assistance, housing background, family relationship background. The more disadvantaged a woman's background, the higher her likely *risk* assessment. As detailed elsewhere in this submission:

- The vast majority of women have a history of abuse (the majority, child sexual abuse).
- The majority of women have low levels of education and a poor employment history.
- The majority of women have mental health issues, intellectual disability or learning disability.

- The majority of women have a history of homelessness and dependence on social security.
- More than 25% of women prisoners are Indigenous women.
- Many women have a history of drug and/or alcohol abuse.

ORNI-R turns women's needs into *risks*. The more disadvantaged a woman, the higher her likely assessed security risk, for example:

- If a woman is assessed as having been the victim of spousal abuse or was unemployed at the time of arrest, she will be identified as having a *risk* in those areas.
- If a woman happens to live in a high crime area (essentially a *poor* area) she will have a *risk* identified in this area.
- If a woman has a psychiatric diagnosis then she will have a *risk* in that area.

There is no evidence of a link between women's social/cultural/economic disadvantage and the risk that she will breach prison security, try to escape or commit further crime. There is evidence that male prisoners are more likely to rate better on ORNI-R. There is also evidence that non-Indigenous prisoners (male and female) rate better than Indigenous prisoners. Because women's disadvantages/disabilities may result in a higher (more secure) classification, SIS argues that OMNI-R is discriminatory, and therefore breaches women prisoners' human rights.

Limited Access to Low Security Facilities

Given the highly discriminatory nature of the security classification process, it is surprising that **any** women achieve a low security rating. Approximately 1/3 of classified women prisoners are classified *low security*. But, there are insufficient so-called *low security* beds available for these women. When the ADCQ report was written, even these beds were not all filled, despite the fact that many low security classified women were in high security beds.

It is important to distinguish between *low security beds* and *low security facilities.* Many of these beds are not located in dedicated low security facilities. Many so-called *low security* beds are located in residential units inside high security prisons (BWCC or TWCC). Often women of different security classifications are co-located in the same units. Many women who are classified as low security prisoners are forced to serve their full sentence under high security conditions. Even women at Numinbah, a mixed *low security* facility, live under higher security conditions and more restrictions than the men. Similarly, TWCC is co-located with the men's prison in Townsville. Whilst some men are at a low security farm, women prisoners of all classifications are co-located. Whenever higher classification women are moved into low security units, security is upgraded to the level required for the higher classification, essentially removing any benefit of being classified a low security prisoner.

The ADCQ was particularly concerned about the mismatch between women's classification and the available accommodation, and the fact that lower classified women were in secure facilities, under the same restrictions as higher classified women. The ADCQ found that all women in BWCC and TWCC experience similar security measures and levels of supervision. The Report argued that:

> *The keeping of open classification prisoners in a secure facility is not best practice. All efforts should be made to ensure the open classification prisoners are accommodated and remain in open facilities … The majority of women prisoners can be appropriately managed in facilities that are based on community living…*
> (ADCQ 2006:47)

And recommended that:

> *That women prisoners be placed in the least restrictive environment possible and, in particular, the highest priority be given to the interests of children in determining the placement of their mothers serving full-time sentences.*
> (ADCQ 2006: Recommendation 5)

Further, women generally have a greater need for health services than men, and most are mothers of dependent children. In Queensland, women requiring many health and dental services are forced to be in high security prisons. Many women must remain in a high security prison if they wish to be geographically accessible to their children.

Yet, the QCS has eliminated the *open security* classification altogether. Future QCS plans focus on building new high security facilities for women in Brisbane and Townsville (totaling 500 beds), and locating all low security facilities at least 100km from Brisbane (eventually closing Helana Jones - the only non-rural low security facility for women). According to the QCS, all future prisons will include secure fences. There is no emphasis on small facilities, and *open* prisons will no longer exist. QCS continues to implement policies and practices that are incongruent with the acknowledge uniqueness of women's experiences, their low security risk and their demonstrated needs. Future plans will even further isolate women from family and community.

This general pattern of behaviour was ably expressed by the British Chief Inspector of Prisons (1997) who concluded from a survey of female prisoners that:

> *Women have different physical, psychological, dietary, social, vocational and health needs and they should be managed accordingly. As one correspondent put it to us, it is not merely a question of women receiving equal treatment to men; in the prison system equality is everywhere conflated with uniformity; women are treated as if they were men…'Cons in Skirts'.* (cited in Byrne & Howells 2000:6)

Multi-Discrimination Against Minority Groups
- Race Discrimination & Indigenous Rights -

Quick Facts

- A massively disproportionately high percentage of women prisoners are Indigenous. In 2004 their rate of imprisonment was 20.8 times higher than non-Indigenous women, and there was a 343% increase in numbers between 1993 and 2003[28]. As at 30 June 2008, Indigenous people are still 13 times more likely to be in prison than other Australians[29].
- Despite comprising only 2.7% of the Queensland adult population[30], 27% of women in Queensland prisons on 30 June 2008 were Indigenous women[31].
- Indigenous women are disproportionately in prison on remand. 32% of Indigenous women in Queensland prisons on 30 June 2008 were unsentenced compared with 22% of non-Indigenous women prisoners[32].
- Indigenous women are more likely to be imprisoned, and less likely to be placed on a community-based order, than non-Indigenous women[33].
- Indigenous women are disproportionately classified as high security prisoners. 76% of the Indigenous women who were classified as at 30 June 2008 were classified as high security prisoners, compared with 61% of non-Indigenous women.
- Indigenous women are much more likely to be placed in a CSU or a DU than non-Indigenous women[34].
- Indigenous women prisoners are younger than non-Indigenous women, with a median age of 30, compared with 34 years[35].
- Indigenous women prisoners have a higher rate of recidivism (62.9%) than non-Indigenous women (53.3%)[36].
- Indigenous women are less likely than non-Indigenous women to get early release through being granted conditional release or parole[37].
- Indigenous women prisoners are more likely to be a victim of a violence crime, including physical and sexual abuse[38].
- 70% of *violent offences* by women, the most serious offence category, are attributed to Indigenous women sentenced in North Queensland[39].
- Indigenous women are less likely to be functionally literate in English[40], and typically have a lower level of education and employment[41].

SIS believes that the horrific rate of imprisonment of Indigenous women constitutes both sex and race discrimination. This breach of Indigenous women's fundamental human rights continues throughout women's imprisonment in a prison system designed for non-Indigenous men.

Some Relevant Human Rights

SIS contends that prison practices in Queensland are in breach of a number of international human rights instruments and Australian guidelines based on these undertakings. The following list is by no means exhaustive.

Universal Declaration of Human Rights

Article 18: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

International Convention on the Elimination Of All Forms of Racial Discrimination

Australian governments are obliged to:

Article 1 (a): … engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.

Article 1 (c): … take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.

Article 2 (1) (a): … engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.

Article 5 (e) (v): … guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law (Article 5), including the right to education and training.

Article 13 (2): … take effective measures to ensure … that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

United Nations Declaration on the Rights of Indigenous Peoples
(Australian ratification forthcoming)

Article 6 (2): Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8 (2): States shall provide effective mechanisms for prevention of, and redress for:
(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities …

Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 22 (2): States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 34: Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Standard Minimum Rules for the Treatment of Prisoners

Rules of General Application - Basic Principles

Principle 6 (1): The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Principle 6 (2): On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

Revised Standard Guidelines for Corrections in Australia

Standard Guidelines for Prisons

Guideline 1.44: Information regarding the classification and placement system should be communicated to prisoners in a way they can understand, ensuring that NESB and prisoners for whom English is not their first language are appropriately informed.

Guideline 3.13: … programmes and services provided to prisoners, especially women, indigenous prisoners and prisoners from non-English speaking backgrounds, should be established following close consultation with the appropriate community groups and experts.

Breaches of these Rights

It is impossible to over-state the extent to which the human rights of Aboriginal and Torres Strait Islander women have been, and continue to be, trampled within the criminal justice system in Australia.

Discrimination over many generations has left its mark in terms of Indigenous women's high rates of poverty, homelessness, substance abuse, mental health needs, physical health needs, poor educational attainment, low levels of English literacy and poor employment history. Women from the Stolen Generations may have limited experience of culturally-appropriate parenting, and as a consequence their children, too, may experience parenting difficulties.

Aboriginal and Torres Strait Islander women are highly disproportionately arrested, charged, imprisoned on remand and sentenced to prison. Once in prison, Indigenous women are highly disproportionately classified as high security prisoners, placed in administrative segregation, excluded from education and isolated from their families and communities. Indigenous women have less access to early release than non-Indigenous women. Once released, they are more likely to face difficulties with income, housing and poverty. As a result, they are more likely to be breached during parole than non-Indigenous women.

Ultimately, it is important to recognise that every Aboriginal and Torres Strait Islander woman has a different story, and a unique experience of prison. It is impossible to generalise about Indigenous women's experience of prison, when they come from such

different backgrounds – with Aboriginal and Torres Strait Islander women having different heritage, and those from urban settings having different life stories (and often, first language) than those from remote communities. Each woman's previous life experiences and her outside support system, will impact on her ability to cope with prison culture.

The Myth of Indigenous-Friendly Prisons

The Royal Commission into Aboriginal Deaths in Custody (RCADIC) Report contains many recommendations about the way in which Indigenous Australians should be treated throughout the criminal justice system. A few of these have been integrated into law and prison policies and procedures. For example, in Queensland, QCS procedures require that:

- Indigenous prisoners must be accommodated as close as possible to their families, unless there is a good reason why not.
- Indigenous prisoners sometimes have the right to additional visits, video conferencing or telephone calls, in order to access cultural interaction and support.
- QCS can appoint an Elder, respected person or Indigenous spiritual healer as a regular visitor to prisons.
- QCS recognises that kinship and family obligations of Indigenous prisoners extend beyond the immediate family, and this is reflected in QCS procedures (eg. visits).
- In certain instances an Indigenous staff member should be involved in decisions made about Indigenous prisoners (eg. during classification reviews, Offender Management Plan reviews and where QCS staff believe an Indigenous prisoner is at risk of self-harm).
- If an Indigenous prisoner is given a safety order specific people must be told - an Indigenous visitor, an Indigenous health worker and a contact person chosen by the prisoner.
- All new prisons should be built with a cultural centre for Aboriginal and Torres Strait Islander prisoners to promote communication and cultural heritage.

However, all the evidence suggests that these procedures are frequently not implemented by QCS staff. Note how many of these procedures are vaguely expressed or discretionary. Several are meaningless. For example, with residential women's prisons in only Brisbane, Numinbah and Townsville, location *as close as possible* to women's families leaves women severely isolated from their communities. Further, very few Indigenous staff are employed to work in direct contact with women prisoners, which makes it impossible for all women to have this support during classification review, etc. Ultimately, these provisions (like similar policies in other states/territories) have been patently inadequate in addressing the ongoing discrimination experienced by Indigenous women prisoners.

In reality, the over-imprisonment of Indigenous women is only the beginning. According to the ADCQ, there are serious questions about whether the needs of Indigenous women are met by the prison system:

> *Preventing discrimination requires addressing differences rather than treating all people the same. Indigenous women need equal opportunities to benefit from safe and secure custody, rehabilitation and reintegration back to their community. This requires the provision of correctional services that address their unique needs. A proactive approach is required by correctional services to look at new models and programs. Equality of outcomes for Indigenous women will not occur if they are simply expected to fit into and try to benefit from existing correctional services and programs that mostly have been developed for non-Indigenous male prisoners.*
> (ADCQ 2006:111)

The ADCQ identified many areas of potential direct, indirect and systemic discrimination against Aboriginal and Torres Strait Island women prisoners, including the:

- Over-representation of Indigenous women at the high security classification level.
- Possible over-assessment of Indigenous women in the ORNI assessment process.
- Potential indirect discrimination that may be occurring by imprisoning Indigenous women so far from their families.
- Inadequacy of existing programs for Indigenous women that attempt to address and reduce the chances of re-offending.
- Lower levels of access of Indigenous women to conditional and post-prison community-based release than non-Indigenous women.
- Much lower access of Indigenous women to community custody facilities.

The Myth of Violence

Indigenous women are more likely to be described as *violent* than non-Indigenous women. This is partly because their most serious conviction is more frequently categorised as *violent*. However, it is dangerous to accept this data in the absence of information on other concurrent convictions which might contexualise the crime.

Where Indigenous women have been convicted of violent crimes, these often occurred in a context of long term domestic violence. When Indigenous women are removed from those situations of domestic violence, they pose an extremely low risk of escaping or re-offending. Yet, the idea that Indigenous women are *violent*, contributes significantly to their disproportionate classification as high security prisoners:

> *The social construction of Aboriginal women as more violent serves to engender an oppressive reaction by the prison system to Aboriginal women. Among women, they do not fit the stereotypes, the standard social roles for women, and they are automatically feared, and labeled as in need of special handling. The label violent begets a self-perpetuating, destructive cycle for Aboriginal women within prisons.*
> (Kilroy 2004:20)

Women on higher security classifications have a more controlled experience of prison, less opportunities to access low security beds/facilities, and therefore less chance of pre-release preparation and early release. There is a direct relationship between levels of pre-release support and rates of recidivism. Lack of pre-release preparation makes it more likely that Indigenous women will re-offend. This means that Indigenous women *start from behind* and are caught up in a *vicious circle* from the moment they enter the criminal justice system.

The Impact of Administrative Segregation

Aboriginal and Torres Strait Islander women are disproportionately placed in administrative segregation. The RCADIC recommendation that:

> *Corrective Services should recognise that it is undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention.*
> (Recommendation 18, cited in ADCQ 2006:111)

The traumatising effects of administrative segregation for women prisoners are further detailed in the section on Health and Safety. Suffice to say that the effects of isolation are multiplied for Indigenous women.

The isolation of prisons in general, and the extra isolation of *prisons within prisons* have a unique impact on Indigenous women prisoners. Yet, in Queensland, Indigenous women are disproportionately placed in DU and CSU. Often, this is because they are perceived to be at risk of self harm. This is incongruous since many studies have suggested that use of isolation, particularly for Indigenous women, might in fact increase a prisoner's desire to self harm.

Breaches of Women's Right to Education

Women prisoners report that Indigenous women have even less chances to participate in the limited educational opportunities available than other prisoners. Prisoners in crisis or detention facilities are generally precluded from participating in educational programs or work. The limited education available is provided in a way that does not meet Indigenous women's learning needs. Reduced access to education puts Indigenous women at particular risk of re-offending and re-incarceration.

The ADCQ was concerned that the QCS may be discriminating against Indigenous women in the provision of education. There is clear evidence that Indigenous women, in particular, have a higher rate of recidivism - due, at least in part, to their lack of access to pre-release preparation including educational opportunities. Similarly, the RCADIC recommended that:

> *That Corrective Services authorities ensure that all Aboriginal prisoners in all institutions have the opportunity to perform meaningful work and to undertake educational courses in self-development, skills acquisition, vocational education and training including education in Aboriginal history and culture. Where appropriate special consideration should be given to appropriate teaching methods and learning dispositions of Aboriginal prisoners.*
> (Recommendation 184, cited in NT Ombudsman 2008:70)

Many Indigenous women are effectively precluded from participation in education because QCS programs are not culturally appropriate to their needs. Many (particularly Indigenous women from remote communities for whom English is a second language) are functionally precluded because programs do not generally include interpreters. Women prisoners report further deterioration in the opportunities available to Indigenous women, since the ADCQ released its report in 2006.

Impact of Prison Location

Prison location has an extra impact on many Indigenous women, because of the distance of most facilities from rural/remote communities. A strong recommendation of the RCADIC was that Indigenous prisoners should be located as close as possible to their family/support networks.

Women from remote communities/towns are often imprisoned hundreds, or even thousands of kilometers from their home. Often, it is extremely difficult for family to visit or even make a phone call. Many communities have a small number of vehicles and a single telephone. Indigenous women from remote communities face the *double-isolation* of disconnection from family and a physical/social environment which is even more alien from their familiar environment than for most non-Indigenous women.

Correctional authorities have consistently used the relatively small number of women prisoners as a justification for a small number of facilities for women prisoners … and for the use of mainly high security prisons (so women of different classifications can be co-located). The ADCQ argued that (in light of women's low risk factors and family needs) prison facilities for women should focus on many small units, located within a variety of community settings. This is in marked contrast with the high security, mega-prison approach reflected in QCS future plans.

Indigenous women have even less access to low security facilities than non-Indigenous women. Indigenous women have even less access to any facilities near their families/communities than Indigenous male prisoners. Despite this, a greater percentage of Indigenous women than non-Indigenous women are refused conditional release.

Disadvantage Post Release

It is often more difficult to develop viable release plans for Indigenous, than non-Indigenous, women. This is typically used by prison authorities to justify the lower rates of conditional release and parole for Indigenous women prisoners. Often, Indigenous women from remote communities cannot safely return to their community of origin – in the immediate or long term. This may be because of:

- The nature of their crime.
- The complex relationships among the victims and offenders in small isolated communities.
- The community being unwilling to accept them back.

Once released, there is some evidence that Indigenous women are breached during parole at a greater rate than other prisoners. This may be *due to lack of housing, failed attempts to reclaim their children and the necessity of having to consort with partners, family and friends who they may be ordered not to 'associate' with* (Armstrong et al 2005:22). This indicates a severe lack of appropriate post-release support, which is only exacerbated by ongoing exclusions of community-based organisations from women's prisons.

Multi-Discrimination Against Minority Groups
- Race Discrimination & CALD Women's Rights -

Quick Facts

NOTE: Women from other Culturally and Linguistically Diverse (CALD) backgrounds experience many of the same breaches of human rights as Indigenous women. Despite being a significant minority group, little research has been done on breaches of CALD women's human rights. Most concrete statistics below come from a Queensland survey undertaken by SIS:

- Approximately 10% of women prisoners in Queensland were not born in Australia, and 14% are from CALD backgrounds; their English language skills vary[42].
- Women with limited English live in extreme isolation, a *prison within a prison*[43], particularly if not co-located with other prisoners with the same mother tongue[44].
- Interpreters are rarely used by QCS after the first 24 hours of imprisonment. Failure to use interpreters for formal communications can have dire consequences[45].
- The majority of CALD women experience language and cultural barriers in prison (85%), with 61.5% not understanding their sentence or prison processes[46].
- CALD women with limited English have a reduced ability to participate in educational programs[47], and are consequently at risk of disadvantage when applying for parole.
- CALD women have limited access to reading materials in their own language, spiritual support in their own religion and culturally-appropriate staple foods[48]. 62% of CALD women told SIS that no information was provided about access to religious services for their faith; 23% had to pray in their cell and were sometimes disturbed by prison officers; 15% (non-Christians) were given a Bible; 23% found lack of familiar food the *worst thing* about prison[49].
- The majority of CALD women prisoners did not have any family in Queensland or Australia. Only one CALD woman prisoner had support from families or friends, with several choosing not to tell their family of their imprisonment.[50]
- At least 76.8% of CALD women in prison had been sexually assaulted (usually multiple assaults by family members beginning at a very young age), and 76.9% had experienced domestic violence[51].
- 85% of CALD women prisoners were mothers, with an average of 1.6 children each. All 85% expected to return to violent homes, and stated that language and cultural differences prevented them from accessing mainstream services[52].
- Convicted women without Australian citizenship are vulnerable to deportation and permanent exclusion from Australia - even if they have committed a minor offence, have dependent children born in Australia and/or are permanent residents[53].
- Women at risk of deportation are more likely to be classified high security prisoners, because they are perceived as an increased escape risk[54].

SIS believes that CALD women's fundamental human rights are breached on a daily basis inside prison.

