

*Submission to the Anti Discrimination Commissioner for an
Inquiry into the Discrimination Experienced by Women Prisoners
within the Criminal Justice System in New South Wales*

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beyond bars
alternatives to custody



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The Purpose of this Submission

On 20th July 2004, the Beyond Bars Alliance wrote to the Commissioner of the Department of Corrective Services (DCS) NSW, the Attorney General of NSW, the Commissioner of Police of NSW, and to the NSW Anti-Discrimination Board (see Appendix I) seeking an inquiry into the treatment of women prisoners in NSW.

Beyond Bars Alliance 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 marginalized 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.

This complaint is made on the grounds that the manner in which women prisoners are treated is discriminatory in contravention to several of the prohibited grounds articulated in the *Anti Discrimination Act 1991* and in Federal anti-discrimination legislation and Human Rights Conventions. Beyond Bars Alliance received a response from the Attorney General's Department stating that the letter was being handed on to another unit for consideration. A letter was also received from the NSW Police Department stating that NSW police follow a range of policies, programs, and training programs, as well as being involved in various community liaison partnerships with other agencies to assist in countering discrimination against women in general. The Anti Discrimination board of NSW acknowledged receipt of the letter and stated that the information provided by the Beyond Bars Alliance would be placed on file and that they looked forward to receiving any further correspondence. There has been no response from the NSW Department of Corrective Services.

In addition to the letter supplied to all the Departments mentioned above, on the 20th July 2004, we referred them all to a number of additional government and academic documents. These documents chronicle the nature and extent of the discrimination on the basis of sex, race, and disability. Furthermore, strip searching and use of the Mum Shirl Unit at Mulawa Correctional Centre are experienced in a discriminatory manner by women prisoners in New South Wales.

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). Beyond Bars Alliance contends that there is systemic discrimination on the basis of race, sex and disability in NSW policing practices and also in the administration of women's prisons.¹ Women prisoners experience direct² and indirect³ discrimination on the grounds of sex, race, and impairment.⁴

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

Police Practices and Systemic Discrimination

Systemic discrimination consists of individual and collective acts, structural processes and administrative practices that contribute to the overall discrimination against a particular group of people. In the case of the NSW criminal justice system, women are subject to such systemic discrimination on the basis of their sex, race and disability. As gatekeepers to and frontline workers of the criminal justice system, the NSW Police Department contributes to this discriminatory process through the criminalization of women, and particularly poor, marginalised, and racialised women. Accordingly, the *Anti-Discrimination Act 1977* which applies to the police service as a provider of ‘goods and services’, identifies systemic discrimination as unlawful, including discrimination based on race, sex and disability.

Social and Economic Disadvantage

Worldwide, women are a disadvantaged group. The gap between women and men living in poverty has continued to widen in the past decade; a phenomenon commonly referred to as the “feminization of poverty”⁵. In NSW, women are also subject to the feminization of poverty. In February 2003, the average weekly earning of all women in the NSW workforce, including part-time and casual workers, was \$591.30, approximately 64.5% of the average weekly earning of men. Additionally, 60% of families living in NSW public housing are headed by women.⁶ In 2001, the average gross income for Aboriginal peoples in NSW was \$364 per week, approximately 62% of the gross income of non-Aboriginal peoples. For Aboriginal women, the unemployment rate was 14.9% compared with 7.7% of non-Aboriginal women.⁷ Aboriginal women and women with mental health concerns are over-represented in the criminal justice system as they are more often arrested for poverty related offences. The criminalisation of women who are at a social disadvantage clearly represents an inherent and prima facie case of discrimination.

Policing and Systemic Discrimination Based on Sex

Women, by virtue of their social and economic disadvantage, often find themselves reliant on the services and support of the state. As a result, the state becomes increasingly more involved in the everyday lives of women. Consequently, the greater the disadvantage, the greater the state becomes involved in their affairs. This increased intrusion into and scrutiny of the lives of disadvantaged women often results in their subsequent criminalisation. As noted above, socially and economically disadvantaged women generally tend to reside in affordable public housing or low-income neighbourhoods or are homeless and are, consequently, more heavily policed. This reality further contributes to an increased intrusion of the state into the lives of women and to their subsequent fine, charge, arrest, and/or revocation of community, bail or parole orders. Once women have been arrested and charged, the possibility of leaving the system is limited and, if released, re-arrest is more likely. In the twenty-year period between the mid-sixties and the mid-eighties, state government spending on police increased 172% as compared to, for example, only a 41% increase for housing and community amenities.⁸ Financial resources that could have been afforded to women’s services to alleviate the symptoms of poverty are adopted for more invasive measures of control and surveillance.

⁵ United Nations Population Fund (2000) *Review and Appraisal of the Implementation of the Beijing, Platform for Action: Report of the Secretary-General*, United Nations Department of Public Information.

⁶ New South Wales Department for Women (2003) *Statistical Profile of Women in NSW*, September, 2003.

⁷ Ibid.

⁸ Mukherjee et al. (1990).

Policing and Systemic Discrimination Based on Race

The *Racial Discrimination Act* 1975, Section 9:

It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.

The Human Rights and Equal Opportunity Commission (HREOC) of Australia made amendments to the *Racial Discrimination Act* 1975 s9(1A) to include ‘indirect discrimination on the basis of race’ as grounds for complaint.

In NSW, the Select Committee into the Increase in Prison Population found that in 2001 the most significant contributing factor to the increase in incarceration of Aboriginal women was the increase in remand. In 1991, the National Inquiry into Racist Violence reported various and numerous incidents of “intrusive and intimidatory” policing against Aboriginal peoples in general. This includes unwarranted entry into households, physical abuse and discriminatory policing in public places and at private functions.⁹ The inquiry also provided significant evidence of the maltreatment of Aboriginal women and girls, which included racist and sexist verbal and physical abuse. Allegations of sexual abuse and rape have also been made by Aboriginal women while in police custody¹⁰ and today, Aboriginal women often report similar treatment.

A 1985–1986 study in NSW found that although Aboriginal peoples represented 1.5% of the overall population, they comprised 47% of police arrests.¹¹ A more recent study found that Aboriginal peoples were over-represented among the population held in police cells by a factor of 19.¹² In NSW, Aboriginal peoples overall represented 14% of those in police custody. Research carried out by the NSW Bureau of Crime Statistics and Research also shows that one of the main reasons for the over-representation of Aboriginal peoples in NSW prisons is due to high arrest rates.¹³ In 2001, more than 6% of the Aboriginal women arrested were subsequently charged and appeared in court, compared to 0.7% of the overall number of women arrested and charged.¹⁴

Policing and Systemic Discrimination Based on Disability

Women and girls with a disability experience discrimination in significantly different ways, such as through forced institutionalisation, denial of control over their bodies, physical restraint, medical exploitation, humiliation and harassment and lack of financial control.¹⁵

⁹ Chan, Janet (1997) *Changing Police Culture: Policing in a Multicultural Society*, Cambridge: Cambridge University Press.

