



Women's Health Tasmania

Response to consultation on
the draft Bail Bill 2021

19 MARCH 2021



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About Women's Health Tasmania

Women's Health Tasmania (WHT) provides health promotion activities and health services to Tasmanian women. It is a charity largely funded by the Tasmanian Department of Health, and its work is guided by the World Health Organisation's definition of health – "Health is a state of complete physical, mental and social well-being, not merely the absence of disease or infirmity".ⁱ WHT's work is focussed on increasing the range of services to women vulnerable to inequitable health outcomes due to social or economic determinants.

Women have both general population and specific health needs. This means that in addition to services for individuals WHT also works to develop policy and best practice for the whole population.

Response to the consultation on the draft Bail Bill 2021

We welcome the opportunity to respond to the consultation. Women's Health Tasmania has worked in the Mary Hutchinson Women's Prison for decades, providing both pre- and post- imprisonment services, and policy advice on gender responsive post-release support.

Summary of WHT's position

The proposed Bail Bill reverses the presumption of bail for specific offences, subject to specific criteria – unless the accused can demonstrate “exceptional circumstances” that would merit bail being granted.

This submission focuses on the issue of the presumption against bail. It seems an important part of the presumption of innocence that people charged with offences are entitled to bail unless they pose a risk to other people, or there is a risk that they would not appear in court. The stated purpose of the draft Bail Bill is “to ensure that the safety of victims of crime, individuals and the community is taken into account when granting bail”.

WHT opposes the Bill's reversal of the presumption in favour of bail for the following reasons

- There is evidence emerging from other jurisdictions that the proposed changes will have an inequitable impact on women and other vulnerable groups even where they do not pose a risk to public safety.
- The proposed changes are contrary to human rights principles and instruments.

Key issues

Evidence of the inequitable impact on women of the presumption against bail

Evidence emerging from Victoria has shown a steep increase in people being held on remand, from 25% of all prisoners in 2015 to 36% in 2018.ⁱⁱ This has impacted inequitably across the population; certain groups are missing out on bail because of the reversal of the presumption of bail. These groups include women, Indigenous people, and people with mental health issues.

Legal experts report that the reason for this adverse impact is that these groups cannot show ‘compelling reasons’ or ‘exceptional circumstances’ to be granted bail, even when they are not facing a term of imprisonment and do not pose any significant risk to the community.ⁱⁱⁱ

A recent study which included Victorian prison entrance and Bail and Remand Court data found that the reasons for the significant growth in women's rates of remand in Victoria included:

- The impact of recent reforms to the Victorian Bail Act 1977 on remand rates.
- Policing becoming ‘tougher’ in response to the new bail regime.
- High bail thresholds created pressure to finalise or ‘plead out’ matters in the Bail and Remand Court.
- The Victorian Bail Act restricted magistrates’ discretion^{iv}

Women are getting trapped in this system because although their offending is often low-level, a range of circumstances contribute to their criminalisation and incarceration, including homelessness, poverty, family violence, untreated health problems and addiction.

As a result of this, it was found that it is now common for women in Victoria to spend lengthy time on remand and receive ‘time served’ prison sentences.

The vulnerability of Tasmanian women prisoners to these inequitable outcomes

There is a risk that Tasmanian women will be more adversely affected by the impact of the draft Bail legislation without any positive benefit in terms of the stated goal of community and individual safety. The pattern of women's offending differs from men. While there has been an increase in the numbers of women convicted for more violent crimes, 60% of women are imprisoned for non-violent, minor offences^v, commonly for drug or poverty related crimes.^{vi}

Women are incarcerated at lower rates than men, but in Tasmania their rate of incarceration continues to increase.^{vii} (After a long period of steady increases in both male and female prisoners, the male imprisonment rate in Tasmania decreased by 6% in 2019-2020, while the female rate of imprisonment increased by 7%.^{viii}) Currently, women comprise 9% of the prison population in Tasmania.^{ix}

Women in prison are one of the most marginalized groups of the population, commonly experiencing multiple disadvantages throughout their lives^x. Tasmanian prison health statistics show that the prevalence of mental health and alcohol and other drug issues for women in prison are higher than for the general population.^{xi} The ongoing impact of colonisation is also evident. Aboriginal women are over-represented in the prison population, comprising 17% of Tasmanian women prisoners in 2020, when Aboriginal people are 3% of the Tasmanian population.^{xii}

The proposed Bail Bill would be enforced in a context which is already highly gendered.

Women serve much shorter sentences than men. On average, women are in prison for about 3 months, compared to 2 years for men. This means that women often miss out on programs and supports offered in prison to those with longer sentences. They are also denied coordinated throughcare.