Some Relevant Human Rights

With the exception of rights specific to Indigenous people, all the human rights in the last section are equally relevant to other CALD women.

Breaches of these Rights

Like Indigenous women and women with mental health issues, CALD women are disproportionately classified as high security prisoners. This means they have a more controlled experience of prison, less opportunities to access low security beds/facilities, and therefore less chance of pre-release preparation and early release. Many CALD women *start from behind* and are caught up in a *vicious circle* from their first entry into the criminal justice system.

The ADCQ Report raised concerns about possible discrimination against CALD women on the basis of race, ethnicity and religion, in Queensland prisons. The Commission made a number of recommendations to reduce the risk of racial discrimination in Queensland prisons (Recommendations 50-52). As far as SIS is aware, there have been no improvements in any of these areas since the release of the ADCQ report. And … the evidence suggests that CALD women are unlikely to make a complaint about mistreatment or discrimination. 77% of CALD women in one survey stated that they felt very uncomfortable lodging a complaint because of fear of retribution from the prison system (Kilroy 2004:39).

Language Barriers

Imprisoned women with limited English often live in extreme isolation, effectively defacto solitary confinement. Prisoners born overseas (like Indigenous women from remote communities) have varied levels of ability to communicate in English. In Queensland, Victoria and NSW it has been found that prison authorities rarely use qualified interpreters after the first 24 hours of imprisonment, preferring to use other prisoners as *interpreters* (which inevitably includes the risk of poor translation and of negative consequences for both prisoners). CALD women are at greater risk to their physical safety than other women because warning signs are in English, they may not understand medical advice, and they do not generally receive information on their legal rights, privileges, punishments or regulations in their own language. A rare exception is in Victoria, where some limited interpreter services are available, mainly to Vietnamese women (who are the fastest growing group within the prison population in Victoria).

The ADCQ found that interpreters are rarely used beyond the first 24 hours of imprisonment, and even then, that onsite interpreters are rarely used. The Commission found that failing to use an interpreter for significant discussions (eg. case management, health visits) might constitute indirect discrimination.

Threats to Health

There is a risk of serious health problems where women are unable to explain their symptoms to the doctor, or understand medical or pharmaceutical advice. Further,

religious and/or cultural norms may mean that it is inappropriate for some women to see a male doctor, and this may lead to them failing to access essential medical care.

The prison diet can also be a threat to CALD women's health. Prison menus are based on western cuisine. Women are required to buy in any *special items.* Therefore if their familiar food is not classified as *basic* by prison authorities, they must buy most ingredients required for a familiar meal (out of the $3-$5 daily pay many women earn). The ADCQ reported hearing that even the most basic foodstuffs were regarded as *luxury items* by prison authorities, and suggested that basic, culturally-appropriate foodstuffs should be provided to all prisoners without extra cost to the woman. Lack of a culturally appropriate diet can lead to health problems – particularly for women who are lactose intolerant or vegetarian. It is difficult for these women to get adequate nutrition from a prison diet. In some prisons, women live in units, which are allocated a communal amount for food purchasing. Where a CALD woman is the only person from their cultural group in the unit, they typically find it very difficult to have their needs met.

CALD women are at high risk of mental health issues. Often, these women are located in accommodation units where other prisoners only speak English. This *adversely impacts on CALD women's mental health in that they potentially exist in a permanent state of fear, misapprehension and powerlessness* (Murdolo 2004 cited in Cerveri et al 2005:33). CALD women also often lack family and other supports. This may be due to the fact that they entered Australia alone or because of a high level of stigmatisation of imprisonment within their communities. Overseas phone calls are a problem both because of their cost (women must pay for all phone calls at premium rates) and the fact that they are only allowed within limited hours. If overseas family members do visit, there are restrictions on visiting time and numbers of visitors. Language and cultural barriers make it even more unlikely that any mental health issues will be detected and treated for CALD women, than for other women prisoners.

Cultural and Religious Discrimination

CALD women prisoners are generally required to make special arrangements for religious visits through their case or welfare workers. Reports from Victoria, NSW and Queensland all indicate that chaplaincy services are disproportionately provided to Christian inmates. For example, Xmas and Easter are routinely celebrated in prisons. No allowances are made for days of special cultural or religious significant for CALD women, and attempts to celebrate important events are systemically undermined. This is even true for numerically significant minorities, such as Vietnamese women in Victorian prisons. According to the ADCQ:

> *Chaplaincy services are to help female prisoners maintain their belief systems and religions, and to provide them with support and counsel in prison. These services appear to be more readily available to prisoners practising the Christian religion. Prison authorities must take all reasonable steps to provide for other religious beliefs and practices. Failure to do so may amount to discrimination on the basis of race, religion or ethnic background.* (ADCQ 2006:117)

There are many anecdotal accounts of direct discrimination against CALD women. Here are 4 stories from Victoria, alone:

- A Muslim woman's pubic region was displayed to a number of prison officers during a strip search, to demonstrate the Islamic custom of complete removal of body hair.

- An African woman was immediately placed in protective custody because prison authorities claimed they did not know where to locate her and how other prisoners would respond to her presence.
- Muslim women said they were *vegetarian* in order to protect their Halal diet without exposing themselves as Muslim for fear of discrimination and retribution from both other prisoners and prison staff.
- A young Muslim woman reported being beaten by other prisoners when trying to say her prayers and prison officers failing to intervene. (Cerveri et al 2005:31)

Educational Opportunities

Like Indigenous women, CALD women have even less educational opportunities than other women prisoners. The language barrier often restricts CALD women's participation in educational programs. Records at Mulawa Women's Correctional Centre in NSW showed that CALD women *felt afraid to ask for help and were unaware of the procedures for seeing a counsellor or accessing education programs (*Armstrong et al 2005:18). Education and training programs in Victoria are subcontracted to TAFE, without any provision for interpreters. In order to meet its contractual agreements, TAFE is required to achieve certain service delivery outcomes. Including women with limited English (or, in fact any student with *special needs*) in programs reduces the chances of achieving these outcomes and therefore women are often precluded from programs other than hands-on programs such as gardening or cleaning (Cerveri et al 2005:37).

The ADCQ noted that women from non-English speaking backgrounds should not be penalised for failing to complete programs, if a main reason was their English language skills. (This is particularly relevant to the parole process, where completion of core programs can have a direct affect on prisoners' access to early release.) Further, the ADCQ argued that CALD women should have access to self-directed learning materials (eg. television, newspapers, and books) in prisoners' own language. QCS is also at risk of sex discrimination, since men in some prisons have access to SBS television, but no women prisoners have access to SBS.

Immigration

Without Australian citizenship, women born outside Australia who are convicted of a criminal offence are vulnerable to deportation, under Section 501 of Migration Act 1948. Any non-citizen who fails to meet the *Character Test*, can have their visa cancelled, and are therefore subject to deportation and permanent exclusion from Australia. Decisions about whether to deport criminalised women are at the discretion of the Department of Immigration and Citizenship. Women's vulnerability to deportation can lead to discriminatory classification – being treated as a high security prisoner because they are seen as *an increased escape risk*.

Often, CALD women have lived in Australia almost all their lives and are permanent residents. Some have Australian partners and dependent children born in Australia. Some are unaware that they are not Australian citizens. Despite the fact that the character test refers to a *substantial criminal record* as a basis for deportation, some women have been deported for minor offences. This can be seen as a breach of the human rights, not only of the woman, but also of her children.

Multi-Discrimination Against Minority Groups
- Disability Discrimination -

Quick Facts

- Studies in different state/territories have found that 50%-84% of women prisoners have a psychological/psychiatric disability[55], with one NSW study finding that 90% of unsentenced women had a diagnosed mental illness[56].
- Studies in various states/territories have found that 12%-30% of women prisoners have an intellectual disability[57].
- Studies in various states/territories have found that 15%-50% of women prisoners have a learning disability[58].
- *Mental illnesses* in Australia (including *drug and alcohol use disorders*) account for an overall 13% rate of the total burden of disease[59].
- As at 2004 - it cost $159 per day to house a prisoner; a hospital mental health bed cost $550 per day; it cost as little as $42.50 per person per day for non-custodial treatment[60].
- No formal assessment of women's mental health status occurs when they enter prison[61].
- Prison Officers receive little or no training in assessing and responding to women with psychiatric disabilities, intellectual disability or learning disabilities[62].
- Women with intellectual or learning disabilities are more likely to be brought up on disciplinary charges than other prisoners - often as a result of inadequate explanation of prison rules[63].
- Women with mental health issues are more likely to be placed in administrative segregation than other prisoners - often as a result of inappropriate responses to their behaviour by prison officers[64].
- The Palmer Inquiry into the detention of Cornelia Rau was highly critical of QCS's response to prisoners with mental health needs[65].
- In Queensland at least, women with some physical disabilities have no access to low security facilities[66].

Further, SIS believes that the high rates of imprisonment and the treatment of women with disabilities constitutes sex and disability discrimination. In particular, breaches of their fundamental human rights are a daily reality for many women with mental health issues or women with intellectual or learning disabilities.

Some Relevant Human Rights

SIS contends that prison practices in Queensland are in breach of a number of international human rights instruments and Australian guidelines based on these undertakings. The following are a few of the more specific requirements from the **UN Convention on the Rights of Persons with Disabilities.**

Article 4 - General obligations
1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

(b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
(c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
(d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;
(i) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in the present Convention so as to better provide the assistance and services guaranteed by those rights.

Article 5 - Equality and non-discrimination
1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

Article 6 - Women with disabilities
1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

Article 13 - Access to justice
1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Article 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment
2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

Article 16 - Freedom from exploitation, violence and abuse
1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.
3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.
4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of

protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.
5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

Breaches of these Rights

Terms such as *mental health issues, psychiatric/psychological disabilities, learning difficulties, intellectual disabilities* and *cognitive disabilities* have been used in a variety of different ways to describe disabilities experienced by some women prisoners. When discussing mental health diagnoses, some researchers have included substance abuse or addiction in their figures; others have not. This makes it difficult to determine to determine exactly which disabilities are faced by how many women prisoners, and what their consequent varying needs might be.

In this submission, the term *mental health issues* is used broadly to describe all psychiatric/psychological disabilities. Intellectual disability and learning disabilities are treated separately.

Women with Mental Health Issues

It seems to be generally accepted that ½ - ¾ of women in prison have mental health issues, albeit vaguely defined. Undoubtedly, a disproportionately high percentage of women in prison do have (pre-existing) mental health issues, and these generally co-exist with a history of sexual or physical abuse, substance abuse, poverty and homelessness.

It has been widely suggested that the increasing rates of women prisoners with *mental health issues* is a direct result of a shortage of mental health facilities (which have been progressively decreasing in tandem with increased imprisonment rates, across Australia). This is due to the deinstitutionalisation of in-patient services and lack of adequate community-based mental health services, in the wider community. As noted by the ADCQ (2006:92-3) many have argued that prisons have become, or are at risk of becoming, *de facto* asylums of the 19th Century kind - where people with mental health issues were simply locked up, rather than treated. Women with mental health issues in prison have poor access to treatment due to inadequate prison-based mental health services and the limited number of prison staff with comprehensive training in this area.

It is important to note the inherent danger in labelling women with mental health diagnoses in a prison system which is ill-equipped to respond appropriately to women's mental health needs. The risk is that this could be used to legitimise increased control measures against women by prison authorities. Prison Officers, in particular, do not generally have the skills required to respond appropriately to women with mental health issues. Many instances have been recorded of Prison Officers confusing disability-driven behaviour with disciplinary problems, and inappropriately punishing women.

Women with mental health issues are often penalised for their disability-driven behaviour within the prison system. Prisons have less tolerance for a range of human behaviours, than the community at large. Prisons are focused on maximum conformity, in order to make

management easier. Therefore, **difference** is often punished and *demonised* as **dangerous** … rather than being seen as a reflection of human diversity.

Women prisoners with mental health issues are frequently treated exactly the same way as women who are perceived as a problem for prison discipline. They are more likely to be placed in the CSU (or equivalent units in other states/territories) or DU than other prisoners. In Queensland, at least, both DU's and CSU's are run by Prison Officers and are separate from health services.

In Queensland, women are often segregated from the general population because of their behaviour, **or prison officers' fears** about their possible behaviour. These women may end up being confined in CSU cells for 23 hours a day, with no personal property of any kind and released only for showers and exercise, for one hour daily, usually in body belt and handcuffs. Where they have *voluntarily* been placed in the CSU for *treatment*, they are typically told that if they do not consent to remain, they will be considered more difficult to manage and therefore not suitable for the general population. If they are not already labeled as high security prisoners, they are likely to be reclassified. They will be described as an *increased security risk* because they have refused to recognise their *need* for treatment to address their criminogenic *risk factors.*

Many women with **perceived** mental health issues are held in *crisis* units for a long time. The ADCQ noted the obvious irony in the name of these units, since *when women are in need of longer term care, the situation is not a 'crisis'.* Further, the ADCQ found that long term incarceration in CSU's might be a breach of women's human rights (ADCQ 2006:101). Incarceration in CSU is effectively *punishment* for women's disability. It includes, in Queensland at least, frequent strip-searching. According to the ADCQ strip searching has a greater impact on women with mental health disability (especially those with a history of sexual abuse) than on those who do not (ADCQ 2006:74). The reality of life for women in CSU (S4) as recounted by a former prisoner is:

> *… inmates in the rest of the jail are strip searched after visitations; we were strip search six to eight times a day. Every time we left or entered our cells we were searched, and we were not stripped like the rest of the prisoners: you had to take it all off …*
>
> *… Food was always left on the table for 30 to 40 minutes before anybody got to eat it because there had to be three prison officers on the floor at all times before the cells could be opened for five prisoners – one with the mentality of a six-year-old, one not there and three incapable of doing absolutely anything.*
>
> *… the lights were constantly on. In the three months that I was there I never slept with the lights off once. In the whole time I was in S4 I never saw a doctor once. I was deemed a management problem, as I made complaints.*
> (*Michelle*, in evidence to (The) Senate Select Committee on Mental Health 2006)

The ADCQ further detailed CSU:

> *In BWCC, the CSU consists of a number of segregated cells surrounding a small central common area and an adjoining small caged-in exercise yard. The unit has a padded cell with restraining devices. The cells contain very little, a bed with a suicide proof mattress, and no personal property of any kind is allowed. The lights in the cells are on 24 hours a day, and while they are in the cells, women wear a suicide gown. Suicide gowns are loose cotton garments, similar to the gowns worn in operating theatres. They have fastenings down the back, which routinely 'gape' and*

provide little allowance for modesty or dignity as no underclothes are allowed to be worn beneath the gowns. Women who are detained in the padded cell in CSU are generally held in a totally naked state. Women are not permitted to use tampons while in the CSU. Occasionally women may be able to attend programs and employment. In other situations they may be confined for significant periods of time, and only exit the unit for a shower and exercise. While the prisoner has contact with corrective services officers, she may have limited or no access to other inmates for support or friendship. Each time a woman exits and re-enters her cell, she is strip-searched. (ADCQ 2006:99)

A study in Western Australia found that the majority of women with diagnosed psychological or psychiatric conditions were on prescribed medication when they entered prison. Most were taken off this medication by the prison doctor and either left to go through withdrawal or prescribed replacement medication. Similarly, in Queensland, *Michelle* was taken off her prescribed medication upon admission to CSU:

I was first placed in a padded cell, which shocks me as they are deemed illegal and inhumane in our psychiatric hospitals. … I had been taking my normal medication, which was 10 Valium three times a day, and they immediately stopped it. As a result of withdrawing from that medication, my own mental illness and the stress of where I was, I became highly agitated and ended up in a body belt and handcuffs in the unit I now know as S4.

(*Michelle*, in evidence to (The) Senate Select Committee on Mental Health 2006)

There have been many reports of psychological and psychiatric services being primarily provided to those women whose behaviour threatens order within the prison. Prison advocates are concerned that doctors may collude with the prison system, through using medication as a means of controlling women prisoners. This is in marked contrast with the position of the AMA which argues that all prisoners should have ready access to psychiatric services independent of correctional authorities, and that medical practitioners with experience in psychiatry should be involved in the day-to-day management of prisoners with psychiatric disorders (AMA 1998:8).

Women with Intellectual or Learning Disabilities

Like women with limited English, women with intellectual disabilities may have difficulty understanding prison rules if these are not fully explained. These women are unlikely to have committed crimes which involve fore-planning. They are often susceptible to sexual opportunism and to influence from others (including criminal relationships).

Again, these prisoners are more likely to be directly or indirectly punished for perceived breaches of discipline or behavioural problems. They are more likely to be in DU as direct punishment for disobeying rules they simply did not understand, or to be indirectly punished within CSU:

We had a woman with the mentality of a six-year-old. We observed them attack her with riot gear. She was already handcuffed in a padded cell. Why is it necessary to attack her with riot gear? Then they patted her on the back and said, 'We'll play a board game with you now,' and she said, 'Beauty, yeah, okay.''
(Michelle in evidence to (The) Senate Select Committee on Mental Health 2006)

The ADCQ raised concerns about possible discrimination against prisoners with intellectual disability (maybe 30% of women prisoners) or other learning disabilities. Women prisoners with intellectual or learning disabilities are less likely to participate in education programs, and are unlikely to be offered education programs relevant to their ability/needs. The ADCQ was particularly concerned that QCS did not appear to have a systematic approach to dealing with the learning needs of people with intellectual, cognitive or learning disability in vocational and education programs - and, even within core programs (Recommendation 27).

Classification, Facilities & Chances of Parole for Women with Disabilities

The ADCQ Report was concerned about possible discrimination against prisoners with all forms of disability.

Like Indigenous and CALD women, women with (diagnosed or suspected) mental health issues and intellectual/learning disabilities are disproportionately classified as high security prisoners and are more likely to be in high security facilities, than other prisoners:

- Sometimes, this is because women's health status is treated as important (an indicator of *risk*) during the classification process, and officers **assume** they are dangerous. This is clearly based on experience with male prisoners. Psychiatric disability, in particular, affects men and women differently. When feeling angry, for example, men usually turn their anger outward, women turn theirs inward and are more likely to harm themselves than others.
- Sometimes, the medical and support services women with disabilities require are only available in higher security areas of the prison. Even these so-called specialist/medical services are highly inadequate. For example, Bandyup Prison in Perth accommodates women considered to be the most at risk of self harm/suicide. The prison employs one single mental health nurse. In Queensland, the ADCQ found that none of the low security facilities appeared to be easily able to accommodate a person with intellectual or mental health disabilities who may require more support than prisoners without these conditions.
- In the case of women with physical disabilities, every women's prison is wholly or partly inaccessible for some women with physical disabilities. Women with physical disabilities are unlikely to be able to be accommodated within any of the current low security facilities. QCS plans for work camps to be the only form of low security imprisonment available to women in the future make this breach of women prisoners' human rights even more likely.

The ADCQ was concerned that women with psychiatric/intellectual/learning disabilities might suffer lower chances of parole than other prisoners, because the available core, educational and vocational programs were unsuitable. In particular, the Commission recommended that prison authorities develop systems to overcome this problem for women prisoners with intellectual disabilities (Recommendation 30).

Finally, lack of post-release planning, rehabilitation, referral to community-based social services and follow-up for prisoners with mental health issues, intellectual disability or learning disability puts these women at particular risk of re-offending and re-incarceration. In particular, women with cognitive, learning or intellectual disabilities, rarely have sufficient time in low security facilities to prepare gradually for release, to meet the challenges of reintegrating into the community.

Multi-Discrimination Against Minority Groups
- Age Discrimination -

Quick Facts

This submission does not focus on juvenile justice, in general. However, two facts are very pertinent to the human rights of women prisoners:

- Queensland is the only jurisdiction in Australia which incarcerates 17 year olds in adult prisons.
- 17 year old female *child* prisoners are disproportionately incarcerated in protective custody, and have less access than other women prisoners to education and development opportunities.