¹⁰ Bowling, Benjamin, Coretta Phillips, Alexandra Campbell & Maria Docking (2004) “Eliminating Discrimination, Xenophobia, Intolerance and the Abuse of Power from Police Work”, *Identities, Conflict and Cohesion Program*, Paper Number 4, United Nations Research Institute for Social Development.

¹¹ Ibid.

¹² McDonald, David & David Biles (1991) “Who got locked up? The Australian Police Custody Survey” *ANZ Journal of Criminology*, 24(3), 190–203.

¹³ Hamilton Hunter, Boyd (2001) *Factors Underlying Indigenous Arrest Rates*, Centre for Aboriginal Economic Policy Research, Canberra: The Australian National University & New South Wales Bureau of Crime Statistics and Research.

¹⁴ Weatherburn, Don, Bronwyn Lind & Jiuzhao Hua (2003) “Contact with the New South Wales Court and Prison Systems: The Influence of Age, Indigenous Status and Gender”, *Crime and Justice Bulletin*, NSW Bureau of Crime Statistics and Research.

¹⁵ Frohmader, Carolyn (2002) “There is No Justice: Just Us”, *Report on the Status of Women with Disabilities in Australia for Women with Disabilities*, Australia.

Given the lack of sensitivity and awareness of the issues faced by women with mental, cognitive and/or physical disabilities, women with disabilities often find it difficult to deal with the police. Often the evidence they provide is not seen as credible or the police are not skilled in addressing or working with people with such disabilities. The Anti-Discrimination Board receives a significant number of complaints against the NSW Police Service related to disability. In the years 2000/01 to 2001/02, the total number of complaints received by the Board increased from 40 to 54; twenty-four of those complaints, or 44%, were related to discrimination based on disability.

Furthermore, section 127 of the Police Act requires that complaints be made in writing. However, women and those with psychiatric and intellectual disabilities as well as non-indigenous culturally and linguistically diverse (CALD) may not be able to comply with this requirement due to mental, physical or language limitations which, as a result, limits the number of complaints. Many women, therefore, do not have equal access to the complaint process. The Anti-Discrimination Board has indicated that there are many instances where individuals are unable to lodge complaints about the discriminatory treatment they have suffered and that many complaints of alleged discrimination, harassment, vilification and victimisation by the NSW Police Service go unreported.

Women with psychiatric and intellectual disabilities often have what is referred to as “deficits in adaptive behaviour”. This refers to limited communication skills, which includes limitations in both writing and speech, ability to sustain friendships, ability to engage in recreational and social activities, ability to work, manage finances or to run a household.¹⁶ The situation for these women contributes not only to their inability to lodge complaints, but also to ably manage themselves once in police custody. This can result in harsher custodial treatment towards these women as they may be consider uncooperative or unmanageable.

NSW Police Act

In the *Review of the Police Act 1990* (NSW), the Anti-Discrimination Board (2002) recommended that it should be made clear that NSW police services should be provided in a non-discriminatory manner and in a manner which respects the diversity of the people of NSW. “Research evidence suggests that disproportionate use of police power is, at least in part, a product of discrimination, and that the abuse of power is most discriminatory where police autonomy and discretion are greatest”.¹⁷ At present, police have authority to use various legislative provisions to search persons and premises without warrant if it is for a specific purpose or if obtaining a warrant would result in the destruction of evidence or cause harm or injury. This approach to policing places priority of surveillance and control over individual rights and collective liberty and continues to contribute to the overall discrimination of women based on race, sex and disability.

NSW Courts

Women in NSW are more likely to appear before the courts for theft and deception offences, while men are more often incarcerated for offences related to violence.¹⁸ The number of women incarcerated for drug offences increased 40% between 1994 and 2003 and many researchers provide strong evidence of the link between drug or alcohol related offences with sexual and physical abuse against women in Australia and as well as in other countries.¹⁹ These trends are further evidence of the discrimination

¹⁶ Select Committee on the Increase in Population (2000) *Interim Report: Issues Relating to Women NSW*, Associate Professor Susan Hayes.

¹⁷ Bowling, Benjamin, Coretta Phillips, Alexandra Campbell & Maria Docking (2004) “Eliminating Discrimination, Xenophobia, Intolerance and the Abuse of Power from Police Work”, *Identities, Conflict and Cohesion Program*, Paper Number 4, United Nations Research Institute for Social Development.

¹⁸ Johnson, Holly (2004) *Drugs and Crime: A Study of Female Incarcerated Offenders*, Research and Public Policy Series, No.63, Australian Institute of Criminology.

¹⁹ *Ibid.*

within the criminal justice system as these offences are tied to the social and economic disadvantage faced by women.

In New South Wales, Aboriginal women constitute 2% of the female population²⁰ and yet represent approximately 32% of the total NSW women's prison population.²¹ In the five years between 1997 and 2001, about 25,000 Aboriginal people appeared in a NSW court for criminal offence charges.²² This rate represents 28.6% of the NSW Aboriginal population and is 4.4 times higher than the rate for the NSW population as a whole. Aboriginal women appear in court on criminal charges about a third as often as their male counterparts and, in 2001, more than 6% of the Aboriginal women's population appeared in court compared to 0.7% of the NSW women population as a whole. Furthermore, Aboriginal women are also imprisoned at a very much higher rate than the general population. About 1.6 per cent of Aboriginal women in NSW aged 20-24 received a prison sentence in 2001.²³ This rate is 18 times higher than the corresponding figure for women in the same age category.

Women actually pose very little threat to the community. For example, in 2003, of the 18,799 women who were found guilty in the NSW local courts, only 8 were convicted of homicide and related offences.²⁴ It is important to further highlight that many acts of violence are against abusive partners. As numerous research studies have found, many of the victims killed by women are known to the women either as a husband, de facto partner, relative or friend and often occurs in the context of abuse by partners or self-defence during arguments or fights. Furthermore, there is a lack of emergency and support housing for women who want to escape domestic violence. In NSW in 2002-2003, the Supported Accommodation Assistance Program (SAAP) revealed that 67.1% of women seeking assistance were doing so in order to escape domestic violence. Those who are turned away usually had to return to their environments of abuse for lack of any other alternative shelter available to them.²⁵ This further suggests that, on the whole, women pose the least amount of threat to the community upon release and should therefore be given all opportunities to return to their communities as quickly as possible. It is suggested that women, and Aboriginal women in particular, are both directly and indirectly discriminated against by the courts and the correctional system.

