



# Australian Human Rights Framework Inquiry

Stakeholder submission from Single Sex Prisons Australia

## Contents

ABOUT SSPA .....	2
INTRODUCTION .....	3
BACKGROUND .....	4
EXISTING HUMAN RIGHTS INSTRUMENTS: GAPS AND INCONSISTENCIES, IN TEXT AND IN PRACTICE .....	5
International human rights instruments .....	5
International Covenant on Civil and Political Rights (ICCPR).....	5
International Convention on the Elimination of All Forms of Racial Discrimination.....	6
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.....	6
Convention on the Rights of Persons with Disabilities (CRPD).....	6
International Covenant on Economic, Social and Cultural Rights (ICESCR).....	6
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) .....	6
Geneva Convention .....	7
Australian national instruments .....	8
Sex Discrimination Act 1984.....	8
Standard Guidelines for Corrections in Australia .....	8
Australian Human Rights Commission Position Paper .....	10
State legislation .....	11
Anti-discrimination legislation .....	11
South Australia Correctional Services Act 1982 .....	11
State policy .....	12
RECOMMENDATIONS .....	14
General .....	14
Ratify and implement.....	14
OTHER CONSIDERATIONS .....	15
Amend .....	17
Repeal.....	17
Australia’s obligations under CEDAW .....	18

## ABOUT SSPA

Single Sex Prisons Australia (SSPA)<sup>1</sup> was established (as Single Sex Prisons Western Australia) in November 2020 in response to growing community and advocate concerns surrounding particular Corrections/Corrective Services policies and provisions that are in opposition to women's protected rights, and in opposition to the standards within international and national human rights instruments.

Since 2020, SSPA has:

- Released a report<sup>2</sup> and review of the Western Australia COPP 4.6 policy which allows (natal) men to be considered for transfer to and placement within the female estate.
- Worked with Australian mainstream media to raise awareness about these policies and legislative provisions.<sup>3</sup>
- Invested hundreds of hours into researching state, national and international human rights instruments.
- Undertaken a review of particular groupings of state penal policies.
- Submitted numerous FOI requests to probe for information regarding the placement of very dangerous men amongst very vulnerable women in women's prisons, and the measures taken in order to make those decisions on placement.
- Worked with other community groups and charities to support and advocate for incarcerated women and girls.
- Lobbied Australian state and federal politicians and parties.<sup>4</sup>
- Made numerous submissions to various reviews and consultations.

SSPA is the Australian peak body for the sex-based rights of incarcerated females.

SSPA was founded and is led by an ex-incarcerated woman.

SSPA can be contacted via email – [singlesexprisons@yahoo.com](mailto:singlesexprisons@yahoo.com)

Jessica Williams, SSPA Founder

---

<sup>1</sup> <https://singlesexprisons.wixsite.com/sspa>

<sup>2</sup> SSPA (formerly SSPWA) review: <https://singlesexprisons.wixsite.com/sspa/wa-policy-review>

<sup>3</sup> Trans prisoners' criminal history should be considered before placing transgender prisoners, documents show: <https://archive.md/DCiN6#selection-613.0-613.158>

<sup>4</sup> <https://singlesexprisons.wixsite.com/sspa/government-response>

## INTRODUCTION

- i. This submission focuses on matters pertaining to the rights of imprisoned females in relation to an Australian Human Rights Act.
- ii. The issues and concerns presented in this submission should be considered in regard to current national and state human rights instruments as well as any further human rights instruments on a state or national level.
- iii. Single Sex Prisons Australia supports an Australian Human Rights Act.
- iv. An Australian Human Rights Act should reflect the points and recommendations presented in this submission.
- v. Women & girls (natal females) are a vulnerable and oppressed class of people.
- vi. Within that (female) sex class, there are groups of women & girls who are even more vulnerable and are further discriminated against.
- vii. Incarcerated women are a particularly vulnerable sub-class of women, and are discriminated against on this (and other) basis.
- viii. The discrimination of incarcerated women is an issue that extends beyond the penal sentence.
- ix. The human rights of incarcerated women are underrepresented across international and Australian human rights instruments.
- x. Penal provisions and standards that do exist within international instruments are not reflected in national and state penal legislation and policies, and these standards are not met in practice within penal facilities.
- xi. Some current Australian penal policies and provisions put incarcerated women (natal females) at an alarming level of unnecessary risk and violate the rights of women prisoners as well as prison guards & other staff, and visitors to prisons.
- xii. This submission is based on years of research, years of advocacy work and decades of personal experience and knowledge. The content of the submission is a unique and valuable blend of experience and fact, and it is hoped that the information presented in this submission is taken into consideration by the Parliamentary Joint Committee on Human Rights (PJCHR).
- xiii. This submission (and name on submission) can be published online and used, as needed, by the PJCHR.

