
Women Transforming Justice:

Final Evaluation Report

Centre for Innovative Justice
December 2020

About the Centre for Innovative Justice

The CIJ's objective is to develop, drive and expand the capacity of the justice system to meet and adapt to the needs of its diverse users. The CIJ meets this objective by conducting rigorous research which focuses on having impact – taking our research findings, many of which involve direct engagement with service users, and using them to develop innovative and workable solutions. We design all of our work to be useful both for those experiencing and for those implementing change.

Running through the areas of our research is recognition that access to justice is about more than just formal access to the courts or legal system redress. Interaction with justice system mechanisms can, for many people, cause significant further trauma and harm. For this interaction to function as a positive intervention instead, people need to be understood; to feel heard; and to experience the justice system as meaningful and fair. A well-functioning and sustainable justice system should therefore be about much more than activity and outputs – taking time and using diverse approaches to have constructive outcomes; driving down incarceration rates; and preventing further harm.

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EXECUTIVE SUMMARY

In this report, the Centre for Innovative Justice (CIJ)¹ presents the findings of an evaluation of the Women Transforming Justice (WTJ) pilot project. Commissioned by Fitzroy Legal Service Inc, the evaluation was developed and conducted over a two year timeframe (2018 – 2020), during which the WTJ project was developed, established and then implemented.

The WTJ project – which began development in March 2018 and fully commenced operation in January 2019 - was a multi-component program funded by the Victorian Legal Services Board which sought to provide an innovative and urgent response to the rising rates of women's incarceration in Victoria. The WTJ project aimed '*to proactively advocate for decarceration*' [WTJ provider 06] at both the individual and systemic level through:

- the facilitation of a Women's Leadership Group (WLG) for women with lived experience of the criminal justice system;
- the development of an integrated Court Support Program (CSP) for women; and
- advocacy for systemic reform.

The overarching objective of the WTJ project was to support women to be released from, and stay out of, custody. It met this aim by providing skilled, integrated and women-specific legal representation and outreach-based case management, as well as by influencing decision-makers to take a gender-responsive approach.

This report explores the development of the WTJ project, as well as the implementation and effectiveness of the WTJ project during the first 18 months of operation. The first section of the report, the Introduction, provides some background to the program as well as to the mixed methods approach to data collection and analysis across the evaluation. In particular, qualitative and quantitative data were captured through interviews with program partners, WTJ clients and WLG members; court observations; case studies; and case file reviews.

The second section conducts a Needs Assessment through a scan of existing literature to explore the support needs of criminalised women, as well as the systemic and structural drivers which propel them into contact with the criminal justice system.

The third section reports on the evaluation's Findings – reporting against the five overarching Key Evaluation Questions (KEQs) which were developed in collaboration with the WTJ project partners and which are also informed by sub-questions. Summary Findings under each KEQ and sub-question heading bring together the evidence gathered throughout the evaluation which supports the relevant findings.

The final section of the report offers recommendations, including that the project partners seek funding for expanded service provision, as well as some proposed steps which may support future systemic advocacy and to strengthen the engagement of women with lived experience – offering lessons for other initiatives which are similarly seeking to incorporate lived experience at the centre of their work.

It should be noted here that, while the evaluation spanned a two year timeframe, the first year of the project's operation included a significant establishment phase, with findings from an interim evaluation report provided by the CIJ to the WTJ partners at the end of 2019 informing program adaptations in 2020. The 2019 calendar year also involved a number of early challenges for the WLG which needed to be addressed. The 2020 calendar year then brought a more global challenge, the COVID-19 pandemic, which impacted on the capacity of the evaluation to gather certain supporting evidence. These limitations should be kept in mind when reading the summary of the evaluation findings which follow and the subsequent recommendations.

¹ The CIJ sub-contracted an experienced evaluator from Clear Horizon to conduct much of the evaluation work, oversighted by the CIJ.

Summary of findings

Program relevance

The evaluation found that the design of the WTJ program met many of the immediate social support and legal needs of women which were identified in the literature and through evaluation findings. Data from across survey results, participant interviews, the literature scan and WTJ program data indicated that women's needs in the context of their contact with the criminal justice system were multiple, interrelated and not adequately met by the wider service system. Data also indicated that trauma and abuse were driving factors in women's experiences of criminalisation; while legal and longer term outreach-based service provision and connections with peers, were mechanisms which could provide vital support.

While the original aim of the WTJ project was to involve WLG members in supporting CSP clients, this was not occurring during the life of the evaluation. Certain gaps in the design and service provision were also identified, which included the need to increase cultural safety; support with child protection matters; and a dedicated housing pathway. Evidence strongly supported the finding, however, that the program was operating within the context of a wider service system which was inadequate, siloed and which cemented inaccessibility for many justice-involved women, in part because of narrow service eligibility criteria.

In this context, custody was functioning as a proxy for services in the community. Ultimately, therefore, the evaluation found that the design of the CSP was meeting women's immediate legal and social support needs, while operating within the confines of a largely inadequate service system.