The Experience of Prison/Remand for Women in NSW

Women on remand represent a higher proportion (30%) than their male counterparts (18%).²⁶ Given that women are charged with fewer serious and violent crimes than men, the number of women on remand should also be proportionally smaller to the number of men. Aboriginal women are again over-represented amongst women on remand.²⁷ Furthermore, remand prisoners are classified by the Department of Corrective Services as 'maximum security' prisoners. This results in higher levels of security, restrictions on personal property, visits entitlements and other "privileges" for women who have yet to be found guilty.²⁸ For example, despite Mulawa Correctional Centre being rated as a medium security prison and given the department's relatively new classification policy for female prisoners, "the presence of remand prisoners effectively means that medium and minimum security

²⁰ NSW Department of Corrective Services Research and Statistics Unit (2002) *Indigenous Inmates Statistics Report*, October 6.

²¹ Community Profile Series 2001 Census (2002) *Indigenous Profile, NSW 2001*, Australian Bureau of Statistics, Commonwealth of Australia, Canberra.

²² Weatherburn, Don Lind Bronwyn & Hua Jiuzhao (2003) Contact with the NSW Court and Prison Systems: The Influence of Age, Indigenous Status and Gender, New South Wales Criminal Court Statistics, *Crime and Justice Bulletin: Contemporary Issues In Crime and Justice*, No. 78.

²³ Ibid.

²⁴ Ibid.

²⁵ SAAP (2004) *Annual Report 2002/2003*.

²⁶ *The Prison Census*

²⁷ Ryan (2002)

²⁸ *The Inquiry*, p19

prisoners may serve their sentence in an environment that is more onerous than is necessary for their classification status.”²⁹

There are considerable social and psychological costs for a woman in custody. In her study, *Women in Prison*,³⁰ for BOCSAR, Edwards describes imprisonment as a time of immense stress for women. She explains,

“The personal consequences of imprisonment can be devastating. Imprisonment can mean the loss of a job, of significant relationships, and of the legal custody of children ... Prisons are also sometimes places of violence and danger ... Aside from the physical dangers of prisons, inmates must negotiate the day to day prison routine. Prison is an unnatural social environment, and it can take some time to adjust to it. Inmates must learn the social norms governing relations among inmates and between inmates and prison staff.”

It is well known that defendants on remand who are in custody are at a particularly high risk of self-harm and suicide. In 2000, the Australian Institute of Criminology reported that “the proportion of remand prisoners who died in custody during 2000 is almost double the proportion of prisoners in Australian prisons.”³¹ Fitzgerald and Marshal highlight the “irony of remanding a person in custody for their own safety, given the risks of self-harm and harm by others inherent in a closed institution.”³² Given the severity in control and restrictions while in remand, and that women are disproportionately placed in remand, particularly Aboriginal women, Beyond Bars Alliance argues that this also presents a case of discrimination in the NSW criminal justice system.

Prison for Women in NSW

Background

In New South Wales, there are currently eight prisons for women located across the State: Mulawa Women’s Correctional Centre; Dylwinia Women’s Correctional Centre; Berrima Women’s Correctional Centre; Emu Plains Correctional Centre; Bolwara Transitional Centre; Paramatta Transitional Centre; June Baker Centre – Grafton Correctional Centre and Kempsey Correctional Centre.³³ All women prisoners are incarcerated in those prisons.

While women represent a smaller proportion of the total prison population, their imprisonment rate has been fast increasing. Women make up approximately 7.1% of the New South Wales prison population.³⁴ This has been a 13% increase since 2001, and an 88% increase since 1998 of women in NSW prisons.³⁵ Conversely, as the prison rates for women increase, there is a general downwards trend for women being placed in community-based corrections,³⁶ which includes, but is not limited to parole, probation, corrections orders, drug programs, conditional release, and other alternatives to prison. These trends suggest a reliance on more punitive and restrictive measures being placed on women and can be understood as discriminatory.

²⁹ McFarlane, K & J. Murray (1998) “Addressing Offending Behaviour”, *An Issues Paper, With Recommendations Concerning Women’s Imprisonment*, from Observations at Mulawa Correctional Centre’, April 1997- May 1998

³⁰ Edwards, A. (1995) *Women in Prison*, p8

³¹ Collins & Mouzos (2000) *Australian Deaths in Custody and Custody Related Police Operations*, Australian Institute of Criminology.

³² Robert Fitzgerald & Peter Marshal (1999) *Toward a More Objective basis for Bail Decision Making*. p5.

³³ The Beyond Bars Alliance considers both custodial and community based corrections to be prisons.

³⁴ Australian Bureau of Statistics (2004) *Prisoners in Australia 2004*, Canberra, Australia.

³⁵ Australian Bureau of Statistics (2004) *Corrective Services: September Quarter 2004*, Canberra, Australia.

³⁶ Ibid.

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. On a whole, Australian women represent 85% of one-parent families.³⁷ Prior to being criminalised, 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.³⁸ According to the 2001 NSW Inmate Health Survey, 64% of women in prison are hepatitis C positive, 75% of women were unemployed 6 months prior to incarceration, and prisoners in general have poor health characterized by neglect, substance abuse and mental illness. Common issues shared amongst women in prison include dependency, poor educational and vocational achievement, parental separation at an early age, foster care, living on the streets, prostitution, violent relationships, suicide attempts, self-injury and substance abuse.

A large percentage of women entering prison also have the sole responsibility for the care of children. This further places a strain on both women and children during the separation generally necessitated by a period of imprisonment.³⁹ Separation from children and the inability to deal with other life challenges while incarcerated are cause for anxiety amongst women in prison. Particularly given that one of the main features of imprisonment is the stigmatization and separation of prisoners from the rest of the community, this strongly affects the relationship between mothers and children. Given the various challenges and difficulties faced by many women in prison, there is a strong interrelationship between background factors in the lives of women in prison that need to be addressed simultaneously and comprehensively in order to effectively enable them to move forward.

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, and/or isolation, as being those that make them want to self-injure. Women in prison are faced with exactly such situations. This is tacitly acknowledged by prisons, which have rules and regulations in place to prevent self-injury. The invasiveness and controlling nature of these prison policies and practices also work to trigger and worsen feelings of powerlessness.

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 often results in further punishment. However, this approach ignores the role of the prison in generating such violence. Fights in prison are often caused by factors such as boredom, provocation, unreasonable or unfair treatment by staff, denial of rights, favouritism, and constant security checks. Furthermore, severe methods of punishment, variation in the quality of staff and inmate relations, a perceived lack of autonomy, and staff age and experience also effects the level of violence in a prison. These organisational and institutional characteristics have greater effects on the level of violence than individual characteristics.⁴⁰

The social context of women prisoners is integral to understanding their survival practices. The criminalization of women is strongly linked to the socio-economic disadvantages suffered acutely by women and is often a result of their marginal social and economic positions within society and their attempts to survive or transcend such an existence. These matters must be considered when addressing

³⁷ Australian Bureau of Statistics (2001) *Household and Family Projections, 1996 to 2021*, Cat. No. 3236.0, ABS, Canberra.