## BACKGROUND

- i. The incarceration of women in Australia, and the human rights abuses they suffer, are very serious issues which are not reflected in current Australian human rights instruments.
- ii. Although women and girls make up just 8% of the total prison population in Australia, the female prison population increased 64% between 2009 and 2019, while the male prison population grew by 45%.<sup>5</sup> This trend echoes international growth in the rate of women being incarcerated (Walmsley 2017).<sup>6</sup>
- iii. Incarcerated women present with high rates of Traumatic Brain Injury, Post Traumatic Stress Disorder, depression & other mental health problems, and consistently have histories of physical and/or sexual abuse, often involving childhood sexual abuse.
- iv. Women make more self-harm attempts than men do while incarcerated.
- v. Women experience more discrimination than men do post-release.
- vi. Serious human rights abuses and other forms of neglect of women prisoners occur at alarming rates.
- vii. When concerns are raised about serious violations of the human rights of women prisoners, the Australian federal government handballs those concerns to the states while rejecting calls for Australian penal policy and legislation, guidelines etc. to reflect international standards (Nelson Mandela Rules, Bangkok Rules, Istanbul Convention, CEDAW).
- viii. When serious concerns are raised about inconsistencies between state and Commonwealth laws, *Chapter V – The States, 109. Inconsistencies of laws of the Australian Constitution*<sup>7</sup> is not upheld, and, instead, the inconsistent state laws prevail.
- ix. In correspondence (about women prisoners) with state and federal politicians from the over the last few years, elected leaders of Australia have stated that states are not bound by, or required to meet, standards set forth in the Bangkok Rules (BR) or Nelson Mandela Rules (NMR). They instead point to the seven core UN treaties to which Australia is a signatory; all of which are either irrelevant or are dangerously inadequate regarding the rights of women prisoners.
- x. There are no national human rights instruments which focus solely, or even largely, on women in prison.
- xi. Consistent, uniform standards are needed to better protect the rights, dignity and safety of women prisoners.

*How can such a vulnerable and discriminated group of people be so widely and consistently overlooked?*

<sup>5</sup> <https://www.aihw.gov.au/getmedia/32d3a8dc-eb84-4a3b-90dc-79a1aba0efc6/aihw-phe-281.pdf.aspx?inline=true>

<sup>6</sup> IBID

<sup>7</sup> [https://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/Constitution/chapter5#chapter-05\\_109](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Constitution/chapter5#chapter-05_109)

## EXISTING HUMAN RIGHTS INSTRUMENTS: GAPS AND INCONSISTENCIES, IN TEXT AND IN PRACTICE

### International human rights instruments

#### International Covenant on Civil and Political Rights (ICCPR)

There are many provisions within the ICCPR that are relevant to criminalised women before imprisonment, but this section will focus on provisions that are specific to women who are already being deprived of their liberty through incarceration.

- i. Article 9 and Article 10 of the ICCPR are relevant to imprisoned people, but are not specific, at all, to women who are already in prison.
- ii. Arguably the most relevant provision focuses on rehabilitation being an aim of penal systems.

*Considering the lack of legislative provisions for women prisoners, how can this international standard be met?*

- iii. A high percentage (72%) of Australian women have previously been incarcerated in youth detention or adult prison (2018-19).<sup>8</sup>
- iv. Treating women with the same programs and measures in place for men does not address the differential needs of women. A feminist, sex-based approach to programs and other measures is necessary to reduce recidivism rates amongst women prisoners.
- v. There are provisions within the *Universal Declaration on the Rights of Incarcerated Girls and Women* which meet this standard set forth in the ICCPR.

Article 7 of the ICCPR pertains to "Cruel, inhuman or degrading" treatment. In another example of a gap or inconsistency between text and in practice, there are acts of what SSPA regards as cruel, inhuman, and degrading treatment of women prisoners happening across the nation:

- i. *"New data reveals that 841 strip-searches of women in Tasmanian prisons took place in a seven-month period, with only three failing the search. The figures obtained by the Human Rights Law Centre under a right to information (RTI) request revealed the data for the period between October 2020 and April 2021. The documents show that only three searches turned up concealed items. The concealed items were: pain medication; tobacco and a lighter; and tobacco and matchsticks."* The Human Rights Law Centre says, *"Tasmanian prisons searches conducted too frequently, not in line with international standards."*<sup>9</sup>

<sup>8</sup> <https://www.aihw.gov.au/getmedia/32d3a8dc-eb84-4a3b-90dc-79a1aba0efc6/aihw-phe%20281.pdf.aspx>; <https://www.pc.gov.au/ongoing/report-on-government-services/2020/justice>

<sup>9</sup> <https://obriensolicitors.com.au/tasmanian-prisons-female-inmates-subjected-841-strip-searches-7-months/>

- ii. Aboriginal women are strip searched at alarmingly higher rates than other women prisoners.<sup>10</sup>
- iii. *“Indigenous woman Ms Dhu was subjected to “unprofessional and inhumane” treatment by Western Australian police that was “well below the standards that should ordinarily be expected” before her death in custody in 2014.”*<sup>11</sup>
- iv. *“Fearful prisoners at Victoria’s biggest women’s jail have launched a petition demanding the removal of a transgender inmate who committed serious sex offences against females while a man.”*<sup>12</sup>

### International Convention on the Elimination of All Forms of Racial Discrimination

- i. This Convention includes no provisions specific to women prisoners. The most relevant is: (a) The right to equal treatment before the tribunals and all other organs administering justice. While SSPA fully supports this provision, it is inadequate. This is particularly alarming considering the overincarceration of Indigenous Australians, particularly women, and considering that Indigenous women are incarcerated for nonpayment of fines and other petty crimes.

### Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- i. This Convention includes provisions only pertaining to education & training for officials to prevent torture, and pertaining to systematically reviewing practices and rules.

### Convention on the Rights of Persons with Disabilities (CRPD)

- i. The CRPD focuses only on appropriate training for prison staff to manage persons with disabilities.