Some Relevant Human Rights

SIS contends that prison practices in Queensland are in breach of a number of international human rights instruments and Australian guidelines based on these undertakings. The following list is by no means exhaustive.

UN Convention on the Rights of the Child (CROC)

Article 1: For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 19.1: States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Article 23.1: States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

Article 29.1: States Parties agree that the education of the child shall be directed to:
(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations …
(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin …

Article 30: In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 37: States Parties shall ensure that:
(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment …
(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall … be used only as a measure of last resort and for the shortest appropriate period of time;
(c) … every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so …

Article 39: States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40.4: A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

NOTE: Australia ratified this convention in 1990, with one reservation. Australia claimed to be unable to comply with the following obligation, saying that this was *accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia*:

Article 37(c): In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

International Covenant on Civil and Political Rights

Article 10.2 (b): Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

Article 10.3: The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

UN Standard Minimum Rules for the Administration of Juvenile Justice (*The Beijing Rules)*

Objectives of institutional treatment

Rule 26.1: The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

Rule 26.2: Juveniles in institutions shall receive care, protection and all necessary assistance - social, educational, vocational, psychological, medical and physical - that they may require because of their age, sex, and personality and in the interest of their wholesome development.

Rule 26.3: Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

Rule 26.4: Young female offenders placed in an institution deserve special attention as to their personal needs and problems …

Rule 26.6: Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do no leave the institution at an educational disadvantage.

Standard Minimum Rules for the Treatment of Prisoners

Rule 8: The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

Rule 8 (a): Young prisoners shall be kept separate from adults.

Revised Standard Guidelines for Corrections in Australia

Standard Guidelines for Prisons

Guidelines 1.43: Special care should be taken with any prisoners under 18 years of age that are not kept in a separate juvenile custodial system. These prisoners should be carefully placed to ensure their safety and should be provided with programmes and services appropriate to their age and circumstances.

Breaches of these Rights

Queensland is the only jurisdiction in Australia that incarcerates 17 year olds in adult prisons. These 17 year olds are disproportionately Indigenous women/*children*, who generally enter prison at a younger age than non-Indigenous women.

The ADCQ found that 17 year olds can be placed anywhere in women's prisons. However these *children* are often placed in protective custody. QCS claims this is due to concerns about their duty of care - QCS argues that these *children* may not be safe in the wider prison population. In *Protection*, these *children* are not separated from adult prisoners. Being in Protection can stigmatise any prisoner, because they may be assumed to be an informer. This, in turn, means young women who enter prison aged 17 often end up spending their whole sentence in Protection.

Women and *children* (that is, 17 year olds) in Protection are particularly disadvantaged. These prisoners are effectively in *a prison within a prison,* with less freedom and facilities than the general prison population. They are extremely restricted in their space, movement and activities compared to almost all other prisoners. There are typically approximately 20 prisoners in Protection in BWCC at any time. Many of these are young women, some of whom are 17 years old. The ADCQ found that placing a 17 year old in Protection is *prima facie* direct discrimination on the basis of her age (ADCQ 2006:116).

Women and *children* in Protection cannot generally participate in programs and activities available to the wider prison population. Here, *child* prisoners have less access to educational facilities than the general prison population. Women in Protection report that most courses are limited to 10 places. It is unlikely that all prisoners in Protection will want to do any given course - so when a course is too popular, some prisoners invariably miss

out. Further, women in segregated parts of the prison, particularly Protection, are generally not entitled to participate in work. Their access to self-learning facilities is also limited. For example, *children* in Protection only have access to the library once per week - and this time has commonly been set during visiting hours, thus forcing prisoners to choose between education and family visits.

Queensland's rationale for keeping *children* in adult prisons is not based on the *best interests of the child.* These *children* are located in either Brisbane or Townsville, and are no closer to their family than they would have been in a youth prison. Certainly, had the alternative sentences advocated by human rights instruments been applied, they would have been much closer to their family and community. QCS justifies this continued breach of international conventions on grounds of economic feasibility - QCS argues they cannot afford to locate 17 year olds in dedicated juvenile justice facilities.

Many of the *children* in (adult and juvenile) prisons in Queensland are, or have been, under child safety orders. This suggests that the Queensland Government recognises the trauma that many young people have endured, and at the same time is punishing them for their subsequent behaviour. These *children* are entitled to care which focuses on their *recovery and reintegration* (Article 39, CROC). Clearly high security, segregated facilities in an adult prison is not an environment that fosters *health, self-respect and dignity*.

It is hardly surprising that the ADCQ recommended:

> *That the Queensland Government immediately legislates to ensure that the age at which a child reaches adulthood for the purposes of the criminal law in Queensland be 18 years.* (Recommendation 48)
>
> *That it is not in the best interests of 17 year old offenders to be placed in an adult prison, or for correctional authorities to place a female 17 year old offender in a protection unit of an adult prison. The Queensland Government and correctional authorities should take immediate steps to cease this practice.* (Recommendation 49)

Nationally, it is also important to consider the situation of women prisoners who fall into the general social category of *young people* (most commonly defined as 12 - 25 year olds). Many women prisoners are aged 18-24. They are rarely acknowledged as a group of prisoners with particular needs. However, many are still mentally and physically immature. In the wider community, a variety of youth services are available to 12 - 25 year olds to address their educational, vocational, employment, psychological, health and other needs. Yet, in prison, these young women must survive alongside older prisoners, without additional support. Many 18-24 year old prisoners are also particularly vulnerable to breaches of their human rights in a prison setting.

Women's Right to Health (and Safety)

Quick Facts

- Women prisoners have significantly higher rates of the following than the wider population: sexual abuse, mental illness, smoking, alcohol use, injecting drug use, Hepatitis C, unplanned pregnancies, tooth extraction (at 4 times the rate of fillings), low rates of exercise, poor nutrition, and many other health problems[67].
- Almost all women prisoners have a history of childhood trauma - particularly incarceration/institutionalisation[68] and/or family violence.
- At least 85% of Australian women prisoners have a history of abuse, most having experienced sexual abuse, childhood abuse and multiple abuse[69].
- Estimates of the incidence of childhood abuse amongst women prisoners nationally range from 48% - 85%[70].
- Prisons replicate characteristics of violent family situations[71]. In particular, strip-searching often re-traumatises women with a history of abuse[72] leading to self harm.
- Multiple surveys have found that 20%- 50% of women self-harmed and 13%-42% had attempted suicide whilst in prison[73].
- Prison staff typically respond to threatened or actual self harm, by placing women in isolation where they are routinely subjected several strip searches each day.
- In the 3 years from August 1999 and August 2002, 41,728 strip searches were conducted on women in Queensland prisons. Only 2 found drugs of any kind[74].
- Male officers undertake tasks such as inspecting women's cells at night, observing (often naked) women in isolation cells and participating in strip searches[75].
- As at 2004, 17% of women (compared with 7% of men) were imprisoned for drug-related offences[76]. This rate is likely to have increased over the subsequent 5 years[77].
- According to a SIS survey, 88% of women in prison used drugs and/or alcohol prior to imprisonment, with 51% stating that they had continued to use drugs (mainly heroin) whilst in prison. 84% of women claimed to be receiving no help in relation to their drug and alcohol abuse whilst in prison[78].
- Many health services are only available in high security women's prisons in Queensland. Women in low security facilities requiring these services are transferred to one of the most restrictive/secure units in a high security prison.
- Women's medical information is not subject to the same level of confidentiality as outside prison. Any information disclosed to prison psychologists or psychiatrists can be presented to the parole board or QCS (non-medical) sentence management staff.
- Women generally only have access to mental and physical health services if they are willing to inform prison authorities about their needs.
- Some standard practices in Australian women's prisons have been seen as *cruel and unusual punishment* or *degrading treatment* in international jurisdictions.

SIS believes that the poor provision of health services, and failure to keep women prisoners safe, constitutes multiple discrimination. Women prisoners come from disadvantaged backgrounds and have demonstrably greater health needs than the wider community. Yet, their access to health services is severely limited. In particular, the practice of strip searching reflects a wider culture of disdain for women prisoners' human rights.

Some Relevant Human Rights

SIS contends that prison practices in Queensland are in breach of a number of international human rights instruments and Australian guidelines based on these undertakings. The following list is by no means exhaustive.

Universal Declaration of Human Rights

Article 3: Everyone has the right to life, liberty and security of person.
Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

International Covenant on Economic, Social and Cultural Rights

Article 12 (1): The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Convention on the Elimination of All Forms of Discrimination Against Women

Article 4 (i): (Governments should …) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitise them to the needs of women.

Standard Minimum Rules for the Treatment of Prisoners

Rule 33: Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment.

Rule 53 (1): In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.

Rule 53 (2): No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

Rule 53 (3): Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

Rule 62: The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects, which may hamper a prisoners' rehabilitation. All necessary medical, surgical and psychiatric services should be provided to that end.

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Article 1 (1): For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a

third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Article 16 (1): Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

United Nations Convention on the Rights of the Child

Article 39: States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Basic Principles for the Treatment of Prisoners

Principle 7: Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.

Principle 9: Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

United Nations Declaration on the Rights of Indigenous Peoples

Article 22 (1): Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
Article 22 (2): States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 24 (1): … Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
Article 24 (2): Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Principle 1: Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

Revised Standard Guidelines for Corrections in Australia

Standard Guidelines for Prisons

Clause 1.27: Prison should provide for the personal safety of staff and prisoners by ensuring a prison environment that protects the physical, psychological and emotional well-being of individuals.

Clause 1.41: The management and placement of female prisoners should reflect their generally lower security needs but their higher needs for health and welfare services and for contact with their children.

Clause 1.55: Force should be only used as a last resort for the minimum period where other means have proved unsuccessful and where not to act would threaten safety, security or the good order of the prison.
Clause 1.62: Instruments of restraint such as handcuffs, chains, irons, straight jackets and chemicals should never be used as punishment.

Clause 1.76: Every prisoner who is placed in segregation as punishment should be visited … as frequently as practicable (preferably daily) by a representative of the medical officer.
Clause 1.77: Prisoners placed in segregation for the security and good order of the prison are to be managed under the least restrictive conditions consistent with the reasons for their placement.
Clause 1.80: Every prisoner who is placed in segregation for management or administrative reasons should be visited … as frequently as practicable (preferably daily) by a representative of the medical officer.

Clause 2.18: Prisoners who are identified as being at risk of self-harm should be placed under a management regime appropriate to their individual needs that is designed to ensure their well being.
Clause 2.19: Prisoners placed under a special management regime should not be denied access to privileges or entitlements other than those necessarily removed for their own protection, and such removal should be for the minimum time necessary. Prisoners should only be segregated as a last resort in order to prevent self-harm or suicide …

Clause 2.24: Prison systems should have a comprehensive and integrated drug strategy that seeks to prevent the supply of drugs into prison, reduce the demand for drugs and minimise the harm arising from drug use in prisons through education, treatment and enforcement.

Clause 2.26: Every prisoner is to have access to evidence-based health services provided by a competent, registered health professional who will provide a standard of health services comparable to that of the general community …

Clause 2.32: Health professionals should advise the officer in charge of the prison whenever it is considered that a prisoner's physical or mental health has been, or will be, injuriously affected by continued imprisonment or by any condition of imprisonment, including where a prisoner is being held in separate confinement …

Clause 2.36: Prisoners who are suffering from a severe psychiatric illness should be managed by an appropriate tertiary or specialist health care facility.
Clause 2.37: Prisoners who are suffering from mental illness or an intellectual disability should be provided with appropriate management and support services.

Clause 2.38: Persons should not be remanded to prison custody solely for psychiatric or intellectual disability assessment.

(QCS) Women Offenders Policy and Action Plan 2008-2112 (p5)

Policy Principle: Women offenders will be managed with respect and regard for dignity, in a way which facilitates self-responsibility.

Breaches of these Rights

Women's right to health services at a standard similar to those available to the wider community is blatantly disregarded in women's prisons throughout Australia. Women prisoners have higher physical and mental health needs than the general community, due to their high levels of economic and social disadvantage. Yet, the quality and quantity of health services available to women prisoners fall significantly below accepted 1st World community standards.

Women's prisons are characterised by a culture of fear - the physical and psychological safety of women prisoners is threatened on a daily basis. This culture is institutionalised and exacerbated by the common use of arbitrary discipline, isolation cells, strip searching, instruments of restraint and allocation of male officers in areas where women are most vulnerable.

General Health Services

Data on the general health needs of women prisoners is not routinely collected by prison authorities in Australia. However, the likely extent of women's general health needs has been highlighted through comprehensive surveys of women prisoners instituted by correctional authorities. For example, the main Victorian study found that 60% of women prisoners had hepatitis, and 40% had asthma. Existing health issues receive little or no attention whilst women are in prison. These, combined with limited preventative health checks means that women leave prison with the accumulated affect of lack of treatment for the duration of their imprisonment, and any new health problems experienced but not diagnosed/treated whilst in prison.

Women in prison typically face barriers to accessing even the most basic medical care. Generally, they will first see a nurse, who decides whether it is necessary to see a doctor. If allowed to see a doctor, women must often wait days or weeks for an appointment. Then, they face similar obstacles to getting a referral to a specialist. At each stage in this process, women with limited capacity to communicate their symptoms risk falling between the cracks in the system. This particularly impacts Indigenous and other CALD women with limited English and women with intellectual disability. Interpreters are almost never used in conjunction with medical care.

Women also experience difficulty accessing quality medication. Women repeatedly report having prescribed non-prescription medication which is subsequently denied by prison authorities on budgetary grounds. Often women are not allowed to continue a program of pharmaceutical treatment started prior to imprisonment. Women also report having effective modern pharmaceuticals replaced with cheaper drugs which have not been generally prescribed in the wider community for many years. Many women report having to deal with withdrawal, alongside coming to terms with being in prison.

Women are often effectively penalised for receiving even the most basic health care. Many health services are only available in high security women's prisons. In Queensland, for example, these include psychiatric services, some dental services, pre and post hospitalisation services and mammograms. Women in low security facilities requiring these services are transferred back to one of the most restrictive and secure units in a high

security prison. The ADCQ identified this as a possible area of discrimination. Women report having avoided health care, due to these penalties.

Often medical care is provided with limited privacy, within the hearing off prison officers, other medical staff and other prisoners. Medical information is not subject to the same level of confidentiality as outside prison. For example, any information disclosed to prison psychologists or psychiatrists can be presented to the parole board or (non-medical) sentence management staff. The AMA (1998:1-2) has reinforced the importance of confidentiality by medical staff in correctional settings, and the need for health services to be independent of correctional authorities. It has argued that patients should have equitable access to culturally-appropriate health services, and prisoners should receive the same quality of health care as the general population.

It is almost impossible to have any privacy in prison. In fact, the only form of true privacy women retain is the choice as to what they will, or won't, tell anyone about themselves. Women generally only have access to mental and physical health services if they are willing to inform prison authorities about their needs. In particular, this often precludes women from accessing confidential support services to address a history of abuse, mental health issues or a pattern of substance abuse. Recent developments in Queensland indicate that women may only be able to access non-prison services for needs that have already been identified during prison assessment processes (eg. ORNI-R). Community organisations which provide services such as counselling, expect increased pressure from prison authorities to reduce the level of confidentiality they offer women.

Women-Specific Health Services

During the Victorian health survey, significant rates of reproductive health issues were identified amongst women prisoners - with 10% of young women reporting a miscarriage and 45% of Indigenous women (and 36% of non-Indigenous women) reporting menstrual irregularity in the 4 weeks prior to interview (cited in Cerveri et al 2005:9).

The ADCQ was particularly concerned that women reported avoiding breast screening/mammograms because of strip-searching upon leaving and re-entering prison, and recommended that breast screening services should be provided regularly in prison (Recommendation 42).

A multitude of harrowing stories about the treatment of pregnant women (from prisons throughout Australia) are on the public record, including:

- Women being disciplined for refusing to take medication which might be harmful to their baby.
- Women waiting as long as 2 months to receive hospital treatment for bleeding during pregnancy.
- Women giving live and still birth in prison toilets and without medical assistance.
- Women waiting for hours for medical assistance of any kind whilst in labour.
- Women receiving no counselling for still born babies, or removal of their baby immediately after birth.
- Women with limited English having their baby removed without explanation.

Again, the AMA (1998:7) has called for access to ante-natal, obstetric and post-natal care and gynaecological health services, the option for mothers to have their children with them

in prison until at least age 2, adequate paediatric care and provision of child-friendly facilities, including play areas.

Mental Health Services

Issues related to the mental health of women prisoners have, according to the ADCQ, been raised in every Australian State and Territory. These have already been largely discussed in the section on disability.

Ultimately, the ADCQ was so concerned about this issue that it called for a national review:

> *That the Human Rights and Equal Opportunity Commission conducts a review into how the justice and prison systems across Australia are dealing with women with mental health issues.* (Recommendation 68)

Similarly, the Palmer Inquiry into the 6-month detention of Cornelia Rau in BWCC was highly critical of the prison's ability to respond to a prisoner with a major personality disorder or major mental illness. The ADCQ also drew heavily on a report by the Community Forensic Mental Health Service, which raised serious concerns about:

- The focus on drug therapies as the main form of treatment (where treatment is given).
- Lack of counselling/therapy.
- Inaccurate amateur diagnoses by prison staff leading to women being treated inappropriately.
- The limited availability of beds in forensic care.
- The shortage of secure mental health beds in the Queensland health system generally.

Currently, women prisoners in Queensland who require psychiatric care are placed in a high security prison. Women in low security facilities are transferred back to a high security prison for even routine psychiatric services, such as having an assessment or attending a mental health review.

Substance Abuse Services

Women are more likely to be imprisoned for drug-related offences, and more likely to have a history of substance abuse, than male prisoners. Many more women prisoners (according to some studies, the majority of women) claim to have committed crimes under the influence of drugs or alcohol, or in order to pay for drugs.

In Queensland, women's access to alcohol or drug treatment is entirely at the discretion of QCS. Even if a woman was in a program prior to imprisonment, there is no guarantee that she will be allowed to continue. Some women are provided with medication to assist with withdrawal, and some are allowed to access substance replacement (eg. methadone). Some programs (eg. Buprenorphine Treatment, or *Subutex*) are only available to women who were on such a treatment program before coming to prison, and only if there is space available on the program. Women must meet a number of criteria to qualify for programs such as Methadone Maintenance. But availability of places in these programs is limited and budget-driven.

Women's access to drug or alcohol intervention programs is entirely at the discretion of QCS. The criteria for participation in substance abuse programs reflect the much longer prison sentences typically served by men. These programs are not available to short term or remand prisoners, thus precluding the majority of women prisoners. A high proportion of women imprisoned for drug-related offences re-offend. The ADCQ therefore recommended:

> *That access to substance abuse programs while in prison be extended to short term and remandee female prisoners wherever possible. Such programs need to be specifically designed for women and should address the needs of Indigenous women.* (Recommendation 34)

Many women, upon entering prison, are left to go through drug withdrawal with little or no medical assistance. Many women (as high as 84%) report having received no assistance in relation to their drug use, whilst in prison. It is hardly surprising, then, that a significant proportion (possibly 50%) of women report continuing to use drugs (mainly heroin) whilst in prison. (These drugs are evidently not entering prisons through visitors, since all women are routinely strip-searched following every contact visit - and drugs were only found on a total of 2 occasions in 3 years, across all women's prisons in Queensland.)