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

³⁹ Baldry, E (1997) *Convicted Women: Before and After Prison*, *Current Issues in Criminal Justice*, 8(3), 275-286.

⁴⁰ Margaret Shaw (1995) *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.

the various 'needs' of women in prison as, consequently, such problems will persist and the circumstances that led to their criminalization will be repeated.⁴¹

Aboriginal Women's Social Context

When issues of racism affecting the general community are mentioned, the over-representation of Aboriginal peoples in the prison system is cited as a marker of the levels of discrimination against this group. As noted above, Aboriginal women are particularly imprisoned at a much higher rate than non-Aboriginal people within the justice system, both as victims and as prisoners, and 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 address this or to protect Aboriginal women from this violence. In fact, the overwhelming response has been to further punish Aboriginal women by removing them from their communities through imprisonment. Why, in a country that is to be considered just with equal and fair application of the law, is a particular group so continuously and consistently over-represented within our systems of control and punishment?

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; that the criminal justice system is discriminatory in its treatment of Aboriginal peoples and that Aboriginal peoples commit disproportionately more offences because of their marginalized status in society. This reality is rooted in a long history of discrimination and social inequality that has impoverished Aboriginal peoples and consigned them to the margins of our society. The marginalization 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 high incidences of Aboriginal crime and the over-representation within the criminal justice system. Beyond Bars Alliance firmly believes a deeper level of understanding and a greater amount of action is required that goes beyond simply acknowledging the role played by colonialism, poverty and debilitating social conditions. It is clear that the over-representation is directly linked to the particular and distinctive historical and political processes that have made Aboriginal peoples "poor beyond poverty"⁴² and forced them to live in social conditions that are well below the high standard of living enjoyed by most Australians.

Social and economic disadvantage is a particular problem amongst Aboriginal women. For example, in February 2000, the labour force participation rate for Aboriginal women was 42.6% compared with 54.8% of non-Aboriginal women and the unemployment rate for Aboriginal women was 14.9% compared with 7.7% of non-Aboriginal women.⁴³ The social context in which their crimes are committed is integral to understanding Aboriginal women who are criminalized. 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-Aboriginal families due to care and protection orders and removal policies implemented by the Government over the last 100 years.

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 increasing contact with the criminal justice system. Aboriginal women prisoners have significantly different personal and social histories from non-

⁴¹ Margaret Shaw et al. (1996) *Paying the Price: Federally Sentenced Women in Context*, p. 19.

⁴² *Social Justice Report 2002*

⁴³ Australian Bureau of Statistics (2000) *Labour force characteristics of Aboriginal and Torres Strait Islander Australians*, Cat. No. 6287, ABS Canberra.

Aboriginal women in a number of ways and the relationship of Aboriginal peoples' marginalization 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 and they also suffer from a greater incidence of past physical and sexual abuse.

As prisoners, Aboriginal women suffer the compounded and intersectional disadvantages of being both women and as Aboriginal peoples in a discriminatory correctional system. Aboriginal women in the prison system are triply disadvantaged: they suffer the pains of incarceration common to all prisoners, they experience both the pains Aboriginal prisoners feel as a result of their cultural dislocation, and those which women prisoners experience as a result of being incarcerated.⁴⁴

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.⁴⁵

The report goes on to identify that non-discrimination involves more than allowing Aboriginal peoples' access to the principles and standards of living 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 peoples must also be respected.⁴⁶

Discrimination within Women's Prisons in NSW

Access to Programs

In NSW, ironically, women prisoners have been penalized for constituting only a small percentage of the state's prison population. They are not provided with adequate recreation or programs, particularly educational and skill based training. The small numbers of women prisoners have resulted in insufficient opportunities made available to them in prison and have also been used as a justification for the failure to focus on the particular requirements of women in prison.

Many correctional policies and practices applied to women are fundamentally an adaptation of those considered appropriate for men. Furthermore, programs provided to women prisoners are not comparable in quantity, quality, or variety to those provided to male prisoners.⁴⁷ Similarly, women in prison do not have the same access to pre and post release programs. The programs a woman can access varies according to whether she is in prison, on remand, whether she has been sentenced, if she is released on parole or on a community based order, or if she has served a finite sentence. The 'status' of a female prisoner affects the types of programs that can be accessed; that is, depending on what classification she is.⁴⁸ This arbitrary application of and inconsistent access to programming not only restricts women's opportunity to benefit from some form of activity while in prison, but also limits women's opportunities for early release. Women should not be further penalized for the Department of Corrective Services' failure to provide adequate programming.

⁴⁴ Daubney Commission (1988) "Taking Responsibility", quoted in *Creating Choices*, p. 38.

⁴⁵ *Social Justice Report 2002*, p. 13.

⁴⁶ *Ibid.*

⁴⁷ Select Committee on the Increase in Prisoner Population (2000) *Interim Report: Issues Relating to Women*, July.

⁴⁸ *Social Justice Report 2004*.

Aboriginal women in prison rarely have programs and courses that are Aboriginal centred or that take into consideration their cultural and spiritual traditions and customs. Programs that fail to consider Aboriginal culture and their current social and economic disadvantage will similarly fail to prepare Aboriginal women for release or support them in coping with the day to day stress, boredom and loneliness of prison life. Additionally, due to the majority of Aboriginal women having a medium to high classification, access to prison programmes is restricted. (see section on Security Classification).⁴⁹ This ongoing neglect is a continuation of the colonial legacy that has desecrated, exploited and marginalized Aboriginal peoples.

Access to Work Opportunities

Opportunities to work and develop employment and trade skills are also limited for women in NSW prisons. In addition to denying women opportunities to improve their economic situations, the type of employment that is offered to women in prison is not useful in gaining work outside prison. Furthermore, those who do not participate are sanctioned. Women also have very few opportunities to pursue education in prison as there are limited places for each program.⁵⁰ Those who choose education have to do so at the expense of an already meagre pay for prison labour.⁵¹ Failing to provide women in prison with useful employment and educational opportunities limits their potential to succeed in their communities and essentially sets them up to fail.