### International Covenant on Economic, Social and Cultural Rights (ICESCR)

- i. The ICESCR has no relevant provisions.

### Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

- i. CEDAW has one provision specific to women prisoners: *Article 2 subsection (g) To repeal all national penal provisions which constitute discrimination against women.*
- ii. For an international human rights instrument that focuses solely on sex-based discrimination of women & girls, it is disappointing how underrepresented women prisoners are within CEDAW.
- iii. The absence of comprehensive rights protection for women prisoners could itself be considered an act of discrimination.

*Discrimination is defined as “the unjust or prejudicial treatment of different categories of people, especially on the grounds of ethnicity, age, sex, or disability.”*

*Prejudicial is defined as “harmful to someone or something; detrimental.”*

*Unjust is defined as “not based on or behaving according to what is morally right and fair.”*

---

<sup>10</sup> <https://www.unsw.edu.au/news/2021/07/excessive-strip-searching-shows-discrimination-against-aborigina#:~:text=Yet%2C%20in%20Australia%2C%20Aboriginal%20women,October%202020%20to%20April%202021>

<sup>11</sup> <https://www.theguardian.com/australia-news/2016/dec/16/ms-dhu-endured-inhumane-treatment-by-police-before-death-in-custody-coroner>

<sup>12</sup> <https://archive.md/Lebao#selection-675.0-675.187>

- iv. Considering this provision, I want to highlight the urgent need, and the requirement, to repeal all provisions pertaining to “gender identity” or “transgender” or “self-ID” or related terms and concepts which allow natal men to be legally recognised as members of the female sex class and then allowed to be considered for transfer to/placement in the female penal estate.
- v. It is abundantly clear, especially considering the plethora of data from research showing the number of vulnerabilities<sup>13</sup> that women & girls share as a natal sex-class and the number of serious risks that men & boys present<sup>14</sup> to the female sex class, that housing men in the women’s estate, to be near and have access to some of the most vulnerable women on the planet, constitutes discrimination.
- vi. All policies and legislative provisions which give way to biological men being allowed to be considered for transfer and/or placement within female prisons are:
  - not based on what is morally right or fair
  - harmful to women
  - detrimental to women
  - in opposition to aforementioned international human rights instruments
  - prejudicial, discriminatory and unjust
- vii. Per SSPA’s research, neither “gender,” “gender identity” nor “transgender” are protected categories or characteristics in the *International Covenant on Civil and Political Rights* (ICCPR); the *International Convention on the Elimination of All Forms of Racial Discrimination*; *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; the *Convention on the Rights of Persons with Disabilities* (CRPD); the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), or the *Geneva Convention*, however, “sex” is a protected category or characteristic in all but one of the aforementioned human rights instruments. It is unclear why the Australian government and state governments have advocated so insistently for “gender identity” to be embedded within Australian legislation as a protected characteristic/category.

### Geneva Convention

- i. “The Third and Fourth Geneva Conventions require that women who are deprived of their liberty be accommodated in separate quarters from those of men. They also require women deprived of their liberty to be under the immediate supervision of women. This rule is set forth in Article 75 of Additional Protocol I as a

---

<sup>13</sup> UNITED NATIONS OFFICE ON DRUGS AND CRIME-GLOBAL STUDY ON HOMICIDE 2019 Edition - <https://www.unodc.org/unodc/en/data-and-analysis/global-study-onhomicide.html>; Woolhouse R, McKinlay A, Grace RC. Women in Prison With Traumatic Brain Injury: Prevalence, Mechanism, and Impact on Mental Health. *Int J Offender Ther Comp Criminol*. 2018 Aug;62(10):3135-3150. doi: 10.1177/0306624X17726519. Epub 2017 Aug 23. PMID: 28831827; Associations between significant head injury and persisting disability and violent crime in women in prison in Scotland, UK: a cross-sectional study, Prof Tom M McMillan, PhD ; Hira Aslam, MSc; Eimear Crowe, DClinPsych; Eleanor Seddon, DClinPsych; Sarah J E Barry, PhD, Open Access Published: May 13, 2021DOI: [https://doi.org/10.1016/S2215-0366\(21\)00082-1](https://doi.org/10.1016/S2215-0366(21)00082-1); [https://www.gla.ac.uk/news/archiveofnews/2021/may/headline\\_792437\\_en.html](https://www.gla.ac.uk/news/archiveofnews/2021/may/headline_792437_en.html); Gergő Baranyi, Megan Cassidy, Seena Fazel, Stefan Priebe, Adrian P Mundt, Prevalence of Posttraumatic Stress Disorder in Prisoners, *Epidemiologic Reviews*, Volume 40, Issue 1, 2018, Pages 134–145, <https://doi.org/10.1093/epirev/mxx015>

<sup>14</sup> United Nations Office on Drugs and Crime – Global Study on Homicide (2019) <https://www.unodc.org/unodc/en/data-and-analysis/global-study-on-homicide.html>



*fundamental guarantee applicable to all women deprived of their liberty for reasons related to the armed conflict.”<sup>15</sup>*

- ii. *III GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF WAR OF 12 AUGUST 1949<sup>16</sup>, SECTION VI, CHAPTER III, II, Article 97, states (in part), “Women prisoners of war undergoing disciplinary punishment shall be confined in separate quarters from male prisoners of war and shall be under the immediate supervision of women.”*
- iii. *IV GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR OF 12 AUGUST 1949<sup>17</sup>, PART III, Section III, Article 76, states (in part), “Women shall be confined in separate quarters and shall be under the direct supervision of women.”*
- iv. SSPA argues that these two standards should be set in general terms, not only in relation to times of armed conflict. An Australian Human Rights Act must legislate the undeniable right of women to sex-segregation within the penal system. Women should always be given the safety, privacy and dignity of single-sex prisons, including all facilities within prisons, and same-sex supervision and management.