Manufactured Culture of Violence

It is impossible to understate the impact of a history of abuse for most women prisoners. From a clinical viewpoint, the interaction between abuse history and imprisonment is a key issue. Connor (1997), writing from personal experience, observed:

> *… prison intensifies the psychological effects of being subjected (as a child or as an adult) to sexual or physical assault. The controlled and punitive setting replicates the dynamic of any abusive relationship where the victim is without power or dignity.* (cited in Byrne & Howells 2000:4)

According to Byrne and Howells, *if women are to be routinely incarcerated, then an understanding of the treatment and management implications of a history of abuse is mandatory* (ibid). Similar to a family violence setting, women in prison again find themselves in a controlling environment, based on authoritarian relationships, where they feel powerless, and lack control and autonomy.

Women's prisons have consistently been found to violate the human rights of prisoners, and are therefore, by definition, *violent*. The prison system as a whole is violent. This violence is expressed both directly and indirectly.

Covert violence operates to slowly kill *the mind through loss of self and privacy.* Mechanisms used in women's prisons include constant monitoring, excessive rules and regulations, arbitrary application of rules, mandatory strip-searching, preventing women purchasing items at 'buy up' or breaching women for minor *offences*.

Overt violence occurs through mechanisms such as:

- Use of excessive force (4 or 5 officers to hold a woman down).
- Ogling/touching, deliberately humiliating or making lewd comments about women during strip-searching.
- Strip-searching women where they can be seen by others.

- Bullying women.
- Sexually assaulting women.
- Using bodily restraints such as straight jackets, body belts and handcuffs.
- Tying women to mattresses.

There are documented cases, on the public record, of each of these behaviours being carried out by prison officers.

A Victorian submission (Cerveri et al 2005:14) to the Equal Opportunity Commission included a detailed comparison between the published statistics from DPFC (a women's maximum security prison) and Barwon (a men's maximum security prison). It found that, proportional to the number of prisoners in each facility:

- Women were twice as likely as men to be charged with breaches of prison discipline.
- Women were subject to segregation orders at 4 times the rate of men.
- Instruments of restraint (eg. body belts, handcuffs and leg shackles) were used 25 times more frequently with women prisoners.
- *Use of force* incidents occurred 35 times more frequently at DPFC than Barwon.
- The mobile riot squad was deployed more often at DPFC than Barwon.

This data is consistent with anecdotal and documented accounts from women's prisons in every state and territory. Women's prisons do not have a history of riots or cell clearances. Clearly, the level and irrationality of physical force being used against women prisoners must have a profound effect on women's sense of safety.

Self Harm

Close examination of the actual incidents involving the riot squad in Victoria, suggested that women experiencing *distress, depression or other mental health issues* were often responded to punitively.

All the clinical evidence suggests that women experiencing emotional trauma will turn it in on themselves physically or emotionally, rather than using violence toward others. This is in marked contrast with men, who commonly express emotions outwardly, through violence against others.

Suicidal thoughts or actions are not always an indication of a psychiatric disability - *wanting to die* can be a reasonable, rational response to the trauma of imprisonment. However, the pressures of prison life are likely to exacerbate mental illness. Sophisticated assessment skills are required to distinguish between the two.

Self injury is a common response by women to the stress of imprisonment. Self harm occurs more commonly amongst short term, than long term, women prisoners. This is due to the *desensitisation* (disengagement from feelings) which long term women prisoners develop, in order to survive within a violent system.

The majority of women who self harm say that they wanted to hurt themselves because of situations where they felt helpless, powerless, or isolated. Prison systems typically respond in a contradictory way:

- On the one hand, prisons have policies designed to try to prevent self-injury (eg. placing women at risk under constant observation in administrative isolation).
- On the other, prisons have policies which trigger feelings of helplessness (eg. strait-jacketing), powerlessness (eg. strip searching) and isolation (eg. placement in crisis unit).

The best medical advice is that:

> *…The principle of nursing suicidal prisoners and detainees is supportive human contact. A prisoner or detainee should not be put into seclusion solely on account of their suicidal ideation.*
> *… When a prisoner or detainee is identified as having a significant risk of suicide, the attending staff should arrange for the prisoner or detainee to communicate with someone trusted, including family members and other appropriate people outside the correctional facility as appropriate.*
> (Australian Medical Association 1998:8)

Yet, prison staff typically respond to perceived threats or attempts to self harm, by placing women in isolation where they are routinely subjected several strip searches each day. This is in direct contradiction to human rights principles, repeatedly included in international instruments and the Australian guidelines.

Strip Searching

The practice of routine strip searching in prisons throughout Australia is perhaps the single most blatant and extreme example of breach of women's human rights.

The Convention against Torture defines *torture* as any act intentionally inflicted upon a person which causes severe pain or suffering which is either mental or physical. However, the UN definition *torture* does not include pain or suffering arising **only** from a *lawful sanction* (such as imprisonment itself). It has been repeatedly stated throughout the human rights literature that women are imprisoned **as** punishment, not **for** punishment. Use of routine, mandatory strip searching is not implicit in imprisonment. It is the result of a deliberate policy.

SIS contends that strip searching women prisoners falls within the CAT definition of *torture*. However, even if this were not the case, this practice undoubtedly falls within Article 16 (1) of CAT, which requires State Parties to prevent *other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture* legitimised in any way by public officials.

Routine or *mandatory* strip searching is strip searching which is carried out as standard practice, without any reasonable suspicion that a prisoner is concealing a prohibited item. For example, women in CSU are routinely strip searched many times each day. Despite having often been observed at 15 minute intervals, women in many prisons are strip searched every time they enter or exit their cells.

What is a strip search? In Victoria, it involves:

> *… a prison officer naming every item of clothing, whereupon the prisoner removes it. Once the prisoner is naked she is required to flip her ears, run her fingers through her hair, open her mouth and remove any dentures if applicable, lift her breasts, bend over and part the cheeks of her buttocks.* (Cerveri et. al. 2005:15)

In Queensland:

> *… the women in Brisbane Women's Prison are subjected to a full strip search including cough and squat after every visit (family-legal). If the woman is menstruating she is required to remove her tampon or pad and hand it to the screw for disposal. This is an enormous decision for women to make. They have to decide to be subjected to this indignity and sexual abuse in order to see their family or have legal counsel.* (Kilroy 2000:12-13).

There is no such thing as a *dignified* strip search. Women must continue to interact on a day-to-day level with the very officers who have seen them naked. The trauma of strip searching is even further exacerbated when observed or carried out by male officers. And, strip searching often re-traumatises the majority of women prisoners with a history of abuse.

A number of studies (cited in Periera 2001) have suggested that strip searching of Aboriginal and Torres Strait Islander women may offend against cultural standards of dignity and modesty and reinforce Indigenous women's historical experience of racism and sexism. For example:

> *In Murri culture, adult women and men spend very little time together. Physical contact between the sexes is far more limited than in mainstream society. Even being in a room with males is uncomfortable for most Murri women, especially those from remote areas. To be strip searched in the presence of men – particularly white men – is tantamount to torture. Many Murri women experience flashbacks to rape and sexual abuse during and after strip searches.* (Lucashenko & Kilroy 2005:17)

Indigenous women are at particular risk of re-traumatisation as a result of strip searching:

> *When they shut the doors on her and turn the key, she has panic attacks big-time. She is terrified that she'll be strip searched again like she was when she first got to the prison. Being strip searched felt just like when her stepfather molested her.* (*Linda*'s story in Lucashenko & Kilroy 2005:29)

> *Leah hates being in prison but it's nothing new. Plenty of old friends inside! So long as she can score enough heroin or speed to keep her habit under control, being in prison again is just 'same shit, different day'. Some days she thinks maybe she could get off the gear if she had some help, or something to take her mind off things. Other days, like when she gets strip searched, she gets so depressed that she slashes up.* (*Leah*'s story in Lucashenko & Kilroy 2005:34)

There are many examples of women's personal accounts of strip searching on the public record. The following (cited in Periera 2001) are particularly concise:

> *I honestly felt the only way to prevent the search becoming more intrusive or sexual was to remain as quiet and docile as possible. I later wondered why I was so passive. All I could answer was that it was an experience similar to sexual assault. I felt the same helplessness, the same abuse by a male in authority, the same sense of degradation and lack of escape.* (A woman pedestrian in Victoria)

> *On the one hand you would feel great about the visit but really raped and angry about the strip search afterwards. It was impossible to 'get used to it' or 'switch off*

from it' or be objective to it. In fact some women preferred not to have a visit because they couldn't handle the strip search afterwards. (A former NSW prisoner)

Routine strip searching is a deliberate and degrading policy, which reflects a lack of respect for women's dignity and humanity. Corrections departments throughout Australia have recognised that many women prisoners have been the victims of sexual abuse. Yet they continue to strip-search women prisoners with an almost blatant disregard for the trauma this inflicts on them. Correctional authorities typically justify this unashamed abuse of human rights, by placing strip searching in the context of *risk* and *good order and security.*

It is important, here, to reiterate the findings of the data uncovered by SIS as the result of a Freedom in Information request. Over a 3 year period, a total of 41,728 strip searches were conducted on women in Queensland prisons. These included both routine strip searches and strip searches instigated on the basis of suspicion. Only 2 found any drugs at all - and we do not know whether even these were illicit or pharmaceutical drugs, or a quantity of drugs of any significance. We do not know whether any drugs were discovered as a result of mandatory strip searching. Similarly, at DPFC in Victoria in 2001-2 each woman was strip searched an average of 93 times with only 1 item of contraband being found, whereas at Barwon Prison, each male prisoner was strip searched an average of 43 times, with 21 items of contraband being found (Cerveri et al 2005:16).

Routine strip searching is transparently ineffective in uncovering contraband entering prisons. It is used by prisons to humiliate, violate and control women prisoners. Strip searching generates fear, and functions as a form of punishment within women's prisons throughout Australia. Both routine and non-mandatory strip searching functions to directly undermine any attempt to help women to recover, or reintegrate into the community. It often functions to discourage women from receiving visits or undertaking activities outside the prison, including work/study release or accessing specialist medical care. **Far from improving women's safety, strip searching places every woman prisoner in Australia in serious emotional danger.** In fact, strip searching may increase propensity for drug use whilst in prison (Pereira 2001).

Some standard practices in Australian women's prisons have been found to constitute *cruel and unusual punishment* or *degrading treatment* in international jurisdictions.

- In *Jordan v Gardner* 986 F. 2d 9th Cir 1993, the Court declared that 'pat searches' of women prisoners by male guards amounted to cruel and unusual punishment. The judge said that intrusive probing searches by men in positions of authority constitute and reinforce gender subordination and offend our concepts of human dignity, whether or not the woman prisoner had been sexually abused prior to imprisonment.
- In Europe, treatment has been held to be degrading in a number of cases including close body searches, and the forced administration of medicine to a mentally disabled prisoner.
- In *Tyrer v United Kingdom*, the European Court of Human Rights (EUC) held that punishment does not lose its degrading character merely because it is believed to be, or actually is, an effective deterrent or an aid to crime control.

The continued practice of strip searching in Australian women's prisons is a matter of international shame for Australia.

Male Officers

Male officers are employed in women's prisons throughout Australia. QCS, for example, says it aims to have 70% female staff in women's prisons. However, QCS is not willing to exclude male staff from high supervision/observation duties. Nor does it appear to aim to increase the percentage of female officers in women's prisons. This is a direct violation of the **UN Standard Minimum Rules** and many other human rights instruments. QCS claims that there are always female officers present when male officers work in prisoner accommodation areas.

Women prisoners know that they may be being watched any hour of day or night. This lack of privacy is heightened in administrative segregation, where women are under constant observation, and are sometimes in cells with glass walls. As Michelle testified to the Senate Select Committee on Mental Health 2006:

> *It took me a few days to work out what was going on in S4, but when I did work it out I was not real impressed. There were five prisoners and three male screws at all times. There were 24/7 cameras, the lights never went off and you were on 24-hour observation. There were seven TV's and they watched you constantly. I have observed them on more than one occasion making fun of women's bodies, degrading them and threatening them with the male screws …*
>
> *… They watch the shower and they will make jokes about how they have just watched the shower three times. I think, 'That's nice.' It is just incredible; it is like a cinema. They sit there and it is like 'Big Brother' … And absolutely nobody knows that this tiny section at the back of Brisbane Women's is there, because most of the women in there are forgotten about. They do not have family or friends questioning where they are or how they are. They are easily able to use these women, and they are very vulnerable, as nobody is asking 'Are you okay?' because they are forgotten.*

The ADCQ listed a number of concerns about the role of male prison officers raised by women prisoners. These included:

- Male officers checking through cell windows whilst on night shift.
- Male officers being responsible for checking women in observation cells with 24 hour camera surveillance (especially when naked in the padded cell at the CSU).
- Male officers being involved in strip searches in the CSU when female officers were not available.

Some specific allegations by women prisoners that were not detailed in the ADCQ Report were referred to the Crime and Misconduct Commission. The ADCQ did not comment on the allegation of involvement of male officers in strip searches in CSU, but did say that in the ADCQ's opinion, male officers should not be working in CSU's at all. The ADCQ recommended that male prison officers not be assigned responsibility to conduct regular observations of women in observation units or inspections of women at night (Recommendation 43). As far as SIS is aware, there has been no change in QCS practice as a result of this recommendation.

Women's Right to Education

Quick Facts

- Most women prisoners come from economically and socially disadvantaged backgrounds. For example, studies have typically found unemployment rates of between 50% and 75% prior to imprisonment[79] and 70% of all Queensland prisoners have a Year 10 or below education level[80].
- Vocational training can reduce both short and long term recidivism amongst women prisoners[81].
- Women prisoners engage with secondary and higher education at a greater rate than male prisoners - despite the fact that they generally have to pay for all tertiary education costs[82].
- Women prisoners report being actively discouraged from participating in full time education by prison staff (a claim that was particularly noted by the ADCQ[83]).
- Low security prisons for women do not allow prisoners to be full time students[84].
- Women prisoners are heavily penalised if they undertake full time study. In practice, some women are forced to choose between being a full time student (earning $10.55 per week and remaining in a high security prison) and working in prison industries (earning up to $57.54 per week and moving to a low security prison).[85]
- QCS policy restricts the number of prisoners allowed to engage in full time (vocational, secondary or tertiary) education[86]. As far as SIS is aware, only 10 positions are available for Queensland women prisoners and these are only available to women in Brisbane[87].
- Women's prison labour seems directed at generating income for correctional services, rather than developing marketable skills for women. In Queensland, over the past 20 years, the value of prison industries in generating external revenue for QCS has risen from less than $500,000 annually in 1989, to $11.9 million in 2008.[88]
- The nature of women's prison labour in Queensland contributes little to women's ability to learn skills of benefit upon their release. (BWCC, for example, only offers work in 3 of the 9 industry areas available to male prisoners[89]) and women's prison industry opportunities are largely sex-role stereotyped (eg. sewing, packing/assembling).
- Compulsory QCS programs do not qualify as *education* within international definitions.

SIS believes that the limited education (and work) available to women prisoners constitutes multiple discrimination. Australian prisons breach women's human rights through inadequacy of education (including sex-role stereotyping), discrimination against disadvantaged groups of women, inaccessibility of education, penalties for full time study, poor quality of education, limited educational value of prison labour, inappropriateness of prison-run programs for women and problems with recognition of education undertaken in prison.

Some Relevant Human Rights

SIS contends that prison practices in Queensland are in breach of a number of international human rights instruments and Australian guidelines based on these undertakings. The following list is by no means exhaustive.

The *Universal Declaration of Human Rights*:

Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 23 (1): Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
Article 23 (2): Everyone, without any discrimination, has the right to equal pay for equal work.
Article 23 (3): Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Article 26 (1): Everyone has the right to education. … Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
Article 26 (2): Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
Article 26 (3): Parents have a prior right to choose the kind of education that shall be given to their children.

Basic Principles for the Treatment of Prisoners

Principle 6: All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.

Principle 8: Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.

Convention on the Elimination of All Forms of Discrimination against Women

Article 2: States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation …

Article 10*:* States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:
(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim …;
(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

International Convention on the Elimination Of All Forms of Racial Discrimination:

Article 5: … States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:
(e) (v): The right to education and training …

UN Convention on the Rights of Persons with Disabilities

Article 24 (3): States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. …

UN Standard Minimum Rules for the Treatment of Prisoners

Rule 71 (4): So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.
Rule 71 (5): Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.

Rule 72 (2): The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.

Rule 77 (1): Provision shall be made for the further education of all prisoners capable of profiting thereby ... The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.
Rule 77 (2): So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.

National Revised Standard Guidelines for Corrections in Australia

Standard Guidelines for the Management of Prisoners

Guiding Principle: (Prisoners are) supervised and managed with an emphasis on their continuing part in the community, not their exclusion from it. Consequently, the involvement of the community in assisting the prison work force in the development and maintenance of programmes should be encouraged; and programmes should be provided to assist prisoners to re-integrate into the community after release.

Standard Guidelines for Prisons

Guideline 3.6: Prisoners should be provided with access to programmes and services, including education, vocational training (and employment), that enable them to develop appropriate skills and abilities to lead law abiding lives when they return to the community.

Guideline 3.8: Prisoners who are approved to be full time students should be remunerated equivalently to prisoners who are employed in full-time work.

Guideline 4.10: Work should provide opportunities for prisoners to acquire skills that are in demand in the employment market so they have real employment opportunities upon release.
Guideline 4.11: Prison employment should offer opportunities to achieve national competency accreditation.

Guideline 4.12: Work opportunities should be free of gender stereo-typing and be designed to reflect the needs of different minority groups within the prisoner population.
Guideline 4.13: Provision should be made for prisoners to be released from work to attend approved programmes and education.

(QCS) Women Offenders Policy and Action Plan 2008-2112

Policy Principle: Women offenders will be able to access programs, services and opportunities that are responsive to their needs.

Breaches of these Rights

Provision of education to women prisoners plays a key role in improving the post-release prognosis for both women and their children. Recidivism rates amongst participants in prison education, vocation and work programs have been found to be significantly lower than non-participants. The evidence suggests that outcomes are even more pronounced for women prisoners than men. Women's common role as *family head* - both carer and breadwinner - means that an investment in their education, and consequent job opportunities, can have a significant impact not only on women themselves, but also on their children.

Educational opportunities for women in Australian prisons fail to meet international human rights standards. Limited opportunities are available. These limited programs are even more inaccessible to the majority of prisoners who are further disadvantaged by their race, disability or age. The quality of programs directly provided by corrections authorities has been widely found to be particularly unacceptable.

Very little research has been undertaken into women's right to education in Australian prisons. In December 2008, SIS undertook research in this area, and wrote a detailed submission to the United Nations Human Rights Council on breaches of women prisoners' right to education. **Anecdotal evidence from all Australian states and territories suggest that the situation for women in prisons outside Queensland is very similar to the SIS findings.** However, because little written material exists in this area, this section is written with almost exclusive reference to the Queensland situation.

Education - A Privilege not a Right

The ADCQ expressed concern that services, including educational programs, seem to be given a lower priority than custodial issues by QCS. This is despite the clear evidence that women prisoners rarely breach security or represent a threat to the good order of prisons. Examples of education being treated as a privilege, rather than a right, by QCS are:

- Most educational programs are short term courses which are often sporadic and/or are cancelled mid-way through.
- With the exception of numeracy and literacy courses, most courses available to women prisoners are sex-role stereotyped - for example, art, sewing and (base level) office work.
- Similarly, opportunities for on-the-job vocational training are largely limited to areas such as kitchen work, laundry, bakery, assembly/packaging and cleaning.

