

**Submission
No 76**

INQUIRY INTO VICTORIA'S CRIMINAL JUSTICE SYSTEM

Organisation: Victorian Womens Guild Executive Committee

Date Received: 30 August 2021



The Victorian Women's Guild (VWG) was formed to protect the sex based rights of women and girls.

The Victorian Women's Guild has grave concerns regarding the safety of women in prison owing to the introduction of prisoners who identify as transgender into women's correctional institutions.

Women's prisons have hitherto been considered sex segregated spaces.

In 1982 Victorian Corrections policy allowed post operative males to be transferred to women's prisons and in 2017 a change to this policy allowed inmates who identify as women to be transferred to women's prisons.

Corrections Victoria states clearly in its document regarding the management of transgender prisoners that:

'Victoria's prison system is currently separated into two systems that are based on gender: a men's system and a women's system. These two systems currently remain the only placement options for people who identify as trans, gender diverse or intersex' (6.3.1)

And

'As a guiding principle, a person should be imprisoned in the prison of their gender rather than their sex assigned at birth.' (6.1.1)

These measures were introduced with little community consultation except with interested groups engaged in transgender advocacy.

The provisions on placement of "trans," "non-binary," and "intersex" prisoners in women's prisons effectively removed segregation by sex from the Victorian prison system.

The definitions in 5.4.1 of the terms "trans," "non-binary," and "intersex" were drawn from the Rainbow eQuality Guide

www.health.vic.gov.au/about/populations/lgbti-health/rainbow-equality/definitions.

Victorian Corrective Services policy regarding transgender inmates stipulates that transgender prisoners should be placed in facilities consistent with their self identified gender. These prisoners do not need to have undergone surgical transition.

This policy is in violation of the UN Geneva Treaty (1949) that specified that male and female prisoners must be housed separately.

Australian Government Objectives on Correction Services state that prisons should provide: *'A safe secure and humane custodial environment'*.

The policy of the corrections service in Victoria on transgender rights pays scant attention to the rights of women to be detained in a safe environment.

The Different life experiences and needs of male and female prisoners

Victoria's Charter of Human Rights and Responsibilities (2006) cites amongst the human rights in prisons and detention centre *'the Right to Privacy and Dignity in a closed environment'*.

The presence of transgender prisoners compromises the safety and psychological well-being of an already vulnerable cohort of women in a situation they cannot escape. It breaches the duty of care that correctional services have for the well-being of women in their facilities.

Women Prisoners in Victorian Prisons:

61% reported being victims of domestic violence
8% are victims of sexual violence
50% were the victims of a crime
26% were homeless or experiencing housing instability
61% reported using drugs

Female prisoners generally present a lower security risk and have more significant and complex needs associated with the intersection of substance abuse, trauma, sexual abuse and mental health issues. For a significant number of primary caregivers, there is anxiety and stress from being separated from their children.

Women prisoners are more likely to be convicted for drug and property offences. Male offenders more likely to be convicted for sexual assault and violent crime.

Male and female prisoners have different needs and different programs have been developed to help in the rehabilitation of female prisoners.

The introduction of transgender persons with different life experiences and different needs threatens to undermine the programs that are specifically designed for the complex needs of women in prison.

Little consideration appears to have been afforded to the needs and cultural sensitivities of culturally diverse women prisoners in having male bodied transgender people in their living spaces.

Standard 4.1. in the Management of Women Prisoners in Victoria states that:

'Prisoners from culturally and linguistically diverse backgrounds are managed in a manner that is sensitive to their cultural needs'.

Similarly, due consideration has not been afforded religiously diverse women prisoners unaccustomed to an unknown male presence in their living spaces.

Safety issues for Women when Transgender Men are Detained in Women's Correction Facilities

Correction Victoria commissioners requirements March 2021 states the following:

3.3 in the placement of trans, gender diverse and intersex prisoners, the safety and welfare of the prisoner and of other prisoners are of paramount consideration.

.....that for trans, gender diverse and intersex prisoners placed in environments Women's prisons where the external manifestation of their gender does not accord with those of the people with whom they are accommodated, they are at heightened risk of sexual or physical assault. It is also recognised that for trans, gender diverse and intersex prisoners placement

in an environment that accords with their external manifestation of their gender, but not their gender identity, may equally be harmful. Relative to this risk, a much smaller proportion might pose safety risks to others, particularly if their criminal record indicates a history of sexual and/ or physical violence.

These policies appear more concerned with the safety of transgender prisoners than with that of women prisoners for it is unclear how the safety needs of women prisoners are in practice balanced against the needs of trans prisoners.

The Victorian Service of Corrections recognises that transgender prisoners who are placed in men's prisons are at risk from physical violence and bullying but the placement of male bodied prisoners, who self-identify as transgender, in women's prisons ignores the safety implications for female inmates.

It is essential that female prisoners have access to private women only spaces in which to shower and change if they are to maintain a sense of safety in their environment. The presence of transgender prisoners in women's facilities such as changing rooms and showers threatens women's privacy-and also feelings of safety.