## Australian national instruments

- i. There are no Australian national instruments which focus **solely** on the rights of incarcerated women and girls.

### Sex Discrimination Act 1984

- i. Aside from by virtue of CEDAW, the *Sex Discrimination Act 1984* includes zero provisions specific to the rights of incarcerated women and girls.

### Standard Guidelines for Corrections in Australia

- i. The *Standard Guidelines for Corrections in Australia*<sup>18</sup> includes a handful of relevant provisions (No. 1-4):
  - 1) *The management and placement of female prisoners should reflect their generally lower security needs but their higher needs for health and welfare services and for contact with their children.*
- ii. This standard is not being met in Australia.
- iii. *“Further, 36% of women in prison had a maximum-security rating, compared with 31% of men, although they did not commit the same level of serious offences. Women were 40 times more likely to be imprisoned for fine default, for instance, than men.”<sup>19</sup>*
- iv. *“New data reveals that 841 strip-searches of women in Tasmanian prisons took place in a seven-month period, with only three failing the search. The figures obtained by the Human Rights Law Centre under a right to information (RTI) request revealed the data for the period between October 2020 and April 2021.”<sup>20</sup>*

<sup>15</sup><https://ihl-databases.icrc.org/en/customary-ihl/v1/rule119#:~:text=international%20armed%20conflicts-,Rule%20119, the%20immediate%20supervision%20of%20women.>

<sup>16</sup>[https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.32\\_GC-III-EN.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.32_GC-III-EN.pdf)

<sup>17</sup>[https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33\\_GC-IV-EN.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33_GC-IV-EN.pdf)

<sup>18</sup> Standard Guidelines for Corrections in Australia - <https://www.publications.qld.gov.au/dataset/f18ea162-6af3-4302-b5b4-61dc5286e586/resource/fe92c3ac-d38d-4fc0-a1a9-0661a5e1f00c/download/standard-guidelines-for-corrections-in-australia-20041.pdf>

<sup>19</sup><https://www.cypc.unsw.edu.au/women-prison-victoria-1970-2010>

<sup>20</sup><https://obriensolicitors.com.au/tasmanian-prisons-female-inmates-subjected-841-strip-searches-7-months/>

*“The documents show that only three searches turned up concealed items. The concealed items were: pain medication; tobacco and a lighter; and tobacco and matchsticks.” The Human Rights Law Centre says, “Tasmanian prisons searches conducted too frequently, not in line with international standards”<sup>21</sup>*

v. We know that Aboriginal women are strip searched at alarmingly higher rates than other women prisoners.<sup>22</sup>

2) *Pre-natal and post-natal treatment and accommodation should be made available to female prisoners, where practicable.*

3) *Programmes and services provided to prisoners, especially women, indigenous prisoners, and prisoners from non-English speaking backgrounds, should be established following close consultation with the appropriate community groups and experts.*

vi. While these provisions are acceptable (and supported by SSPA) in and of themselves, they are inadequate in regard to the scope of provisions needed for effective protection of incarcerated women & girls.

4) ***Males and females shall in principle be segregated, although they may participate together in organised activities as part of an established programme.***

vii. This standard is not being met in Australia.

viii. As mentioned throughout this submission, there are state penal policies which constitute discrimination against women by allowing natal men to be housed with natal women.

ix. There are national legislative provisions, acts and policies which allow the falsification of official documents (birth certificates, licence, Medicare card) for the purposes of identification, which then give way to natal men being legally considered natal women.

x. Every state or territory in Australia has a policy or legislative provision which gives way to natal men being able to be transferred/placed into a natal female prison or other penal facility.

xi. A dangerous sex offender, a natal man that changed his name to [redacted], has been housed with women, in a women's unit, at Dame Phyllis Frost Centre in Victoria<sup>23</sup>. This is despite His Honour Judge Tiwana acknowledging that [redacted] was likely to reoffend;

*“Having considered this matter carefully, I am satisfied beyond reasonable doubt that you will pose a risk to the sexual safety of one or more persons or to the community upon your release from custody.”*

despite his serious sexual offences;

*“... I bear in mind that you have committed sexual offences against a child and now an adult. The offending against the child was committed in 2011. From 2012 until your deportation back to Australia in 2018, you served a term of imprisonment in a male prison in circumstances that you found harrowing. Despite that stern punishment, you went on to commit these offences against an adult female who was walking home alone. It occurred at a time when you were already subject to reporting obligations. You*

---

<sup>21</sup> IBID

<sup>22</sup> <https://www.unsw.edu.au/news/2021/07/excessive-strip-searching-shows-discrimination-against-aborigina#:~:text=Yet%2C%20in%20Australia%2C%20Aboriginal%20women,October%202020%20to%20April%202021>

<sup>23</sup> <https://singlesexprisons.wixsite.com/sspa/post/imprisoned-women-petition-for-their-safety>

*have sought to minimise your offending and demonstrated little insight into your offending conduct.”*  
(Section 112)

despite being nonchalant about his horrific crimes, and despite the “magnitude” and “gravity” of risk and harm.

