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

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Tables of Contents **Page**

1.0 THE PURPOSE OF THIS SUBMISSION

On December 10th 2003, International Human Rights Day, Sisters Inside wrote to the Director General of the Department of Corrective Services (DCS) in Queensland to urge him to conduct a broad-based review and issue a special report regarding the treatment of women prisoners in Queensland.

This complaint was made on the grounds that the manner in which women prisoners are treated is discriminatory. It contravenes several of the prohibited grounds articulated in the *Anti Discrimination Act 1991* and in Federal anti-discrimination legislation and Human Rights Conventions. Sisters Inside received a response from the department stating that there was no discrimination within one month of sending the letter. Sisters Inside does not accept this response and believes it to be based on a false premise.

Sisters Inside is concerned about systemic discrimination on the basis of sex that is faced by women throughout the criminal justice and prison systems. We are concerned about discrimination on the basis of race faced by Aboriginal women and other women marginalised by race. In addition we are concerned about discrimination on the basis of impairment that is experienced by women prisoners with cognitive, mental and physical disabilities.

In addition to the material supplied to the Department of Corrective Services on 10th December 2003, we referred the Department of Corrective Services to a number of additional government documents. These documents chronicle the nature and extent of the discrimination on the basis of sex, race, and disability. Furthermore, strip searching and the use of the crisis support unit are experienced in a discriminatory manner by women prisoners in Queensland.

The purpose of this submission is to request the Anti-Discrimination Commissioner to conduct an investigation under s.155(2)(b) of the Anti-Discrimination Act (ADA). Sisters Inside contends that there is systemic discrimination in the administration of women's prisons.[1] Women prisoners experience direct[2] and indirect[3] discrimination on the grounds of sex, race, religion and impairment.[4]

The key means of discrimination are

- The classifications system;
- The number of low security beds;
- Access to conditional and community release;
- Access to programs;
- Access to work;
- Strip searching.

[1] See s.101 ADA. The administration of state laws and programs is the area of activity in which the discrimination takes place.
[2] s.10 ADA
[3] s.11 ADA
[4] s.7 ADA

Security Classification

Section 12 of the *Corrective Services Act 2000* requires that every prisoner be assigned a security classification. The *Corrective Services Act 2000* provides that security classifications apply equally to both men and women prisoners. However, Sisters Inside disputes the application of the security classification system for women in two ways. Firstly, whether women should be assigned a security classification at all; and, secondly, whether the current instruments that measure risk are valid for women prisoners.

The Department of Corrective Services assesses security classification on the basis of "risk" using the Offenders Risk Needs Inventory (ORNI). Women prisoners are particularly disadvantaged by a security classification system which relies on needs which are equated with risk factors. The process converts "disadvantage" or "needs" into "risk". Women prisoners are penalised for their social disadvantage. A woman with a high level of social disadvantage will therefore attract a higher security classification. The risk assessment tools and classification schemes that are used for women, particularly Aboriginal women, culturally and linguistically diverse women and women with disabilities, impose a white, middle-class, male-based and male-normed approach on women prisoners.

The security classification system results in Aboriginal women being disproportionately classified as maximum security for several reasons relating to the historical reality of colonial oppression and the current social and economic realities of Aboriginal disadvantage. In the case of Aboriginal people "individual" risk categories are not individual but reflect the experience of the entire Aboriginal population. The ORNI is highly discriminatory against Aboriginal women.

Women prisoners labelled with a mental disability are more likely to be classified as maximum-security prisoners. Conditions of isolation and lack of appropriate service underscores the harsh and discriminatory results of placing women with severe mental disabilities in maximum security.

Women prisoners who have a mental disability, who are in need of support due to self harming are confined in exactly the same way as women who are perceived as problems for prison discipline. Prison staff are not adequately trained and resources are not available to ensure proper treatment is available to women with mental health disabilities.

Number of Low Security Beds

A prisoner's security classification determines the type of prison in which the prisoner is incarcerated. The conditions of confinement of women prisoners are virtually the same regardless of their security classification as the majority of women are imprisoned in maximum-security prisons because there are too few low and open facilities. Sisters Inside asserts that the lack of low security facilities available for women prisoners constitutes sex discrimination.

Conditional and community release

Relative to men, women pose a lower risk to the safety of the community upon release. However, women are provided with far fewer opportunities for release into low security prisons, parole, and work release and/or home detention.

In addition, Aboriginal women are granted conditional or community release at a slower rate, if at all.

Because of the tendency to give women with mental disabilities higher security classifications they are less likely to obtain conditional or community release. Furthermore, because women with mental disabilities require more support on release and support facilities are extremely limited they are less likely to obtain these types of release.

Access to programs

Women prisoners do not have adequate recreation or adequate programs, including educational and skill based. Ironically, women have been penalised for the fact that they constitute a small percentage of the State's prison population. The small numbers of women prisoners has been a justification for the failure to focus on the particular requirements of women prisoners. Correctional policies and practices applied to women are an adaptation of those considered appropriate for men - women are the correctional afterthought. It is clear that the programs provided to women prisoners are not comparable in quantity, quality, or variety to those provided to male prisoners.

Aboriginal women identified the need for Aboriginal run courses and programs that would prepare them for release as well as supporting them to cope with the day to day stress, boredom and loneliness of prison life.

Culturally and linguistically diverse (CALD) women found that, in general, contact with prison program staff was not easy. Prison management attempt to overcome language problems through the use of other women prisoners as interpreters is an inadequate strategy to deal with language barriers.

Access to Work Opportunities

In the Queensland prison system benefits are given to prisoners who do prison labour and sanctions are imposed on prisoners who do not. There are insufficient work opportunities for women in prison and women are given access to fewer of the benefits accruing from prison labour than men.

Strip Searching

Mandatory strip searching is experienced in a discriminatory manner by women prisoners. Women prisoners, as a group, have a higher incidence of previous history of sexual assault than the general community and they often experience strip searching as a new assault. There is no evidence that mandatory strip searching actually carries out its stated purpose, the prevention of contraband. Any strip search is an unjustified assault on women prisoners by the state.

Women prisoners, as a group, are systematically discriminated against by the state. Culturally and linguistically diverse women and women with disabilities are further discriminated against. Women prisoners are a particularly disadvantaged group. Women prisoners do not often come forward to raise complaints because they fear

retribution. Women prisoners see discrimination as inevitable and something to be coped with and minimised.

Historically, prisons and what went on in prisons, were completely shielded from public scrutiny. For women prisoners, the ADCQ might be seen as simply another government body seeking information that will ultimately be turned against women prisoners in some pernicious way. Past inquiries, reviews and reports have repeatedly and consistently documented the abuses and mistreatment to which women prisoners have been and are subjected.

Sisters Inside urges the ADCQ to immediately constitute an inquiry into the conditions of women prisoners in Queensland, in order to remedy the discrimination, systemic discrimination and identified human rights violations that women prisoners face.

2.0 WHO ARE THE WOMEN IN OUR PRISONS?

2.1 Statistical Snapshots

In Queensland, there are currently five prisons for women located across the State. They are: Brisbane Women's Correctional Centre (BWCC); Numinbah Women's Correctional Centre (NWCC); Townsville Women's Correctional Centre (TWCC); Helana Jones Community Corrections Centre (HJCCC); and Warwick WCC Program. All women prisoners are incarcerated in those prisons. For the purpose of this submission Sisters Inside calls all five prisons, prisons. We do not differentiate between custodial and community corrections as the issues are relevant to all five prisons.

Women are approximately 6.5% of the Queensland prison population. The numbers of female prisoners has increased by 13% over the last 5 years to 325 in 2003, while the male prison population has remained unchanged[5]. The number of women on community supervision orders has decreased by 39% in the last 5 years, from 4,055 to 2,492, with a similar decline in men on community supervision orders.[6] Community supervision orders include probation, intensive corrections orders, intensive drug rehabilitation (alternatives to imprisonment) and parole, home detention, conditional release (post-imprisonment alternatives).

Approximately 85% women have been sentenced to less than two years imprisonment. Most men are serving sentences of less than four years. While 61% of male prisoners had served previous prison sentences, 54% of the female prison population had a prior history of imprisonment. Drug offences accounted for 17% of women in prison but only 7% of men. While 57% of men were convicted of violent offences, only 38% of women were.[7]

According to the Office of Economic and Statistical Research,[8] of the 50,761 female offenders convicted in Queensland courts in 1999-2000, only 15 were convicted of "homicide etc".[9] Of the small proportion of women that have committed offences resulting in death, it is important to understand the minimal risk they pose to society. In many cases, the offences are defensive in the sense that they were a reaction against an abusive partner. In addition, the context of those offences involving violence must be highlighted. Research has found that almost all of the victims who were killed by women prisoners in Queensland were known to the women; the victim was either a husband, de facto partner, relative or friend. Killing often occurred in the context of long histories of abuse by partners, or self-defence during arguments or fights. Only a very small percentage were strangers. In contrast, men are less likely to kill immediate family or friends, but twice as likely to kill someone during the commission of another criminal act.[10]

Upon their release from imprisonment, women are less likely than men to be convicted of a subsequent offence, even less so a crime of violence. This

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[5] *Department of Corrective Services Annual Report 2002-2003* Table 1 p.85
[6] *ibid* Table 9 p.89
[7] *ibid* p.3
[8] Table 2.5.1 at www.oesr.qld.gov.au/data/tables/cjsq2000/table_2_5_1.htm
[9] "etc" is not explained, but would include at least manslaughter
[10] CAEFS Human Rights Submission 2003.

suggests that the risk of women offending violently against the community is low. On the whole, such women pose the least threat on release.

The rate of imprisonment for indigenous Queenslanders is 14 times higher than for non-indigenous people in Queensland.[11] At 30 June 2003, indigenous women were 25.3% of the female prison population while indigenous men were 23% of the male prison population.[12] In 2004 Indigenous women were 30% of the population of women in prison an increase of 4.7%.

2.2 Women Prisoners' Social Context

Women prisoners are likely to be poor, undereducated and lacking vocational skills that would enable them to earn enough income to be self-sufficient. Prior to their involvement with the criminal justice system 50.5% were unemployed compared to 7.8% unemployment for Queensland women overall. Only 20.3% were employed before incarceration this is an extremely low level of employment compared with the general population of Queensland women where 57.1% are employed. Of those women prisoners who were employed, 59.9% were employed in semi skilled or unskilled occupations.[13]

Prior to women being criminalised by the 'justice' system, many women prisoners have experienced multiple disadvantages. Most women in prison have faced an overlapping series of difficulties in their lives such as a disruptive upbringing that tends to lead to dropping out of school and the failure to develop job skills, coupled with substance abuse and violence and mistreatment from many sources.[14] There is an interrelationship between background factors in the lives of many of the women. Having a history of alcohol or drug abuse is usually related to both a disruptive early family life and a history of physical and sexual abuse. Over 50% of women in prison had been placed "in care" as children and approximately one quarter had been imprisoned in a juvenile detention centre. Prior to incarceration, 98% of women prisoners had experienced physical abuse and 89% had experienced sexual abuse.[15]

Women prisoners often present with inter-related problems that need to be addressed (simultaneously and comprehensively) in order to effectively enable them to move forward. Common issues are dependency, low self-esteem, poor educational and vocational achievement, and parental separation at an early age, foster care, living on the streets, prostitution, violent relationships, suicide attempts, self-injury and substance abuse.

Many of the women have alcohol or drug addictions, which may have been the cause of their offending in some way. Drug and alcohol abuse are more likely in women who have experienced child sexual and physical abuse, domestic violence and prostitution.