Conditional and Community Release

Relative to men, women pose a lower risk to the safety of the community. However, except for the 40 or so women in transitional centres, women are provided with few opportunities for work release⁵² or other contact with the community prior to release. This reality is particularly true for Aboriginal women who are granted conditional or community release at a much lower rate than other women in prison.⁵³

Similarly, women with mental or cognitive disabilities are more likely to be classified as higher security, as their inability to “manage” translates into a risk concern. As a result of this tendency to give women with mental or cognitive disabilities higher security classifications, they too are less likely to obtain conditional or community release. Furthermore, since women with mental or cognitive disabilities require more support upon release and the facilities that do provide such support are extremely limited, they are again less likely to obtain these types of release as there are few places that can accommodate their disability. A lack of adequate community-based resources is not a justifiable reason for failing to release women into the community as this constitutes discrimination based upon their disability.

Women with Disabilities

Women prisoners in New South Wales 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 prisoners, those with families and children, single women, and those with special physical and health needs. Many women prisoners are identified as having high levels of need for programs and services, including mental health needs. Men and women in prison have markedly different mental health needs and problems. Many problems experienced by women prisoners can be linked directly to past experiences of early and/or continued sexual abuse, physical abuse and assault.

⁴⁹ Select Committee on the Increase in Prisoner Population (2000) *Interim Report: Issues Relating to Women*, July.

⁵⁰ Standing Committee on Law & Justice (2000) *Crime Prevention through Social Support (Second Report)*, August.

⁵¹ Select Committee on the Increase in Prisoner Population (2000) *Interim Report: Issues Relating to Women*, July.

⁵² Only 9 women were on work release in March 2005. DCS Weekly Statistics.

⁵³ Lawrie, Rowena (2003) *Speak Out, Speak Strong: Researching the needs of Aboriginal Women in Custody*.

The well-documented institutional warehousing of persons with disabilities⁵⁴ is not an acceptable practice and the recognition that people with mental disabilities can and do benefit from community-based services has rendered the practice of institutionalization more objectionable. The provision of community-based services and less invasive treatments are now recognized as the preferred approach.⁵⁵ Although community integration is 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 characterizing their behaviour as 'criminal', labelling them as 'criminal offenders', and institutionalizing them in the criminal justice system. Social and economic challenges such as homelessness, unemployment, social isolation, malnutrition and substance abuse further compound the struggles and challenges of people with mental disabilities. As a result of these difficulties, prisons are increasingly becoming the default placement for people with mental disabilities.⁵⁶

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, New South Wales is now witnessing a marked increase in the number of women with cognitive and mental disabilities who are being criminalized. Studies about women in prison indicate that women prisoners have significantly higher incidences of mental disabilities including schizophrenia, major depression, substance use disorders, psychosexual dysfunction, and antisocial personality disorder, than the general community. In addition, incarcerated women have much higher incidences of histories of childhood sexual abuse and severe physical abuse than women in the general population.⁵⁷

Overall, women outnumber men in all major psychiatric diagnoses:⁵⁸ women prisoners are three times as likely to experience moderate to severe depression (68.9%) compared to men in prison; men in prison 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. Although men were more likely than women to report a psychiatric admission within the correctional system, this is likely due to there being little access to a women's psychiatric hospital in prison⁵⁹ despite a 20 bed hospital being opened in 2004 in Long Bay Correctional Centre for forensic and/or psychiatric affected women.

Women with mental disabilities often serve long sentences and are labelled as having significant disciplinary problems, while the prison system is ill equipped to provide the services and supports required by such women. According to the *Crimes (Administration of Sentences) Act 1999 and Regulation*, "community safety" is the paramount consideration in sentencing. It is not surprising then that administration and staff prioritize security and risk management over all other institutional and/or individual needs. As a result, women's health and well-being is given secondary consideration, if at all, and prison staff have little awareness of how to respond appropriately to prisoners with mental disabilities.⁶⁰

⁵⁴ Beyond Bars Alliance uses the term "mental disability" to refer to intellectual cognitive, psychiatric and learning disabilities.

⁵⁵ Butler, Tony & Milner, Lucas (2003) *The 2001 NSW Inmate Health Survey*.

⁵⁶ Kilroy, D. (2001) "When Will You See the Real Us? Women in Prison," *Women in Prison Journal*, October and Hocking B.A., Young M., Falconer, T., and O'Rourke P.K. (2002) *NSW Inmates Health Survey*, Corrections Health Service.

⁵⁷ Kilroy, D. (2001) "When Will You See the Real Us? Women in Prison," *Women in Prison Journal*, October and Hocking B.A., Young M., Falconer, T., and O'Rourke P.K. (2002) *NSW Inmates Health Survey*, Corrections Health Service.

⁵⁸ Hannah-Moffat, K., & Shaw, M. (2001) *Taking Risks: Incorporating Gender and Culture into the Classification and Assessment of Federally Sentenced Women*, Government of Canada: Status of Women Canada.

⁵⁹ Butler, Tony & Milner, Lucas (2003) *The 2001 NSW Inmate Health Survey*.

⁶⁰ Butler, Tony & Milner, Lucas (2002) *The 2001 NSW Inmate Health Survey*.

For example, 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 women in physical restraints or administrative segregation – crisis support units. Such responses often exacerbate rather than alleviate the woman's symptoms.⁶¹

The Department of Corrective Services state that 57.1% of women in New South Wales prisons have been diagnosed with a specific mental illness.⁶² 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".⁶³ Indeed, the spectre of institutionalization common in previous days may very well be reinventing itself in today's prisons.

Non-Indigenous and Linguistically Diverse Women (CALD)

CALD women are a minority group within NSW prisons and failing to address language barriers represents a failure of the Department of Corrective Services to assist women with culturally and linguistically diverse backgrounds in NSW prisons. For example, CALD women found that, in general, contact with prison staff was difficult.⁶⁴ Prison management's attempt to overcome such barriers through the use of other women prisoners as interpreters is not an adequate or realistic strategy.

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".⁶⁵

The Department of Corrective Services only attempts to provide linguistically and culturally appropriate information at reception upon arrival at prison. The reception/induction process can be quite lengthy and complicated, but rather than use face-to-face interpreters, management relies upon a telephone interpreting service, and only if considered necessary. This method is highly alienating form of communication, particularly upon entry when women are most confused, alarmed and vulnerable.

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 the Operations, Policy and Procedures Manual. This information is only available in English. In a recent survey, women that were interviewed stated that they did not have access to an interpreter after admission into the prison.⁶⁶ CALD women endure absolute deprivation and isolation in the prison system. They are in a "state of *de facto* solitary confinement."⁶⁷ As a result, 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. Furthermore, women routinely spend twelve to thirteen hours per day locked in their cells or units and given the small number of CALD women, they are often placed in a cell with non-CALD women. CALD women report social and emotional isolation due to cultural and language difference. 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. 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.

⁶¹ Butterfield, R. (2000) *Prisons: The Nation's New Mental Institutions in CAPT Outreach Magazine*, February.

⁶² Hocking B.A., Young M., Falconer, T., and O'Rourke P.K. (2002) *NSW Inmate Health Survey*, Corrections Health NSW.