*“Despite serious offending against a young child and the reporting obligations imposed upon your arrival in Australia, you have again committed serious offending, on this occasion against an adult female victim. Your offending has had grave consequences as far as the victim in the current matter is concerned. I regard the magnitude and the nature of the risk posed by you and the consequent gravity of possible harm as high.”* (Section 114)

- xii. This flies in the face of government claims that “rigorous risk assessments” are being used to determine whether or not to approve transfers of prisoners from male penal facilities to female penal facilities.

### Australian Human Rights Commission Position Paper

- i. Even the 380-page position paper from the AHRC *FREE AND EQUAL A Human Rights Act for Australia 2022* is dreadfully inadequate and does not address the gaps in the provisions within international and national instruments pertaining to the rights of women prisoners, nor does the AHRC position paper acknowledge the uniquely vulnerable nature of women prisoners.<sup>24 25 26 27</sup>
- ii. SSPA questions how thorough policy audits can be conducted considering women prisoners continue to be underrepresented in said policies, and especially considering the blatant human rights violations that exist within these policies. Below image is from the AHRC *FREE AND EQUAL A Human Rights Act for Australia 2022* document.

<p><b>Victorian Charter: preventative audits and protocols</b></p> <p>The Charter has played a significant role in ‘prompting identification of potential issues in advance’ and through this, influencing policy development and decision-making processes. As an example, following the implementation of the Charter, the Victoria Police Human Rights Unit Project identified various policies and practices, which have the potential to result in human rights violations. They conducted policy and practice audits into a range of units within the agency including: the Aboriginal Advisory Unit; the Gay and Lesbian Liaison Unit; the Multi-Cultural Advisory Unit; the Prisoner Management Unit; the Witness Security Unit; and the Strategic Research Unit.</p>	<p>The outcome of these audits in some units resulted in the development of protocols, which aim to ensure that the risk of Charter violations is minimised.</p> <p>In addition, Victoria Police:</p> <ul style="list-style-type: none"> <li>• audited police cells and holding rooms and reviewed its persons in custody policy to ensure compliance with human rights standards</li> <li>• referenced the Charter in Operational Safety and Tactics training guides, and</li> <li>• ensured that complaints handling procedures are in line with human rights standards.</li> </ul> <p>Extracted from Human Rights Law Centre, 2012.<sup>11</sup></p>
---	---

<sup>24</sup> Woolhouse R, McKinlay A, Grace RC. Women in Prison With Traumatic Brain Injury: Prevalence, Mechanism, and Impact on Mental Health. *Int J Offender Ther Comp Criminol.* 2018 Aug;62(10):3135-3150. doi: 10.1177/0306624X17726519. Epub 2017 Aug 23. PMID: 28831827; Associations between significant head injury and persisting disability and violent crime in women in prison in Scotland, UK: a cross-sectional study, Prof Tom M McMillan, PhD ; Hira Aslam, MSc; Eimear Crowe, DClinPsych; Eleanor Seddon, DClinPsych; Sarah J E Barry, PhD, Open Access Published: May 13, 2021DOI: [https://doi.org/10.1016/S2215-0366\(21\)00082-1](https://doi.org/10.1016/S2215-0366(21)00082-1)

<sup>25</sup> [https://www.gla.ac.uk/news/archiveofnews/2021/may/headline\\_792437\\_en.html](https://www.gla.ac.uk/news/archiveofnews/2021/may/headline_792437_en.html)

<sup>26</sup> Gergő Baranyi, Megan Cassidy, Seena Fazel, Stefan Priebe, Adrian P Mundt, Prevalence of Posttraumatic Stress Disorder in Prisoners, *Epidemiologic Reviews*, Volume 40, Issue 1, 2018, Pages 134–145, <https://doi.org/10.1093/epirev/mxx015>

<sup>27</sup> United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) - [https://www.unodc.org/documents/justice-and-prison-reform/Bangkok\\_Rules\\_ENG\\_22032015.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf)

- iii. Page 355 of the AHRC Position Paper has as a heading, "*Humane treatment when deprived of liberty*," which references the ICCPR and suggests implementing it. As already covered in this submission, while SSPA supports the ICCPR being implemented, the provisions within the ICCPR are inadequate for women prisoners. The basic provision of sex-segregation, which is found in the Third and Fourth Geneva Conventions and the Nelson Mandela Rules, is not found in the ICCPR or the ACT Human Rights Act. SSPA argues that it is a basic act of humanity to provide sex-segregation and same-sex supervision for women prisoners. The *Universal Declaration on the Rights of Incarcerated Girls and Women* will serve to fill the gaps that exist within and between international human rights instruments and Australian human rights instruments.
- iv. SSPA would like to acknowledge Chapter 6 pertaining to 'Positive Duty' in the AHRC Position Paper. SSPA supports the AHRC position that, "*In accordance with this model, there would be a specific 'positive duty' on the executive to act compatibly with human rights, and give proper consideration to human rights when making decisions. Government entities, known as 'public authorities' would be bound by this duty.*"
- v. SSPA argues that the past lack of 'positive duty' to which government entities would be bound has already led to provisions that do not meet legislative standards being implemented, and that these provisions are incompatible with the human rights of natal women and girls.
- vi. In terms of responses to SSPA emails and letters, government entities have not been accountable to Australian residents who seek information and clarification regarding the rights of women prisoners and the policies and laws that affect them.

