



Royal Commission into Domestic, Family & Sexual Violence

Commissioner N Stott Despoja AO

Submitted via submission portal

Dear Commissioner

RE: CRIMINALISED WOMEN AND DOMESTIC, FAMILY & SEXUAL VIOLENCE

About Us:

The National Network of Incarcerated and Formerly Incarcerated Women & Girls (The National Network) is an organisation made up of ciswomen, transwomen, gender diverse people, and girls who are currently incarcerated or have been in cages across so-called Australia. We aim to end the incarceration, exile, surveillance and punishment of women and girls by organising against the intersecting gendered, racial and class violence that produce prisons and police. We are committed to Indigenous sovereignty which requires the abolition of the Prison-Industrial-Complex<sup>1</sup> (PIC), and we believe that only women and girls who have been trapped in cages across so-called Australia should be determining the terms through which we endeavour to free all women and girls in cages. Our membership is drawn from all-over so-called Australia.

We make this submission as women who have been to prison, and for almost all of us, as women who have been victim-survivors of domestic, family and sexual abuse. We have suffered at the hands of family, husbands, partners, care givers, state agents, and other people who have taken more from us than they were entitled to. We also make this submission on behalf of the community of criminalised women who are largely left out of the state and national discourse about domestic, family and sexual violence, despite us being massively represented in victim-survivor statistics. In fact, even in the commission's list of victim-survivors and those with lived experience of domestic, family and sexual violence that this inquiry is prioritising, we are not listed as a priority population group. We are not listed anywhere in the discussion papers, nor on the website. We are an invisible population because we are not deemed worthy victims by the state, the community or the law (until they want to imprison us).

We are disposable humans in the eyes of the State.

An overwhelming majority of women in prison are victim-survivors of domestic violence, with evidence suggesting that between 70 - 90 percent of incarcerated women have been physically,

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<sup>1</sup> The prison industrial complex (PIC) is a term we use to describe the overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to economic, social and political problems



sexually, or emotionally abused as children or adults<sup>2</sup>. Australian Law Reform Commission (2017)<sup>3</sup> studies found 75–90 percent of incarcerated Aboriginal and Torres Strait Islander women have been victims of sexual, physical or emotional abuse, with most experiencing multiple forms. Specifically, around 70 percent of Aboriginal women reported experiencing child abuse, and 70 percent were sexually assaulted as children. Most had suffered other forms of child abuse. Around 78 percent of Aboriginal women in custody had endured violent abuse as adults, 75 percent were victims of domestic violence, and 44 percent were victims of sexual assault<sup>4</sup>. Studies reveal that Aboriginal women in custody were victims of violent abuse long before they were criminalised highlighting a significant gap in support services needed to help them resolve past trauma.

Approximately 98% of incarcerated women have histories of victimisation and trauma, with close to 85% having been victims of sexual violence. These challenges are exacerbated by criminal records, legal entanglements, and systemic barriers within both the criminal legal system and domestic violence support structures. Of course, we also have to remember that the prison system itself is a form of violence, and we argue that imprisonment can be experienced as a form of abuse, replicating a woman's previous experiences of domestic and family violence. 'Prisons are built on an ethos of power, surveillance, and control'<sup>5</sup>—the same tactics used by perpetrators of domestic and family violence. Our experience of incarceration is that it is often a continuation of the control, chronic gaslighting, physical abuse, and extreme emotional stress previously experienced in our interpersonal relationships.

Criminalised women face unique and compounded challenges in relation to family, domestic and sexual violence. Services and legal responses are not developed to respond to the specific needs of our community, nor are there clear pathways to appropriate support.

Some of the barriers, and nuanced challenges we face, include:

**Legal Barriers:**

- Parole Restrictions: Women on parole may have travel restrictions that prevent them from relocating or moving to a safe place.

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<sup>2</sup> Australia's National Research Organisation for Women's Safety. (2020). *Women's imprisonment and domestic, family, and sexual violence: Research synthesis* (ANROWS Insights, 03/2020). Sydney: ANROWS.

Wilson, M., Jones, J., Butler, T., Simpson, P., Gilles, M., Baldry, E., Levy, M., & Sullivan, E. (2017). Violence in the Lives of Incarcerated Aboriginal Mothers in Western Australia. *Sage Open*, 7(1).