The overall health status of women in prison is of great concern. Hepatitis C infection is at a rate of 45% and the reported history of women prisoners injecting drugs is

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[11] *ibid* p.1
[12] *Department of Corrective Services Annual Report 2002-2003* Table 2 p.86
[13] Australian Bureau of Statistics, 2002b. (ABS Stats for general employment levels or prison employment levels)
[14] Kilroy, D., "When Will You See the Real Us? Women in Prison," *Women in Prison Journal* ,October 2001
[15] Kilroy, D., "When Will You See the Real Us? Women in Prison," *Women in Prison Journal* ,October 2001

92.3%. Indeed even the Department of Corrective Services itself admits: "Women prisoners are characterised by lower levels of general and functional health, especially for issues related to mental health."[16]

85% of women prisoners are mothers and the majority of them had primary responsibility for raising at least some of their children prior to incarceration. Separation from their children and the inability to deal with problems concerning them are major anxieties for women in prison. Particularly given that one of the main features of imprisonment is the stigmatisation and separation of prisoners from the rest of the community. This strongly affects the relationship between mothers and children.

Self-injury is a common response by women to the stress of imprisonment. The majority of women who self-injure identified situations producing feelings of helplessness, powerlessness, or isolation, as being those that make them want to self-injure. This is exactly the situation that women in prison are faced with. This is tacitly acknowledged by the prison which has considerable rules and regulations in place to prevent self injury. However, the prison also has significant policies which trigger feelings of powerlessness (see for example strip searching in section four).

The use of violence by prisoners against themselves or against others is often interpreted as an expression of violent pathology of the individual prisoner and results in punishment. However, that approach ignores the role of the prison regime in generating violence. Fights in prison are often caused by factors such as boredom, provocation, unreasonable or unfair treatment by staff, denial of rights, favouritism, constant security checks. Furthermore, severe methods of punishment, lack of incentives to good behaviour, variation in the quality of staff and inmate relations, a perceived lack of autonomy, and staff age and experience also effected the level of violence in a prison. These organisational and institutional characteristics have greater effects on the level of violence than individual characteristics.[17]

The social context of women prisoners is integral to understanding their offending and the correctional policies and practices, which might address their disadvantage. The criminalisation of women is strongly linked to other socio-economic disadvantages suffered acutely by women. If men are poor women are poorer, if men are marginalised women are more marginalised, if men are subjected to violence women are subjected to more violence.

The criminality of women often stems from their position as victims of criminal activity. This is not to say that women are completely lacking in agency or the ability to act on their own behalf. However, it is essential that this information is utilised when women are "punished" for their offences against society. These matters must be considered when attempting to rehabilitate women because if they are not dealt with then the problems will remain unsolved and the circumstances that led to offending will be repeated. [18]

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[16] Hocking B.A., Young M., Falconer, T., and O'Rourke P.K. (2002) *Queensland Women's Prisoners Health Survey*, Department of Corrective Services: Queensland.
[17] Margaret Shaw, "*Managing Risk and Minimizing Violence,"* Presentation to Phase 2 of the Commission of Inquiry Into Certain Events at the Prison for Women", 1995, p. 12-3.
[18] Margaret Shaw et al. "Paying the Price: Federally Sentenced Women in Context," p. 19

2.3 Indigenous Women's Social Context

When issues of racism affecting the general community are mentioned often the over-representation of indigenous people in the prison system is cited as a marker of the levels of discrimination against indigenous people. Their rate of imprisonment is 14 times higher than for non-indigenous people. Aboriginal women in particular are significantly over-represented in the criminal justice system, both as victims and prisoners, often as both.

Aboriginal women and their children suffer tremendously as victims in contemporary Australian society. They are victims of racism, of sexism and of unconscionable levels of violence. The justice system has done little to protect them from this violence. Furthermore, Aboriginal women have higher rate of over representation in the prison system than do Aboriginal men. Approximately 30% of the women's prison population consists of Aboriginal women. The total Aboriginal population in Queensland is 3%.[19]

Why, in a society where justice is supposed to be blind, are the people incarcerated in our prisons selected so overwhelmingly from a single group? Recent inquiries into the reasons for over-representation have concluded that while the issue is complex, two factors may be identified as the most significant; the criminal justice system is discriminatory in its treatment of Aboriginal people and Aboriginal people commit disproportionately more offences because of their marginalised status in society.

The causes of Aboriginal criminal behaviour are rooted in a long history of discrimination and social inequality that has impoverished Aboriginal people and consigned them to the margins of our society. The marginalisation of Aboriginal people stems from their historical exclusion from full participation in the dominant society and, more importantly, the interference with and suppression of their culture. Economic and social deprivation is a significant contributor to the high incidence of Aboriginal crime and over-representation in the criminal justice system. Sisters Inside believes that a further level of understanding is required beyond acknowledgment of the role played by poverty and debilitating social conditions in the creation and perpetuation of Aboriginal crime. It is clear that over-representation is linked directly to the particular and distinctive historical and political processes that have made Aboriginal people "poor beyond poverty"[20] .

The social context in which their crimes are committed is integral to understanding Aboriginal women who are criminalised. Many Aboriginal women have experienced disruption of their families and communities through the operation of racist government policies over generations. Individual Aboriginal women have experienced much disruption in their lives, both within the community and within prison. They face racism directly as individuals and as a community. Many Aboriginal women have been raised by non-Indigenous families due to care and protection orders and removal policies implemented by the Queensland Government over the last 100 years.

[19] Australian Bureau of Statistics
[20] *Social Justice Report* 2002

Increasingly, societal norms, administrative policies and laws are in conflict with the lives of Aboriginal women and their attempts to survive are resulting in their enmeshment in the criminal justice system. Aboriginal women prisoners have significantly different personal and social histories from non-Aboriginal women in a number of ways. The social and economic marginalisation of Aboriginal people is even more acute in the lives of Aboriginal women.

The relationship of Aboriginal marginalisation to the criminal justice system has been well documented. As a group, Aboriginal women enter prison at a younger age than non-Aboriginal women. They generally have lower levels of education and employment. Alcohol, drug abuse and violence are a greater problem for them and reportedly play a greater role in their offending. They also suffer from a greater incidence of past physical and sexual abuse.

As prisoners, Aboriginal women suffer the compounded disadvantages of being both women and Aboriginal prisoners in a discriminatory correctional system. The problem is similar in Canada where:

> Imprisoned native women are triply disadvantaged: they suffer the pains of incarceration common to all prisoners; in addition, they experience both the pains native prisoners feel as a result of their cultural dislocation, and those which women prisoners experience as a result of being incarcerated far from home and family.[21]

Further, the Aboriginal & Torres Strait Islander Social Justice Commissioner states that:

> The discrimination faced by Indigenous women is more than a combination of race, gender and class. It includes dispossession, cultural oppression, disrespect of spiritual beliefs, economic disempowerment, but from traditional economies, not just post – colonisation economics and more.[22]

The report goes onto identify that non-discrimination involves more than allowing Aboriginal people access to the type of aspirational principals that are standard in the dominant culture. Non-discrimination requires vigilance to ensure that legitimate cultural differences are respected. Differences caused by the long history of invasion and oppression suffered by Aboriginal people must also be respected.[23]

[21] Daubney Commission. *Taking Responsibility*, 1988, quoted in *Creating Choices*, p. 38
[22] *Social Justice Report* 2002 pp13.
[23] *Social Justice Report* 2002

2.4 Women with Disabilities

Sisters Inside uses the term "mental disability" to refer to intellectual disabilities, psychiatric disabilities and learning disabilities. Due to the difficulty in providing an accurate statistical profile of women prisoners with mental disabilities in the prison system, we offer a narrative description of some of the factors that are known about women prisoners with disabilities.

The institutional warehousing of persons with disabilities is no longer an acceptable practice. The recognition that people can and do benefit from community services has rendered the likelihood of institutionalisation more remote. In addition, for those with mental disabilities, institutions have been replaced by antipsychotic drugs, which are supposed to offer a more humane alternative to long-term hospitalisation. As a result, the provision of community-based services is now recognized as the preferred approach.

Although community integration is promoted as a highly valued principle, relentless cuts to social and health programs over the last two decades have eviscerated any real hope for progress offered by this principle. Currently, the shortage of adequate community resources causes many persons, particularly those with mental disabilities, to fall through the cracks of the system. In too many cases, society responds to the attempts of such persons to survive by characterising their behaviour as criminal, labelling them as criminal 'offenders', and institutionalising them in the criminal justice system. Social and economic challenges such as homelessness, unemployment, social isolation, malnutrition and substance abuse further compound the plight of people with mental disabilities. As a result prisons are increasingly becoming the default placement for people with mental disabilities.

Historically, women have been over-represented in psychiatric facilities and under-represented in the prison system. However, with the closure of psychiatric institutions and increasingly overtaxed and under-resourced community based services, Queensland is now witnessing a marked increase in the number of women with cognitive and mental disabilities who are being criminalised. Studies on, or about, women in prison indicate that women prisoners have a significantly higher incidence of mental disability including schizophrenia, major depression, substance use disorders, psychosexual dysfunction, and antisocial personality disorder, than the general community. In addition, incarcerated women have a much higher incidence of a history of childhood sexual abuse and severe physical abuse than women in the general population.[24]

Although other women in prison are often far more accommodating than their male counterparts when it comes to differences of all sorts, prisoners with mental disabilities may still be shunned by their peers. They also often serve longer sentences and are labelled as having more disciplinary problems.

Generally, the prison system is ill equipped to provide the services and supports required by women with mental disabilities. According to the *Corrective Services Act 2000*, "community safety" is the paramount consideration. It is not surprising then that the

[24]Kilroy, D., "When Will You See the Real Us? Women in Prison," *Women in Prison Journal* ,October 2001 and Hocking B.A., Young M., Falconer, T., and O'Rourke P.K. (2002) *Queensland Women's Prisoners Health Survey*, Department of Corrective Services: Queensland

training of prison staff prioritises security and risk management over all other institutional and/or individual needs. As a result, prison staff may not have the training required to respond appropriately to prisoners with mental disabilities.

Some women with mental disabilities may have difficulty understanding prison rules if they are not fully explained. It is not uncommon for prison staff to respond to such a circumstance with some form of punishment or by placing the woman in physical restraints or administrative segregation – crisis support unit. Such responses may exacerbate rather than alleviate the woman's symptoms.

The trend to incarcerate persons with mental disabilities in prisons has caused advocates for the mentally disabled to say that the "clock is being turned back to the 19th century".[25] Indeed, the spectre of institutionalisation common in previous days may very well be reinventing itself in today's prisons.

Unfortunately, there is a general lack of data substantiating the numbers of women prisoners with mental disabilities. According to some sources 30 to 50% of women in prison have a learning disability, while others suggest that it is more like 15 to 20%. Department of Corrective Services state that 57.1% of women in Queensland prisons have been diagnosed with a specific mental illness.[26]

The dearth of reliable statistical information makes it difficult to say with any certainty what percentage of women prisoners are considered to have a mental disability. Department of Corrective Services estimates the rate of mental disability among women prisoners to be significantly higher than women in the general population. Sisters Inside accepts this assertion. However, we are also cautious about Department of Corrective Services assessment of the prevalence of mental disability. The Department of Corrective Services tends to cast a wide net when identifying women with mental disabilities by equating social disadvantage with having a mental disability. While social disadvantage combined with inappropriate incarceration may create mental health problems, Department of Corrective Services seems to use the label of mental disability as a means of removing women from the general prison population into a more controlled environment such as the crisis support unit for "treatment" if the prisoner is assessed as being at risk of harming herself or others.