Program outcomes

The evaluation found that the CSP had improved legal outcomes for the majority of women accessing the program, with 76% of WTJ clients being granted bail at their first application. Women were also being supported with their non-legal needs by the WTJ case manager. This support included intensive outreach; practical supports, such as transport to and from appointments, as well as food or phone vouchers; assistance for women to find housing and advocating for referrals to other services – outreach work which was intensive, time-consuming and complex.

From March 2020, when COVID-19 restrictions meant that many services either closed or reduced intake significantly, the project partners recognised the potential health risks posed by the pandemic within the prison system, as well as the significant delays in court proceedings. LACW consequently redoubled its efforts to pursue bail applications, while FO focused on continuing to provide face to face intensive outreach to the greatest extent possible. This made the WTJ CSP component a critical support for women on remand or on bail, being one of the few services which continued to provide face to face support during this time.

Over the same period, the female prison population decreased by nearly 30% as a result of pressures on the system related to COVID-19, although the project partners noted that the numbers had started to rise again towards the end of 2020. While it cannot be said that the decrease in prison numbers occurred as a result of LACW and FO's efforts through the CSP, 25 WTJ clients were successful with their first bail applications during this period, which was not an insignificant proportion.

Program process: Challenges arose in relation to initial program implementation in 2019, which affected timeliness of referrals and support in some instances. This included challenges in relation to staffing changeover which saw some connections with clients decline during this period.

However, an interim evaluation report provided by the CIJ to the WTJ project partners at the end of 2019, as well as improvements made to the integration of the CSP in 2020, meant that, by early 2020, LACW and FO were working together in a very timely manner to support women. Strong evidence across the evaluation pointed to FO and LACW consistently providing integrated legal and social support (“wrap around support”) for clients. There was also strong evidence of lawyers and the case manager working together to identify and access the most appropriate, immediate support for women’s needs.

Further, there was also strong evidence of women being provided with quality legal and outreach support, that would otherwise not be available to these women *but for LACW and FO*. This was especially true during COVID-19, where both organisations maintained their commitment to supporting women to be granted bail and providing intensive outreach.

Overall the evaluation found that the program had not only reached an effective level of integration by 2020 but could be described as exceeding expectations during a particularly difficult time. A focus on continuous improvement and learning, adopted informally at first, was increasingly cemented.

Leadership for women with lived experience: The original design of the overall WTJ project was premised on women with lived experience having direct input into all aspects of the program, including the CSP. While the WLG members had input into the design and implementation of the WLG and in systemic advocacy (ie the first and third objective of the project), initial challenges meant that they were not able to have input into the operation of the CSP (the second objective). This was in part because of pressures on CSP staff and challenges in coordinating information exchange. Rather, the focus in the early stages of the project was on providing support as members established themselves as a group, as well as training and leadership opportunities.

As a result of these training and leadership opportunities, WLG members subsequently became involved in many WTJ advocacy activities throughout 2019 and 2020, including providing input into submissions; delivering presentations and consulting; or establishing networks with various organisations. The evaluation found that the WLG was provided with strong, ongoing support by the WTJ coordinators, which members recognised as critical to their cohesion as a group. Despite challenges of COVID-19, WLG members felt empowered and ready to take ownership over their direction, including to provide more support to peers.

The skills and strength that women gained through their participation in the WLG were clear right across the evaluation data – skills and strength which were particularly significant in light of the novelty of their work; a lack of previous experience in terms of systemic advocacy and office environments; and a backdrop to their participation of ongoing stigmatisation and complexity in members’ lives.

Systemic change: Through FLS, WTJ conducted numerous presentations, workshops, meetings and network participation – where the involvement by WTJ and WLG members sought to influence the awareness of decision makers, as well as policy and practice. While longer term change stemming from these advocacy activities was difficult to capture after only 18 months of the project’s operation, key successes were identified as a submission to and reference in the Spent Convictions report; the *Constellations of Circumstances* report and WLG involvement in the launch; and a test case in the Supreme Court which sought to highlight the links between women’s experiences of violence and subsequent criminalisation.

While change is a long process, signs were emerging of shifts in understanding from lawyers, Magistrates and services, as well as a keen interest in the issues facing criminalised women from policymakers across a number of contexts. That said, shifts had only emerged to varying extents – pointing to considerable work still needing to occur, supported by frameworks which could formally articulate the WTJ project’s gender responsive approach, as well as an agenda for systemic advocacy.

Overall, the evaluation found that the WTJ project and its three components had achieved a significant amount in a relatively short period, within the context of substantial systemic drivers which keep women in contact with the criminal justice system, as well as the multiple needs which women experience and which go largely unmet by the wider service system. The evaluation found that wider services appear to be funded and designed to work with needs in isolation, rather than at the convergence of trauma and structural disadvantage which pushes women into contact with the law.