## State legislation

### Anti-discrimination legislation

- i. The *Equal Opportunity Act 2010* (VIC), The *Discrimination Act 1991* (ACT), and the *Anti-Discrimination Act 1991* (QLD) each fail to mention women prisoners, and each fail to have any provisions regarding the unique vulnerabilities and specific needs, protections and rights of women prisoners.
- ii. Provisions within each of these human rights Acts violate the human rights of women set forth in Australian national instruments such as *CEDAW* and the *SDA 1984*, as well international instruments such as the *Nelson Mandela Rules*.
- iii. These human rights instruments give way to natal men being legally allowed to falsify their identity to be untruthfully classified as natal women.
- iv. There must be a review of all anti-discrimination legislation in Australian states and territories.

### South Australia Correctional Services Act 1982

- i. Some of the provisions within the *South Australia Correctional Services Act 1982* are in opposition to the internationally and nationally protected sex-based rights of women & girls.
- ii. For example, the recognition and protection of the characteristic of "gender identity" undermines protections based on sex (ICCPR, CEDAW, etc.). Repeatedly in the SA Correctional Services Act both sex and "gender identity" are referred to for the same purposes: "*those present at any time during the search when the prisoner*

*is naked, except a medical practitioner, must be of the same sex or gender identity as the prisoner...*" What if a natal male Prison Officer has claimed a female "gender identity?" What if a natal male prisoner has claimed a female "gender identity" and prefers a woman to search him?

- iii. Another example showing how provisions for "gender identity" are in opposition to the reality of the need for sex-based protections and provisions for women prisoners is when the SA Correctional Services Act states, *"facilities and programs developed for the care, rehabilitation, imprisonment, training, therapeutic treatment or other treatment of prisoners, probationers and parolees should—*
- (i) be evidence based; and*
  - (ii) be individually designed as much as reasonably practicable—*
    - (A) to take account of the prisoner, probationer or parolee's age, gender, gender identity, sexuality or sexual identity, cultural identity, developmental and cognitive capacity, ability or disability, and any special needs; and*
    - (B) to address offending behaviours; and*
    - (C) to address the physical and mental health of the prisoner, probationer or parolee; and*
    - (D) to address the educational and vocational training needs of the prisoner, probationer or parolee"*
- iv. SSPA argues that a natal man claiming to be a natal female by virtue of a claimed "gender identity" and being treated as such during incarceration is not based in evidence; is in direct opposition to "cultural identity" (certain religions prohibit women being in the close presence of strange men), sexuality (lesbians are same-sex attracted natal women), ability (men and women are biologically different with many differences related to strength and ability), disability/special needs (women present in prison with more disabilities and more special needs).
- v. SSPA argues that "offending behaviours" are based on sex and can be traced via sexed patterns of criminality.
- vi. SSPA argues that the physical and mental health needs of women prisoners are wholly different to those of men prisoners.
- vii. SSPA argues that the educational needs of women prisoners are different to those of men prisoners.

## State policy

- i. The following state policies are wholly in opposition to internationally and nationally protected human rights of incarcerated women and girls:
- NSW Inmate Classification and Placement - Classification and Placement of Transgender and Intersex Inmates<sup>28</sup>
  - Western Australia Department of Justice Corrective Services Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners<sup>29</sup>

---

<sup>28</sup> NSW Inmate Classification and Placement - Classification and Placement of Transgender and Intersex Inmates - [https://correctiveservices.dcj.nsw.gov.au/content/dam/dcj/corrective-services-nsw/documents/policies/inmate-classification-and-placement/Inmate Classification and Placement - Classification and Placement of Transgender and Intersex Inmates Redacted.pdf](https://correctiveservices.dcj.nsw.gov.au/content/dam/dcj/corrective-services-nsw/documents/policies/inmate-classification-and-placement/Inmate%20Classification%20and%20Placement%20-%20Classification%20and%20Placement%20of%20Transgender%20and%20Intersex%20Inmates%20Redacted.pdf)

<sup>29</sup> Western Australia Department of Justice Corrective Services Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners - <https://www.wa.gov.au/system/files/2022-11/COPP-4.6.docx>

- Queensland Corrective Services Custodial Operations Practice Directive for Transgender Prisoners<sup>30</sup>
  - Tasmania Prison Service Director's Standing Order [DSO – 2.15] Transgender, Transsexual and Intersex Prisoners<sup>31</sup>
  - Australian Capital Territory (ACT) Corrections Management (Reception and Management of Transgender Prisoners) Policy 2007\* [Notifiable instrument NI2007-469]<sup>32</sup>
  - Corrections Victoria Commissioner's Requirements - Management of Prisoners who are Trans, Gender Diverse or Intersex<sup>33</sup>
- ii. These policies allow the consideration of placement of (natal) males into (natal) female penal facilities, removing the safeguarding of sex-segregation.