Women prisoners in Queensland come from a wide range of backgrounds and experiences in terms of their age, social and economic position, culture and ethnicity, and sexual preferences. They include women who have spent much of their life on the street or in institutions, older first-time offenders, those with families and children, single women, and those with special physical and health needs. As a whole, the population is very diverse - more so than the much larger male prison population. Many women prisoners are identified as having high levels of need for programs and services, including mental health needs. The types of mental health problems are different for women than men. Many problems experienced by women prisoners can be linked

[25] Butterfield, R. *Prisons: The Nation's New Mental Institutions* in *CAPT Outreach Magazine*, February 2000.
[26] Hocking B.A., Young M., Falconer, T., and O'Rourke P.K. (2002) *Queensland Women's Prisoners Health Survey*, Department of Corrective Services: Queensland.

directly to past experiences of early and/or continued sexual abuse, physical abuse and assault. Overall, women outnumber men in all major psychiatric diagnoses.[27]

Mental disability can also affect women and men differently. Differences can be described as:

(1) Usually men turn their anger outward while women turn theirs inward;
(2) Women prisoners are three times as likely to experience moderate to severe depression (68.9%) compared to men prisoners; and
(3) Men tend to be more physically and sexually threatening and violent while women are more self-abusive and suicidal. Self-destructive behaviours, such as slashing, are not uncommon for women with mental disabilities.

[27] Hannah-Moffat, K., & Shaw, M. Taking Risks: Incorporating Gender and Culture into the Classification and Assessment of Federally Sentenced Women, 2001, Government of Canada: Status of Women Canada.

3.0 SYSTEMIC DISCRIMINATION – THE REGULATORY FRAMEWORK

3.1 The Statutory Framework

The *Corrective Services Act 2000* (CSA), the *Corrective Services Regulation 2001* and departmental policies and procedures govern the conditions of imprisonment and the release of women prisoners in Queensland.

The *Corrective Services Act 2000* provides that every member of society has certain basic human entitlements, and that, for this reason, an offender's entitlements, other than those that are necessarily diminished because of imprisonment or another court sentence, should be safeguarded. The *Corrective Services Act 2000* and *Regulations* both include restrictions on the rights and privileges of prisoners and provide them with certain entitlements and procedural protections.

The Act recognises the need to respect an offender's dignity; and the special needs of some offenders by taking into account an offender's age, gender, race, disability status and the culturally specific needs of Aboriginal and Torres Strait Islander offenders. Therefore, prisoners retain all the rights and privileges that are enjoyed by all members of society except for those which are necessarily removed as a consequence of the sentence of imprisonment.

Many of the policies, procedures and practices which operate in prisons are not contained in the Act or the Regulation but are promulgated by the Chief Executive of the Department of Corrective Services pursuant to section 189 of the *Corrective Services Act 2000.* For example, there is no provision in the Act that specifically mentions "management plans" but management plans are one way in which the women are controlled. Management plans are not applied to all women, only to those selected by the prison administration. The vast majority of women on management plans are Aboriginal. These plans do not require women to be placed in separate prison cells, but it is a practice regularly used by the prison authorities.

The legality of policy and the manner in which policy is implemented are assessed only against the requirements of the *Corrective Services Act 2000* and *Regulations.* Actions by the Department and the prison administration are not assessed against other legislation. However, as with all governmental actions, decisions taken by the Department of Corrective Services must comply with the *Anti Discrimination Act 1991*, which applies to all members of society and prohibits unlawful discrimination.

The *Corrective Services Act 2000* establishes a complete statutory framework, which regulates all aspects of the confinement and release of prisoners serving prison sentences. The overriding purpose expressed in section 3 of the *Corrective Services Act 2000* is community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders. The primacy of this concern reflects the traditional security based model for prison management. Because of the statutory mandate, *Corrective Services Act 2000* views virtually all decisions concerning imprisonment through a security prism. Unfortunately, the Department interprets this requirement to mean that security concerns prevail even over human rights, including equality rights.

For the Department, prisoners' human rights and rights under the Act can be ignored or restricted when there is a "security concern", no matter how important or fundamental the right and how tangential or speculative the security concern. From the perspective of the Department actions are not recognised as discriminatory or otherwise illegal where the purpose of the action is security.

3.2 The Classification System

Section 12 of the *Corrective Services Act 2000* requires that every prisoner be assigned a security classification of maximum security, high security, medium security, low security, or open security. Theoretically, a prisoner's security classification determines the type of prison in which the prisoner is incarcerated. Prisons are operated pursuant to rules that reflect the different degrees of supervision and control imposed on prisoners according to their security classification. Security classifications also underlie various other decisions such as the granting of Leaves of Absence, the prisoner's access to visitors and the treatment that they receive when they have health problems.

Maximum security prisoners can be housed only in maximum security prisons. They are usually in the secure section of the facility. High security prisoners are also only housed in maximum security prisons, though they may live in the residential area. Medium security prisoners are also housed in maximum security prisons; they do not have access to work release and they can receive Leaves of Absence only if they are escorted in handcuffs. Low and open security prisoners should be housed in low security prisons but because of the paucity of low security beds they are often housed in maximum security. Low and open prisoners should have access to work release and unescorted Leaves of Absence but only if they are housed in a low or open facility. If a low or open security prisoner is in a maximum security prison, then they still do not have access to the entitlements of a low security prisoner.

Sisters Inside disputes the application of the security classification system for women in two ways.

A. Whether women should be assigned a security classification at all; and,
B. whether the current instruments that measure risk are valid for women prisoners.

Regarding point A because there are not enough low security beds for women in Queensland women regularly serve their sentences in maximum security regardless of their security classification.

Regarding point B, women are usually classified at higher level than can be justified because the security classification system regulates social and economic factors as "risk" factors. In addition the security classification system regards mental health factors as "risk" factors. Furthermore, the security classification system is based on white, male, middle class norms that are not applicable to the social realties of the female prison population in Queensland.

3.2.1 The Classification System and Gender

The security classification of men serves a practical purpose because it is used to assign them to an appropriate prison by matching their security classification to the security level of the prison. The same practical application does not exist for women.

All women prisoners are imprisoned, initially, in one of the two maximum-security prisons, Brisbane Women's or Townsville Women's.[28] All prisoners are subject to the same static security although the degree of freedom within the prison varies somewhat depending upon where women live in the prison (ie. in protection – absolute isolation from all mainstream prisoners; the crisis support unit – absolute isolation; secure – single cells with caged areas; residential – open style units).

Women imprisoned are classified in all categories under the Act. The conditions of confinement are virtually the same for all women. Maximum, high, medium, low and open security women live together in the same housing units, attend programs and recreation together and have the same freedom of movement within the prison. Therefore, practically speaking, there is no appreciable difference between the five security levels and thus the need to classify women prisoners at all appears redundant.

The conditions of confinement of women prisoners classified, as maximum, medium, low and open security is virtually the same as the majority of women are imprisoned in maximum-security prisons at Brisbane Women's and Townsville Women's. It is often the case that women with lower security classifications are kept within maximum security conditions because of the unavailability of lower classification facilities. There are only a small number of low or open security classification cells available for women at Numinbah (24), Helena Jones (24) and Warwick WCC Program (12). A large majority of women prisoners serve their prison sentences within the maximum security prisons and have no access to gradual release back into the community.

By contrast there are many more low security prisons available for men. Sisters Inside asserts that the lack of low security facilities available for women prisoners constitutes sex discrimination.

Section 12 (3) of the *Corrective Services Act 2000* sets out the factors that must be considered in assigning a security classification to each prisoner. It focuses on the perceived risk posed by the prisoner in twelve areas: risk of the prisoner to the community; the nature of the offence; period of imprisonment; whether the prisoner has outstanding charges; prisoners' criminal history; prisoners' escape history; prisoners' demonstrated attitude towards sentence; likelihood of prisoners being deported or extradited and their attitude towards this; prisoners' previous conduct in a prison; prisoners' conduct on a community based order; prisoners' medical history; and the likely influence of the prisoners' family relationships.

While the statutory criteria for classification appear uncontentious on their face, the Department implements these criteria through a risk assessment tool, which directly and indirectly discriminates against women and indigenous prisoners. The Offenders Risk Needs Inventory (ORNI) is used by prison staff to "objectively" determine,

[28] There is actually no reason why some (or most) women should not go directly from court to a low/open facility. Most women do not present a security problem or a flight risk and hence should serve their entire sentences in low/open facilities rather than maximum security facilities. The reasons given by the Department for not doing this include: lack of transportation and lack of medical facilities. Lack of transportation is an easily remedied problem and the maximum security facilities do not have full time doctoring staff anyway and hence there is not difference between the two.

offenders' risk factors and offenders' needs. The assessment uses the areas of criminal history; education/employment; financial; family/ marital; accommodation; social interactions; health; and driving. According to Department policy, ORNI rating is a compilation of objective judgments derived from the identification of risks and needs (and the severity of risks and needs) within each of the twelve domains. Sisters Inside contends that ORNI is not objective. Rather it reveals biases that attach significance to deviations from middle class norms.

The ORNI requires the prisoner's static and non-static social history to be taken into account in determining security classifications. This process assesses the prisoners' background of disadvantage. It assesses factors such as "low educational level, poor employment history, a childhood that lacks family ties, physical problems and mental problems".[29] Because the ORNI is a technique used to assess "risk", these factors of social disadvantage are translated into "risks". A prisoner who presents with a history of social disadvantage is assessed as a greater risk. For example, if a prisoner 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. A prisoner who lives in a high crime area (affectively a socially and economically disadvantaged area) will have a risk identified in this area. A women with a psychiatric diagnosis will have a "risk" in that area. Factors recorded as "risks" attract "points". A woman with a "high score" will therefore attract a higher security classification.

Women prisoners, especially indigenous women, are particularly disadvantaged by a security classification system, which relies on needs which are equated with risk factors. The process of converting "disadvantage" or "needs" into "risk" is absurd given that the Department has itself characterised women prisoners as being composed of a particularly disadvantaged ("high needs") population.[30]

Women prisoners are penalised for their social disadvantage. Part of that penalisation includes being denied access to early conditional release. This approach not only pathologises women in too many instances, but it also further victimises them both within the prison and as a result of the impact of their treatment upon their community integration potential when released.

The identification of women's social history as a factor in the risk assessment process juxtaposes needs and risk and is discriminatory. Women's experiences and cultural backgrounds are equated with security risk whilst imprisoned even though there is no demonstrated causal link between them. In the context of s.11 of the ADA, it is not reasonable to assess the risk of breaching prison security by social history and a greater proportion of male prisoners would be rate better on this criteria. A greater proportion of non-indigenous prisoners (male and female) would rate higher on this criteria.

Sisters Inside makes no objection to identifying needs of women prisoners – a truly rehabilitative model of imprisonment demands that. A socially inclusive and equality enhancing approach based on the building of capacity of prisoners, should be adopted instead of a focus on risk assessment, detection and punishment. A capacity building model would necessarily focus upon the identification of need areas by and for

[29] Risk Needs Inventory Assessment, Department of Corrective Services 2004
[30] Department of Corrective Services, *Profile of Female Offenders*, 2000.

women prisoners; an assessment of their preferred manner of addressing those needs; allocation of resources according to the needs assessed and a woman directed approach to locating and/or developing necessary resources for individual women upon their release. In some areas, this is referred to as capacity building. Others refer to this approach as developing a brokerage model of community development. Most recognise it as social development through community development.

3.2.2 The Classification System and Race

Aboriginal women are disproportionately classified as maximum-security prisoners. Despite the evidence of the way the prison environment impacts on Aboriginal women, and the cultural inappropriateness of correctional practices, the security classification system as applied to Aboriginal women results in their being disproportionately classified as maximum security. The majority of Aboriginal women in prison are kept in the maximum security prison.

Aboriginal women are disproportionately classified as maximum security for several reasons. The classification system relies on assessment instruments which are culturally inappropriate and which translate the marginalisation experienced by Aboriginal women in the community into risk.

These risk scales are all individualised instruments. This is a significant and central problem when it comes to applying these instruments to Aboriginal people (male or female). This individualising of risk absolutely fails to take into account the impact of colonial oppression on the lives of Aboriginal men and women. Equally, colonial oppression has not only had a devastating impact on individuals, but also concurrently on communities and nations.

The needs risk assessment used in Queensland Prisons is an adaptation of the Canadian needs risk assessment system. It identifies seven dimensions of need: "employment, marital/family, associates, substance abuse, community function, personal/emotion and attitude."[31] These present problems that are specific to Aboriginal people, for example, Aboriginal people often do not belong to functional communities because of the impact of colonisation and oppression on their communities. Aboriginal people cannot be positively assessed in the community function category because in order to be positively assessed in this category one needs to belong to a functional community and this is a significantly less likely outcome for Aboriginal people.