This need for privacy and a feeling of safety will be further undermined by the presence of preoperative trans gender prisoners in women's spaces.

No consideration appears to have been given regarding the overwhelming amount of evidence showing that biological males pose a serious risks to the safety of biological females, especially when biological males are housed in female sex- segregated spaces.

There are already many precedents (see examples below) that demonstrate the ways in which standards of safety have been breached in prisons overseas once transgender inmates are introduced into women's prisons.

A British woman, Laura, who was in and out of prison in her teens and early twenties said: *'A key point for me is that most of the women in prison (including me) had arrived there after a lifetime of having to appease violent men, of having that appeasement of violent men to be a keystone of their survival, and so importing that necessity of appeasement of violent men INTO the prison is both cruel and counter-productive' .*

Quoted in The Critic UK 30 October 2020

Attitudes of Women Prisoners When Housed with Men who Identify as Transgender

It is difficult to obtain information about the feelings of women prisoners housed with transgender inmates, and there is no data to ascertain whether women prisoners or prison staff have been asked for their opinions on the matter.

A report on the appeal by Evie Amati in the NSW Court of Appeal against his conviction for a violent assault in a 7/11 store provides an indication of the unease women prisoners experience when housed with men who identify as women. Amati had undergone trans surgery and was placed in the Mary Wade Women's Correctional Centre, NSW where he

was involved in a violent incident because women inmates objected to his being housed in a women's prison. (news.com.au July 30 2019)

Transparency

The Department of Corrections does not provide statistics on the number of "trans," "non-binary," and intersex prisoners that are housed in Victorian women's prisons.

The Department does not provide statistics on the numbers of prisoners detained in women's prisons who identify as female but have not undergone hormone treatments or surgery to transition.

The Department does not provide information on the attitudes of women prisoners and prison staff on the housing of transgender prisoners in women's prisons regardless of their biological gender.

The Department does not provide information on the numbers of "trans" and non-binary prisoners with a history of violence that are detained in women's prisons.

Overseas Examples

California

The Senate Bill 132 (2020) allowed inmates to be housed according to their self proclaimed gender. Since SB 132 was introduced, contraceptives and guidance on how to obtain an abortion were issued to the Central California Women's Facility, California's largest women's prison. Women prisoners have expressed concerns they will be at risk of sexual harassment and rape. Few women prisoners display violent behaviours, and the introduction of transgender inmates has led to greater security measures. Since SB 132 was introduced there have already been reports of a woman becoming pregnant by a transgender inmate.

The United Kingdom

In July 2021 a case came before the High Court by an ex prisoner who alleged that she had been raped by a transsexual person who had been housed at HMP Bronzefield. She was suing the Ministry of Justice for breach of duty of care.

The judge ruled that the Ministry of Justice had not broken the law but the judges recognised that:

'The psychological impact on non-transgender women prisoners held in prisons with transgender women is likely, in many instances to be significant' and that there was 'a statistically greater risk of sexual assault upon non-transgender prisoners.'

Canada

Women make up 5% of all prisoners in provincial penitentiaries

6% of all prisoners in federal penitentiaries

80% of women are in prison relating to poverty and abuse

Of the women who are convicted of violent crimes, the majority acted out of self defence for themselves or for their child

Male crimes tend to be more violent therefore rehabilitation programs for women prisoners are adapted to their needs,

2017 Correctional Services Canada policy allowed male inmates who identify as women to be transferred to female prisons even if they were not taking hormones and had had no surgery.

The Fraser Valley Institution for Women houses 92 inmates, including a mother and child program. There are 5 transgender inmates in this prison, including Tara Denousa (Adam Laboucon) who was incarcerated for raping a 3 month old baby.

Ireland

Since the 2015 Gender Recognition Act, the Irish state has allowed individuals to change their gender identity simply by deciding that they wish to declare themselves to be of the opposite sex. This has resulted in at least two cases of violent transgender individuals being housed in women's prisons; one of them a pre-operative, pre-hormone therapy, male to female transgender prisoner who had been convicted of ten counts of sexual assault and one count of cruelty against a child

Concluding Remarks

Why should the female prison population be made to accommodate at risk prisoners and thereby assume the risk to themselves?

Wouldn't it be more appropriate to provide separate accommodation for transgender prisoners within the male prison?

When the situation is reversed, and there is a female at-risk gender non-conforming prisoner needing separate accommodation for safety and well-being purposes there do not appear to be arrangements to house that prisoner in the male prison

Victorian law reform appears captured by transgender ideologies rather than the safety and emotional needs of a vulnerable prison cohort.

Recommendations

The Victorian Women's Guild recommends that:

1. Prisons should be single sex to protect the privacy, safety and dignity of women in prison
2. Transgender male to female prisoners should be housed in separate facilities within men's prisons
3. An end to the practice by the criminal justice system of allowing offenders to self identify their sex – particularly if they have committed violent and/or sexual offences.
4. The department release data on the numbers of transgender and non-binary prisoners detained in Victorian prisons
5. The department release data on the numbers of transgender and non-binary prisoners convicted of violent and/or sexual offences

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