- Women are often required to undertake numeracy and literacy programs, regardless of their existing competencies.
- Many courses are non-accredited, which means they have no currency beyond prison. Where accredited modules are offered, QCS frequently fails to provide all the components required to complete a certified course.
- Programs often seem to be scheduled without regard for women's availability - for example, during work or visiting hours.
- Poor library facilities mean that women have little opportunity to pursue their educational interests independently (including secondary or higher education).
- Women report being actively discouraged from participating in full time education by prison staff (a claim that was particularly noted by the ADCQ).
- It is almost impossible for a woman to complete a full course of study, particularly higher education, whilst in prison. Each prison does its own assessment of women's educational needs. Each time a woman moves to a different prison, her education needs are reassessed. Each time a woman moves, any study she has commenced is in jeopardy. Each time a woman moves, she is placed at the bottom of any waiting list for which she is deemed to qualify by the authorities at that particular prison.
- Women must choose between being in a low security prison and continuing full time education. None of the current low security prisons for women allow prisoners to be full time students. This problem is exacerbated by the fact that spending some time in a low security prison is sometimes a prerequisite for parole. Therefore, women are often forced to choose between continuing their education and the potential for parole.
- QCS plans that in the future work camps will be the only form of low security imprisonment available. This suggests that women may be forced to choose between staying in a higher security prison and continuing their studies, or moving to a low security prison and abandoning their studies altogether.
- Many women prisoners are ineligible for education. The ADCQ addressed the issue of eligibility for educational participation, and particularly raised concerns about prisoners serving long periods on remand, who are ineligible for most forms of education.

Unless a range of educational options relevant to their interests are available to all women prisoners (sentenced or on remand), these women are likely to remain in the very cycle of poverty, violence, homelessness, mental health issues and/or substance abuse that most commonly led to their imprisonment.

Access to Education

Women's access to education is a largely arbitrary system, where QCS staff can exercise discretion as to individual prisoners' educational opportunities. This further supports the contention that women's human rights are treated as a *privilege* by QCS.

Women on remand **may** be assessed for basic education. This usually only occurs in instances where they are deemed to have special learning needs. There is no guarantee that education will be provided to remandees.

After the initial education assessment, women serving less than 12 months **may** be further assessed for education activities. However, this will only occur if it is considered to be *beneficial* by prison authorities and if there are sufficient resources available. There is no guarantee of education for women serving less than 12 months. With women serving an average of 2 months in prison, this means that the majority of women never access education whilst in Queensland prisons.

Women sentenced to over 12 months **may** be assessed further, if prison authorities' education assessment indicates that that there is a need for education or training.

The *goal posts* for accessing education are changing constantly - sometimes daily. Different officers interpret policies in different ways, or simply make different decisions to other staff. In short, prison staff have a very high level of discretion when addressing women's educational rights and needs.

The arbitrary nature of decision making particularly impacts on women who want to make a long term commitment to completing a course of study. Women are required to meet all costs associated with their education, unless it is provided free of charge by an educational institution/organisation or government. Costs may include student fees, books and resource materials. If women require computer access, it costs $4.00 per week to hire an in-cell computer to undertake study. Most women simply don't have sufficient funds available to pay the costs of their education outright - paying by installment is the only way they can undertake full time study. The prison **may** make a loan, which prisoners then repay by installments, at the discretion of the General Manager of the relevant prison. The risk that they will not receive a loan, or that this will be arbitrarily removed at some point in their study program, is an active disincentive for women to begin a course of study.

Penalties for Full Time Study

QCS has a policy of restricting the number of prisoners allowed to engage in full time (vocational, secondary or tertiary) education. As at 2000, there were only 10 positions available for women prisoners in Brisbane. As far as SIS is aware, no women have ever studied full time in Townsville prison (where the vast majority of prisoners are Indigenous women). Educational facilities are not offered at Helana Jones - currently the main low security prison option for women. Women at other low security prisons (work camps) are not allowed to be full time students. In other words, as far as SIS is aware, only 10 women prisoners in total are studying full time at any given time in Queensland, and all are, out of policy-driven necessity, living under high security conditions in Brisbane.

The General Manager of each QCS prison also has the discretion to set the level of pay each full time student receives. Prisons are primarily focused on industry, rather than education. In practice, most women end up receiving far less than they would have had they been working. The reality is that women may be forced to choose between:

- Earning $2.11 per day (ie. $10.55 per week), living in a high security prison and paying for computer hire and loan repayment out of this, and,
- Earning up to $14.40 per day including bonuses (up to a ceiling of $57.54 per week) and living in a low security prison.

Many women spend much of their meager income on items for their children. Therefore, a decision to undertake full time study penalises their children - both financially, and because this may extend the length of time mothers spend in prison. (Having spent time in a low security prison can assist with parole applications.)

Limited Educational Value of Prison Labour

Prison labour is compulsory in Queensland prisons, except where prisoners are exempted to undertake full time studies or are unable to work. The official rationale for this is that prison labour assists prisoners in their rehabilitation and post-release employment through enabling them to acquire vocational skills and a work ethic. The nature of women's prison labour in Queensland contributes little to their ability to learn skills of benefit upon their release.

Prison labour could be integrated with useful vocational education. However, there is increasing evidence that women have few opportunities to learn from prison labour. Women continue to report that the available work does not provide them with skills development, and that the so-called *Trade Instructors* who supervise their work, rarely focus on teaching or assessing skills. Very few women leave prison with any form of qualifications - particularly trade-based TAFE accreditation - which is recognised by industry.

The ADCQ was concerned about both the quality and rehabilitation value of the work available to women prisoners. The ADCQ Report cited feedback from both women and prison officers which raised concerns about the lack of integration between learning and work for women prisoners, and the need for a wider range of trade/apprenticeship opportunities. BWCC only offers work in 3 of the 9 industry areas collectively available to male prisoners. It is difficult to see what vocational skills are developed through much of the work undertaken by women in prison industries - including sewing and packing/assembling:

> *For example, it is likely that there are few rehabilitative benefits being achieved through the Numinbah women performing the task of packing plastic forks into plastic bags.* (ADCQ 2006:86)

Perhaps the QCS culture in relation to women's education is best reflected through the example of donations to the library. It is almost impossible for anyone (including prison officers) to make donations of books or other learning resources to the library.

Recognition of Education Undertaken in Prison

Problems with recognition of education and training undertaken inside prison are not restricted to lack of recognition of certification. Many women report never having received assessment, and therefore certification, for on-the-job training conducted by TAFE certified instructors. Much of the education undertaken by women in prison is not accredited at all, and therefore of little market value as a basis for either continued education or gaining employment.

The ADCQ also raised concerns about the fact that TAFE (and possibly other) certificates awarded to women prisoners have the prison's address recorded on them. This may reduce the market value of the qualification, and could certainly function as a barrier to gaining employment. This situation appears (at least temporarily) to have been addressed by the QCS.

Core Programs - Not *Education*

QCS *core programs* are the most commonly available form of so-called *education* available to women prisoners. These programs do not meet the definition of education in Article 26 of the **Universal Declaration of Human Rights** - they are neither *directed to the full development of the human personality* nor *to the strengthening of respect for human rights and fundamental freedoms.* These are compulsory programs which sentenced prisoners are required to undertake. Failure to complete a program may preclude a woman from accessing parole.

Most women find the content of both core and other prison-run programs unhelpful in addressing the real issues they face in their lives. In the case of core programs, this can be attributed to the fact that these were generally designed for non-Indigenous male prisoners; they fail to address the very different criminogenic pattern of women, and are even more culturally inappropriate for many Indigenous women. To date, only one of these programs has been slightly adapted for women prisoners. According to the ADCQ:

> *Adapting specially developed male courses for female inmates is unlikely to address satisfactorily, the needs of women prisoners, given their differing offending behaviour, their life and significant physical, psychological, social, vocational, health and educational needs. To be effective, programs need to be specifically developed to address women's needs and build their capacity to integrate into the community when they leave prison.* (ADCQ 2006:78)

Women also find other QCS *educational* programs (eg. numeracy and literacy) unhelpful. This may be attributed to staff attitudes toward women, or failure to design programs which are sufficiently flexible to address the very different learning needs of different prisoners, or a failure to adequately brief teaching staff on the background and needs of women prisoners.

In the case of vocational on-the-job training, women consistently report that so-called *Trade Instructors* rarely provide education at all.

Recommendations 24 - 28 of the ADCQ report focus on the importance of analysing women prisoners' needs and developing appropriate courses (rather than adapting courses designed for men), evaluating the impact of core programs on women's reintegration into the community, funding core programs adequately, making provision for women with learning needs and enabling short term and remand prisoners to participate. Again, SIS is unaware of any improvement in the quality or accessibility of these programs since the ADCQ released its report in 2006.

Further, it would appear that QCS do not have any plans to improve women's access to education. None of the QCS performance indicators for 2008-2012 relate to secondary or tertiary education. On the other hand, several relate to work in prison industries. In light of Rule 72 (2) of the **UN Standard Minimum Rules for the Treatment of Prisoners**, it is ironic that despite the lack of any indicators related to secondary/tertiary education, there is a performance indicator focused on the financial value of work performed by prisoners in Queensland through work camps.

Exclusion of Community Educators

In the past, educators from community organisations outside Queensland prisons have played a significant role in formal and informal education provision to women prisoners. Long term prisoners talk with affection about many of the developmental programs offered at Bogga Road, the predecessor to BWCC. These were facilitated by community members, who were encouraged to contribute and had easy access to the prison. Women were sometimes allowed to participate in education and training outside the prison - including undertaking residential family programs at The Outlook (an outdoor education facility in Boonah) during school holidays, and attending TAFE and university classes. Community educators added breadth, richness and quality to the educational options for women prisoners. Some of these community-based options contributed directly to building, or rebuilding, women's relationship with their children in preparation for release.

For example, over the past 10 years, Sisters Inside (SIS) has run a variety of programs (including educational courses, mother/child programs, release preparation and sexual assault counselling) in BWCC and other QCS prisons for women. Over the past 5 years, since lodging the human rights complaint which led to the ADCQ investigation, SIS's access to women in prison has been severely curtailed by prison management. For periods of several months at a time, SIS staff have been fully excluded from prisons; on many occasions, individual staff have been arbitrarily refused entry to the prison when they attend for agreed appointments. Overall, direct SIS services to women in prison were reduced by 80% - 90% between 2004 and 2008. Whilst most have been reinstated during 2008, there is no guarantee of our ongoing access to women in prison. (As a result, a major focus of SIS services is now post-release support for women and their children.)

Human Rights Violations Against Children and Families of Women Prisoners

Quick Facts

- The vast majority of women prisoners are mothers of dependent children, and were heads of single parent families (80-85% according to most studies) prior to incarceration. Many are expected to return to primary economic responsibility for their family post-release.[90]
- 80% of all women in prison in Victoria received some sort of parenting payment prior to imprisonment[91].
- Some, particularly Indigenous, women had carer responsibilities for other family members prior to imprisonment[92]
- Throughout Australia, studies have typically found unemployment rates of between 50% and 75% prior to imprisonment[93].
- 70% of all Queensland prisoners have a Year 10 or below education level[94].
- 76% of women prisoners report not having completed secondary school, and 55% were unemployed immediately prior to entering prison[95].
- According to an unpublished SIS study, prior to incarceration:
  - 15% of women were homeless and 14% lived with their mother.
  - 82% of women were the primary carers of their children.
  - Each woman had an average of 2.5 children, of whom about half were aged 1-10 years.
  - 76% of women were unemployed, 19% were employed and 6% were students.
  - Women's financial survival depended on a combination of Centrelink benefits, prostitution and crime, with an average income of $251.61 per week.
  - 53% of women prisoners were still in debt at the time of the survey.

Further, SIS believes that imprisonment has a profound, long term effect on the families of women prisoners. Most women in prison already have a background of social and economic disadvantage prior to imprisonment. These, and other, disadvantages are compounded as a result of imprisonment, both for women and their children.

Some Relevant Human Rights

SIS contends that prison practices in Queensland are in breach of a number of international human rights instruments and Australian guidelines based on these undertakings. The following list is by no means exhaustive.

Universal Declaration of Human Rights

Article 16 (3): The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 22: Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 25 (1): Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
Article 25 (2): Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Convention on the Rights of the Child

Article 2 (2): States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3 (1): In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 5: States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6 (2): States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 9 (1): States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child …
Article 9 (3): States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

Article 14 (2): States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

Article 16 (1): No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
Article 16 (2): The child has the right to the protection of the law against such interference or attacks.

Article 20 (1): A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

Article 27 (1): States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Article 31 (1): States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
Article 31 (2): States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

United Nations Declaration on the Rights of Indigenous Peoples

Article 23: Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

United Nations Standard Minimum Rules for Non-Custodial Measures (*The Tokyo Rules*)

General Principles
Principle 1.5: Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

Rule 9.1: The competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society.
Rule 9.2: Post-sentencing dispositions may include:
(a) Furlough and half-way houses;
(b) Work or education release;
(c) Various forms of parole;
(d) Remission;
(e) Pardon.

Revised Standard Guidelines for Corrections in Australia

Standard Guidelines for Prisons

Guideline 1.39: The placement and assignment of prisoners to prisons should also include the principle of enabling prisoners to reside as closely as possible to their family, significant others, or community of interest.

Guideline 1.41: The management and placement of female prisoners should reflect their generally lower security needs but their higher needs for health and welfare services and for contact with their children.

(QCS) Women Offenders Policy and Action Plan 2008-2112 (p5)

Policy Principle
Correctional services for women will acknowledge the centrality of relationships and the importance of maintaining connections with family. Individual women offenders will be encouraged and supported to maintain their role as primary caregivers.

Breaches of These Rights

Most women prisoners are mothers of dependent children. Most are serving short sentences for minor, non-violent offences. Even a very short period of imprisonment can lead to homelessness, loss of employment, accumulation of debt, dislocation of children and many other negative consequences. Often, children are emotionally damaged as a result of being placed in care whilst their mother is in prison. Following criminalisation, women and their children lose even more opportunities to be part of the economy, part of their families and part of the community.

The ADCQ was very concerned about the human rights of children of women prisoners in Queensland. The Commission's Report made 7 recommendations about mothers and children. According to the ADCQ:

> *Few Australian studies have investigated the position and experiences of children with imprisoned parents. The impact on children with supporting parents in prison is critical and should be further researched if female imprisonment rates continue to increase at the rates of the past two decades ….* (ADCQ 2006:119).

Many Prisoners are Mothers

Nationally, no formal statistics are kept on the number of women in prison who are mothers:

> *In 1988 when the National Corrections Statistics Committee was asked to collect this information they said 'it was not relevant to prison policy and planning'.*
> (Cited in Cerveri 2005:13)

Nothing seems to have changed over the past 20 years. **This reinforces the invisibility of both women, and their children, in a prison system designed for men.**

It is difficult to see how Australia is fulfilling its obligations under the United Nations *Convention on the Rights of the Child,* when it allows the sentencing of mothers to prison for minor offences. The impact of mother/child separation has been well documented, and imprisonment of mothers functions *as double-punishment* – both for the mother and her children.

Two stories demonstrate the realities of the impact of a mother's imprisonment on her children. *Helen* was serving a 4 week sentence in prison in WA for a traffic offence. She was primary carer for her 6 children aged 6 months to 12 years, prior to imprisonment. Helen was very worried about the hardship they experienced:

> *I've never been away from my kids before … I've got 6 kids; three of them go to school and three of them don't … being in prison really impacts on your kids in lots of areas such as schooling, care and just everyday life, especially the 3 little ones who I really miss and they miss me. My brother is looking after them in the day, and their father when he comes home from work but I stress because I know I look after them best.* (Cited in Goulding 2004:29)

And, a Victorian mother talked about the impact of separation on her young child:

> *But he said to me, Mum, some days I just want to wake up and kill myself – and he was seven, I think at the time, six or seven – and I said, I feel like that sometimes too mate. And he said, 'don't do that, I'd miss you'. So I told him 'I would miss you too, if you did it'. So then I said how about we make a deal that we both won't kill ourselves. And we shook hands, and he never said it again. That's how deep it was, from a six-year-old saying how much he missed me. That's how scary it's been for him, but he's never said it since.* (Cited in Flat Out Inc & VACRO 2006:46)

Imprisonment as a Last Resort

The *Penalties and Sentences Act 1992 (Qld)* states that a sentence of imprisonment should be imposed as a last resort, and that a sentence which allows an offender to stay in the community is preferable. Further, when considering sentencing, a court is supposed to take into account any other relevant circumstance. However, no explicit reference is made in the *Act* to considering the best interests of children who may be affected when their parent is sentenced.

The ADCQ concluded that it is particularly important that imprisonment be the last resort for women with dependent children. Research shows that the early years of life are crucial for good health and other positive outcomes in later years, including the formation of secure emotional attachments with parents. The Commission found that incarceration of a parent can have significant adverse effects on a child. There is extensive research evidence to indicate that this often leads to social, behavioural, emotional and psychological difficulties as well as physical and mental health problems.

Judges and magistrates have repeatedly asserted that they either can not, or should not, take women's status as mothers into account when sentencing. The Victorian Court of Criminal Appeal, for example, has stated that:

> *The offender cannot shield herself under the hardship she creates for others, and courts must not shirk their duty by giving undue weight to personal or sentimental factors*, and, *hardship or stress shared by the family of an offender cannot be allowed to overwhelm factors such as retribution and deterrence.*
> (Cited in Flat Out Inc & VACRO 2006:45)

Is *retribution* more important than children's human rights?

As a Victorian judge said:

> *It's not a fact that we are supposed to take into account, because of the equality with which we are supposed to sentence. It used to be significantly different.* (Cited in Flat Out Inc. & VACRO 2006:47)

This appears to indicate a lack of distinction between uniformity and equity. The **same** sentence applied to a woman with dependent children will have a greater **effect** than for another person. It is, in practice, a heavier sentence for the same offence.

The Commonwealth Crimes Act (for Federal offences) requires a court to take into account the probable effect of a sentence on the offender's family or dependents. Yet, despite this, some courts have seen this as only applying to *exceptional circumstanc*es. (Flat Out Inc. & VACRO 2006:47)

Keeping Young Children in Prison

Some women's prisons in Australia, have a few cells where women can have their young (pre-school) children with them. Correctional authorities decide whether a mother can keep her children with her in prison. According to QCS, their decision is based on *the child's best interests.*

In Queensland, women who have their children with them in prison, are responsible for the child's care and safety. This includes responsibility for the child's costs (except food and drink). QCS can decide at any time that it is no longer *in the best interests of the child* to remain with their mother, or they can decide that the presence of the child threatens the *good order and security* of the prison. Alternately, they can decide to move the mother to another prison where children are not allowed. This means that women who have their children with them in prison are always vulnerable to losing their child at short notice, and with little explanation.

Many women are never allowed to keep their children, even breast feeding babies, with them in prison. Some have their babies removed within minutes or hours of birth, and their mother is simply returned to prison to serve out the remainder of her sentence. It is impossible to calculate the long term damage this situation creates in terms of both child physical and emotional health, and mother/child bonding.

According to the Prisoners' Legal Service in Queensland:

> *… Let me tell you a little about the Indigenous women in Townsville that our office has been speaking with. Townsville Women's has a high proportion of Indigenous women, reportedly up to 90% at some times. Many of these women may be pregnant, breastfeeding or caring for infants at the time of their incarceration. Despite this, over 2 years ago the specially designed mothers unit was shut down and since this point our office has received numerous complaints from women who gave birth in prison and had to hand their babies out, women who gave birth prior to incarceration and were breastfeeding on the weekends, women who had many children, including infants, and were forced to choose between staying in Townsville where they could get access to their other children or being transferred to Brisbane to keep breastfeeding.*

> *… one woman said to me that she now understands how the mums who lost their children in the stolen generation feel after being allowed to hold her baby for a mere 2½ hours after the birth before handing it to carers.* (Alexander 2008:3)

Many women have difficulty getting approval to have their babies and young children with them in prison. Currently in Australia, the government department which administers prisons in each State and Territory has the final say on whether children and infants are allowed to reside with their mother in prison. Even where they have the option, many mothers are torn about whether their children will be better off on the inside, or the outside.