This categorisation does not measure "risk" as such. Rather it assesses that Aboriginal people already belong to a class that is oppressed. In the case of Aboriginal people this "individual" risk category is not individual but reflects the experience of the entire Aboriginal population. The categories of "marital/family", "associates" and "substance abuse" can be similarly said to reflect the experience of Aboriginal people as an oppressed group rather than the "risk" presented by an individual Aboriginal person. It is predetermined that Aboriginal people will score

[31]Patricia Monture-Angus, "Women and Risk: Aboriginal Women, Colonialism and Correctional Practice - Some Preliminary Comments." Workshop on Gender, Diversity and Classification in Federally Sentenced Women's Facilities, 1999.

more highly (poorly) on these individual risk assessments because of their membership of the group "Aboriginal people."[32]

The ORNI is highly discriminatory against women prisoners, particularly Aboriginal women. The ORNI used in Queensland has been adapted from the one used in Canada. The Canadian Human Rights Commission recently found that the needs risk assessment is discriminatory against women, particularly Aboriginal women prisoners, racialised women and women with disabilities.[33]

Some of the ORNI criteria induce a subjective assessment of the prisoner's needs in a manner that is difficult to describe as anything but discriminatory on the basis of race. For example the ORNI includes questions about Aboriginal people's "cultural beliefs" that are skewed so that most indigenous people cannot answer them positively. Answers to questions in ORNI can produce answers from prison staff such as: ethnicity is problematic or religion is problematic.

The greater incidence of previous incarcerations and violence in Aboriginal women's offences creates the setting for a higher security classification and risk assessment for Aboriginal women prisoners.[34] The social construction of Aboriginal women as more violent serves to engender an oppressive reaction by the prison system to Aboriginal women. To be a woman and to be seen as violent is to be especially marked in the eyes of the administration of the prisons and in the eyes of the prison staff. In a prison with a male population, women's crimes would stand out much less. Among women, they do not fit the stereotypes, the standard social roles for women, and they are automatically feared, and labelled as in need of special handling. The label violent begets a self-perpetuating, destructive cycle for Aboriginal women within prisons. In Brisbane Women's and Townsville Women's everything follows from this label. The prison regime serves to reinforce the violence that it is supposedly designed to manage. This is heightened by the tensions and misunderstandings between Aboriginal cultures and that of the criminal justice system and prison environments.

Another aspect of ORNI's indirectly discriminatory effect is in relation to linguistically diverse women. Women whose first language is other than English often have low levels of literacy in English, which automatically results in higher score for risk levels.

3.2.3 Impairment and the Classification System

Women prisoners labelled with a mental disability are more likely to be classified as maximum-security prisoners. The practical reality within prison is that mental health needs are equated with risk. The discriminatory treatment of women with mental and cognitive disabilities is built right into the legislation. Mental disability is a factor

[32] Patricia Monture-Angus, "Women and Risk: Aboriginal Women, Colonialism and Correctional Practice - Some Preliminary Comments." Workshop on Gender, Diversity and Classification in Federally Sentenced Women's Facilities, 1999.

[33] Canadian Human Rights Commission, Protecting Their Rights; Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women, December 2003.

[34] The larger number of violent offences by Aboriginal women is partially due to the likelihood of Aboriginal women being imprisoned for the "trifecta" (drunk and disorderly, abusive language and resiting arrest, a charge of resisting arrest is usually accompanied by a charge of assault – no matter how minor the assault in question might have been) and partially die to the fact that Aboriginal women often come from environments characterised by high levels of violence particularly spousal abuse.

that must be taken into account in determining security classification. Section 12 (3) (k) of the *Corrective Services Act 2000* provides that:

> When deciding a prisoner's classification, the chief executive must consider all relevant factors, including for example - (k) the prisoners medical history, including physiological or psychiatric history.[35]

A security classification scheme, which takes into account, disability, whether physical or mental, is *prima facie* discriminatory. It associates security concerns with disability, which relies on the social construction of persons with mental illness or disorder as dangerous. For all prisoners, including those with disabilities, it is their conduct that should be taken into account in determining the level of institutional supervision and control that should be provided within the legislation.

The inclusion of disability as a factor in classification is consistent with the legislative and institutional imperative to categorise, classify and label. However, it contravenes equality principles that prohibit the application of stereotypical assumptions based on membership of disadvantaged groups.

The identification by the Department of Corrective Services of women as having mental health needs serves to satisfy a prison management objective. Although there are some women who would be identified as having a mental health disability if they were in the community, the vast majority would not be perceived as requiring treatment nor would they be detained in a psychiatric hospital either voluntarily or involuntarily. Some women might possibly be considered candidates for out patient treatment or some form of supported living.

Furthermore, the ORNI system of allocating classification means that social disadvantage is often translated into a mental health need and these needs are translated into a perceived need for higher security classification by the system. By translating social disadvantage into mental health needs, the Department of Corrective Services pathologises a significant portion of women prisoners and subjects them to a greater degree of control based on the attribution of mental disability.

This is largely due to the reality that, in the community, there is a tolerance for a broader range of conduct because conduct is not required to conform to rigid institutional norms. In prison, conformity is mandatory from an institutional management perspective. Those who do not readily conform are not as easy to manage, so the institutional reflex is to render them more manageable by separating them from other prisoners. By pathologising women and then imposing upon them crisis support orders or treatment, the Department of Corrective Services justifies their removal from the general population to a more controlled environment.

While the prevalence of mental disability among women prisoners may be higher than in the non-prison population, this does not mean that assumptions should be made about them which operate to their disadvantage, or that they should be a target for "treatment" and "segregation" in a prison environment.

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[35] *Corrective Services Act 2000*

Women who are classified as maximum security prisoners and have a mental or cognitive disability are often described by correctional authorities as not being able to "manage" in the general population. However, Sisters Inside's information suggests that there is no significant statistical difference in the institutional adjustment of women with mental disabilities compared to women with no mental health disability. Sisters Inside is aware through over 10 years of experience working with women in prison that a comparison between prison breach charges, violent prison charges, and time spent in segregation by women labelled with a mental disability and those who were not so labelled concluded that there was no significant difference. If this is the case, women with mental health disabilities should not be subject to more institutional controls than others.

Conditions of isolation and lack of appropriate service underscore the harsh and discriminatory results of placing women with severe mental disabilities in maximum security. It further raises serious questions about its therapeutic/rehabilitation value for such women.

3.3 Access to Low Security Beds

The discriminatory classification system is compounded by women's relative lack of access to low security prisons. Men who are classified as minimum security prisoners have access to minimum security prisons spread throughout Queensland. Once a man is classified as minimum security, he is transferred as soon as a space becomes available to a minimum security prison. Minimum security prisoners in minimum security prisons have greater access to release into the community, experience fewer controls within the prisons, and have an increased likelihood of favourable consideration for home detention, work release and parole.

Consequently, one of the most egregious examples of the discriminatory treatment of women is that there is only one community correctional prison for women in Queensland (HJCC), with a capacity to house approximately 24 women with a further 12 beds available at the Warwick WORC. There is also a low security prison at (NWCC) with a capacity for 25 women.

Another effect of the lack of low security beds in Queensland is that women with disabilities are not able to access low security facilities. For example Helana Jones and Numinbah are not wheelchair accessible. This means that any woman confined to a wheelchair will be unable to transfer to a low security environment simply because her disability will not be accommodated`. This is a blatant case of discrimination against women with a disability.

The lack of spaces for women in low security facilities also further prejudices women with mental health and/or cognitive disabilities or other special needs, who may require more support through the gradual release process to meet the challenges of reintegrating into the community.

3.4 Conditional Release and Community Release

Conditional release affects women who have been sentenced to less than two years imprisonment. When a woman has served two thirds of her sentence she is entitled to apply for conditional release. Whether conditional release is granted is assessed by the internal administration of the prison. Women serving less than two years do not

have access to the Parole Board. Approximately 75% women are serving under one year and approximately 85% are serving under 2 years.

Post-prison community based release affects women serving more than two years. After a portion of the sentence is served the prisoner can apply for parole, Leaves of Absence and work release. The parole board assesses whether these can be granted.

Relative to men, women pose a lower risk to the safety of the community upon release. However, women are provided with far fewer opportunities for release into low security prisons, parole, and work release and/or home detention.

There is only one women's community corrections facility in Queensland. Overall, there are far too few spaces in low security prisons across the State for the number of women in prison. The result is that many women stay in maximum-security prisons until their full time date for release. Release to a community corrections prison that is the norm for the majority of imprisoned men, is not generally available for the majority of women.

Furthermore, a major obstacle to releasing women into the community in a more timely way is the lack of accommodation options for women when they are released. Women have a harder time convincing authorities that they are suitable for home detention and parole because they often have no stable home to go to that is not precluded by the conditions of parole or home detention.

Aboriginal women are also granted conditional or community release at a slower rate, if at all. In part, this is owing to the higher security levels imposed on them, as Department of Corrective Services usually requires that prisoners achieve a lower level of security classification before release and the parole board looks more favourably on those with lower security classification levels.

In addition to being greatly over-represented in Queensland prisons, Aboriginal prisoners also experience special problems in terms of their gradual release, notably:

1. Majority are serving prison sentences under 2 years;
2. Disproportionate slowness in obtaining various forms of parole
3. Higher rates of recidivism and revocation while conditionally released; and
4. Relative weaknesses of community support systems.

Aboriginal women have few community release options. The reality for many Aboriginal women applying for conditional release is that they often cannot return immediately to their home communities for a variety of reasons including the nature of the offence, or the complex relationships among the victims and offenders in small, isolated communities. Often, the communities themselves are unwilling to accept offenders back after their release from prison. Other solutions must be actively explored which will provide the opportunity for release away from their home communities. The problems created by this fundamental tension between cultural experience and correctional programs are felt most on the release from prison. The chances of being able to plan for successful reintegration into the community are minimal in many cases.

At this time there are no plans or proposals to develop programs that allow the conditional, supported release of Aboriginal women into Aboriginal communities. The failure of the Queensland Government to actively explore this option means that Aboriginal women will be less likely to have viable release plans that would be favourably considered by the Parole Board. Overall, they have few other options for release.

Department of Corrective Services needs to address the slower release rate of Aboriginal prisoners on conditional release by addressing the specific disadvantages facing Aboriginal women prisoners. It is imperative that the Department of Corrective Service's existing policies and procedures be immediately reviewed to ensure that discriminatory barriers to reintegration, such as the ORNI, are identified and addressed. This review should be independent of the Department of Corrective Services and be undertaken with the full support and involvement of Aboriginal organisations.

Because of the tendency to give women with mental disabilities higher security classifications they are less likely to obtain conditional or community release. Furthermore, because women with mental disabilities require more support on release and support facilities are extremely limited they are less likely to obtain release. In addition the lack of support also means that their rate of recidivism is higher.

4.0 DISCRIMINATION - A DAILY EXPERIENCE ON THE INSIDE

Women's prisons in Queensland are administered in such a way that the conditions under which women are imprisoned and their daily experiences are marked by discrimination.

4.1 Strip Searching

Strip searching of prisoners is permitted by s. 26A(4)(a) of the *Corrective Services Act 2000*. Strip searches are mandatory following all contact visits at Brisbane Women's. Strip searching indirectly discriminates against women – the effect on women prisoners is disproportionately greater than the effect on men and the requirement is not reasonable in the circumstances.

4.1.1 Is Strip Searching Reasonable?

Strip searches of prisoners are justified on the basis of keeping prisons free of drugs and contraband. According to the Department, visitors pass illicit drugs and contraband to prisoners. However, Sisters Inside's research has revealed that strip searches do not uncover contraband being smuggled into the prison. According to records obtained by Sisters Inside through the *Freedom of Information Act 1992*, there were 41,728 searches conducted in Brisbane Women's in the three years between August 1999 and August 2002 (one of which was conducted on a baby). Only two of these searches discovered any significant contraband.