<sup>3</sup> Australian Law Reform Commission. (2017). Pathways to justice—An inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples (ALRC final report 133). Sydney: ALRC

<sup>4</sup> Lawrie, R 2003 'Speak Out Speak Strong: Rising Imprisonment Rates of Aboriginal Women', *Indigenous Law Bulletin*, vol.5, no. 24

<sup>5</sup> Covington, S., & Bloom, B. (2004, November). Creating gender-responsive services in correctional settings: Context and considerations. Paper presented at the American Society of Criminology Conference, Nashville, Tennessee. Retrieved from <https://www.stephaniecovington.com/assets/files/2.pdf>



- **Child Custody Issues:** Criminal records can complicate custody battles, making it harder for women to secure custody of their children or relocate with them. Often the male partner knows this, and it becomes a barrier to the woman leaving the relationship
- **Pending Charges or Court Dates:** Women with ongoing legal issues may be required to attend court dates, making it difficult to leave their current location.

#### **Fear of Legal Repercussions:**

- **Reporting Hesitation:** As a National Network we have been raising the issue of women facing further criminalisation when they are reporting domestic violence. We have witnessed incidents where the police have recriminalised the victim-survivor and treated her like the perpetrator or primary aggressor, and in turn named as respondents on family violence intervention orders.
- **Fear of arrest or further criminal charges can deter women from reporting:**
  - ‘Women who have been the victims of their partners’ long-term violence are regularly misidentified as the primary abuser. Domestic violence order rules subsequently require the woman (the respondent) to obey rules relating to the aggrieved. Problematically for women and their children and extended family, those women who have acted to protect themselves or their children in an attack have become secondary victims to the criminal legal system. For nearly all deaths of Indigenous women in domestic and family violence cases, the murdered woman is listed as both aggrieved and respondent in domestic violence orders (Woods 2023)<sup>6</sup>.’
- **Retaliation by Abuser:** Criminalised women often fear that their abuser will use their criminal record against them in legal battles or to undermine their credibility with authorities.
- **Criminalisation for fighting back:** Many women fight back, and with a criminal record, many of us are more harshly punished.
  - “He stalks me and rapes me and I’ve had to do the time.”
  - “I got charged for assault. They’re saying I assaulted this guy, but I threw a can at him because he grabbed my niece and started scruffing my niece in the liquor store. I shouldn’t have been in prison because I’ve been through domestic violence for 15 years, so if I see a man scruffing a woman, I’m going to try and help.”

#### **Social Stigma and Isolation**

- **Stigmatisation:** Criminalised women may face additional stigma and judgment from society, family, and friends, which can result in further isolation.
- **Lack of Social Support:** Estrangement from family and social networks due to their criminal history can leave women without a support system to turn to when trying to escape.
- **The good victim vs the bad victim:** The system frames some women as passive victims who only fight back when they perceive their life in certain danger; at all other times, they do not retaliate. Women who defend themselves on a more regular basis are perceived as something other than ‘victims’ and find themselves at a significant legal disadvantage, as well as being framed as something other than the ‘good’ or deserving victim.

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<sup>6</sup> Woods, C 2023, Women in Prison, *Law Society Journal NSW*, <https://lsj.com.au/articles/women-in-prison/>



### **Access To Support Services:**

- **Discrimination by Service Providers:** Some domestic violence shelters and support services may be reluctant to assist women with criminal records or who are on home detention due to perceived risks or biases.
- **Eligibility for Assistance:** Criminal records can affect eligibility for various forms of assistance, including housing, financial aid, and legal support.
- **Mistrust of Authorities:** Past negative experiences with the criminal legal system may lead to a mistrust of authorities (including the police) and support services (including social workers, and so-called child welfare), making women less likely to seek help.
  - “I was just taking it all in and I didn’t ring the police or nothing . . . I didn’t want to ring the police or DCP would be involved. So I just took hidings<sup>7</sup>.”

### **Financial Barriers:**

- **Employment Difficulties:** Women with criminal records often face significant barriers to employment, making it harder to achieve financial independence.
- **Housing Instability:** Criminal records limit access to safe and affordable housing, due to discrimination by landlords. Many of the shelters operate on a carceral model of ‘care’, with daily/weekly ‘check ins’ and consequences for not complying with case plans.
- **Debt and Fines:** Ongoing financial obligations related to fines, fees, or restitution can create additional stress and limit resources available for escaping the situation.

### **Mental Health and Trauma:**

- **Cumulative Trauma:** The combination of abuse and criminalisation can result in compounded trauma, making it more difficult for women to take steps to leave and seek help.
- **Mental Health Issues:** Women in these situations may suffer from mental health issues such as depression, anxiety, or PTSD, which can hinder their ability to plan and execute a safe exit.

### **Custodial Concerns:**

- **Fear of Losing Children:** Women may fear that leaving the abuser and revealing their criminal history will result in losing custody of their children.
- **So called Child Protective Services (CPS):** Involvement of CPS can add additional pressure and scrutiny, complicating the situation further for women with criminal records.