Some mothers decide not to keep their children in prison, in their child's best interests. Children inside prison generally have a lower quality and quantity of educational, recreational and health facilities, than they would in the wider community. They are deprived of many of the items that a mother would normally purchase for her children on the outside. Being in prison restricts the child's interaction with other family members. Being under constant surveillance, the child will have less private moments with their mother than other children. And … their mother will be more limited in her opportunity to make parenting decisions than other mothers. Mothers have limited freedom to make judgments about how they will parent their children. At the very least they do not have the power to establish their own routine with their children.

The ADCQ was very critical of the limited opportunities for women to keep their children with them in prison, and of the standard of facilities available.

Children on the Outside

Children's whole world is generally thrown into disarray when their mother goes to prison. It is not unusual for their trauma to result in behaviours such as bedwetting, jealousy, tantrums, depression, anger or refusing to go to school. When visiting mum in prison, they may refuse to leave, throw tantrums/scream/cry or be moody/non-communicative.

Children whose mothers are in prison are usually forced to live with someone who's not their parent; they may be forced to live with strangers. They may be forced to change home and school. They may have to face prejudice and stigmatisation. They may not have opportunities to see their mother face-to-face (especially if from an Indigenous family), due to the limited locations of women's prisons, the cost of video-conferencing, their mother's anxiety about them seeing her in the prison setting, and/or carers' lack of willingness or ability to manage visits. Visiting facilities are far from conducive for mothers and children.

Older children often face added challenges. Many are required to take on *adult* responsibilities for younger brothers and sisters. This may be at the expense of their own opportunities to pursue education or employment.

The Impact on Mothers

Mothers face many issues related to their parental responsibilities when they go to prison. According to a WA study (Goulding 2004), mothers face significant anxiety about the placement of their children, and concern for their children's wellbeing. Whilst Indigenous children are often cared for by family members, non-Indigenous children are more likely to be fostered by strangers. The many women who were, themselves, fostered or adopted are

likely to be even more concerned for their children. Many suffer extreme anxiety about the safety of their children, particularly if they were living in a violent family setting prior to imprisonment. Women are likely to feel guilt, grief and loss on multiple levels. As they move toward release, many women are anxious about custody arrangements post-release - many must go to the family court to regain custody of their children, or prove themselves to welfare authorities - even if they had no previous history of inadequate parenting.

This is a rare situation in which Indigenous women prisoners are sometimes in a better position than non-Indigenous women. Their children are more likely to have familiar carers, and retain some continuity of lifestyle. On the other hand, caring for children can place enormous stress on Indigenous families, particularly older family members. For example, Irene is an urban Aboriginal woman in WA with 10 children, all of whom are state wards being cared for by family members:

> *I've got 10 children and that's a lot of work on my mum and dad … my baby was taken at birth. Welfare took her … I thought the stolen generation was a long time ago but they're still doing it now. My children have been taken from me and they're under state care in my mum and dad's custody. They've got the whole 9 and my uncle's got the baby.* (Cited in Goulding 2004:24)

Many women come from environments where their children can easily be exposed to neglect, domestic violence and sexual abuse while their mother is in prison. According to one Indigenous woman prisoner in Queensland:

> *When I found out my mum and my kids had gone back to live with X, I wanted to neck myself on the spot. I couldn't even cry about it, eh. 'Cos he's a pedophile, and he got into all my sisters and me. Now he's living under the same roof as my kids, he's got access to them 24/7, and there's nothing I can do about it.*
> (Cited in Lukashenko & Kilroy 2005:18-19)

CALD women may experience particular anxiety about the care of their children whilst in prison. According to Kim Vu, a community-based prison support worker, most of the 30 Vietnamese women in Victorian prisons do not speak English and are mothers (mainly single mothers):

> *… there were often problems in placing children of Vietnamese women in prison with alternative carers because of the need for culturally and linguistically appropriate care. Fostering or temporary accommodation through mainstream children's services was usually not appropriate for this reason. Many children are placed with reluctant Vietnamese families who suffer shame and stigma in the Vietnamese community because of the children's mother's incarceration and status as a single mother. As a result of these problems it is often difficult for the children to maintain a relationship, or even contact, with their mother.*
> (Sisters Inside and Aboriginal Family Violence Prevention and Legal Service 2005:13)

Maintaining Family Relationships

Mothers' level of contact and involvement in their children's lives often depends upon the attitude of carers. Some carers actively involve mothers in decisions about their children (eg. about care, treatment, discipline). This helps the woman retain her role as *mother*, and makes the transition to life on the outside more straightforward. Some carers are hostile

and may undermine the mother's role through limiting contact, excluding her from decisions, giving ultimatums or bargaining around care of the children. In the case of family members, they may take the opportunity to try to get custody of the children. Where children are taken into foster care, individual welfare workers generally decide on the extent to which mothers can retain contact with their children, and influence decisions affecting their lives.

Many mothers struggle to be able to maintain contact with their children at all. With prison income as low as $11 per week many women cannot afford to pay prison (premium) rates to call their children more than once a week. It's very difficult to maintain a parent/child relationship on a 7 minute phone call each week. In some states the prison used to provide $10 per month for phone calls for mothers with children located out of local call range. As far as SIS is aware, this type of support no longer exists for families.

Following Release

Many women do not have immediate custody of their children upon release. They are required to prove themselves to welfare authorities (even if they have no previous history of problematic parenting), in order to regain custody of their children. This can extend the time children spend without their mother.

Once with their mother, children will face new upheavals. They will probably experience increased poverty and insecurity due to their mother's loss of income and housing. They may need to change school or community, and be removed **again** from their familiar life and support systems … often, for the second time in a few months.

The level of involvement mothers have in their children's lives whilst in prison has a significant impact on the transition to life following imprisonment. However, all women who have been in prison will need to rebuild their relationships with their children to some extent. Most mothers must deal with traumatised children who may:

- Question their parental authority, because someone else has been their parent figure for some time.
- Resist any separation (even for activities like going to school), because they fear being abandoned again – either by their mother, or by siblings (where they were separated).
- Constantly struggle with self-esteem, because of penalties related to their mother's imprisonment (eg. teasing at school).
- Express anger about everything, because they blame their mother for abandoning them.
- Deal with all the consequences of childhood abuse, if they were abused whilst their mother was in prison.
- Ostracise siblings who lived elsewhere whilst their mother was in prison.
- Have developed specific fears (eg. police cars - because one took mum away when she was arrested).

In addition to facing the extra challenges of life after criminalisation, these mothers actually require higher order parenting skills than most women in the wider community.

Further Damaging Families - Trends in Criminal *Justice*

The future is bleak for the children of imprisoned mothers. The number of mothers being incarcerated continues to grow at an alarming rate. QCS's future plans can be expected to place children and families at further risk.

When the ADCQ report was written, an *open security* classification existed in Queensland prisons. This has now been abandoned altogether. 5-10 years ago, some of the options available to women prisoners were - half way houses, work release, education release, home detention, resettlement leave, reintegration leave and weekend leave. These mechanisms are particularly important tools for deinstitutionalising mothers who have served long sentences. They allow prisoners to go home for the weekend or to attend appointments to prepare for release (eg. obtain a driver's license, or housing, or identification). Such practices are advocated by *The Tokyo Rules*. They are also best practice for maximising family reintegration and community safety.

The Queensland Government proposes to abolish Resettlement LOA's and Reintegration LOA's. The only form of reintegration to the community prior to release will be work orders. Work orders will only be available to prisoners who are not sex offenders, repeat violent offenders or those considered a *risk*. It would appear that *high risk* prisoners will now be released into the community directly from a high security prison, with no guarantee of transition support.

QCS plans to reconstitute all low security facilities as isolated *Base Work Camps* which undertake community projects. All women's work camps will be based over 100kms from Brisbane. The only existing low security prison in Brisbane, Helana Jones, will be closed. It appears that women will be unable to undertake, or continue, secondary or tertiary studies (on either a full or part time basis) as part of their *community reintegration*. It appears that women will be forced to choose between:

- Staying in a high security prison, continuing their studies and reducing their chances of parole, or,
- Moving to a low security prison, abandoning their studies and improving their chances of parole.

Transfer to a low security prison would improve mothers' chances of parole, and earlier reunification with their children. Completing educational qualifications would improve their family's long term social and economic opportunities. QCS has provided no evidence that the range or quality of vocation/work opportunities for women will be improved. This means the current sex-role stereotyped, low skilled and semi-skilled tasks, with little opportunity for women to develop accredited competencies with labour market currency, can be expected to continue at the *new* work camps.

At the very time when prisoners most need to be enhancing their connections with family and community, most women will have even less access to their personal networks than at present. QCS plans for future development include 120 new beds for women at Palen Creek (120km from Brisbane) and 350 cells for women as part of a new high security mega-prison housing 4,000 prisoners in Gatton (100km from Brisbane). This will place women's relationships with their children in further jeopardy. Palen Creek includes plans for improved facilities for women with babies and toddlers, however, the majority of women prisoners have other children, from whom they will be further geographically isolated.

QCS plans reflect a continuing trend toward undermining women's ability to reintegrate into their families and communities upon release. The closure of Bogga Road moved women from a central Brisbane location to Wacol on the outskirts of Brisbane. Now, QCS intends to further reduce women's capacity to engage with their families and communities through moving many to even more remote locations. Such isolation will only slow down efforts to secure accommodation, housing and other practical needs. It will invariably further erode women's family relationships, and reduce their capacity to reintegrate with their families and communities upon release.

These draconian measures show a total disregard for, or ignorance of, the rights of women prisoners and their children.

The Solution - Legislating Human Rights

Prisons in Australia are largely unaccountable for their actions. There is a complete lack of routine external scrutiny of Australian prison policies and practices in most jurisdictions[96]. This means that prison authorities are rarely called to account for behaviours which violate women prisoners' human rights.

For as long as Australia fails to adopt a Bill of Rights, or other similar legislative framework, women in prison continue to have no formal legal redress for the failure of prison systems to meet their human rights, including the discrimination they face on a daily basis. Sisters Inside (SIS) believes that such legislation is critical to meeting Australia's international obligations. At the very foundation of these obligations, is the **Universal Declaration of Human Rights** which states:

> *Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.* (Article 8)

The limited authority of government human rights bodies (anti-discrimination or equal opportunity bodies) does not allow for *effective remedy* of breaches of human rights in Australia. This is ably demonstrated by the Queensland Department for Corrective Services (DCS, now QCS) response to the ADCQ report on *Women in Prison*. Despite the modest recommendations of the ADCQ, QCS effectively dismissed almost every recommendation[97].

ADCQ does not have the authority to require QCS (or any other body) to meet its human rights obligations. The Commission could only express *hope* that QCS would *better address the human rights of women prisoners*:

> *The scope of this review did not allow for an examination of the antecedents of discrimination and inequality. Our hope is, however, that this review will assist in changing the correctional system from within so as to better address the human rights of women prisoners.* (ADCQ 2006:134)

This *hope* appears to have been in vain**.** As far as SIS is aware, **none** of the 72 recommendations of the report have been substantively addressed by QCS since the release of the ADCQ report 3 years ago.

Coherent National Data Collection

Human rights advocacy and government human rights bodies are forced to rely on piecemeal research and anecdotal data, when addressing possible discrimination against women prisoners. Research about women in prison accounts for only 3% of all publications on prisoners in Australia[98]. As demonstrated throughout this submission, repeated studies in Australian states/territories have identified many actual or potential breaches of women prisoners' human rights. However, it is difficult to firmly substantiate systemic, indirect and direct discrimination against women in prison in the absence of coherent national data. This is especially true in relation to the health (particularly mental health), disability (particularly intellectual disability), parental and race status of women in Australian prisons.

Despite this, the ADCQ explicitly identified 34 areas of potential discrimination against women in Queensland prisons[99]:

<u>Possible</u> cases of direct discrimination:

1. Impairment: Classification guidelines which force women who otherwise qualify for open (low) classification to remain in secure custody in order to access psychiatric or medical services. (p44)
2. Race: A classification guideline which make some CALD women more likely to be *unacceptable for progression*. (p45)
3. Impairment: Returning women from low security facilities to high security facilities in order to access medical and dental care. (p53)
4. Sex: Failure to provide work camp opportunities for women in South East and North Queensland. (p59)
5. Sex: 4 strip searches for the woman prisoner, compared with 1 for the male prisoner, during inter-prison visits. (p70)
6. Impairment: Women in the CSU being routinely strip searched 6 times each day, when other prisoners are not subject to the same requirement. (p74)
7. Sex: QCS failing to provide a similar level of access to, and quality of, recreational facilities for women as men at the same facility. (pp40,83)
8. Sex: Lack of a community custody facility in North Queensland. (p112)
9. Age: Placing a young 17 year old female prisoner in protective custody on the basis of her age. (p116)
10. Gender: Failure to presumptively place a transgender prisoner in the prison of his or her self-identification. (pp124-5)
11. Gender: Placing transgender prisoners in protective custody against their will. (p125)

<u>Possible</u> cases of indirect/systemic discrimination (within the control of prison authorities):

12. Multiple: The overall security classification system for women prisoners, particularly Indigenous and CALD women and those with mental health issues, which results in disproportionate classification of Indigenous women as high security prisoners. (pp45-46)
13. Multiple: The inconsistencies/inadequacies of officers assessing women for classification. (pp45-46)
14. Multiple: Failure to ensure valid classification assessments and/or demonstrate the validity of measuring instruments. (pp46,67)
15. Multiple: Inflexible systems that do not adequately consider the differing needs of subgroups of prisoners. (p27)
16. Race: Lack of low security options (or special/welfare measures to address this disadvantage) for Indigenous prisoners from remote locations, who are required to be incarcerated far from their homes and families/children. (p59)
17. Race: Lower rates of conditional release for Indigenous women prisoners. (p64)
18. Race: The terms of eligibility for parole for Indigenous women serving sentences of more than three years. (p64)
19. Race: Slower granting of post-prison community-based release orders for Indigenous women. (p66)

20. Race: Failure to develop viable release plans, which may prevent Indigenous women being granted conditional release and post-prison community-based release at the same rate as non-Indigenous women. (p67)
21. Impairment: Failure to collect statistics on women with intellectual or mental health disabilities in any systematic manner. (p66)
22. Multiple: Limited access to culturally appropriate programs. (p67)
23. Disability: Failure to evaluate the progress of women with mental health and intellectual disabilities through each stage of the prison regime to identify and take steps to address emerging issues. (p67)
24. Impairment: Routine strip searching of women with mental health issues (particularly in CSU) who are less likely to cope with frequent strip-searching, than women who are not suffering from a similar impairment. (p74)
25. Impairment: Failure to institute a systemic approach to providing for the needs of women prisoners with intellectual disability. (p79)
26. Sex: Payment of lower levels of bonuses to women prisoners than male prisoners. (p87)
27. Sex: Lack of availability of programs to women serving short sentences - because women typically serve shorter sentences than men. (p90)
28. Race: Failure to develop and deliver substance abuse programs in a manner that adequately considers the needs of Aboriginal and Torres Strait Islander women. (p91)
29. Impairment: Failure to improve the whole justice system's dealings with people with mental illness. (p93)
30. Race: Treatment of Indigenous women at all levels of the justice system, including - tailored programs, over-representation in the prison system/high classifications/CSU, possible over-assessment using ORNI, lower levels of access to early release, location far from family, inadequate of programs contributing to recidivism and less access to community custody facilities. (pp109-110)
31. Race: Failure to provide an interpreter for women with limited English language skills, at the time of their incarceration and for discussions about their case management, health visits, and any other issues of particular significance. (pp117-8)
32. Race: Failure to make core prison programs accessible to women with limited English language skills. (p118)
33. Race: Failure to allow reading materials in the first language of women with limited English language skills. (p118)
34. Race, Religion and/or Ethic Background: Failure to take reasonable steps to make chaplaincy services available in women's own religion. (p118)

Even formal bodies such as the ADCQ can often only identify *possible* or *potential* breaches of women's rights, or identify *prima facie* cases of discrimination, in the absence of comprehensive data. The ADCQ called for more complete data collection by QCS:

> *That research and statistics produced by the Department of Corrective Services on offenders in the corrective services system includes the following data: gender, race, disability and the impact on dependent children of incarcerated parents.* (Recommendation 66)

State and territory prison authorities have repeatedly refused to (individually or collectively) collect the data required to adequately identify breaches of women prisoners' human rights. **It is only through a national, legislated requirement that coherent data will be collected about women prisoners.** It is only through the existence of this data, that human rights

abuses will be able to be conclusively identified and remedied. Only then can prisons be made truly accountable for their human rights record, policies and practices.

Independent Scrutiny of Prisons

> *I need to reiterate our concern that the women who are isolated* (in CSU) *now will continue to be isolated and have been isolated. They have no access to anyone. Corrective Services will say that they can speak to an official visitor or ombudsman, but these women do not necessarily have the capacity to do that or understand how to fill out the right forms to do so. Then there is the fear of retribution; you are threatened for speaking out. We need an independent person who can go into these prisons and into the dark corners, because that secrecy does breed abuse. … these things happen when we have closed institutions, whether they are prisons or psychiatric units.*
> (Debbie Kilroy, evidence to the Senate Select Committee on Mental Health 2006)

> *Prison management must operate within a clear ethical framework. When one group of people is given significant powers over another group, constraints must be put in place to ensure power is not abused. The ethical basis for running a prison service must come from the highest levels of management, and flow right through to the officers who supervise the daily routines of prisoners.* (ADCQ 2006:128)

Women prisoners are amongst the most vulnerable **victims** of crime in Australia. Yet, their treatment inside prison is generally not open to external scrutiny. Most of the so-called accountability measures involve internal appointments by prison authorities (eg. prison visitors, inspectors of prisons).

In Queensland, for example, the Office of the Chief Inspector of Prisons has been established as part of the *Corrective Services … Act* (CSA-2008). Despite an ADCQ recommendation that the Office be independent of the QCS and report directly to Parliament (Recommendation 67) the Queensland Government proceeded with plans to make the Chief Inspector part of the QCS structure.

Drawing on British models (which are partly replicated in Western Australia), the ADCQ argued that *the safeguarding of human rights in a prison system is best served by a formal overseeing function to ensure compliance* (ADCQ 2006:128). A prison inspector should have a role that *is independent of the prison service to provide the public, parliament and government with an objective and authoritative assessment of prison conditions* (ibid). The core responsibility of the inspector should be to carry out comprehensive (announced or unannounced) inspections of all prisons. The inspector should also consider issues that are common to all or a number of prisons, including undertaking reviews of thematic issues (eg. women, young people or prisoners with mental health issues).

This is in marked contrast with the current situation in Queensland, where no mechanism exists (apart from *Freedom of Information Act 1992* provisions) for the new Chief Inspector's reports to go beyond the QCS Director-General. The Chief Inspector does not report to the Parliament or the public in any form. Further, the Chief inspector can only inspect prisons when directed by the Director General, and not of their own volition.

It is implicit in the nature of their work, that staff throughout the prison system must make frequent judgments - often on a moment-to-moment level. Some prison officers are humane

and treat women with as much dignity as possible within the constraints of the system. However, there have been repeated allegations of serious abuse of power by prison officers in women's prisons throughout Australia. On a day to day level, there is overwhelming anecdotal evidence of officers acting in arbitrary and inconsistent ways that continually undermines the human rights of women prisoners. This is why it is critical that an independent authority be appointed to protect the human rights of prisoners.