Some of the contraband reported as found by the Department following searches included cigarettes, earrings, a sanitary pad (no blood), a scratch on a cell wall from the window to the door and a foul odour. Out of 41,728 searches there were only two instances of an unspecified drug being found. It is difficult to understand how the pad and the scratch can be considered contraband but Corrective Services records have identified them as such.

In spite of the comprehensive mandatory practice of strip searching - illicit drugs are still available in the prison. In a recent survey of the women inside: 51% of women state that they are still using drugs within the prison. 84% say they are receiving no counselling or support to assist them with their drug abuse.[36]

It is Sisters Inside's contention that the Department of Corrective Services does not wish to investigate a major route of drugs into prison. The cars, bags and clothing of correctional officers are never searched when entering the prison, let alone their person. Originally, Corrective Services legislation provided that there were powers to search prison officers however this section has been removed.

Prisoners are strip searched because it is a highly effective way to control women, not because it keeps the drugs out of prison. It is obvious from evidence about drug use in the wider community and within prisons that repressive regimens simply do not work. The emphasis of prison and general community drug policy should be focused on the reasons why women use drugs rather than physically trying to prevent the use of drugs. Strip searching as a mechanism for ridding prisons of drugs is a demonstrable failure.

[36] Kilroy, D., "When Will You See the Real Us? Women in Prison," *Women in Prison Journal* ,October 2001

This submission characterises mandatory strip searches of women prisoners as unlawful assaults and systemic sexual assault. The enormity of these assaults is exacerbated by the fact that the overwhelming majority of women prisoners are survivors of sexual abuse and incest. Even when carried out by women, strip searches are still assault. They re-traumatise already traumatised women and they function to demoralise and control prisoners in a cruel manner.

Sisters Inside asserts that the degrading and humiliating impact of strip searches on women prisoners, is an exercise in domination and social control by the State. The State tries to deny that strip searches are criminal assaults and attempts to justify the practice by labelling the victims of strip searches as being of a class deserving of the treatment, and by completely ignoring the experiences of the victim. The State goes to great lengths to justify giving itself these powers over women prisoners precisely because it knows that these actions are criminal.[37]

The criminal nature of mandatory strip searching can be appreciated in the context of the law of assault. Assault is the application of force to a person without their consent (and includes the person's reasonable fear that force will be applied to them). What might otherwise be regarded as an assault is no longer an unlawful act if there are circumstances which the law recognises as justifying the use of "reasonable force". What the law regards as reasonable force is always decided on a case by case basis. It depends on the specific circumstances.

How can strip searching, which is nothing other than an assault, be justified as "reasonable force" unless it is justified on the basis of specific and reasonable suspicion that the particular person about to be searched has contraband secreted on her person? To continue strip searching again and again without finding contraband cannot be justified. To strip search women when there is no reason to suspect they are carrying contraband cannot be justified. The prisoner having received a visit is not a valid reason.

There are more humane and less discriminatory ways to detect drugs than strip searches of women. This plus the low detection rate of contraband means that mandatory strip searching is not reasonable, which combined with its disproportionate effect on women, indirectly discriminates against women.

4.1.2 The Effect of Strip Searching

Strip searching has a disproportionate effect on women prisoner, particularly in the light of the pre-imprisonment experience of many women prisoners. Research indicates that 89% of women prisoners have been sexually abused at some point in their lives.[38] A survey conducted in 1989 by Women's House in Brisbane found that 70-80% of women in prison were survivors of incest.[39]

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[37] Amanda George "Strip Searches: Sexual Assault by the State" in Easteal, P (ed.) *Without Consent: Confronting Adult Sexual Violence* Australian Institute of Criminology. Conference Proceedings 27-29 October 1992 p.212.

[38] Kilroy, D., "When Will You See the Real Us? Women in Prison," *Women in Prison Journal* ,October 2001

[39] This figure is consistent with the rest of Australia. See for example Stella Simmering and Ruby Diamond "*Strip Searching and Urine Testing: Women in Prison"* Polemic Volume 7 no 1 1996, Kilroy D '*When Will They See the Real Us: Women in Prison'* Australian Institute of Criminology Conference 2000

Significant numbers of these women were abused as children by people in a position of authority or trust. It is cruel and inhuman treatment to re-victimise these women by subjecting them to mandatory strip searches by people who exert considerable authority over them and control their lives.

In a study of 100 women surveyed by Sisters Inside in South East Queensland Prisons, 42% of the women have attempted suicide (with a total of 150 attempts spread through the group). 41% have self-harmed (with a total of 331 self-harm experiences). 40% received no support. 23% believed the self-harm and attempted suicides were due to the abuse they had experienced.[40]

Women who have survived sexual abuse are re-victimised by strip searching which is humiliating, degrading, performed by someone in power over someone who has no power. The state deliberately demoralises women prisoners through the indignity and humiliation of the strip search. On the one hand women prisoners have access to sexual abuse counselling, psychiatric assistance for depression and other mental illness, and programs to improve their self-esteem and to develop cognitive and assertiveness skills. On the other hand a mandatory strip search is the price the woman prisoner must pay to get a visit from her children, her lover, or her mother. The deliberate cruelty is in the stripping away of any fragile self-esteem that might be developed by the various welfare programs conducted in prison. The total powerlessness and humiliation experienced in the mandatory strip-search can only exacerbate depression, thoughts of suicide and incidents of self-mutilation and, ironically, return women to the need for drugs to avoid the mental anguish inflicted by abusive treatment.

Another effect of mandatory strip searches is that some prisoners are now reluctant to receive visits because the feelings of powerlessness and degradation experienced during the strip search and the reminder of previous sexual abuse are too much to take. Enforcing a strip search as the price of a family visit is analogous to torture. Maintenance of strong family ties during imprisonment, particularly with children, is widely recognised as an important element of rehabilitation and decreases recidivism.[41] Because women in maximum security prisons face mandatory strip searching as the price they must pay for a visit from family members, children and friends, some women are now telling their families not to visit. This is not in the interests of their rehabilitation.

4.1.3 Strip Searching and International Law

As an unjustified, unreasonable and discriminatory practice, strip searching also contravenes the Australia's International Treaty obligations. Sisters Inside believes that Queensland's women prisoners are held in conditions, and subjected to treatment, that are in breach of United Nations standards and Australia's obligations under international law. For example, the International Covenant on Civil and Political Rights (ICCPR) in force in Australia since 13 November 1980, the Convention on Elimination of All Forms of Discrimination Against Women in force in Australia since 27 August 1983 and the Convention Against Torture and Other Cruel Inhuman or Degrading Punishment or Treatment (referred to as the Convention Against

[40] Kilroy, D., "When Will You See the Real Us? Women in Prison," *Women in Prison Journal* ,October 2001
[41] Amnesty International Report. AMR 51/01/99 United States of America. "*Not Part of My Sentence*". Violations of Human Rights of Women in Custody. pp.24-25.

Torture) in force in Australia since 7 September 1988.

The ICCPR makes reference to prisoners human rights and accordingly makes the following provisions:- That prisoners will be treated with humanity and respect and that they shall not be subject to cruel, inhuman or degrading treatment or punishment. Furthermore, ICCPR codifies the right of people not to be arbitrarily interfered with and the protection of the law against such interference.

A punishment is cruel if it makes no measurable contribution to acceptable goals and hence is nothing more than the purposeless and needless imposition of pain and suffering. One indicator of cruel punishment is where the permissible aims of punishment (deterrence, isolation to protect the community and rehabilitation) can be achieved as effectively by punishing the offence less severely.[42]

Two important principles emerge from the international standards on the treatment of prisoners. Firstly, individuals are sent to prison *as* a punishment, not *for* punishment and secondly, justice does not stop at the prison door.[43]

> While the law does take [the prisoners] liberty and imposes a duty of servitude and observance of discipline for [her] regulation and that of other prisoners, it does not deny [her] right to personal security against unlawful invasion.[44]

The experience of women in Queensland prisons is that they are indeed sent to prison for punishment. They are regularly punished by mandatory strip searching, which is conducted because they are women and because they are seen as a class of people who deserve no better treatment. Mandatory strip searching violates the women prisoners' right to personal security against unlawful invasion. The injustice perpetrated against women prisoners in the name of the State diminishes us all.

Sisters Inside submits that mandatory strip-searching of women prisoners violates the provisions of the ICCPR and the Convention Against Torture. Sisters Inside submits that mandatory strip-searching constitutes cruel, inhuman or degrading treatment or punishment and is an arbitrary, unjustifiable and unlawful interference with the privacy of the prisoner. Mandatory strip-searching violates the obligation to treat women prisoners with humanity and respect for the inherent dignity of the human person. That violation is the very thing which makes it useful to the State as a means of social control.

Subjecting a woman prisoner to a mandatory strip search other than one based on specific and reasonable suspicion of a criminal offence constitutes and reinforces her powerlessness and loss of dignity. It is inhuman and degrading treatment. Imposing mandatory strip searches as the price a prisoner pays for visits from family, friends and children is tantamount to torture. The Department of Corrective Services is in breach of Australia's obligations under the ICCPR and the Convention Against Torture.

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[42] Paul Sieghart, *The International Law of Human Rights* 1983 Clarendon Press p.166

[43] Nick O'Neill and Robin Handley *Retreat from Injustice*: Human Rights in Australian Law 1994 Federation Press p.171.

[44] Coffin v Reichard 143 F. 2d. 443 (1944) at p.445.

It can also be argued that mandatory, arbitrary, capricious and oppressive strip searching of women is in breach of Australia's commitment to the rights of women. The Convention on the Elimination of All Forms of Discrimination against Women establishes the Committee on the Elimination of Discrimination against Women. The Committee comprises 23 experts of high moral standing and competence in the fields covered by the Convention. The Committee has said that the definition of discrimination against women which is prohibited by the Convention includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately.

The former general manager of Brisbane Women's has stated that the reason for mandatory strip searches is that women have more orifices in which they can conceal things. This is violence directed against women because they are women. If a woman is intrusively searched by a person in a position of ultimate authority, the search reinforces gender subordination in the most humiliating manner. This is violence that affects women disproportionately. As most women prisoners are survivors of sexual abuse, intrusive body searching which triggers recollections of prior abuse is violence which affects women disproportionately.

The US Supreme Court has considered the prohibition against cruel and unusual punishment in the Eighth Amendment of the US Constitution and has held that such punishment includes more than just physically barbarous punishment. In 1910 in *Weems v United States* 217 US 349, the Court observed that the prohibition against cruel punishment was not confined to punishment involving torture or lingering death, but acquires wider meaning as public opinion becomes enlightened by humane justice. In *Estelle v Gamble* 429 US 97 (1996) the Court held that the prohibition embodies broad and idealistic concepts of dignity and civilised standards of humanity and decency against which penal measures must be evaluated.

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 ultimate 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 *Denmark et al v Greece* the European Monitoring Center on Racism and Xenophobia (EUCM), stated that the notion of inhuman treatment covers at least such treatment which deliberately causes severe suffering mental or physical which in the particular situations is unjustifiable. *Ireland v United Kingdom* noted that the use of "unjustifiable" had given rise to misunderstanding as it did not have in mind the possibility that there could be a justification for the infliction of inhuman treatment.

In *Denmark et al v Greece* the EUCM defined "degrading treatment" as treatment which grossly humiliates an individual or drives him to act against his will or conscience. In Europe, treatment has been held to be degrading in a number of cases - denial of exercise to prisoners whether convicted or on remand, taking a person through the town wearing handcuffs and prison dress, close body searches, the forced administration of medicine to a mentally disabled prisoner.

