

Women Incarcerated at Darwin Correctional Centre – Advocating for and Shining a light on Women Ordinarily Invisible at a Policy, Systems and Structural level

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Inside sector 4 : the criminalisation of abuse victims

Top End Women's Legal Service (**TEWLS**) work in sector 4 at the Darwin Correctional Centre has provided an insight into the women incarcerated there that few others share. Providing civil law services to those women has revealed to TEWLS not only the extent of their legal needs, but the extent of their broader holistic needs, and the ever-continuing reality that if those needs go unaddressed their prospects of successful reintegration into the community remain slim.

In deciding to undertake the project the subject of this article, TEWLS sought to develop an evidence base for what they anecdotally already knew. In this article, the evidence is laid bare together with the accompanying commentary as to why the information we came to know is so important. To provide context, a couple of de-identified case studies are provided of the strong, resilient women TEWLS has come to know as clients. It is hoped that this demonstrates the lived experience and needs of just a few of the occupants of sector 4 and provides context to the key ask of this piece of work.

Karie* is an Aboriginal woman incarcerated for offences committed whilst 'ice' affected. Prior to sentencing, Karie had weekly face to face contact with her children. Once incarcerated, all contact and communication stopped.

Court orders were obtained facilitating supervised contact and communication. Expert evidence identified multiple health and well-being benefits for both Karie and the children of ongoing connectivity.

Maintaining safe connection to family is vital for incarcerated women, and assists in reducing recidivism. Of note, Karie has complex trauma acquired as a child and incarcerated women's access to services to address reasons foundational to criminality is severely limited.

Shalayne* asked for help about a domestic violence order. In providing that assistance, we also addressed her consumer contracts, court fines, and debt matters.

Shalayne disclosed 'historical' sexual assaults for the first time during legal appointments and a victim of crime compensation application was lodged. We facilitated an external specialist NGO sexual assault counselling service to attend Shalayne and other women incarcerated in Darwin. Prior to this, incarcerated women had no access to sexual assault counselling at the prison.

We are currently advocating for attendance at therapeutic and rehabilitation programs to count towards cutting out court fines, and for financial counselling services for all incarcerated women in Darwin.

The project identified that many, if not all, women had multiple unaddressed pre-existing vulnerabilities, being compounded by incarceration. There was a clear absence of any targeted focus on addressing the high-level complex trauma being experienced by the women and instead a systems focus on the criminal acts and accompanying offending behaviour. TEWLS believes this article shows that by taking this approach, it serves little purpose in achieving the goal of reducing recidivism. Incarcerated women continue to be devalued and invisible at a policy, systems and structural level.

OUR ASK

The provision of an external, specialist, trauma-informed, domestic and family violence visiting counsellor to Sector 4 at the Darwin Correctional Centre.

Introduction

In 2019, TEWLS embarked on a Legal Health Check project within Sector 4 of the Darwin Correctional Centre (**DCC**). Sector 4 of the DCC houses female inmates and as the site of a regular legal clinic, is an area well-known to TEWLS, as are its occupants.

TEWLS is a community legal centre focused on the advancement of women's rights. TEWLS provides high quality, responsive, and culturally appropriate free legal advice, information, casework and representation services, community legal education and advocacy in civil and family law to women living in the Greater Darwin region. Notably, TEWLS remains the only service to provide a consistent civil and family law clinic for women incarcerated at the DCC.

In order to assist as many women as it can, TEWLS attends at the DCC every third week and at any one time, has over 100 open legal matters (being legal tasks or representation matters). In the last five years, service demand at the DCC has increased by 500%, with the service's key performance targets similarly exceeded. With funding at the same level as a decade ago, TEWLS is falling further behind in its ability to meet the legal needs of these women incarcerated at the DCC.

Legal Health Checks (**LHC**) are a discursive, flexible screening tool which 'diagnose' legal problems. As a best practise initiative, TEWLS adapted the legal health check to identify precursors to incarceration, to holistically identify and address the multiple legal needs of women incarcerated at DCC, and to establish a Northern Territory specific evidence base.

LHCs are non-confrontational. They allow participants to determine their level of engagement and disclosure. This is essential when working with victims of domestic and family violence, where there is always much that remains unsaid, and in seeking to address consequential and current legal and related matters.

The LHCs further highlighted the urgent need for legal assistance to be provided to women incarcerated in Darwin, however they also identified the acute needs of the women outside of the realm of legal advice. They identified the stark reality of the experiences of the women in terms of social disadvantages together with past and ongoing experiences of abuse.