The General Manager (GM) of each prison has a particularly high level of discretion in many areas. This directly impacts on individual women's human rights. On a day to day level, the GM determines issues such as the property women may keep and which visitors are allowed in the prison. The GM also decides issues with longer term implications, such as whether women are allowed to engage in education, their pay levels and whether women are granted Leave of Absence (LOA's) to deal with family matters or prepare for their release. GM's are largely unaccountable to anyone outside QCS for these decisions.

The GM also has the authority to decide whether community-based service providers are allowed to provide essential services such as sexual assault counselling and transition programs for women in prison. As a result, organisations can be arbitrarily excluded from providing services to women. Sisters Inside (SIS), for example, has been periodically *locked out* of women's prisons in Queensland - apparently in direct response to public advocacy about the rights of women prisoners. As an organisation, we are often forced to choose whether to speak out about breaches of women's human rights, or continue to provide essential services (not otherwise met) to women prisoners. This is despite the ADCQ seeing a significant role for organisations such as SIS in protecting the rights of women prisoners:

> *Ongoing effective community engagement with all relevant stakeholders will provide some of our most disempowered Queenslanders (women prisoners) with a voice. ADCQ urges DCS to work with community representatives and advocacy organisations to ensure that its programs, policies and legislation are continually developed in a fully informed way.* (ADCQ 2006:131)

And:

> *A common thread throughout this review is the need for policies and services to be designed specifically for women. The DCS should access community representatives, experts and prison advocates to ensure its policies meet the needs of women prisoners. The criminal justice system must take new and possibly radical approaches and alternatives to the existing regime for female offenders. The system must recognise the links between violence against women, including sexual offending, child abuse and domestic violence. Most women prisoners are both victim and offender. A coherent and strategic approach must be taken by all government departments and agencies to ensure that these issues are not dealt with in isolation.* (ADCQ 2006:134)

The human rights of women prisoners can only be properly protected through a system of independent, external scrutiny. It is clear that Queensland has been unwilling to establish this type of scrutiny in the absence of compulsion. The only way to ensure that prisons operate in a non-discriminatory way is to require transparent, external review processes through legislation.

A Deteriorating Situation

> *If the differences between female and male prisoners have been largely ignored by prison administrators until recently, then so have the unique needs of subgroups within both female and male prison populations. The needs and differences of Indigenous prisoners, prisoners with disabilities and particularly those with mental health or intellectual disabilities, and those from culturally and linguistically diverse backgrounds are frequently forgotten or ignored in the design, administration and daily routines of the prison system.*
>
> *… The ADA requires that state government administrators, including the administrators of Queensland prisons, act to ensure they do not unlawfully discriminate by treating a prisoner less favourably than another prisoner on the basis of the prisoner's sex, relationship status, pregnancy, parental status, age, race, impairment, religious belief, lawful sexual activity, gender identity, sexuality, or family responsibilities. The ADA prohibits both direct and indirect discrimination. Inflexible systems that do not adequately consider the differing needs of subgroups of prisoners may amount to indirect discrimination.* (ADCQ 2006:27)

This submission has largely detailed the deteriorating situation of women prisoners at a statistical and operational level. This is particularly reflected in dramatic increases in the number of women in prison, the highly disproportionate disadvantage of Indigenous women prisoners, the horrific treatment of women with mental health issues and the worrying short and long term consequences for the children of women prisoners.

The ADCQ called for the Queensland Government, in reviewing the Corrective Services Act, to take account of its commentary and recommendations.

Far from addressing the problems identified by the ADCQ, they are being reinforced and further exacerbated at a policy level. The CSA-2008 contains some deeply worrying elements with serious implications for the human rights of women prisoners. According to the Queensland Prisoner's Legal Service:

> *The Corrective Services and Other Legislation Amendment Act 2008 (Qld) … is a failure of our political system to commit to the protection of basic human rights and demonstrates the need for a universally binding charter to protect such rights.*
>
> *This Act classified the State of Queensland and employees or engaged service providers of the State as 'protected defendants' under the Anti-Discrimination Act 1991 (Qld). This category of 'protected defendant' relates only to complaints brought by prisoners and people supervised by probation and parole (including community based orders) and sets an alarming precedent for rolling back human rights law. This new law makes it significantly more time consuming and difficult for victims to raise complaints of discrimination, vilification or sexual harassment against 'protected defendants'. In addition, the Act proposes a specifically defined test of 'reasonableness' that can excuse both indirect and direct discrimination.* (Alexander 2008:1)

This is in marked contrast with statements made by the current Minister for Corrective Services, when in 1991 she welcomed the introduction of the *Anti Discrimination Act 1991* in Queensland. Talking about the disadvantage faced by Indigenous people, including overrepresentation in the prison system, she said:

> *They can now be assured that any blatant discrimination towards them will in future be met with the full thrust of the law.* (Hon Judy Spence, cited in Alexander 2008:2)

A key element of the new legislation is the introduction of a *reasonableness test* for both direct and indirect discrimination. The Act allows for discrimination against prisoners on 10 grounds, which almost exclusively focus on the interests of the *protected defendant* (QCS employee) or the QCS. Perhaps the most worrying of these, is that QCS and its staff will be protected if it discriminates on the basis of *the administrative and operational burden* of providing non-discriminatory treatment. The Prisoners' Legal Service has commented on another criterion, *the security and good order* of the prison:

> *This is the first time in Queensland, that reasonableness can be used to justify not only indirect but also direct discrimination. This will mean that the State of Queensland will be able to justify even direct discrimination if they can show that it is more probable than not, that they did so for the security and good order of the prison. This is a test that has been very hard to fight in other areas as the information about what is in the security and good order of a prison is publicly unavailable.*
>
> *… Public servants and the State do not need 'protection' from human rights laws that aim to stop discrimination, sexual harassment and vilification. They can avoid complaints by providing adequate training to ensure that human rights are upheld and that breaches of such laws are dealt with appropriately. By reducing external accountability mechanisms, the result will inevitably be an increase in human rights abuses.* (Alexander 2008:4)

The ADCQ also commented in detail on the need for improved selection, training, supervision and support of prison officers, and saw this as an essential element in improving the accountability of prisons. The Commission emphasised the need to ensure both the skills and personal integrity of prison officers:

> *The clear ethical framework that forms the basis of prison administration needs to be articulated clearly to all prison officers working in Queensland prisons. Part of the framework must be the performance of their work and the delivery of services in a manner that is not contrary to the requirements of the ADA. All staff need to be trained and supervised so that they do not unlawfully discriminate against or sexually harass prisoners and other staff within the prison.* (ADCQ 2006:128)

The ADCQ identified several key areas in which all prison officers should receive mandatory training and information. These included:

- Unlawful discrimination and sexual harassment. (Recommendation 65)
- Identification and provision of appropriate responses to prisoners experiencing mental health problems. (Recommendation 40)
- Indigenous issues. (Recommendation 65).
- Dealing with people from culturally and linguistically diverse communities. (Recommendation 65).

This element of the CSA-2008, alone, ably demonstrates the urgent need for national legislation to protect the human rights of women prisoners. But, there's more …

Under the new legislation, the likelihood of a prisoner receiving compensation for discrimination is significantly reduced. But, what happens if a prisoner does succeed in

receiving monetary compensation? The CSA-2008 now allows for the victim of the crime for which the person was imprisoned to make claims against this compensation. *In effect, this creates a system where a victim's compensation is linked to an abuse of the human rights by the State*[100]. A similar move was introduced in New Zealand. According to the Chief Commissioner of the New Zealand Human Rights Commission, Rosslyn Noonan:

> *In this legislation a victim's chance for compensation is effectively dependent on his or her abuser being abused in turn. The victim is then reliant on the abused prisoner making a claim for compensation that the prisoner knows they will likely never receive.* (Human Rights Commission[101] 2005, cited in Alexander 2008:4)

In the case of women prisoners who are already victims of crime, this element of the Queensland legislation only further institutionalises the cycle of abuse to which most women prisoners have been subjected throughout their lives… and which continues to contribute to their criminalisation.

And, this is all occurring in the context of the Queensland Government's refusal to legislate independent external scrutiny of prisons.

An Urgent Need for Coherent National Legislation

It is essential that the continuing erosion of the human rights of women prisoners (and others in Australia) is stopped.

International human rights instruments do not have the force of law in Australia, unless specifically legislated. The legislated human rights of women prisoners (and, indeed, of all Australians) vary from state to state. It is essential that Australia adopts a Commonwealth Human Rights Act which requires that all our international treaty obligations are implemented. These include our obligations under CROC, CEDAW, CERD, ICCPR, ICESCR and CAT.

In order to implement this Act, it will be essential for Australia to invest sufficient resources and authority in monitoring organisations, at a state and national level. Bodies such as the ADCQ and HREOC should have the means to fully investigate the implementation of Australia's obligations. They should have the legal authority to require change where violations of human rights are uncovered. They should have the authority to require prison (and other) authorities to collect the data required to establish any emerging patterns of discrimination or other breaches of human rights.

Human rights advocacy organisations, like whistle-blowers, are at the coalface of human rights violations. In the case of women prisoners, organisations such as SIS are in a unique position to identify and expose breaches of human rights. By informally monitoring prison practices on a day to day level, these organisations are well positioned to alert the relevant authorities when potential or actual violations are identified, and to contribute to the enhancement of women prisoners' human rights. In order to be able to fulfill this role, community-based service providers with a human rights focus should be legislatively guaranteed that their funding cannot be threatened if they speak out. They should be granted access to prisons which cannot be arbitrarily removed by prison authorities. Women inside prison should be enabled and encouraged to participate in the management

of these organisations. Human rights advocacy organisations must be protected against any penalty (against the organisation itself, or women in prison) if they speak out.

It is essential that women prisoners are consulted and heard, both in framing the relevant legislation and in monitoring its ongoing effectiveness. Mechanisms such as the SIS management structure (which includes both women in prison and outside members), can provide a useful pathway for the relevant authorities to access the expertise and experiences of women prisoners.

A useful first step would be to ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT). On 19 May 2009, Australia signed this protocol, which calls for a *National Monitoring Body* to investigate allegations of torture and other cruel, inhuman or degrading treatment of punishment. It is critical that an Australian body is established which is able to address abuse of power at all levels of prison systems throughout Australia - from discriminatory legislation to any practice which violates women prisoners' rights. Such a body must encompass and extend the functions of a National Monitoring Body outlined in Articles 17-23 of OP-CAT. Independent inspecting authorities should be established in all states and territories. They should have the authority to initiate investigations within their jurisdiction.

Prison authorities have a history of failing to address breaches of human rights identified by monitoring bodies. It is therefore critical that the Australian body established under the OP-CAT have genuine authority to direct prisons (and other systems of detention) to meet their human rights obligations.

If Australia is to meet its international human rights obligations, it is essential that the human rights of everyone in Australia are encoded in a single, coherent piece of national legislation. Further, it is essential that human rights monitoring bodies have the genuine authority to address any abuse of human rights in Australia.

Endnotes

[1] For example, one study found that research about women prisoners constitutes only 3% of publications about prisoners in Australia (McGuire 2000:4 cited in Goulding 2004:14).
[2] ABS cited in Goulding 2004:14.
[3] Media Release from the Queensland Minister for Corrective Services, Judy Spence, *Crime Rates Decrease*, 4 July 2008, cited in Alexander 2008:2.
[4] QCS 2008(c):20
[5] ABS 2008:7. Prisoner numbers across Australia are increasing at a rapid rate, from 141.1 per 100,000 of the adult population in 1998, to 168.7 in 2008 (ibid:37). Rates were as high as 610 per 100,000 in NT, 83% of whom were Indigenous people (ibid:5). The actual number of women in prison has increased from 1,135 to 1,957. Over the same period, the number of male prisoners increased by 37% (from 18,771 to 25,658) and the total number of prisoners increased by 39% (from 19,906 to 27,615).
[6] ABS 2008:39. Nationally, the percentage of women prisoners has increased from 5.7% to 7.1% (ibid:42).
[7] ABS 2008:8. The percentage of prisoners who were unsentenced ranged from 19% in Victoria to 49% in the ACT (ibid:13).
[8] ABS 2008:39. Nationally, the percentage of prisoners who are on remand has risen from 14% in 1988 to 23% in 2008 (ibid:42).
[9] For example, in NSW, women are placed on remand at a rate of 30%, compared with 18% for men. (Armstrong et al 2005:8)
[10] DCS statistics cited in ADCQ 2006:90 & Kilroy 2004:7. In fact, in Queensland most women serve less than 12 months with 85% of women in Qld prisons sentenced to less than 2 years. In Vic, over 80% of women in prison are serving sentences of less than 12 months (SIS and Aboriginal Family Violence Prevention and Legal Service 2005:4).
[11] ABS 2008:3
[12] Kilroy 2000:3
[13] Goulding 2004:28.
[14] Cited in Cerveri et al 2005:12.
[15] QCS 2008c:23
[16] Armstrong et al 2005:8.
[17] For example in Queensland in 1999-2000, only 15 of the 50,761 convictions recorded against women were for *homicide etc* (DCS and OESR statistics, cited in Kilroy 2004:7). Similar statistics are available from NSW.
[18] Almost every woman convicted of a violent offence, knew her victim. Killing often occurred in the context of a long history of abuse by her partner, or self-defense during an argument or fight. It is rare for women to kill strangers. Men, by contrast, are less likely to kill people they know, but twice as likely to kill a stranger (DCS and OESR statistics cited in Kilroy 2004:7). Similar statistics are available from Vic.
[19] James cited in Cerveri et al 2005:12.
[20] Nationally, the ABS found that in 2003, 58% of total male prisoners and 49% of total female prisoners had been imprisoned previously (cited in Aboriginal and Torres Strait Islander Social Justice Commissioner 2004). Re-offending rates are very different for Indigenous and non-Indigenous women - various studies indicate as low as half the recidivism rate for non-Indigenous women. In Queensland in 2002-3, 61% of male prisoners had a history of prior imprisonment, compared with 54% of female prisoners (DCS statistics cited in Kilroy 2004:7).
[21] QCS 2008a:69. As at 30 June 2008, 366 women prisoners were classified. Of these, 238 (65%) were classified as high security prisoners and 128 (35%) as low security prisoners. (59 women were unclassified.)
[22] SIS 2004:16-20
[23] SIS 2004:16-20
[24] ADCQ 2006:57,59.
[25] ADCQ 2006:64-65
[26] ADCQ 2006:78, SIS 2004:22-23
[27] QCS 2008b
[28] ABS cited in Aboriginal and Torres Strait Islander Social Justice Commissioner 2004. Individual State figures are similar: (WA) Department of Justice, cited in Goulding 2004:14; ADCQ 2006:107; Kilroy 2004:8; Armstrong et al 2005:6-8.
[29] ABS 2008:6.
[30] ABS 2008:58-59. Total Indigenous adults comprise 2.6% of the Queensland adult population (ibid).
[31] QCS 2008a:69
[32] Of a total of 425 women in Queensland prisons on 30 June 2008, 115 (27%) were Indigenous women. Of a total of 425 women in Queensland prisons on 30 June 2008, 106 (25%) were on remand. Of the 106 women on

remand, 37 (35%) were Indigenous women. 37 (32%) of the 115 Indigenous women prisoners were on remand; 69 (22%) of the 310 non-Indigenous women prisoners were on remand.[32]

[33] QCS 2008c:24

[34] ADCQ 2006:108-110. For example, in the BWCC in 2003-2004, 26% of the women held in the CSU were Indigenous, at a time when they represented 19.2% of that prison's population. In TWCC, for two out of the three years from 2002 to 2004, the number of Indigenous women held in the CSU was 13% higher than the percentage of Indigenous prisoners in the total female prisoner population.

[35] ABS 2008:8. The median age of non-Indigenous male prisoners was 33 years, and of Indigenous male prisoners, 30 years.

[36] National Prison Census cited in ADCQ 2006:107

[37] ADCQ 2006:108,110. Indigenous women have far less access to community custody facilities. There are no community custody facilities for women in North Queensland (but there are a number of such facilities for Indigenous males). The absence of a community custody facility in North Queensland is considered a major barrier to the diversion of Indigenous female prisoners from secure custody. This is a '*prima facie'* instance of direct discrimination under the ADA on the basis of sex. (ibid:112).

[38] ADCQ 2006:108

[39] According to the ADCQ (2006:108) The *Aboriginal and Torres Strait Islander Women's Taskforce on Violence Report* commented on the *correlation between rapidly mounting incarceration rates and violence against Indigenous women living in isolated communities. Indigenous women from these communities make up a high proportion of the female prison population in Townsville, where they have been imprisoned for violent offences as a result of domestic violence.*

[40] ADCQ 2006:108-9. Kilroy 2003:1, cited a 2000 DCS needs analysis that stated 11% of women in prison are from NESB background, and argued that this figure increased to 14.2% in 2003 (based on Women's Policy Unit (2000) *Profile of Female Offenders*, Department of Corrective Services, Brisbane.)

[41] QCS 2008c:22

[42] ADCQ 2006:117. Indications are that CALD women are a significant minority in women's prisons throughout Australia. In Victoria, for example, as at June 2004, 13.2% of women prisoners were from a non-English speaking background (an increase of about 6% in 3 years). As at June 2001, 18% of women prisoners were born outside Australia. There are indications that these percentages have increased significantly since, with a particularly large population of women from a Vietnamese background – anecdotally accounting for at least 15% of women in DPFC. The Victorian Government acknowledges that Vietnamese women are *the fastest growing group* of women prisoners.

[43] Easteal, P. (1992) *The Forgotten Few: Overseas Born Women in Australian Prisons,* AGPS, Canberra cited in Kilroy 2003:1

[44] Easteal, P. (1992) *The Forgotten Few: Overseas Born Women in Australian Prisons,* AGPS, Canberra, cited in Kilroy 2003:1

[45] ADCQ 2006:117

[46] Kilroy 2003:2

[47] ADCQ 2006:117

[48] ADCQ 2006:118

[49] Kilroy 2003:4

[50] Kilroy 2003:5

[51] Kilroy 2003:2

[52] Kilroy 2003:2

[53] *Fact Sheet 79. The Character Requirement* , Department of Immigration and Citizenship 2007: http://www.immi.gov.au/media/fact-sheets/79character.htm

[54] Kilroy 2004:19

[55] B.A. Hocking cited in Anti-Discrimination Commission Queensland 2006:92, Kilroy 2004:12, Goulding 2004:32, Armstrong et al 2005:15-17, SIS and Aboriginal Family Violence Prevention and Legal Service 2005:5, Tye 2002 cited in Cerveri et al 2005:6.

[56] Butler & Allnutt, cited in Goulding 2004:32

[57] NSW Council on Intellectual Disability study cited in Cerveri et al 2005:39-40, ADCQ 2006:92,

[58] Cerveri et al 2005:38-41, Kilroy 2004:13.

[59] Australian Institute of Health and Welfare (200) **Australia's Health 2006**, AIHW Cat. No. AUS 73, AIHW, Canberra. Cited in ABS 2006.

[60] 2004 Productivity Commission report cited in Australian Medical Association 2006:3

[61] Goulding 2004:33

[62] ADCQ 2006:97, Cerveri et al 2005:40.