⁶³ Butterfield, R. (2000) *Prisons: The Nation's New Mental Institutions in CAPT Outreach Magazine*, February.

⁶⁴ Select Committee on the Increase in Prisoner Population (2000) *Interim Report: Issues Relating to Women*, July.

⁶⁵ Easteal, P. (1992) *The Forgotten Few: Overseas Born Women in Australian Prisons*, AGPS: Canberra.

⁶⁶ Multicultural Resource Development Project (2004); *Final (Unpublished) Report*, Sisters Inside.

⁶⁷ Easteal, P. (1992) *The Forgotten Few: Overseas Born Women in Australian Prisons*, Canberra: AGPS.

CALD women also 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 Mulawa Women's Correctional Centre) and were unaware of the procedures for seeing a counsellor or accessing educational programs.⁶⁸ Prison management attempts to overcome language problems through the use of other women prisoners as interpreters, which is not an adequate means to ensure women are properly and well informed.

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 as women are required to pay for all telephone calls. Furthermore, women in prison pay premium rates for both local and international phone calls. So, for example, for a local call women pay 40c rather than 20c. As mentioned above, given that many women come from lower socio-economic backgrounds, maintaining outside contacts remains difficult for many.

Security Classification

Clause 10 of the *Crimes (Administration of Sentences) Regulation 1995* requires that every prisoner be assigned a security classification. The *Crimes (Administration of Sentences) Act 1999* provides that security classifications apply to both men and women prisoners. Beyond Bars Alliance disputes the application of the security classification system for women in two ways: firstly, as to whether women should be assigned a security classification at all and, secondly, whether the current instruments that measure 'risk' are valid for women prisoners.⁶⁹

The NSW Department of Corrective Services assesses security classification on the basis of 'risk' as determined by 'needs'.⁷⁰ Given their social and economic disadvantage, women prisoners are particularly discriminated against by a security classification system that equates a woman's 'needs' as risk factors. Consequently, a process that converts 'disadvantage' or 'needs' into 'risk' penalizes women for their disadvantage. Accordingly, a greater social and economic disadvantage will attract a higher security classification.

This security classification rating scheme results in Aboriginal women being disproportionately classified as higher security for reasons that relate to the historical reality of colonial oppression and the current social and economic realities of Aboriginal disadvantage. Since such disadvantage equates to 'risk', the 'individual' risk categories used in the classification scheme reflect the experience of the entire Aboriginal population, resulting in the over-classification of the majority of Aboriginal peoples. A higher classification for Aboriginal women results in them not being eligible for a range of opportunities including, for example, being eligible for the Paramatta Transitional Centre, the Jacaranda Cottages at Emu Plains or a Section 25 release.⁷¹

Similarly, women prisoners labelled with a mental or cognitive disability are also more likely to be classified as maximum-security prisoners as they are often described as "difficult to manage".⁷² Conditions of isolation and the lack of appropriate services exacerbate existing mental health conditions and underscore the harsh and discriminatory nature of placing women with mental and cognitive disabilities in higher maximum security. Additionally, women prisoners who have a mental or cognitive disability, or who are in need of support due to self-harming, are confined in exactly the same way as women who

⁶⁸ Kilroy, D. (2003) *The Silenced Few: NESB Women in Prison, Pandora's Box*, Queensland University.

⁶⁹ Select Committee on the Increase in Prisoner Population (2000) *Interim Report: Issues Relating to Women*, July.

⁷⁰ NSW Dept Corrective Services (2004) *Operations, Policy & Procedures Manual*.

⁷¹ Lawrie, Rowena (2003) *Speak Out Speak Strong: Researching the Needs of Aboriginal Women in Custody*.

⁷² Butler, Tony & Allnut, Stephen (2003) *Mental Illness Among NSW Prisoners*, August.

are perceived as problems for prison discipline.⁷³ Prison staff are not adequately trained and resources are not available to ensure proper treatment is available for these women. 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, and male-based approach on women prisoners and fail to consider the diverse challenges women face.

Section 2 of the *DCS Operation & Procedures Manual* 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. If a low or open security prisoner is in a maximum security prison, then they do not have the same access to the entitlements of a low security prisoner. As already documented above, there are inadequate low security beds for women in New South Wales prisons. Women regularly serve their sentences in maximum security regardless of their security classification.

The conditions of confinement of women prisoners are virtually the same regardless of security classification. The majority of women are imprisoned in maximum-security prisons despite a lower security classification rating. This is a result of there being too few low and open facilities. Beyond Bars Alliance asserts that the lack of low security facilities available to women prisoners constitutes discrimination based on sex. Although there are several NSW prisons that are regarded as medium and minimum security, the actual number of women that are classified low security and have access to the privileges and programs associated with being a low security is minimal.⁷⁴ In 2003, Emu Plains Correctional Centre, which was considered a medium to low security prison, built more fencing to enable remand women prisoners (i.e. high security classified) to be housed there. This, therefore, minimizes the low security positions that the prison was originally developed for.⁷⁵

Strip Searching

Mandatory strip searching is also experienced in a discriminatory manner by women prisoners. Women prisoners, as a group, have higher incidences of prior sexual assault, domestic violence and other forms of abuse⁷⁶ (and suffer post-traumatic stress as a result at higher rates than male prisoners⁷⁷ as well as the general community). As a result, they often experience strip searching as a new occurrence of assault. Furthermore, there is no evidence that mandatory strip searching actually carries out its stated purpose to prevent contraband. There are other proven ways to search for and prevent contraband. Mandatory strip searching, as a non-consensual act, is de-humanising and humiliating and fails to

⁷³ Armstrong, K (2001) Personal Observations.

⁷⁴ Select Committee on the Increase in Prisoner Population (2000) *Interim Report: Issues Relating to Women*, July.

⁷⁵ Armstrong, K (2003) Personal Observations.

⁷⁶ Lawrie, Rowena (2003) *Speak Out Speak Strong: Researching the Needs of Aboriginal Women in Custody*.

⁷⁷ Butler, Tony & Milner, Lucas (2003) *The 2001 NSW Inmate Health Survey*.

accomplish its intended purpose. It is an unjustified assault on women prisoners by the state and thus breaches their human rights.⁷⁸

As a debasing, unreasonable and discriminatory practice, strip searching contravenes Australia's International Treaty obligations, such as the International Covenant on Civil and Political Rights (ICCPR), ratified in Australia on 13 November 1980, the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), ratified in Australia on August 27 1983 and the Convention Against Torture and Other Cruel Inhuman or Degrading Punishment or Treatment ratified in Australia on 7 September 1988 (henceforth referred to as the Convention Against Torture).

All persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person
Article 10.1 ICCPR

No-one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
Article 7 ICCPR

No-one shall be subjected to arbitrary and unlawful interference with his privacy, family, home or correspondence ...
Article 17.1 ICCPR

Everyone has the right to protection of the law against such interference or attacks
Article 17.2 ICCPR

The ICCPR makes reference to prisoners' human rights based on 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.

International Law says that a punishment is cruel if it does not contribute to acceptable goals and results in purposeless and needless 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.⁷⁹ 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, despite having lost their right to freedom, prisoners' rights do not stop at the prison door.⁸⁰ "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".⁸¹

Mandatory strip searching is in breach of the ICCPR principles, as women in prison are routinely punished through the random and mandatory strip searches that are conducted without reasonable suspicion and that violate their right to personal security against unlawful and unreasonable invasion.

Strip searching also violates the provisions set forth by the Convention Against Torture as it constitutes cruel, inhuman and degrading treatment. Strip searching, as an unjustifiable and dehumanizing practice,

⁷⁸ George, Amanda (2003) "Strip searches: Sexual Assault by the State" in Eastal, P (ed.) *Without Consent*.

⁷⁹ Sieghart, Paul (1983) *The International Law of Human Rights*, Clarendon Press, 166.

⁸⁰ O'Neill, Nick & Robin Handley (1994) *Retreat From Injustice: Human Rights in Australian Law*, Federation Press.

⁸¹ Coffin v Reichard 143 F. 2d. 443 (1944) at p.445.

is an unlawful interference with the privacy and wellbeing of the prisoner and violates the obligation to treat women prisoners with humanity and respect for the inherent dignity of the human person.

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. The strip searching of women, and particularly women who are survivors of sexual assault, is an antiquated practice that can only result in the further degradation and humiliation of women. Corrective services are clearly in breach of Australia's obligations under the ICCPR and the Convention Against Torture.

The arbitrary, capricious and oppressive strip searching of women is also in breach of Australia's commitment to the rights of women. The CEDAW committee, which comprises 23 experts of "high moral standing and competence", has articulated that discrimination against women includes gender based violence, that is, violence that is directed against a woman as a result of her gender, or that affects women disproportionately. As a large majority of women from prison are survivors of sexual abuse and/or incest, strip searches impact women disproportionate. A strip search, as an assault, is an act of violence towards a woman's person. In Queensland, women prisoners are strip searched more frequently than male prisoners. The frequency at which strip searches occur on women further reinforces gender subordination and violence directed towards women.

Post-release

After release from prison, women and especially Aboriginal women are subject to discrimination. There are only ten funded post-release support places for women in NSW at Guthrie House. These places must also serve women seeking housing support for bail, women awaiting a Drug Court hearing and women on parole. There are no funded supported places for Aboriginal women. Women and Aboriginal women in particular return to prison after release significantly faster and in greater numbers than men which suggests they face significantly greater barriers to social integration. This is unsurprising, considering that they are provided with fewer resources and opportunities.⁸² Aboriginal women who are on parole are also breached in greater numbers than other parolees often due to lack of suitable housing, failed attempts to reclaim their children and the necessity of having to consort with partners, family and friends who they may be ordered not to mix with. There is a growing rate of re-imprisonment due to these breaches of administrative orders and they affect women disproportionately.⁸³

Other Forms of Discrimination

Religion

The religious needs of women prisoners are met through the Chaplaincy Board. The Chaplaincy Board currently includes four denominations (Anglican, Catholic, Uniting 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.⁸⁴ Furthermore, Vietnamese women have very distinct days of special significance. Yet their festivals and days of special religious observance are not celebrated within

⁸² Baldry E & Maplestone, P (2003) *Women Ex-Prisoners Post Release: Where to Go from here?*

⁸³ *NSW Prison Census (2003)*

⁸⁴ Kilroy, D. (2003) *The Silenced Few: NESB Women in Prison, Pandora's Box*, Queensland University.

prison. Vietnamese women identified two days of special significance: *Tet* and the Moon Festival, yet while the prison makes allowances for Christian holidays such as Easter and Christmas, no allowance is made for non-Christian religious holidays.

Food

Despite the existence of some freedom in selecting menus, some women, such as vegetarians, vegans, CALD women and women of certain religious faiths find it very difficult to accommodate their dietary needs as food selection and preparation are based on a Western standard.⁸⁵ In addition, some women have metabolic conditions (such as lactose intolerance) that prevent them from eating much of the food served in the prison. Although the prison does provide some basic ingredients for the women's use and the women then "buy in" any special items which they wish to use, women still find that the basic ingredients are western and they are forced to buy most or all of the ingredients for their meals. This presents a financial burden because the women only receive approximately \$3 to \$4 a day, depending on what industry they work in and even less if they are continuing their education. This practice is detrimental and discriminatory in regards to respecting women's dietary and cultural needs.

Systemic Discrimination: The Regulatory Framework

The Statutory Framework

The *Crimes (Administration of Sentences) Act 1999 and Regulation*, the *Crimes (Sentencing Procedure) Act 1999*, the *Parole Orders (Transfer) Act 1983* and departmental policies and procedures govern the conditions of imprisonment and the release of women prisoners in New South Wales.

The *Crimes (Administration of Sentences) Act 1999* provides that every member of society has certain basic human entitlements and that, for this reason, a prisoner's entitlements, other than those that are necessarily diminished because of imprisonment or another court sentence, should be safeguarded. The *Crimes (Administration of Sentences) Act 1999 and Regulation* 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 the dignity of those in prison and their special needs by taking into account age, gender, race, disability status and the culturally specific needs of Aboriginal and Torres Strait Islander peoples. 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 Commissioner of the Department of Corrective Services. For example, there is no provision in the Act that specifically mentions "management plans", but management plans are nonetheless one way in which women in prison are controlled. Firstly, management plans are not applied to all women, only to those selected by the prison administration. Furthermore, 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 prison authorities.

The *Crimes (Administration of Sentences) Act 1999* 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 *Crimes (Administration of Sentences) Act 1999* is community safety and crime prevention through the humane containment, supervision and rehabilitation of prisoners. The primacy of this concern reflects the traditional security based model for prison

⁸⁵ Ibid.

management. Because of the statutory mandate, *Crimes (Administration of Sentences) Act 1999* 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. The legality of policy and the manner in which policy is implemented are assessed only against the requirements of the *Crimes (Administration of Sentences) Act 1999 and Regulation*. 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.