---

<sup>30</sup> <https://www.publications.qld.gov.au/dataset/c85d0cd0-a020-4390-b2a3-5090e480d9e6/resource/c4782e0a-b06b-4877-96b0-fae43846dfc/download/transgender-prisoners-copd-public.pdf>

<sup>31</sup> [https://www.justice.tas.gov.au/\\_data/assets/pdf\\_file/0020/562016/2-15-Transgender-Prisoners-DSO\\_VER-2.pdf](https://www.justice.tas.gov.au/_data/assets/pdf_file/0020/562016/2-15-Transgender-Prisoners-DSO_VER-2.pdf)

<sup>32</sup> <https://www.legislation.act.gov.au/ni/2007-469/20071219-35655/pdf/2007-469.pdf>

<sup>33</sup> [https://files.corrections.vic.gov.au/2021-06/2\\_63.docx](https://files.corrections.vic.gov.au/2021-06/2_63.docx)

## RECOMMENDATIONS

### General

SSPA recommends that the Parliamentary Joint Committee on Human Rights:

- 1) Recognises and acknowledges how inadequately protected imprisoned women and girls are and addresses these shortcomings and failings.
- 2) Ensures that an Australian Human Rights Act has a section dedicated solely to the protection of the dignity, safety, privacy and sex-based rights of women prisoners
- 3) Implements provisions in an Australian Human Rights Act to drastically reduce the incarceration rate of Australian women.
- 4) Calls for an urgent review of all state anti-discrimination legislation.
- 5) Calls for an urgent review of all state and territory penal policy pertaining to the management of “trans” or “gender diverse” prisoners, and to the transfer of prisoners.
- 6) Ensure there is a ‘positive duty’ of government entities to consider how decisions will impact the human rights of women prisoners.
- 7) Recommend to the Australian government that Single Sex Prisons Australia be considered a representative of the vulnerable minority group of Australian women prisoners under participatory democratic principles.

### Ratify and implement

The following instruments should be ratified and implemented via an Australian Human Rights Act:

- 8) *The Universal Declaration on the Rights of Incarcerated Girls and Women*<sup>34</sup>

This is the new benchmark for the rights of imprisoned women and girls. It is open for any government to ratify and implement. The UDRIGW addresses many, if not all, of the above-mentioned failings and shortcomings of international and national instruments regarding the human rights of incarcerated women and girls.

- 9) *The Declaration on Women’s Sex-Based Rights*<sup>35</sup>

This has been signed by over 35,000 people from across the world, and it is endorsed by over 500 organisations.

- 10) *The United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)*<sup>36</sup>

- 11) *The Australian Government Guidelines on the Relief and Support of Girls and Women Exiting the Sex Trade in Australia: Proposal*<sup>37</sup>

---

<sup>34</sup> Universal Declaration on the Rights of Incarcerated Women and Girls - <https://theinigw.wixsite.com/inigw/declaration>

<sup>35</sup> Declaration on Women’s Sex-Based Rights - <https://www.womensdeclaration.com/en/>

<sup>36</sup> [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf)

<sup>37</sup> <https://jkwiliamsoriginalwork.wordpress.com/2021/09/07/australian-government-guidelines-on-the-relief-and-support-of-girls-and-women-exiting-the-sex-trade-in-australia-proposal/>



12) If recommendations 8 – 11 cannot be implemented as suggested, provisions within the recommended instruments should be incorporated into an Australian Human Rights Act.

13) Implement penal provisions that cater specifically to (natal) women prisoners' needs during and after incarceration.

## OTHER CONSIDERATIONS

14) Incarcerating women is an act of discrimination against women, and also against their children (when applicable)

SSPA argues that provisions and standards set within CEDAW and the ICCPR, and information from other instruments (i.e.: Bangkok Rules) and research, support the argument that women should seldom, if ever, be imprisoned, and that the act of imprisoning women could be considered a form of discrimination.

### ICCPR:

Article 9, of the ICCPR states,

*"1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."*

Arbitrary is defined as *(of power or a ruling body) unrestrained and autocratic in the use of authority.*

Unrestrained is defined as *not restrained.*

Restrained is defined as *characterized by reserve or moderation.*

It can be argued that it is an arbitrary action to imprison women and that, in Australia, given the incarceration rates and practices pertaining to women, the act of imprisoning women cannot be characterized by reserve or moderation.

### CEDAW:

As mentioned, Article 2 of the *Convention on the Elimination of All Forms of Discrimination Against Women* calls for states to condemn discrimination against women in all its forms and lays out 6 subsections for this article. All of the subsections in Article 2 could be applied to women prisoners, but the only one that specifically and solely focuses on women prisoners is subsection (g). It calls for all national penal provisions which constitute discrimination against women to be repealed.

Discrimination is the *unjust or prejudicial treatment of different categories of people, especially on the grounds of ethnicity, age, sex, or disability.*

Unjust actions are defined as *not based on what is morally right and fair.*



Considering what we know about the number of (incarcerated) women suffering from:

- Traumatic Brain Injury (TBI)/Acquired Brain Injury (ABI)
- Post Traumatic Stress Disorder (PTSD)/Complex Post Traumatic Stress Disorder (CPTSD)
- poor mental health
- depression
- histories of sexual and physical violence and injury
- histories of child sexual assault

The act of arresting women, the act of sentencing women to serve time in a penal facility, and the act of incarcerating women are forms of direct discrimination which others forms of direct, indirect and compounding discrimination (i.e.: strip searches, loss of parental rights, etc.) stem from which then develop into ongoing forms direct, indirect and compounding discrimination.