In *Tyrer v United Kingdom* the European Court of Human Rights (EUCt) 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 EUCt also held that while publicity might be a relevant factor in assessing whether a punishment is degrading, it might well suffice that the victim is humiliated in his own eyes.

4.2 Segregation

Within the prison there are a number of ways that prisoners are segregated from the rest of the prison population. These are segregation in the Crisis Support Unit, the Detention Unit, Protection and under a Special Treatment Order.

Segregation is used for punishment, treatment and management by the prison authorities. Segregation in the form of Crisis Support Orders is used as both punishment and 'treatment' for mental health issues. Segregation in protection is for women who are perceived to be in danger in the general prison population – a management issue. Segregation in the Detention Unit is used as punishment for breaches of the prison rules.

4.2.1 Crisis Support Unit

Prisoners are placed on Crisis Support Orders if it is deemed that the prisoner poses a threat to herself or to others. The *Corrective Services Act* 2000 s42 provides that the person in charge of a prison may make a crisis support order if an officer believes that there is a risk that a prisoner may harm herself, or a doctor or psychologist advises the general manager that they reasonably believe there is a risk that the prisoner may harm herself or someone else. The prisoner may be segregated from other prisoners within the Crisis Support Unit or health centre if the general manager reasonably believes it necessary to reduce the risk of a prisoner harming herself or someone else. Section 43 also allows for consecutive crisis support orders.

Until 2002 there was no crisis support unit within the women's prison. Women prisoners on crisis support orders were housed in the men's crisis support unit. After many complaints raised by Sisters Inside and other prisoners' organisations about the treatment of women imprisoned within the CSU at the men's prison it was finally closed. This decision is said to have resulted from a number of incidents at the prison. Furthermore, there was reporting in the media of horrific treatment of women prisoners by staff and male prisoners. As a consequence of the men's prison CSU being closed to women, a unit within BWCC was refurbished for women on crisis support orders.

The Crisis Support Unit in BWCC is referred to as S4. Even though this unit was refurbished to replace the CSU in the men's prison it is not treated as a formal CSU by the prison authorities. If this were a formal CSU then it would only be allowed to house women who were on Crisis support orders. In order to remove the need to have women placed on Crisis Support orders before they could be placed in the Crisis support unit the Department of Corrective Services began to refer to the CSU as "S4". In this way they are able to send women to what is effectively the CSU without having to comply with the legislative requirement for a crisis support order. In short, the Department of Corrective Services are confining women in the CSU illegally

Some women are confined to the CSU on a voluntary basis. However, women segregated in the CSU, even those women who are ostensibly there as a result of their own volition face the constant presence of uniformed correctional officers in the unit.

There can be no doubt that the participation of correctional officers and nurse/guards on "treatment" teams raises real questions about the voluntary nature of prisoner compliance with treatment. Indeed, this issue underscores the element of coercion, which is ever present in a prison setting.

Coercion is absolutely incompatible with voluntariness, especially in the context of a prison regime, which is by definition coercive. Women in the CSU are usually advised 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 labelled as maximum security prisoners, they will likely be reclassified. They will be described as having elevated their security risk by virtue of their refusal to recognize their "need" for treatment to address their criminogenic "risk factors".

In the end, this will mean that women who do not consent to such treatment regimes will likely see their security classification level elevated to the maximum-security designation.

Within the CSU, women are usually further segregated by reason of mental health disability. This means that they may end up being confined in 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 belts and handcuffs.

These orders whether voluntary or ordered are discriminatory as the CSU is no more than a form of segregation. These women are removed from association with the general population of the prison. This segregation based on security classification and mental health status places these women, in terms of their conditions of confinement, at a considerable disadvantage.

Women who have mental health disabilities are more likely to be placed in administrative segregation (CSU or Special Treatment Orders). They are isolated, and often deprived of clothing and placed in stripped/barren cells, usually restrained with body belt and hand cuffs depending on behaviour.

> Julie is a woman prisoner with a mental disability. Because of certain behaviours that may be caused by her mental disability the Department of Corrective Services psychologist decides that the most appropriate accommodation for her is in the CSU. She is placed in the CSU with a lawful order that keeps her segregated and isolated from the rest of the prison population.
>
> While in the CSU an incident occurs, Julie yells abuse and strikes out at a correctional officer. She is then placed in a body belt and double handcuffed and placed in the rubber room for over 7 hours. She is menstruating and crying requesting tampons. Blood is everywhere. She is absolutely devastated, shamed and feeling undignified. She lies on the mattress and starts

to unpick the stitching on the mattress. Prison staff eventually come into the isolation cell and inform her that she is being charged with destroying government property. She is formally charged.

She makes numerous complaints but to no avail. She is left for days in isolation. A community organisation assists her in the approval of Supreme Court Bail. She is released from prison. The organisation takes her home. She is highly traumatised by the abuse in the CSU. Mental health workers assist where possible. She requires 24 hours 7 days a week support. She eventually tries to throw herself under a train and is taken to the Psychiatric Ward. The doctor diagnoses her with posttraumatic stress disorder due to her experience in the CSU at the women's prison. The doctor states that if she were returned to prison it would be to her absolute health detriment. The doctor states that the prison is not conducive to ensuring that this woman's mental health needs will be address appropriately.[45]

Women prisoners who have a mental health problem, who are in need of support due to self harming or have an intellectual disability are confined in exactly the same way as women who are perceived as problems for prison discipline. Prison staff are not adequately trained and resources are not available to ensure proper treatment is available to women with mental health disabilities so the women are imprisoned within the CSU.

4.2.2 Detention

The degree of liberty of the general population of a prison varies, depending on the security level of the prison. The exception to this is administrative or punitive segregation. Punitive segregation may be imposed under s38 of the *Corrective Services Act 2000*, where a prisoner receives special treatment under such order for the purposes of the prisoner's safety or the security or good order of the prison.

Further, women can be breached under s86 of the *Corrective Services Act 2000* and s15 of the *Corrective Services Regulations 2001*. Section 15 provides that breaches of discipline include: disobeys a lawful direction of a prison officer; conceals something or consumes something not approved; uses abusive, indecent, insulting language; acts in a way contrary to the security or good order of the prison; makes a complaint that is frivolous or vexatious; gambles; consumes anything that brings about an intoxicated state; alters their appearance without approval; takes medication not approved; damages or destroys prison property etc.

The fact that segregation is used as a disciplinary tool underscores that it is an especially severe form of imprisonment. Section 38, s88(2) (c) and s88 (3) of the *Corrective Services Act 2000* identifies the purpose of administrative segregation to keep prisoners from associating with the general prison population. Administrative segregation may only be imposed pursuant to specific statutory criteria set out in these sections and in accordance with the procedural requirements in the *Regulations.* There is nothing in the legislation that permits the Department of Corrective Services to restrict the freedom of any prisoner within the prison more than the rest of the

[45] "Julie's" story is based on the experiences of women prisoners who have been detained in the CSU as conveyed to Sisters Inside

general population, except in accordance with the strict requirements of the legislation.

All maximum and medium security prisons for men and women's prisons have segregation cells. In the women's prisons they are referred to as the Detention Unit (DU). These cells are effectively solitary confinement and may be used lawfully only under specific statutory criteria set out in the *Corrective Services Act 2000*. Under the *Corrective Services Act 2000*, a prisoner may be segregated only for her own protection or for the protection of others, or for a breach of discipline.

A prisoner can only be placed in segregation involuntarily if subject to a special treatment order. She can judicially review the decision to place her on a special treatment order through engaging her right to counsel. This provision in the legislation underscores the fact that segregation is recognised in law as a separate form of confinement or a "prison within a prison." Section 38 of the *Corrective Services Act2000*, further provides that prisoners on special treatment orders must be provided with an order that specifies the conditions, prescribed under regulation, that apply to the prisoner's treatment.

A prisoner may also be sentenced to segregation after a hearing of a breach of discipline. A punitive sentence of this sort may not exceed 7 days. No legal advice or other representation is allowed regarding the breach or in the review process. The hearing is done by a prison officer. Further, the prison officer is not bound by the rules of evidence but may, subject to any regulations, inform himself or herself about the matter in the way the prison officer thinks appropriate. This process is also not subject to appeal or further review under the Act.

Aboriginal women in BWCC in the last 12 months have been segregated on special treatment orders for periods of up to three months. Aboriginal women are disproportionately represented in the Detention Unit of the prison.

4.3 Provision of services

It is clear that the programs provided to women prisoners are not comparable in quantity, quality, or variety to those provided to male prisoners.

The only area in which women in Queensland have equality with men - without even trying - is in the state system of punishment. The nominal equality translates itself into injustice as the equality ends and reverts to outright discrimination when it comes time to provide constructive positives - recreation, programs, lower security accommodation, basic facilities and space - for women.

Women prisoners do not have adequate recreation or adequate programs, including educational and skill based. There seems to be a remarkable indifference and casual neglect of women's needs by the State.

Ironically, women have been penalised for the fact that they constitute a small percentage of the State's prison population. Because of their smaller numbers, they have been denied the same program, vocational and industry opportunities as men. Prior to the opening of the new Brisbane Women's Correctional Centre in 1999, the majority were confined in one large prison, which was operated as maximum security.

In Canada the situation has been parallel to the experience of Queensland women prisoners.

> Women also served their sentences in harsher conditions than men because of their smaller numbers. They have suffered greater family dislocation, because there are so few options for the imprisonment of women. They have been over classified, or in any event, they have been detained in a facility that does not correspond to their classification. For the same reasons, they have been offered fewer programs than men, particularly in the case of women detained under protective custody arrangements, of which there are only a handful. They have had no significant vocational training opportunities.[46]

The small numbers of women prisoners has been a justification for the failure to focus on the particular requirements of women prisoners. Correctional policies and practices applied to women are an adaptation of those considered appropriate for men - women are the correctional afterthought.

Correctional services in both institutional and community settings have been designed by men for men who comprise of 93% of the prison population. The development of services for women is usually an afterthought; programs which are available for them are often extensions or "hand-me-downs" of programs established for males. Correctional facilities are often mere appendages (either figuratively or literally) of facilities designed for males.[47]

4.4 Prison Industries

Prison labour is a topic which has not received much attention in policy debates or prison reform agendas. As imprisonment arose as an alternative penalty to capital and corporal punishment in Western Europe in the 18th century, prison labour accompanied imprisonment as a punitive and disciplinary measure.[48] It was only as recently as 1988 that 'hard labour' was abolished as a penalty in Queensland. Although slavery has been abolished in most of the world, it is an almost universal practice that governments are free to confiscate the labour of prisoners and, with few exceptions, leave this compulsory labour unpaid or grossly underpaid. This worldwide penitentiary practice is viewed as normal and rarely attracts the interest of human rights organisations. Only the most excessive forms of forced prison labour such as American chain gangs or Chinese "reform through labour" camps attract international protest.[49]

Even the international human rights conventions, which seek to eliminate forced labour, reflect the uncritical acceptance of compulsory labour by prisoners. Sisters Inside intends to raise the issue of compulsory prison labour as a civil rights issue

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[46] Arbour. *Report of the Commission of Inquiry into Certain Events at Prison for Women*, 1996, p. 2000. (is this title correct it looks like it is missing a word)

[47] Robert Ross and Elizabeth Fabiano, "Correctional Afterthoughts: Programs for Female Offenders," Solicitor General, 1985, p. 121. (what does this reference refer to)

[48] G. de Jonge "Still 'Slaves of the State' Prison Labour and International Law" in D. van Zyl Smit & F, Dunkel (eds) *Prison Labour: Salvation or Slavery?* Ashgate 2000, pp313.

[49] de Jonge p.314. de Jonge notes that Chilean working prisoners are paid the basic minimum wage and since the end of 1991, in two open prisons in Hamburg which operate with private enterprise to sell products on the open market, the prisoners are paid market wages. Angela Davis reported at the Women in Prison Conference in Brisbane in November 2001 that American working prisoners are paid market wages.

which needs to be addressed and further examined.