LHC STATISTICAL SNAPSHOT

- 76% identified as Aboriginal and/or Torres Strait Islander
- 76% had experienced DFV either as a child or an adult
- 76% had received an injury from a violent act
- 74% had issues with alcohol and/or other drugs
- 53% of those who chose to answer had a pre-existing mental health condition
- 52% were either receiving treatment or had medical concerns
- 78% were mothers and 30% had prior involvement with Child Welfare authorities

The Northern Territory Context

The Northern Territory has the highest incarceration rates in Australia for both women and men, with almost half convicted of a violent act. In the last decade, the rate of women incarcerated in Darwin has doubled.¹ This follows a worrying national and international trend in the increase of incarcerated females, where included in the growth of female incarceration generally is the rate of incarceration of Aboriginal women; the fastest growing segment of the prisoner population in Australia.²

In the NT, there is a significant overrepresentation of Aboriginal women compared with non-Aboriginal women within the prison system, where between 2008 and 2017, the rate of incarceration of Aboriginal women in the NT more than doubled, increasing by 109 per cent.³

According to the Law Council of Australia, Indigenous women make up around 2.2 per cent of the overall Australian female population, but around 34 percent of all women prisoners.⁴

The uniqueness of the female prisoner – the criminalisation of abuse victims

Women prisoners represent one of the most socially, culturally, and economically marginalised populations in Australian society. The literature universally recognises that the majority of these women have a history of poverty, housing insecurity, unemployment, poor educational outcomes, poor health and institutional intervention. The statistics gleaned from the LHCs supports this in its entirety.

The criminogenic profile of women prisoners is profoundly different from that of male prisoners. Perhaps the most important difference relates to women's past experiences of violence. Repeated studies have found that at least 85% of women prisoners in Australia are victims of abuse, with most having experienced multiple forms and incidents of violence.⁵ In line with national figures, **76% of the women who engaged in the LHC project had experienced domestic and family violence either as a child or an adult or both.** As a result, and in our experience, the majority of female prisoners suffer from complex trauma.

The level of complex trauma experienced by the vast majority of incarcerated women contributes to their risk of re-offending. While women on average serve significantly shorter sentences than male offenders, they tend to have higher recidivism rates.⁶

It has been widely demonstrated that Aboriginal and Torres Strait Islander women experience higher rates of domestic and family violence than non-Indigenous women.⁷ Indigenous women prisoners generally report a significant history of trauma and abuse beginning in childhood.⁸ Within the LHC project, **76% of those who took part identified as**

¹ Derived from Australian Bureau of Statistics, *Prisoners in Australia*, 2017 (2017) cat. no. 4517.0 <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/7B1DF284B985CDE1CA25835A0010FCD7?opendocument>>.

² *The Justice Project Part 1 - Aboriginal and Torres Strait Islander People*, Law Council of Australia (2018).

³ See above n 1.

⁴ *Pathways to Justice - Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples*, Australian Law Reform Commission (2018).

⁵ *Women in prison in Australia* Current Issues in Sentencing Conference, Debbie Kilroy (2016).

⁶ *Women in prison: histories of trauma and abuse highlight the need for specialised care* Silke Meyre for the Conversation, 15 November 2016.

⁷ *Women in Prison: A Report by the Anti-Discrimination Commission* Anti-Discrimination Commission Queensland (2006).

⁸ Social Justice Report, Aboriginal and Torres Strait Islander Justice Commissioner, Australian Human Rights Commission (2009).

Aboriginal and Torres Strait Islander, which leads itself to supporting this position when compared with the other concerning findings.

Criminalised women, almost universally, have begun life from an unjust starting point and have generally lived with severe disadvantage all their lives. The female prisoner's cycle of incarceration is different from that of their male counterparts, with many women concurrently stuck within two cycles – of abuse (typically domestic and family violence related), and of offending in an effort to cope with this abuse.

The push to incarcerate more women ignores the social and psychological forces that often underlie female offending, including higher-than-average rates of lifetime exposure to cumulative trauma, as well as physical and sexual victimisation; untreated mental illness; the use of substances to manage distress; and behavioural choices that arise in conjunction with gross economic disparities.

THEIR VOICES

“Thanks very much, that’s the first time someone asked about me.”

Trauma-informed care – the why – both sides of the divide

As is the age-old debate, there are those who see prison as a place to send people to receive punishment and those who see prison as an opportunity to address underlying causal factors of offending in order to return people to their community in a better place than before; the punitive and rehabilitative divide.

The punitive view is that whilst incarcerated, prisoners should not be looked after with care and compassion but instead be solely encouraged, by any means possible, to repent their wrongs. The alternative view sees prison as a rehabilitation opportunity, most likely to succeed when, during an individual's incarceration, she or he are aided to address the underlying factors which lead them to offend in the first place. Described within this piece are what those factors look like for female prisoners.

The truth of the matter is that often the common ground between those two approaches is that people would like less money spent on the prison system, saving tax-payer money and ideally redirecting it to more wholesome, fruitful places. TEWLS' advocacy for trauma-informed care in the form of a specialist domestic and family violence counsellor could contribute to achieving just that.