### **Systemic and Institutional Barriers:**

- **Inadequate Legal Representation:** Access to quality legal representation can be limited for criminalised women, impacting their ability to navigate both the criminal legal and family court systems effectively.
- **Institutional Bias:** There are systemic biases within the criminal legal system that disproportionately impact criminalised women, making it harder for them to receive fair treatment and support.

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<sup>7</sup> Wilson, M., Jones, J., Butler, T., Simpson, P., Gilles, M., Baldry, E., Levy, M., & Sullivan, E. (2017). Violence in the Lives of Incarcerated Aboriginal Mothers in Western Australia. *Sage Open*, 7(1).



- The death in custody of Yamatji woman Ms Dhu is an example of how police respond less ‘empathetically’ to Aboriginal victims of abuse<sup>8</sup>. Ms Dhu ‘died in police custody of complications from an infected rib fracture — an injury sustained in a family violence incident — after repeated failure by officers to provide access to adequate medical care.’ This failure, the report said, ‘was largely rooted in the false assumption by police officers that Ms Dhu’ — who was arrested on a warrant of commitment for \$3,622 of unpaid fines in August 2014 — ‘was withdrawing from substance addiction, rather than the victim of a family violence incident.’

The National Network also concerns itself with the matter of murdered and disappeared Aboriginal women and believe that it is relevant to this inquiry. When we use the term disappeared in this context, we refer to it in the terms outlined by Dr Amy McQuire<sup>9</sup> as, incorporating ‘Aboriginal women who are the fastest growing incarcerated population in the world, who are being locked up as victims of family violence, and the Aboriginal women who are killed in custody.’ In this country, the issue of disappeared and murdered Aboriginal women demands urgent attention. We draw attention to the recent coronial inquest into the disappearance of Ms Constance Watcho who was a victim of domestic homicide. We draw attention to the extraordinary systemic failures in addressing this crime, including the role of state funded coronial inquests in creating alibis for the perpetrators responsible. Honouring the memory of the women who have been murdered and seeking justice for their families is paramount. These women should not be ignored in this inquiry, yet they also remain invisible in the discussion papers.

Work needs to be done to acknowledge the unique and nuanced needs of the criminalised community. Comprehensive support addressing our unique challenges is essential. This includes specialised legal aid, accessible support services, and policies that consider the intersecting issues of domestic violence and criminalisation. We continue to propose funding organisations led by women with lived prison experience, organisations that operate outside of criminological frameworks, grounded in abolition principles that reject notions of punishment and exile. The criminalisation of violence has not lowered the rates of domestic, family and sexual violence in this country. Instead, it perpetuates a cycle of harm without addressing the root causes.

The National Network argue that we must challenge the systems of colonisation, racial capitalism, patriarchy, misogyny, homophobia, and transphobia. These destructive forces entrench a culture that enables domestic, family and sexual violence. Socio-cultural contexts of patriarchy, toxic masculinity, and transphobia normalise violence, and criminalisation fails to eradicate it.

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<sup>8</sup> Australian Law Reform Commission 2017, Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, Final Report No 133

<sup>9</sup> 15 May 2024, Appearance at Inquiry into Missing and Murdered First Nations Women and Children Opening statement



The criminal legal system often provides neither rehabilitation for those who harm nor justice for those who are harmed. We advocate for investment in strategies that address the causes of domestic, family and sexual violence, such as promoting strong family and community structures, supporting healthy relationships, funding Aboriginal community-led initiatives, and services developed and led by criminalised women.

As an abolitionist organisation, the National Network implores the Commission to ensure that reforms in the area of domestic, family and sexual violence do not seek to extend police powers. There should be no additional funds being investment into policing, nor an expansion of their powers, because the police are not a safe option for every woman, especially criminalised women. We acknowledge the importance of providing immediate support and protection to victim-survivors of family, domestic and sexual violence, however, we urge governments and policy makers to consider alternative ways to support criminalised women when they are leaving abusive relationships. True safe havens and appropriate support services must prioritise accessibility and safety for all, not just a few.

The National Network are committed to dismantling the Prison Industrial Complex (PIC) to end the trauma and violence it inflicts on women and girls. The PIC maintains white supremacy by killing Indigenous women in custody and imprisoning women and girls. Our abolition practice is about land back, ending violence in all its forms, and envisioning a world without oppressive state apparatuses. We emphasise the importance of solidarity, awareness, and continued advocacy. Meaningful justice requires dismantling racial capitalism and its associated legal structures, rather than merely reforming existing systems.

We would welcome the opportunity to meet with you to discuss our submission to radically reimagine responses to domestic, family and sexual violence and get creative in our solutions, moving beyond the punishment treadmill that serves only a few.

Yours sincerely

*Sent by Email*

DEBBIE KILROY

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