In addition, service delivery for women post-release is fragmented and ad hoc. Tasmania is one of the few states in Australia that has not yet established coordinated post-release support programs.^{xiii} Approximately 20% of women in Tasmania exit on parole and have an Officer from Community Corrections who works with them to ensure they meet parole requirements.^{xiv} When parole is over, there is no ongoing co-ordination of support. All other women (80%) exit without any coordinated response to address their needs.^{xv} Access to supports for these women is ad hoc and dependent on their own resources, knowledge, and skills.

Services which could work with these women find it hard to connect with them on release. It is difficult to build relationships of trust or to connect with women pre-release because their sentences are so short. It is difficult to run therapeutic programs in prison as the women's prison is so overcrowded, and little space is available for therapeutic or health promoting activities. Approximately half the women exiting prison exit to the north of the state, making ongoing relationships with Hobart-based services difficult. In addition, women often have more complex needs than the male prisoners, making brief service interventions limited in their effectiveness.

Finally, while a number of Tasmanian services work within the women's prison, and with women pre-and post-release, their capacity to do this is compromised by limited resources and short-term funding cycles.

Women exiting prison lack family support, often due to long term domestic violence which has isolated them from their families, and they lack stable long-term accommodation. Women exit into the same situations which led to the original criminal activities with even more challenges - disconnection from children and partners, unemployment, and housing insecurity. They typically experience poor health and have histories of complex trauma. The consequence of this is that women exit the prison every week needing ongoing support for health, alcohol and drug and mental health needs, in addition to basic needs like income, housing and reconnection with family. Many women find the difficulties they face outside prison overwhelming, with the result that they give up and re-offend. Service providers report examples of women even deliberately re-offending so that they go back to prison, because it is safer or simpler than dealing with life outside prison.

As a result of these and other factors is that women have higher rates of recidivism, measured as returning to Corrective Services within 2 years, with over 50% of women re-entering the corrections system.^{xvi}

These women are at high risk of failing to meet requirements for bail.

When homelessness and gender become reasons for imprisonment

Statistics repeatedly point to the hardships experienced by women who are in the criminal justice system. These include homelessness, trauma, poverty, experiences of family violence, untreated physical and mental

health problems, and drug and alcohol addiction.^{xvii}

An examination of the implementation of Bail reforms in Victoria found that homelessness was the most significant barrier for women seeking bail. The Victorian Bail Act does not stipulate that housing is a requirement for bail, but unstable housing was found to lessen a woman's chance of success.^{xviii} It was also found that women confront particular barriers to securing bail if they do not have access to housing as magistrates were more hesitant to bail a woman to the streets.^{xix}

Tasmania has a disproportionately high rate of homelessness, with the third highest rate of people contacting the Special Homelessness Support system in Australia.^{xx} The bulk of these clients (56%) are women.^{xxi}

Women on remand

The implementation of the Bail Bill will see a substantial increase in unsentenced prisoners being held on remand. An increase in the numbers of people being held on remand is not neutral in its effect.

Time on remand can be very difficult for women, particularly for those who are primary carers. Women risk losing the care and custody of their children, their jobs, and being evicted from their housing. For example, many women have told us they do not tell their children they are going away to work and they do not see their children while in prison. Other women may lose access to their children because they are sent to live with their (ex-)partner's family, or because of access conditions when their children are in out of home care. Having lost their housing, they may struggle to regain custody of their children.^{xxii} The impact of this on the children can also be devastating. Being the primary carer of children is not currently considered a reason to meet exceptional circumstances for bail.^{xxiii}

Time spent on remand can already be lengthy. In 2020 unsentenced prisoners spent varying times in prison, from a few weeks to months, but for some people the wait was over a year.^{xxiv} At the extreme end, people might wait (on average) 40 weeks for the Department of Public Prosecutions to decide to drop their case, or 2½ years until their case got to the Supreme Court.^{xxv}

Human rights

An entitlement of bail where there is no risk of flight and no risk to other people is consistent with the presumption of innocence. Removing an entitlement to bail is in contravention of human rights agreements. The United Nations *Standard Minimum Rules for the Treatment of Prisoners* (The Mandela Rules) provide clear guidelines for state and prison authorities on the minimum standards of compliance with international human rights law.^{xxvi} The standard minimum rules contain the following directions with regard to prisoners under arrest or awaiting trial. "84. (2) Unconvicted prisoners are presumed to be innocent and shall be treated as such."