### **Ongoing discrimination – beyond the penal sentence:**

We know that incarcerated women struggle more than incarcerated men when re-entering society and their community post-release.<sup>38 39 40</sup>

- For women, the barriers of a criminal record are additional to other disadvantages. Incarcerated women are more likely to be Indigenous, to have suffered multiple disadvantages, physical and mental health problems, histories of abuse, to be sentenced to less serious non-violent offences compared with men and are often carers of children (Baldry et al., 2018; Easteal, 2001). In NSW, 61% of incarcerated women are mothers (McFarlane, 2017). There are also employment differences between men and women. For example, just over half of the prison population reported that they were unemployed in the 30 days prior to being incarcerated. Compared to 14% of women, 34% of men were in paid work (Australian Institute of Health and Welfare (AIHW), 2019: 18)."*
- “Increasing female incarceration rates in Australia reflect similar trends overseas (Office of the Correctional Investigator, 2015; Prison Reform Trust, 2012, 2017). While both men and women face the potential for discrimination, overcoming the stigma of a criminal conviction is particularly difficult for women (Dodge and Pogrebin, 2001: 42; Straussner and Attia, 2002). Women can often feel more stigmatised by incarceration compared with men due to the challenges of parenting, relationships and community reintegration amid the ‘bad mother’ label which society often assigns to women (Burkart, 1973; Dodge and Pogrebin, 2001).
- Men carry the blame of the ‘crime’, while women carry the added burden of being a ‘bad person’, thereby harbouring feelings of shame in reaction to societal definitions of what it means to be a good woman, and a good mother (Dodge and Pogrebin, 2001: 52). These negative perceptions are internalised by the direct experiences of abandonment that women face while in prison and when they leave prison. During incarceration, women are less likely to be able to rely on a (male) partner remaining in the relationship, or to

---

<sup>38</sup> van den Broek, D., Black, P., & Nicki. (2021). Doing Double Time: Women, Incarceration and Employment Discrimination. *Work, Employment and Society*, 35(5), 968–978. <https://doi.org/10.1177/0950017021995662>

<sup>39</sup> Baldry and Maplestone, 2003; Metcalf et al., 2001

<sup>40</sup> Naylor B (2012) Living down the past: why a criminal record should not be a barrier to successful employment. *Employment Law Bulletin* 18(8): 115–119.

provide a home for their children (Rafter, 1985). Many women struggle to rebuild broken relationships, particularly with children they have become separated from while incarcerated (Braithwaite, 1989; O'Brien, 2001). Women often return to violent relationships post-release and are disadvantaged by poor work histories, due in part to child-rearing responsibilities both pre-incarceration and post-release (Baldry et al., 2018: 4). These factors seriously undermine women's attempts to minimise internalised feelings of shame and progress towards rehabilitation."

- iv. Making ongoing discrimination and barriers re-entering society even more difficult to overcome is the fact that the age of most female prisoners in Australia is at a point in life where these women would otherwise be focused on education, career, family and/or other interests and goals (Most female prisoners were aged 25–39 (54%). The median age was 34).<sup>41</sup>
- v. These issues highlight the lack of rehabilitative focus within women's prisons.

## Amend

If it falls within the remit of the PJCHR to action the following recommendations, or to pass on the following recommendations to the appropriate government entity:

- South Australia Correctional Services Act 1982:

Part 1, 3—Objects and guiding principles, (3)(d)(ii)(A) – remove “gender, gender identity”, add “sex”

Part 4, Division 3—Assessment of prisoners, 23—Initial and periodic assessment of prisoners, (3)(a) – remove “gender, gender identity”

Part 4, Division 3—Assessment of prisoners, 23—Initial and periodic assessment of prisoners, (4) – remove “or gender identity”

Part 4, Division 6-Management of prisoners, 37—Search of prisoners, (2)(a) – remove “or gender identity”

Part 4, Division 6-Management of prisoners, 37—Search of prisoners, (2a) – remove “or gender identity”

## Repeal

(National)

- Australian Government Guidelines on the Recognition of Sex and Gender<sup>42</sup>

(State)

- NSW Inmate Classification and Placement - Classification and Placement of Transgender and Intersex Inmates
- Western Australia Department of Justice Corrective Services Commissioner's Operating Policy and Procedure (COPP) 4.6 Trans, Gender Diverse and Intersex Prisoners
- Queensland Corrective Services Custodial Operations Practice Directive for Transgender Prisoners

<sup>41</sup> <https://www.aihw.gov.au/getmedia/32d3a8dc-eb84-4a3b-90dc-79a1aba0efc6/aihw-phe-281.pdf.aspx?inline=true>

<sup>42</sup> <https://www.ag.gov.au/rights-and-protections/publications/australian-government-guidelines-recognition-sex-and-gender>

- Tasmania Prison Service Director's Standing Order [DSO – 2.15] Transgender, Transsexual and Intersex Prisoners
- Australian Capital Territory (ACT) Corrections Management (Reception and Management of Transgender Prisoners) Policy 2007\* [Notifiable instrument NI2007-469]
- Corrections Victoria Commissioner's Requirements - Management of Prisoners who are Trans, Gender Diverse or Intersex

Any other provisions and/or Acts, policies or other binding documents mentioning or pertaining to “gender” and/or “gender identity” and/or “trans” or “transgender” need to be repealed, and provisions within these Acts and/or policies should not be reflected in an Australian Human Rights Act.

### Australia's obligations under CEDAW

It is important that the PJCHR review this witness statement and annexure, pertaining to Article 2 of CEDAW and Australia's obligations under CEDAW - in relation to women prisoners, for the University of New South Wales (mock) CEDAW Hearing - <https://jkwilliamsoriginalwork.wordpress.com/2023/06/02/university-of-nsw-cedaw-hearing-witness-statement/>

*What value do human rights standards have  
if Australia is not meeting them?*