The material below was prepared in 2001 and it is difficult to obtain current information about prison industries. The section of the Department's website named "Prison Industries" is currently unavailable and the last Annual Report contains minimal information.

According to the 1999-2000 DCS Annual Report, 100 women prisoners were employed, including 40 in commercial industries.[50] However, the women have reported to Sisters Inside that at November 2001, only 135 positions were available in the 246 bed Brisbane Women's Correctional Centre which has an average occupancy of 200. Clearly there are not enough jobs for all. Theoretically there are four commercial industries operating within the BWCC. However, there is never an occasion when all four are running at one time. In early 2004 there was only one industry operating which employed approximately 20 women.

A range of carrots and sticks are deployed to "encourage" women to participate in prison labour. Different work attracts different levels of pay. Some work is "commercial" that is to say it is work that is contracted from outside the prison but most of it is service work within the prison (cooking, cleaning etc) The remuneration rates for prison labour bear no resemblance to payment for work done. The weekly maximum that prisoners may earn is $57.54. However, Sisters Inside, with over ten years experience of women in prison, has never come across anyone who was earning the maximum rate. Women who are unable to work for medical reasons or because work is unavailable are paid an unemployed rate of $1.26 per day.

Further incentives to prison labour are found in the early release scheme. Prisoners may access early release if they have been of "good conduct and industry" One of the factors considered in deciding if a prisoner has been of "good conduct and industry" is whether the prisoner has participated in approved activities or programs such as work to the best of the prisoner's ability.

Incentive bonuses are payable only in commercial activities and not to service workers. The incentive bonus is payable on achievement of deadlines, additional productivity and conscientious attitude. They are paid at the discretion of the General Manager. Men receive bonuses of 100%, women receive only 60%. This is direct discrimination.

Prisoners who refuse to work or who are dismissed from a position are not entitled to the unemployment rate of $6.30/wk.[51] Early release opportunities are damaged by refusal to work and freedom of movement within the prison is affected. Women prisoners who refuse to work are transferred from residential to secure units and have their weekly "buy-up" (toiletries, coffee, cigarettes) limited to $20 which would buy about one packet of rolling tobacco.

The picture of prison labour is clear. It is certainly a "required activity" to use the polite terminology of the Criminal Justice Commission. The human rights of

[50] www.dcs.qld.gov.au
[51] Some women from overseas imprisoned in Queensland do not even get the $6.30 as they do not have residency in Australia.

prisoners are violated by the fact that their labour is compulsory and although it produces profit for the State, the prisoner-as-worker acquires no useful skills and is not paid a fair price for her labour. The prisoner-as-worker also does not enjoy the legal rights of other workers in relation to workplace injury.

Prison reformers, policy makers and Government need to reassess the practice and rationale of prison labour. The woman prisoner as worker endures unnecessary humiliation through being forced to perform trivial and unskilled work without the normal protections of fair wages and workers' compensation. Genuine implementation of ILO Convention No. 29 and the UN Standard Minimum Rules would be a significant leap forward towards humane treatment of women prisoners.

4.5 Culturally Specific Issues for Indigenous Women

One of the failures of the correctional system is the disrespect for Aboriginal culture and spirituality, and the failure of the Department of Corrective Services to recognise the centrality of their cultural identities to many Aboriginal prisoners.

The incarceration of Aboriginal women in traditional prisons is culturally inappropriate. In fact, the confinement of Aboriginal women replicates the control and suppression of Aboriginal people by white colonisers from the time of first contact.

> It is impossible for Aboriginal women to heal or be rehabilitated inside prison. The laws and rules do not benefit us. They are made to oppress. Aboriginal women have an innate fear of psychiatrists and psychologists because of what they represent. The represent the authority on the mission, they represent what was taken, they take freedom. There is a hatred of psychs – abhorrence isn't a strong enough word[52]

Aboriginal women experience imprisonment as a continuation of the historical imposition of non-Aboriginal systems and institutions on Aboriginal people. Because of their centuries' old oppression by white colonisers, Aboriginal women cannot derive any benefit it is designed to deliver.

> The treatment of Aboriginal women and other women marginalised by race is strongly affected by the character of prison management. The skill of a manager is graded by how well they treat women marginalised by race. In order to combat racism prison officers and staff need cultural sensitivity training before anything positive can happen. They need to recognise problems of racism and sexism in themselves and the system. These could be addressed using workshops for all people in the prison system both prisoners and staff. They need to be run by people outside the prison system.[53]

[52]Report from Aboriginal women inside 2004.
[53]Report from Aboriginal women inside 2004

Aboriginal women identified that the need for Aboriginal run courses and programs and would prepare them for release as well as supporting them to cope with the day to day stress, boredom and loneliness of prison life.[54]

4.6 Non-indigenous Culturally and Linguistically Diverse Women

CALD women are a significant minority within the Queensland prison system. In 2000 the Department of Corrective Services released a needs analysis that stated 11% of women in prison are from CALD backgrounds.[55] This figure has increased to 14.2% in 2003.

4.6.1 Language Issues

> Imprisonment is one of the most isolating, horrifying and depriving experience for any woman. For women from non-English speaking backgrounds (NESB) the prison experience is one of "desperate isolation".[56]

The Department of Corrective Services only attempts to provide linguistically and culturally appropriate information during the process of induction on first arrival at prison. As the reception/induction process can be quite lengthy and complicated, prison management never uses face-to-face interpreters. Instead, they rely on the telephone interpreting service, which is only called if the prison or welfare staff assess that it is needed. It is an alienating means of communication, particularly in a situation where women are feeling at their most vulnerable. Furthermore, the admission process into prison is completed within 24 hours and all the women interviewed in recent research stated that they never again had access to an interpreter after the phone was hung up.[57]

After induction no further attempts are made to ensure that CALD women have information regarding their legal rights, privileges, punishments or regulations as provided for in s11 *Corrective Services Act* 2000. This information is only available in English. CALD women endure absolute deprivation and isolation in the prison system. They are in a "state of *de facto* solitary confinement."[58]

CALD women frequently rely on information from other women in prison. The CALD women claim they prefer to observe the custom of the prison and to watch before they act, as a means of gathering information. If they have to ask someone, they would choose another CALD person. As there are only a small number of CALD women at each prison care is needed to ensure that CALD women have ready access to each other.

CALD women found that, in general, contact with prison program staff was not easy. The difficulties were most apparent in the early stages of prison life. In common with many other prisoners, CALD women felt afraid to ask for help, particularly at

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[54] Lawrie, R. *Speak Out Speaking Strong: Researching the Needs of Aboriginal Women in Custody,* Aboriginal Justice Advisory Council, 2003
[55] Women's Policy Unit, *Profile of Female Offenders,* Department of Corrective Services 2000.
[56] Easteal, P. (1992) *The Forgotten Few: Overseas Born Women in Australian Prisons,* AGPS, Canberra.
[57] *Multicultural Resource Development Project; Final report,* Unpublished Report, Sisters Inside 2004
[58] Easteal, P. (1992) *The Forgotten Few: Overseas Born Women in Australian Prisons,* AGPS, Canberra

Brisbane Women's Correctional Centre. They were unaware of the procedures for seeing a counsellor or accessing educational programs.

Prison management attempt to overcome language problems through the use of other women prisoners as interpreters, but there are problems attached to this strategy. When fellow prisoners are used as interpreters, CALD women may be placed at a disadvantage, as the prisoner's ability at interpretation may not be sufficiently advanced. Further this contravenes Queensland Government Policy which states that:

> As far as practicable, friends and family members should not be used in the same role as professional interpreters. Children and relatives are not appropriate interpreters in any context.[59]

Furthermore, the Queensland Government Language Services Policy reflects a whole of government commitment to the development of communication strategies to inform clients of services and the policy states that they will:

> Plan for language services in the agency, incorporating interpreting and multilingual information needs into the budgeting, human resource and client service program management.[60]

Therefore, it is already Government policy to ensure language services are available.

CALD women are placed at greater risk to their physical safety. All signs warning of danger (eg indicating an electric fence) are in English only. It is possible that such an action is a breach of the *Queensland Workplace Health and Safety Act* (1995). As the Department of Corrective Services has determined that certain signs are needed for the health and safety of the prisoners, they are under an obligation to provide them in a form accessible by all.

Furthermore, close living with shared accommodation presents some particular problems for CALD women. Women routinely spend twelve to thirteen hours per day locked in their cells or units. The small number of CALD women means that it is likely that they will be placed in a cell with non-CALD women. CALD women report social and emotional isolation due to cultural and language difference. The situation is particularly unfortunate when it is remembered that CALD women often have to rely on a trusted other to help them gather information and to fill in forms.

All prisoners suffer difficulties in maintaining ties with families and friends. Visiting times and number of visitors are restricted, as are times for telephone calls. The cost of telephone calls is also prohibitive for those whose families are interstate or overseas. The women have to pay for all telephone calls. Furthermore, women in prison pay premium rates for phone calls. That is to say for a local call they pay 40c rather than 20c which is what Telstra bills at, women making international phone calls also pay premium rates.

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[59] Queensland Government, *Language Services Policy,* Multicultural Affairs Qld, Department of Premiers and Cabinet 2001, pp 11.
[60] Queensland Government *Language Services Policy* Multicultural Affairs Qld, Department of Premiers and Cabinet 2001 pp7

CALD women experience difficulties accessing the educational programs provided by Department of Corrective Services. All women are expected to do core programs as a means of moving through the prison system if they are sentenced to over 12 month's imprisonment. CALD women found severe problems in accessing programs. Their difficulty is attributable to their lower levels of English ability. CALD women have also reported being told that they could not work because their English isn't good enough.

CALD women reported they had never heard of the Anti Discrimination Commission and that there were laws against discrimination. Further, 76.9% women stated that they felt very uncomfortable lodging a complaint because of fear of retribution from the prison system.[61]

The *Corrective Services Act* 2000 s.11 provides for prisoners to be informed of entitlements and duties. Section 11(2) provides that if a prisoner does not understand English, the person in charge, being the General Manager of the prison employed by the Department of Corrective Services, must take reasonable steps to ensure the prisoners understand s11(1) being entitlements and duties under the Act and administrative policies and procedures relevant to the prisoners entitlements and duties. The section of the *Corrective Services Act* 2000 s11(3)(a) provides that the General Manager, being the person in charge must by law ensure a copy of the relevant legislation be available to all prisoners. All prisoners must therefore reasonably include CALD women. However, none of this information is available to CALD women prisoners.

4.6.2 Food

Food in prison is based on western cuisine. Despite the existence of some freedom in selecting menus CALD women find it very difficult to cook their own food. For most of their prison life CALD women must cook and eat from the standard Western menu. For many of them, it is very different from what they are used to eating. In addition some CALD women have metabolic conditions (such as lactose intolerance) that prevent them from eating much of the food served in the prison. Even when CALD women are allowed to vary the menu they are faced with problems. The prison provides some basic ingredients for the women's use and the women then "buy in" any special items which they wish to use. CALD women find that the basic ingredients are western so they have to buy almost all ingredients for any meal they choose to cook. This presents a financial burden because the women only receive approximately $1.50 - $4.00 per day in pay. Recently the General Manager of BWCC cut back significantly on what can be bought in "Asian buy up." This is detrimental and discriminatory in regards to respecting CALD women's cultural needs. Furthermore, whilst the issue has not yet arisen it would be difficult for a woman whose religion demanded vegetarianism to get adequate nutrition from the prison diet.

4.6.3 Religion

The religious needs of women prisoners are met through the Chaplaincy Board. The Chaplaincy Board currently includes four denominations (Anglican, Catholic, Uniting

[61] Kilroy, D. *The Silenced Few: NESB Women in Prison*, Pandora's Box, Queensland University, 2003.

Church and the Salvation Army). Prisoners whose religions are not included in these groups must make special arrangements for services or visits by contacting their case workers/welfare workers.