It is likely too that the new Southern Remand Centre will be overwhelmed by an inevitable increase in the numbers of prisoners held on remand, and we will return to the situation of unsentenced prisoners being housed with the main prison population with the associated risks to unsentenced prisoners. This is also contrary to the Mandela Rules, which states that unsentenced prisoners should be kept separate from the convicted offenders [s 85 (1)].

Conclusion

The Victorian experiment with bail reform has seen large numbers of women imprisoned for lengthy periods for crimes for low level offending when imprisonment should be a last resort. This is because of the multiple disadvantages those women face. We are concerned that the implementation of the Bail Bill will see the Victorian experience will be replicated in Tasmania. Like women in Victoria, the situation of many women in the Tasmanian criminal justice system is impacted by poverty, family violence, homelessness and addiction.

We note the concern among workers in family violence services that the Family Violence Act still does not work to deny bail to potential offenders whose behaviour has come to the attention of police. Further reforms are needed to address this concern.

Endnotes

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- ⁱⁱ Russell E, Carlton B, Tyson D, Zhou H, Pearce M, Faulkner J 2020, *A Constellation of Circumstances: The Drivers of Women's Increasing Rates of Remand in Victoria*, Fitzroy Legal Service and the La Trobe Centre for Health, Law and Society paper pp34 - 37
- ⁱⁱⁱ Ibid
- ^{iv} Ibid
- ^v Sisters Inside 2013, *Submission to the Inquiry into the value of a justice reinvestment approach to criminal justice in Australia*, Sisters Inside, Brisbane.
- ^{vi} Department of Justice Tasmania 2010, *Breaking the Cycle: Tasmanian Corrections Plan 2010-2020 Discussion paper*, Department of Justice, Hobart
- ^{vii} Australian Bureau of Statistics 2020, *Prisoners in Australia 2020, Tasmanian data* [Prisoners in Australia, 2020 | Australian Bureau of Statistics \(abs.gov.au\)](#)
- ^{viii} Ibid
- ^{ix} Australian Bureau of Statistics 2020, *Prisoners in Australia 2020, Prisoners, selected characteristics by state/territory*, Australian Bureau of Statistics 45170DO002_2020 Prisoners in Australia, 2020, Table 14, [Prisoners in Australia, 2020 | Australian Bureau of Statistics \(abs.gov.au\)](#)
- ^x Australian Institute for Health and Welfare 2016, *The Health of Australia's Prisoners 2015*, Canberra, Act, Australian Institute of Health and Welfare.
- ^{xi} Wake C, Bruno R, Donaldson F, de Graaff B, Siddall D & Cairns P, 2012, *Health and Wellbeing in Tasmanian Prisoners with and without Hepatitis C antibodies*, Correctional Primary Health, Department of Health and Human Services & School of Psychology, University of Tasmania, Hobart.
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- ^{xiii} Johnson, I, 2017, *Just Support Project Report: Throughcare for women exiting Mary Hutchinson Women's Prison: towards a gender responsive approach*, Women's Health Tasmania, Hobart, p10
- ^{xiv} Ibid, p10
- ^{xv} Ibid, p10
- ^{xvi} Australian Bureau of Statistics, *4517.0 Prisoners in Australia, 2016*,
- ^{xvii} Russell E, Carlton B, Tyson D, Zhou H, Pearce M, Faulkner J 2020, *A Constellation of Circumstances: The Drivers of Women's Increasing Rates of Remand in Victoria*, Fitzroy Legal Service and the La Trobe Centre for Health, Law and Society, p19
- ^{xviii} Ibid, p22
- ^{xix} Ibid, p23
- ^{xx} Australian Institute of Health and Welfare 2020, *Specialist Homelessness services annual report: clients' services and outcomes, Cat. No. HOU 322, AIHW Canberra.*
- ^{xxi} Australian Institute of Health and Welfare 2020, *Specialist homelessness services 2019-20: Tasmania. Canberra: AIHW, p1*
- ^{xxii} Johnson I 2017, Op cit.
- ^{xxiii} Legal Aid, pers comm, 4 March 2021
- ^{xxiv} Australian Bureau of Statistics 45170DO002_2020 *Prisoners in Australia, 2020, Unsentenced prisoners, time on remand by state*, Table 32, 45170DO002_2020 Prisoners in Australia [Prisoners in Australia, 2020 | Australian Bureau of Statistics \(abs.gov.au\)](#)
- ^{xxv} Legal Aid, pers comm, 4 March 2021
- ^{xxvi} United Nations Office of the High Commissioner 1955, *Standard Minimum Rules for the Treatment of*