[63] See for example: Kilroy 2004:13, Cerveri et al 2006:38.
[64] See for example: Cerveri et al 2006:8, Palmer Inquiry cited in ADCQ 2006:96.
[65] Palmer 2005:129
[66] ADCQ 2006:62
[67] Hockings 2002:ii-iii
[68] Johnson 2004:17; Kilroy 2004:8. A SIS survey found that 50% of women in Queensland prisons had been in the care of the State as children themselves (Kilroy 2000:3).
[69] **Nationally**, see for example: Johnson 2004:16; Kilroy 2004:8,24,26; Goulding 2004:35; Victorian Prisoner Health Survey 2003, cited in Cerveri et al 2005:6,7. In **Queensland,** surveys of women prisoners have found:

- That of the 95% of women with a history of abuse - 98% had experienced physical abuse, 89% had been sexually abused, 19% were survivors of ritual abuse, 85% may have experienced childhood sexual abuse and many were survivors of multiple abuse. 37% of these women experienced abuse before the age of 5 (SIS study cited in Kilroy 2000:3).
- That 42.5% of women were abused prior to age 16, 1/3 of these experienced multiple abuse prior to age 10, and 37.7% reported physical or emotional abuse prior to age 16 (QCS study: Hockings et al 2002:52-55).
- At least 70% of women prisoners were survivors of incest (unpublished 1989 study by Women's House, Brisbane).

[70] Byrne & Howells 2000:25.
[71] Connor 1997 cited in Byrne & Howells 2000:4
[72] Pereira 2001:17-23.
[73] Cited in Kilroy 2004:27; 3 studies cited in Anti-Discrimination Commission Queensland 2006:98; B.A. Hockings et al cited in Anti-Discrimination Commission Queensland 2006:97; Goulding 2004:36; Victorian Prisoner Health Survey cited in Cerveri et al 2005:6
[74] Records obtained by Sisters Inside through the *Freedom of Information Act 1992* cited in Kilroy 2004:25. Strip searches of prisoners are justified on the basis of keeping prisons free of drugs and contraband. According to QCS, visitors pass illicit drugs and contraband to prisoners. However, this data reveals that strip searches do not play a significant role in uncovering contraband being smuggled into the prison.
[75] ADCQ 2006:105-6
[76] Department of Correctional Services (Qld) statistics cited in Kilroy 2004:7
[77] **For example,** the number of women incarcerated for drug related offences in NSW increased by 40% between 1994 and 2003 (Armstrong et al 2005:7).
[78] Kilroy 2000:4
[79] *2001 NSW Inmate Health Study* cited in Armstrong et al et al 2005:10; DCS and ABS statistics, cited in Kilroy 2004:8.
[80] Spence, Judy (Minister for Correctional Services), *Queensland Prisoners Developing Skills in Multi-Million Dollar Prison Industries*, Media Release of 23 August 2007.
[81] Cameron, M. (2001) *Women Prisoners and Correctional Programs*, Trends and Issues in Crime and Criminal Justice, No. 194, Australian Institute of Criminology p4, cited in Ombudsman for the NT 2008:72, 82.
[82] ADCQ 2006:82.
[83] ADCQ 2006:82.
[84] QCS future plans are that work camps will be the only form of low security imprisonment available in Queensland, as outlined in the recent (QCS 2008b). Prisoners at work camps are not allowed to undertake full time study. This means that women will continue to be required to choose between continuing their studies and increasing their income. Further, women must consider the impact of their choice on their access to parole - which is improved if they spend time in a low security prison. Their decision can impact significantly on their children, in both the short and long term.
[85] The General Manager of each QCS prison has the discretion to set the pay level for each full time student. Most women end up receiving far less than they would have had they been working. (QCS various: *Remuneration Rates* - http://www.dcs.qld.gov.au/Resources/Procedures/Offender_Management/index.shtml) In addition to loss of income, full time students are required to pay for computer hire (currently $4 per week) and any education loan repayment, from their pay. The situation is made more complex by the fact that most women spend the majority of their discretionary income on their children. This means that a decision to undertake full time study also penalises the children of women prisoners.
[86] QCS various: *Education of Offenders*
[87] Cited in SIS n/d:2.
[88] Separate statistics on the economic value of women prisoners' work are not available. The role of commercial activities in generating external revenue for the QCS has grown dramatically over the past 20 years - in 1989

the income generated from prison industries was $343,955; by 2008 it had risen to over $11.9 million. This is in addition to use of prisoner labour (involving larger numbers of prisoners) to offset internal prison costs eg. laundry, maintenance, food preparation, administration, cleaning (SIS nd:2; QCS 2008b:45).

[89] QCS 2008a:45; QCS various - *Remuneration Rates*.

[90] ADCQ 2006:119; Cerveri et al 2005:12; Kilroy 2000:3; A 1995 study cited in Equal Opportunity Commission Victoria 2006:22 The WA government reported a lower rate – 61%, possibly due to a different description …mothers of *young children* (WA) Attorney General, cited in Goulding 2004:14.

[91] Cerveri et al 2005:12

[92] Goulding 2004:29-30

[93] *2001 NSW Inmate Health Study* cited in Armstrong et al et al 2005:10; DCS and ABS statistics, cited in Kilroy 2004:8.

[94] Spence, Judy (Minister for Correctional Services), *Queensland Prisoners Developing Skills in Multi-Million Dollar Prison Industries*, Media Release of 23 August 2007.

[95] QCS 2008c:22

[96] An exception is Western Australia, where the Office of Chief Inspector is directly answerable to the WA Parliament (ADCQ 2006:128-129).

[97] DCS 2006

[98] McGuire 2000 cited in Goulding 2004:14

[99] Many other of potential discrimination were implied in the ADCQ Report, but not explicitly named as such.

[100] Alexander 2008:4

[101] Media Release entitled: *Prisoners and Victims Claims Bill doesn't do prisoners or victims justice*, 16 February 2005.

References - United Nations Human Rights Instruments (and their status)

Universal Declaration of Human Rights
http://www.un.org/en/documents/udhr/
Adopted by the United Nations General Assembly in 1948.

Basic Principles for the Treatment of Prisoners
http://www.unhchr.ch/html/menu3/b/h_comp35.htm
This declaration was adopted by a United Nations General Assembly resolution in 1990.

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
http://www2.ohchr.org/english/law/cat.htm
This convention came into *force* in June 1987, and was ratified by Australia in 1989.

Convention on the Elimination of All Forms of Discrimination Against Women
http://www2.ohchr.org/english/law/cedaw.htm
This convention came into *force* in 1981, and was ratified by Australia in 1983 (with reservations that remain current in relation to maternity leave).

Convention on the Rights of Persons with Disabilities
http://www2.ohchr.org/english/law/disabilities-convention.htm
In 2008, this convention came into *force* and was ratified by Australia.

Convention on the Rights of the Child
http://www2.ohchr.org/english/law/crc.htm
In 1990, this convention came into *force*. It was ratified by Australia in 1990 (with one reservation which remains current in relation to separation of children from adults in prison).

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
http://www2.ohchr.org/english/law/victims.htm
This declaration was adopted by a United Nations General Assembly resolution in 1985.

Declaration on the Elimination of Violence Against Women
http://www2.ohchr.org/english/law/eliminationvaw.htm
This declaration was proclaimed by the United Nations General Assembly in 1993.

International Covenant on Civil and Political Rights
http://www2.ohchr.org/english/law/ccpr.htm
Australia ratified this Covenant in 1980. In 1991, Australia ratified the *First Optional Protocol* to the Convention, which allows people to make individual complaints against governments which have signed the Convention.

International Covenant on Economic, Social and Cultural Rights
http://www2.ohchr.org/english/law/cescr.htm
The Covenant was ratified by Australia in 1975 and brought into force in 1976.

International Convention on the Elimination of All Forms of Racial Discrimination
http://www2.ohchr.org/english/law/cerd.htm
This convention came into *force* in 1969, and was ratified by Australia in 1975.

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

http://www2.ohchr.org/english/law/cat-one.htm

This protocol was adopted in 2002, came into *force* in 2006, and was signed by Australia on 19 May 2009.

Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

http://www2.ohchr.org/english/law/medicalethics.htm

Adopted by the United Nations General Assembly in 1982.

Standard Minimum Rules for the Treatment of Prisoners

http://www2.ohchr.org/english/law/treatmentprisoners.htm

These guidelines were adopted by a UN Congress in 1955, and approved by the Economic and Social Council in 1957 and 1977.

Standard Minimum Rules for the Administration of Juvenile Justice (*The Beijing Rules)*

http://www.unhchr.ch/html/menu3/b/h_comp48.htm

Adopted by the United Nations General Assembly in 1985.

United Nations Declaration on the Rights of Indigenous Peoples

http://iwgia.synkron.com/graphics/Synkron-Library/Documents/InternationalProcesses/DraftDeclaration/07-09-13ResolutiontextDeclaration.pdf

This Declaration was adopted by the United Nations in September 2007. Australia was one of only 4 countries which voted against the Declaration. On 26 March 2009 the Australian Government said it would endorse this Declaration.

United Nations Standard Minimum Rules for Non-custodial Measures (*The Tokyo Rules*)

http://www.unhchr.ch/html/menu3/b/h_comp46.htm

Adopted by a United Nations General Assembly resolution in 1990.

References - Australian Policies & Guidelines

Revised Standard Guidelines for Corrections in Australia (Revised Edition 2004), jointly published by all State & Territory Governments.

http://www.nt.gov.au/justice/corrservices/documents/corrservs/Standard_Guidelines_2004.pdf

These guidelines are not legally binding.

Queensland Corrective Services (2008c) **Improving Outcomes for Women Offenders: Women Offenders Policy and Action Plan 2008-2112**, Queensland Government, Brisbane.

http://www.correctiveservices.qld.gov.au/Publications/Corporate_Publications/Strategic_Documents/women_offenders_action_plan_2008_2012.pdf

Queensland Corrective Services (ongoing) **Policies** and **Procedures**

http://www.correctiveservices.qld.gov.au/Resources/index.shtml

These resources are the most current available source of QCS policies and procedures available to the public.

References - Other

Aboriginal and Torres Strait Islander Social Justice Commissioner (2004) *Walking with the Women: Addressing the Needs of Indigenous Women Exiting Prison*, in **Social Justice Report 2004**, Human Rights & Equal Opportunity Commission, Canberra.
http://www.hreoc.gov.au/social_justice/sjreport04

Alexander, Matilda (2008) **Protection Needed for Human Rights, Not the State**, Prisoners' Legal Service, Brisbane.

Anti-Discrimination Commission Queensland (2006) **Women in Prison: A Report by the Anti-Discrimination Commission Queensland**, ADCQ, Brisbane.
http://www.adcq.qld.gov.au/pubs/WIP_report.pdf

Armstrong, Kat, Chartrand, Vicki & Baldry, Dr Eileen (2005) **Submission to the Anti Discrimination Commissioner for an Inquiry into the Discrimination Experienced by Women Within the Criminal Justice System in New South Wales**, Beyond Bars Alliance, NSW. http://www.sistersinside.com.au/media/NSWADCreport.pdf

Australian Bureau of Statistics (2008) **Prisoners in Australia**, author, Canberra
http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/F618C51B775B2CF7CA25751B0014A2D5/$File/45170_2008.pdf

Australian Bureau of Statistics (2006) **Mental Health in Australia: A Snapshot 2004-5**, ABS, Canberra. http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/4824.0.55.001

Australian Medical Association (2006) ***Undue Punishment?*** **Aboriginal and Torres Strait Islanders in Prison: An Unacceptable Reality** (AMA Report Card Series 2006, Aboriginal and Torres Strait Islander Health). http://www.ama.com.au/web.nsf/doc/WEEN-6pu8qn

Australian Medical Association (1998) ***Health of Prisoners and Detainees - 1998*** (AMA Position Statement). http://www.ama.com.au/web.nsf/doc/SHED-5G4V6U

Byrne, M. & Howells, K. (2000) *Key Issues in the Provision of Correctional Services of Women*, Paper presented at the Women in Corrections: Staff and Clients Conference, Australian Institute of Criminology and Department for Correctional Services, SA, Adelaide, 31 October - 1 November, 2000. http://www.aic.gov.au/conferences/womencorrections/byrnhowe.pdf

Cerveri, Pia; Colvin, Kate; Dias, Marika; George, Amanda; Hanna, Jiselle; Jubb, Greta; Vidyasagar, Arati; and Weigall, Claire (2005), **Request for a Systemic Review of Discrimination Against Women in Victorian Prisons,** The Federation of Community Legal Centres, and The Victorian Council of Social Service, Melbourne.
http://www.sistersinside.com.au/media/VICComplaint.pdf)

Commission for Children and Young People and Child Guardian (2007) **Snapshot 2007: Children and Young People in Queensland**, author, Brisbane. www.ccypcg.qld.gov.au

Crime and Misconduct Commission Queensland (2004) **Listening In: Results from a CMC Audit of Police Interview Tapes**, Crime and Misconduct Commission, Brisbane.
http://www.cmc.qld.gov.au/data/portal/00000005/content/43510001124751313841.pdf

Equal Opportunity Commission Victoria (2006) **Women Prisoners in Victoria**, EOCV, Melbourne. http://www.humanrightscommission.vic.gov.au/publications/reports%20and%20discussion%20papers/ downloads/EOCV_report_final%20060830.pdf

Flat Out Inc & VACRO (2006) **Children: Unintended Victims of Legal Process – A Review of Policies and Legislation Affecting Children with Incarcerated Parents**, Discussion Paper, Flat Out Inc and the Victorian Association for the Care and Resettlement of Offenders (VACRO), Melbourne.

Goulding, Dot (2004) **Severed Connections: An Exploration of the Impact of Imprisonment on Women's Familial and Social Connectedness**, Murdoch University, Perth. http://www.cscr.murdoch.edu.au/impact_of_prison.pdf

Hockings, B.A., Young, M., Falconer, A. & O'Rourke, P.K. (2002) **Queensland Women Prisoners Health Survey**, Department of Corrective Services, Brisbane. http://www.correctiveservices.qld.gov.au/Publications/Corporate_Publications/Strategic_Documents/health_survey.pdf

"J" Block (2006) *Women Behind Bars: Passage to a Brighter Future*, unpublished document written by women in J Block, Darwin Correctional Centre, and presented at a meeting with the NT Office of Women's Policy on 22 September 2006.

Johnson, Holly (2004) **Drugs and Crime: A Study of Female Incarcerated Offenders**, Research & Public Policy Series, No. 63, Australian Institute of Criminology, Canberra. http://www.aic.gov.au/publications/rpp/63/

Kilroy, Debbie (2004) **Submission of Sisters Inside to the Anti-Discrimination Commissioner for the Inquiry into the Discrimination on the Basis of Sex, Race and Disability Experienced by Women Prisoners in Queensland**, Sisters Inside, Brisbane. http://www.sistersinside.com.au/media/adcqsubmission.pdf

Kilroy, Debbie (2003) **The Silenced Few: NESB Women in Prison**, Sisters Inside, Brisbane. http://www.sistersinside.com.au/media/TheSilencedFewNESBwome%20inprison.doc

Kilroy, Debbie (2000) *When will you see the real us? Women in prison*, presented at the Women in Corrections: Staff and Clients Conference, Australian Institute of Criminology and Department for Correctional Services, SA, Adelaide, 31 October - 1 November, 2000. http://www.aic.gov.au/conferences/womencorrections/kilroy.pdf

Legislative Council (2001) **Select Committee on the Increase in Prison Population: Final Report**, Parliamentary Paper Number 924, Parliament of NSW. http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/a2dc299193d1072eca256cf4002183ec/$FILE/Final%20Report%20-%20Prisons.pdf

Lucashenko, Melissa & Kilroy, Debbie (2005) **A Black Woman and a Prison Cell: Working with Murri Women in Queensland Prisons**, Sisters Inside, Brisbane. http://www.sistersinside.com.au/media/ablackwomenreport.pdf

Ombudsman for the Northern Territory (2008) **Women in Prison Northern Territory: Report of the Investigation into Complaints from Women Prisoners at Darwin Correctional Centre,** Ombudsman for the Northern Territory, Darwin. http://www.sistersinside.com.au/media/NTWomen%20In%20Prison%20PDF.pdf

Palmer, Mick (2005) **Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau: Report**, Commonwealth of Australia, Canberra. http://www.immi.gov.au/media/publications/pdf/palmer-report.pdf

Pate, Kim & Kilroy Debbie (2005) *Developing International Norms and Standards to Meet the Needs of Criminalized and Imprisoned Women*, Statement issued to the delegates at the 11th United Nations Congress on Criminal Justice and Crime Prevention, Bangkok, 18-25 April 2005. http://www.sistersinside.com.au/media/unreport.pdf

Pereira, C. (2001) *Strip Searching as Sexual Assault*, **Women in Prison Journal**, Volume 2, October 2001. (http://findarticles.com/p/articles/mi_hb6655/is_2_27/ai_n28885411/?tag=content;col1)

Queensland Corrective Services (2008a) **Queensland Corrective Services Annual Report 2007-08**, Queensland Government, Brisbane. http://www.dcs.qld.gov.au/Publications/Corporate_Publications/Annual_Reports/annual07-08/documents/CS_AR_07_08_AR_with_Financials_with_covers.pdf

Queensland Corrective Services (2008b) **Reform in Low Security Custody in Queensland - A Green Paper**, Queensland Government. http://www.correctiveservices.qld.gov.au/About_Us/The_Department/key_initiatives/low_security_reform/greenpaper.pdf

Queensland Corrective Services (various) **Department of Corrective Services Procedures: Offender Management**, Queensland Government, Brisbane. http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/index.shtml

Quixley, Suzi (2008) **Rethinking Youth Remand and Enhancing Community Safety: A Discussion Paper**, Coalition Against Inappropriate Remand (CAIR), Brisbane. http://www.yanq.org.au/content/view/1065/59/

Select Committee on the Increase in Prisoner Population (2000) **Interim Report: Issues Relating to Women**, Parliament of NSW. http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/e0f03efd3f66d460ca256cf4002183ed/$FILE/Committee%20Report%2019%20July%202000%20-%20Inquiry%20into%20Increase%20in%20Prisoner%20Population.pdf

(The) Senate Select Committee on Mental Health (2006) **A National Approach to Mental Health – From Crisis to Community, First Report March 2006**, Commonwealth of Australia, Canberra. http://www.aph.gov.au/Senate/committee/mentalhealth_ctte/report/report.pdf

Sisters Inside and Aboriginal Family Violence Prevention and Legal Service (2005) **Building on Women's Strength: Developing Community-based Service Models for Women in Prison and Released from Prison in Victoria** (Discussion Paper), Sisters Inside, Brisbane. http://www.sistersinside.com.au/media/BOWSReichstein.pdf

Sisters Inside (2006) **Understanding the Queensland *Women in Prison* Report: A Detailed Analysis**, Sisters Inside, Brisbane. http://www.sistersinside.com.au/media/Understanding%20WomeninPrison.pdf

Sisters Inside (2008) **Submission to the UN Human Rights Council: Prisoners' Right to Education**, author, Brisbane. http://www.sistersinside.com.au/media/Submission%20to%20the%20UN%20Education%20Submission%20-%2030Dec08.pdf

Sisters Inside (nd) *Prison Labour as Discriminatory Practice*
(Download: http://www.sistersinside.com.au/media/prisonlabour.pdf)

(The) United Nations Office on Drugs and Crime (2008) **Handbook for Prison Managers and Policymakers on Women and Imprisonment**, Criminal Justice Handbook Series, United Nations, New York. http://www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf

Woodward, Rosemary (2003) **Families of Prisoners: Literature Review on Issues and Difficulties**, Occasional Paper No. 10, Australian Government Department of Family & Community Services, Canberra. http://www.fahcsia.gov.au/about/publicationsarticles/research/occasional/documents/op10/OP_No_10.pdf

Youth Affairs Network of Queensland (2007) **Stop Locking Up Children in Queensland Adult Prisons**, YANQ, Brisbane. http://www.yanq.org.au/images/stories/Documents/campaign_kit_jan_07.pdf