61.6% of CALD women stated that no information was provided about access to religious services for their faith. 23% stated that they have to pray in their cell and are sometimes disturbed by prison officers. 15.4% were given a Christian Bible even though they were not Christians. There is clear discrimination against women who are not Christians, in the failure to provide them access to the religious services and pastoral care that is appropriate to their faith.[62]

The Vietnamese are a significant minority within prison and they have very distinct days of special significance. Yet their festivals and days of special religious observance are not celebrated within prison. The Vietnamese women identified two days of special significance: *Tet* and the Moon Festival. The prison makes allowances for Christian holidays such as Easter and Christmas but no allowance for the non-Christian religious holidays of a significant minority within the prison population

[62] Kilroy, D. *The Silenced Few: NESB Women in Prison,* Pandora's Box, Queensland University, 2003

5.0 THE INVESTIGATION – RISKS AND OPPORTUNITIES

5.1 Risks

Barriers to disclosure experienced by women in prison are severe and these have the potential to impede an investigation by the Anti-Discrimination Commissioner. Sisters Inside recognises that disclosure issues are matters with which the ADCQ is extremely familiar. However, we believe that the barriers experienced by women prisoners are so acute as to warrant specific attention. Given the nature of the prison environment, and the already seriously disadvantaged status of most of the women who are sentenced to prison, women prisoners are a particularly disadvantaged group. In this context, patterns and practices of discrimination may be particularly difficult to formally establish. This submission affords a unique opportunity to raise these complicated disclosure issues in a non-adversarial forum so as to facilitate their fuller investigation and to promote discussion and dialogue of these matters.

Insights into individual and systemic barriers to disclosure in other areas, including human rights generally, and in relation to issues of violence against women, are helpful in thinking about the barriers experienced by women prisoners. The prison context greatly exacerbates the problems encountered in other settings, as well as creating its own unique inhibiting factors.

> The invocation of anti-discrimination law does not enable the victim to over come power differentials in situations where she or he is pitted against the more powerful opponent. The bonds of victimhood are reinforced rather than broken by the intervention of legal disclosure. [63]

There are reasons why victims of human rights and discrimination violations are unlikely to complain of the mistreatment they have experienced. The model of legal protection assumes that those who have suffered harm will recognise their injuries and invoke the protective measures of law. Since most anti-discrimination laws rely primarily on victims to identify violations, report them to public authorities, and participate in enforcement proceedings, these laws tacitly assume that such behaviour is reasonably unproblematic. In other words, because protective laws place responsibility on the victim to perceive and report violations, they assume that those in the protected class can and will accept these burdens. [64]

Rights have been an alien concept in the prison context and historically what we would now clearly label as abusive or inappropriate practices were simply the institutional norm. A major part of the history of prisoners' rights has been the gradual, piecemeal, *ad hoc* uncovering of the individual, institutional and systemic abuses to which prison inmates have been subjected. Historically, prisons and what went on in prisons, were completely shielded from public scrutiny. Prisoners were thought to have forfeited their rights through the commission of the crime for which they were convicted; they were locked away in prisons without any oversight of the treatment they received in the institution with the assumption that, 'whatever happened to them, they got what they deserved'. There were no mechanisms for

[63] Bumiller, K., *Victims in the Shadow of the Law: A Critique of the Model of Legal Protection*, 1987 12 Signs 421 at 438

[64] Bumiller, K., *Victims in the Shadow of the Law: A Critique of the Model of Legal Protection*, 1987 12 Signs 421 at 422

complaint or for raising issues about treatment. "Complaining" would have been considered totally inappropriate by both prison staff and prisoners and, furthermore, the risk of retribution against the complainer would have been extremely high. As has been extensively documented through inquiries and investigations, complaining would only have made the situation worse. In the history of Queensland prisons, prison "riots" and the resultant inquiries have been the primary mechanisms by which the intolerable conditions under which prisoners were forced to live were brought to light. This historical legacy that is so inimical to raising issues of abuse and mistreatment continues to haunt the prison system in Queensland today.

When this understandable lack of faith in processes of inquiry or promises of reform is viewed in conjunction with the conditions under which women prisoners live when in prison, it is amazing that any woman would come forward to tell of abuse or mistreatment experienced in that setting or to provide any information. These are women whose entire lives are subject to State control and who have very little power while they remain in prison. An inquiry such as the one proposed may offer them little, if any, hope for change. For women prisoners, the ADCQ might be seen as simply another government body seeking information that will ultimately be turned against women prisoners in some pernicious way.

For prisoners, prison is an isolated and self-contained world with its own codes of conduct. Women prisoners participate in a culture that frowns upon disclosure as weakness and betrayal and regards silence as strength and integrity. The disclosures that are made are the tip of the iceberg, warning of serious problems that need to be resolved, but not in any way revealing the extent of the problems. Those women prisoners who are willing to come forward to tell their stories of mistreatment may reflect extremes of despair, in the sense of feeling that things are so bad they cannot get worse, or of desperation, in the sense that conditions are so intolerable that one cannot ignore any opportunity to try to improve them, even if it appears futile. Those women prisoners who are managing to survive, in the face of ongoing abuse, mistreatment and discrimination, may understandably choose to remain silent. They may thus avoid retaliation or the pain and resulting despair that follow upon false hopes raised through disclosure that ultimately is ignored or denied or results in no perceptible change. It is important that the proposed inquiry and ensuing report not contribute further to that despair.

What the preceding discussion clearly demonstrates is that the more vulnerable a person is the less likely they are to disclose any abuse and mistreatment they are experiencing. The likelihood of disclosure decreases exponentially in relation to the control and power that the person doing the abuse has over the person being abused. Gender, race and disability stereotypes and power imbalances, combined with individual histories of abuse and with the extreme asymmetrical power relations that characterise the prison setting render women prisoners among the most vulnerable groups in our society. These same factors combine to cover up patterns of discrimination and systemic inequality.

The extreme power imbalance in the prison, the unsatisfactory handling of previous complaints by government officials, the continuing failure to remedy ongoing problems and the omnipresent spectre of retribution, combined with the personal

histories, extreme vulnerability and the perceived lack of credibility of women prisoners are, at the same time, the subject of the problem.

While an investigation under s.155 of the Anti-Discrimination Act is intended to circumvent some of these problems which are faced by an individual complainant, the process remains nonetheless dependent on the stories of mistreatment and abuse being reported to the ADCQ. The process of Sisters Inside requesting an inquiry rather than individual complaints being lodged with ADCQ does not make telling those stories any more likely or any easier. The inhibiting factors simply resurface at a different level and in different ways. We cannot assume that issues of disclosure have been addressed because the information is being actively solicited or that victims of discrimination will necessarily be anymore willing to tell their story to the ADCQ than to a prison official visitor.

In the context of a proposed investigation by ADCQ into potential human rights and discrimination violations, silence or denial of mistreatment cannot be taken at face value. Historical and contextual factors need to be considered in assessing the significance of what will be said and what might be left unsaid by women prisoners. Sisters Inside recommends that the numerous reports and submissions sought from other state, national and international community organisations provide ample evidence for the conclusion that the data and information that will be gathered from women prisoners in the course of this inquiry represents only the tip of the abuse/mistreatment iceberg. Sisters Inside strongly urges the ADCQ to interview women prisoners about their experiences of prison and to gather information, data and submissions from other organisations both community and government. Sisters Inside will support the ADCQ to undertake interviews with women prisoners and women released to the community to share their experience of Queensland prisons.

5.2 Opportunities

Not only can an investigation by the Anti-Discrimination Commissioner reveal and document systemic discrimination in the administration of women's prisons on the grounds of sex, race, religion and impairment, but it also provides real opportunities for identifying reforms aimed at substantive equality and the protection of human rights.

Sisters Inside argues that it is not sufficient to compare the situation of women prisoners to the situation of men prisoners in order to ascertain whether women prisoners in Queensland are experiencing discrimination on the basis of sex. Measuring women's treatment against the comparator group "men prisoners" will not necessarily lead to a substantive equality result. The prison is an institution designed to incarcerate men and meet their needs.

In a system of corrections that is defined by men with men as the norm and on male patterns of criminality, stereotypes of women can profoundly influence the way that women are treated. Accommodating women in an institution premised on the needs of male prisoners is a sex equality issue. Remedying that discrimination by ensuring that women receive the same kinds of treatment as men does not remedy the discrimination at all but will more likely lead to a perpetuation or concealment of that discrimination.

Sisters Inside is not advocating a complete abandonment of the use of comparator groups in equality analyses. Equality will always be a relative concept. However, the use of comparator groups has to be understood as more complex. The more likely outcome of comparing men and women is that the process of comparison will reify the treatment of men as the norm or standard by which to measure the 'proper' treatment of women. The prison, as an institution designed to imprison men, would not be challenged.[65]

We believe the best means for assessing substantive equality for women prisoners is to measure their treatment against objective standards grounded within the *Anti Discrimination Act* and international law and human rights principles. Sister's Inside believes that Queensland's women prisoners are held in conditions, and subjected to treatment, that are in breach of United Nations standards and Australia's obligations under international law. By measuring the treatment of women against international or other standards for the treatment of women prisoners, not merely against the treatment of men prisoners, we can begin to see a way to challenge the imbalances of power, or the discourses of dominance, such as racism, ablebodyism and sexism, which result in a society being designed well for some and not for others.[66]

Substantive equality requires neither that one seek the same treatment nor that one posit one's sameness to a comparator group. Substantive equality is more fluid, contextual and complex. A substantive equality approach demands the redress of existing inequality and the institution of genuine, real, effective equality in the social, political and economic conditions of different groups in society. Substantive equality requires a focus on systemic and group-based inequalities. It encompasses the right to have one's difference acknowledged and accommodated both by the law and by relevant social and institutional policies and practices.[67]

While formal equality means treating likes alike, substantive equality means that sometimes in order to treat people equally you have to treat them differently. Furthermore, the provision of services to women in prison would only be equality enhancing if it reduced inequality between men and women in a way that was respectful and attentive to differences amongst and between women - differences such as those of race, class, disability and sexuality. Steps toward substantive equality cannot be offered in a way that further exacerbates the oppression of groups of women in Queensland who are already disadvantaged. Understanding substantive equality in this way requires shifting the analysis to focus on the inequality that needs to be remedied by the provision of a benefit or service, rather than on the formal operation of the law at issue. This approach would reaffirm the positive, remedial aspect of substantive equality rights.

Services and programs for prisoners should be developed through a process that measures whether all members of the group 'prisoners' are having their needs met. If that is not the case, then the programs should reflect the disparity in needs of differing groups of prisoners, including women, Aboriginal women, other culturally and

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[65] Comack, E. The Prisoning of Women: Meeting Women's Needs" in K. Hannah-Moffat and M. Shaw, An Ideal Prison? Critical Essays on Women's Imprisonment in Canada Halifax: Fernwood, 200 pp 117 – 127.
[66] Day, S., & Brodsky, G. *The Duty to Accommodate: Who will Benefit?* The Canadian Bar Review 433, 1996
[67] Buckley, M., ed., *Transforming Women's Futures: A Guide to Equality Rights Action and Theory*, Vancouver: West Coast Women's Legal Education and Action Fund, 2001

linguistically diverse women, women with disabilities, and women with children. The non-discriminatory provision of programs and services would reflect the different needs and capabilities of the individual groups of prisoners, not measured in relation to each other, but measured in relation to their needs.

6. Conclusion

Women in prison in Queensland are discriminated against in a number of direct and indirect ways. They are discriminated against as women, as Aboriginal women, as women from culturally and linguistically diverse backgrounds and as disabled women. The prison system in Queensland is designed from a white, male middle class, able bodied norm that allows the discrimination against women to pass unseen unless it is closely examined. Issues such as security classification, lack of low security beds, strip searching, lack of work opportunities and insufficient programs all combine to make imprisoned women among the most discriminated against people in the state. Sisters Inside urges the Anti-Discrimination commission to immediately constitute an inquiry into these issues so that they can be fully examined and rectified.