The reality is that the way the prison system treats incarcerated women risks making their trauma worse, which may boost their risk of re-offending. Apart from the fact that re-traumatising abuse victims is morally wrong, prison is costly and it is in everyone's best interest to treat – not worsen – underlying mental health issues among prisoners who will re-enter society when their sentence ends.⁹ Within this LHC project, **53% of those that chose to answer had an underlying mental health illness.**

Additionally, with every new generation of prisoners, the net widens. Increasing numbers of individuals and families are being drawn into the cycle of adult and youth criminalisation, child protection, violence, poverty and despair. Notably, the children of women prisoners are at increased risk of criminalisation, with one study finding that the children of prisoners are

⁹ See above n 6.

five times more likely to end up in prison than other children.¹⁰ This, in part, is likely due to the number of children taken into states care as a result of their mother's (even brief) imprisonment and the associated increased risk of youth and adult criminalisation.¹¹ This means further public monies are required to be invested across many government agencies as a knock-on effect of incarceration.

TEWLS has been particularly advocating for the engagement of an external, specialist, mental health and domestic and family violence counsellor at the DCC over a number of years. Currently at the DCC, women are unable to access mental health or domestic and family violence counselling. The services that are provided at the DCC are in line with criminal sentencing, such as alcohol and other drug counselling, and fail to holistically address the needs of incarcerated women so as to address their cycle of recidivism.

To contextualise why this is so important, it is critical to note that the prison system generally does not address the mental health issues of many women in jail. This is a live issue, because for many women, mental health issues are closely linked to substance abuse. And while drug and alcohol issues are being addressed through relevant programs in many prisons, the long-term effects are often limited because the underlying causes remain untouched.¹² To provide an analogy, it is like continually addressing the smoke without seeking to put out the fire.

In working through "our ask", it is important to be reminded that academic research has informed a growing awareness that past traumatic experiences can play a significant role in women's criminal justice involvement, adjustment within institutional settings, and success in the community. Trauma-informed practice is a framework for human service delivery that is based on knowledge and understanding of how trauma affects people's lives and their service needs.¹³

Trauma-informed care emphasises the importance of two key areas:

- the types of services being delivered to prisoners (such as counselling or interventions to address substance misuse); and
- the environment these services are delivered in.

Although a prison falls short of a perfect environment to deliver trauma-informed care, providing specialised and trauma-informed counselling services in the nature advocated for by TEWLS would be a starting point for addressing issues of underlying trauma, thus reducing the risks of recidivism.

Within the LHC project, **63% of those who had experienced domestic and family violence said that they would talk to a specialist counsellor if one was available.** This is a cohort that are often hard to reach and their incarceration provides a welcome opportunity to make inroads with an otherwise disengaged group.

¹⁰ Shine for Kids (Children of Prisoners Support Group) cited in Aboriginal and Torres Strait Islander Justice Commissioner (2009) Social Justice Report 2009, Australian Human Rights Commission, Sydney at www.hreoc.gov.au/Social_Justice/sj_report/sjreport09/index.html.

¹¹ See above n 5.

¹² See above n 6.

¹³ "Women in Prison 2019", A human rights consultation report, Anti-Discrimination Commission Queensland (2019).

Still not convinced? Let's talk cold, hard cash

Within the LHC project, **66% of the women who engaged with the LHC project had one, and in some cases multiple, prior incarcerations.** In 2016-2017, the cost of imprisonment in the Northern Territory was close to 123 million.¹⁴ The report for 2017–18 noted that the total net operating expenditure and capital cost per prisoner per day for the Northern Territory was \$317.73.¹⁵ If just a small percentage of that expenditure was directed in the way suggested in this piece i.e. a specialist domestic and family violence counsellor, there is much evidence to suggest that it would assist in allowing a far greater percentage to be directed away from Correctional Services in the longer term. Front-end investment, back-end return.

Conclusion

It is the view of TEWLS that this issue is not only a lost opportunity to service a cohort that is otherwise out of reach, but an ongoing systemic failure to acknowledge and address the underlying causal factors to women's offending. In not providing holistic, wrap-around servicing, women are unable to address their own trauma and mental health, meaning that upon their return to the community, they are consequently unable to break out of their own cycle of detention. The provision of holistic servicing, including culturally safe and appropriate mental health services, is a critical step in breaking the cycle of recidivism. By denying the women such treatment, their mental health and wellbeing is continuously neglected resulting in the ongoing criminalisation of abuse victims.

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¹⁴ Report on Government Services, Chapter 8 Corrective Services, Table 8A.1

¹⁵ Northern Territory Department of the Attorney-General and Justice, Annual Report 2018-19