Conclusion

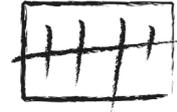
The systems and processes of policing, courts, prisons and are often shielded from public scrutiny. While past inquiries, reviews and reports have repeatedly and consistently documented the abuses and mistreatment to which women have been and are subjected, there are no systems of accountability to ensure the rule of law is upheld and that women's well-being is maintained. Whilst women caught in the criminal justice system may have only a brief encounter with policing and the courts, they may have prolonged encounters with the prison system. For women prisoners, enquiries and investigations into the prison are often seen as potentially harmful as any information that they convey can be used against them by prison authorities and/or administration in various pernicious ways. As a result, women are often reluctant to disclose information that can have personal consequences for them.

Beyond Bars Alliance urges the Anti Discrimination Commission of NSW to immediately initiate an inquiry and/or a review into the conditions of women in the criminal justice system in New South Wales, in order to remedy the systemic discrimination and human rights violations that women in prison face.

Appendix I

Similar letters were sent to The Commissioner for Corrective Services and the Commissioner for Police

beyond bars
alternatives to custody



20th July, 2004

Hon. Bob Debus MP
Attorney General of NSW
PO Box A290
Sydney South
NSW 1232

Dear Attorney General

Re: Complaint Regarding the Discriminatory Treatment of Women in the Criminal Justice System by the Government of New South Wales.

On behalf of individual community members we are writing to register our complaint about the discriminatory treatment of women in the criminal justice system at the hands of the New South Wales Government. We are requesting that the NSW Attorney General's Department, the NSW Police Department and NSW Department of Corrective Services conduct a broad-based, systemic review and issue a special report regarding the treatment of women in the criminal justice system including women prisoners.

This complaint is made on the grounds that the manner in which women are treated in the criminal justice system is discriminatory, as it contravenes several of the prohibited grounds articulated in the Human Rights and Equal Opportunity Commission Act 1986 as well as rights and obligations that have become part of customary international laws. The process of arrest, detainment for questioning, remanded to custody, appearing in court and the subsequent incarceration in NSW prisons should be included within the systematic review and report..

We are concerned about the discrimination on the basis of sex that is faced by women throughout the system, especially poor women, Aboriginal women, women with mental and intellectual disabilities and single mothers facing court, those held on remand, housed in segregated crisis support units and all those subjected to strip searches. In addition, we are very concerned about the discrimination on the basis of race that is the particular experience of Aboriginal women (with NSW having the highest rate of over-representation of Indigenous women in prison in Australia and possibly the world [Social Justice Commissioner 2002]) and other racialised women, as well as discrimination on the basis of disability that is experienced by women facing arrest, court and imprisonment in New South Wales with cognitive and mental disabilities (with up to 50% having a mental disturbance in the 12 months prior to imprisonment).

In addition to the material in previous reports on issues of Aboriginal prisoners in particular, we refer you to the documentation of the nature and extent of the discrimination on the basis of sex, race and disability experienced by women in the criminal justice system in New South Wales evident in the documents listed in the attachment.

With the exception of various internal investigations, we understand that the foregoing documentation is available and known to your Department. Should this not be the case, we would be happy to assist you in obtaining copies of any documents to which you do not currently have access. In addition, we are available to meet at a time of mutual convenience to discuss this matter further. Please do not hesitate to contact me at your earliest convenience should you have any questions or desire any additional information regarding this complaint.

Yours sincerely,

Dr. Eileen Baldry
On behalf of the Beyond Bars Alliance

Identical requests sent to the NSW Police Commissioner and the NSW Commissioner for Corrective Services

Cc: Anti Discrimination Board of NSW

PLEASE REPLY TO:
Dr Eileen Baldry
Senior Lecturer
School of Social Work
UNSW
NSW 2052
Ph 9385 1878

Attachment – documents relevant to discrimination against women in the criminal justice system

1. “Inmate Health Survey 2001” Butler & Milner (2003)
2. “Women ex-prisoners post-release. Where to from here?” Baldry, E. paper presented at Sisters Inside Conference, Brisbane Nov 27-30th (2003)
3. “Diverting Mentally Ill Women away from Prison in NSW: building on the existing system” Walsh, T. *Psychiatry, Psychology and Law* Vol 10, No 1 pp227-238 (2003)
4. “Issues Facing Mental Health Patients Post Release”. Greenberg, D. (2003)
5. “The Invisible Sentence Project” –Scott, P. (2003)
6. “Prisoners In Australia” – Australia Bureau of Statistics (2003)
7. “Aboriginal Offenders Strategic Plan 2003-2005” NSW Dept Corrective Services, (2003)
8. “Speak Out, Speak Strong” Lawrie R. (AJAC-2003)
9. NSW Aboriginal Justice Plan: Discussion Paper Summary - Aboriginal Justice Advisory Committee (AJAC – 2002)
10. “Indigenous Women and Corrections – A Landscape of Risk” Social Justice Report 2002, Aboriginal & Torres Strait Islander Social Justice Commissioner.
11. “Ex-prisoners and Accommodation: What bearing do different forms of housing have on social re-integration”. Positioning paper AHURI, Melbourne. Baldry E, McDonnell D, Maplestone P, Peeters M. (2002)
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13. “Mental Health and the Criminal Justice System”. Paper presented at a Public Seminar, Institute of Criminology, University of Sydney, (2002)

14. "Report on an Inspection of Mulawa Correctional Centre". Inspector General of NSW Corrective Services (2002)
15. "Strip Searching as Sexual Assault". *Women in Prison Journal* Vol 2: 17-23. Pereira, C. (2001)
16. "Women Bail and Remand" Ryan, L. Student Report to the NSW Anti Discrimination Board (2001)
17. "Double jeopardy: sentencing options in NSW and the discriminatory implications for female offenders as carers". Ellison, S. report to the ADB 2001
18. "Homelessness and the Criminal Justice System" *Women, Girls and Criminal Justice* Vol 12 No 6:83, 91-94. Baldry, E. (2001)
19. "Interim Report – Issues Relating to Women". Select Committee on The Increase in Prisoner Population. NSW Legislative Council July (2000)
20. "Reducing the Number of Women In Prison". Research submission to Select Committee on the Increase in Prisoner Population NSW Parliament Upper House Committee. Vinson, T and Baldry, E. (2000)
21. "Women's Action Plan 2" NSW Department of Corrective Services October (2000)
22. "Women in Prison: The Criminal Court Perspective". NSW Bureau of Crime Statistics and Research, Fitzgerald, Jacqueline (1999)
23. "Convicted Women: Before and After Prison". *Current issues in Criminal Justice* Vol 8, No 3: 275-286. Baldry, E. (1997)
24. "Women in Prison": *Crime and Justice Bulletin – Contemporary Issues in Crime & Justice* No: 26, NSW Bureau of Crime Statistics and Research, Sydney. Edwards, A. (1995)
25. "Prison-Not Yet the Last Resort: A Review of the NSW Penal System" Inter Church Steering Committee on Prison Reform (1994)
26. "Prisons and Women", Hampton, B. (1994)
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