The WTJ project achievements clearly demonstrated the value of including the expertise of women with lived experience in the development process; of providing gender informed legal and intensive outreach support; and of advocating for change at the systemic level. The fact that the WTJ project delivered on all these components – not only weathering the impacts of COVID-19 but accelerating its efforts during this time – was a significant project success. This pointed to the need to build on this success with service expansion and a long term agenda for further reform.

Recommendations

Some of the systemic limitations to the WTJ program's objectives - such as the introduction of reforms to the *Bail Act* and an overall lack of much needed social housing – sat outside the WTJ project itself. Nevertheless, there are significant opportunities for the lessons of the WTJ project to contribute to its overall goal of decarceration of women.

Accordingly, the CIJ recommends that the WTJ project partners consider opportunities in relation to the following broad categories, being: partnership; model/approach; integrated service model; systemic advocacy; leadership for women with lived experience; evaluation and data collection; and capturing learnings through COVID. The number of recommendations reflect the complexity of the approach – with three partners and the WLG being involved in program delivery – as well as the complexity of the issues the project was seeking to address throughout the evaluation.

Partnership

1. The CSP delivered by LACW and FO was a key success of the WTJ project and reflected the strength of the relationship between those organisations. The manner in which the CSP was connected to FLS and the complex collaboration which resulted created opportunities, as well as challenges, particularly in relation to data systems and collection; connection with the WLG; and shared and separate advocacy activities. Accordingly, the project partners should **review the roles and responsibilities** of the partners to ensure that they promote:
 - Service delivery which is sufficiently resourced and designed to be highly integrated, flexible and sufficiently responsive to referrals;
 - Stronger integration and reciprocal, open communication across service delivery, advocacy and the involvement of women with lived experience of prison, including in the context of time poor environments;
 - Clarity around expectations and responsibilities for data collection;
 - A continuous learning approach, which recognises as a strength the need to adapt the partnership and elements of the project as they evolve;
 - A shared understanding of the components of effective service integration.
2. The outcomes of that review could inform the development of a **Service Integration Framework**, which sets out the criteria for effective service integration when working with criminalised women. The Framework should incorporate a continuous learning approach, supporting learning to identify where adaptations to program design or service delivery need to occur in recognition of what is highly complex work. The Service Integration Framework can also be adapted as partners learn more about good service integration in the context of wider systemic and structural drivers.

Model/approach

3. The WTJ project piloted a unique and innovative offering that responded effectively to the needs of criminalised women and the complex context of women's incarceration in Victoria. To capture and build upon the lessons learned, the WTJ partners should develop a **Framework for Gender Responsive Approaches** which articulates the key components of the WTJ program and can drive wider service system reform in relation to criminalised women. This Framework should articulate:
 - the key elements of the CSP piloted by WTJ (the WTJ integrated service model);
 - best practice to integrating the experiences of women with lived experience of incarceration into the model's development and operation;
 - systemic advocacy priorities in support of the WTJ project's goal of supporting women to be released from and stay out of custody, as well as associated outcomes of success; and
 - the production of advocacy tools which can be used to increase understanding of decision and policymakers, as well as service providers, around responding to women who have come into contact with the criminal justice system. These advocacy tools are detailed further under 'Systemic Advocacy'.

Integrated service model

4. The project partners should pursue funding to **expand the availability of and access to integrated services** with specialist and gender informed legal representation and intensive outreach-based social support for women. The evaluation found that the extent to which the CSP was able to accelerate service provision and advocacy during COVID-19 restrictions was a testament not only to the dedication of LACW and FO but also to the strength of the relationships which had developed between them during 2019.

While the CSP was effectively and efficiently adapting to available resources, the evaluation found that ongoing and expanded resourcing was essential for this type of complex work to remain sustainable, while also remaining voluntary, flexible and responsive. Funding should therefore be sought to include additional scope and resourcing for:

- a) **dedicated, intensive and assertive outreach** to ensure the capacity to be highly responsive to referrals.
- b) the establishment of a **dedicated housing pathway**, particularly in light of the restrictive or narrow admission criteria of other services. As originally envisaged by the WTJ program design, establishing a housing pathway for women in contact with criminal justice systems is critical, particularly in light of restrictive or narrow admission criteria of many services.
- c) provision of, or connection with, **longer, ongoing support** to help women to transition from a short term crisis response to a longer term response.
- d) **strengthened cultural safety** for Aboriginal and Torres Strait Islander clients, as well as for clients from CALD communities. Given the overrepresentation of Aboriginal and Torres Strait Islander and CALD women both in the criminal justice system and WTJ, any service must have adequate funding for identified positions to strengthen the program's cultural safety.
- e) strengthened capacity to **respond to child protection issues**, with resources dedicated to addressing the connection between women's contact with the criminal justice system and their experiences of trauma, family violence, homelessness and having their children removed.

- f) exploring the feasibility of **integrating a peer support component** into the service delivery model. This could include consideration of whether and how any interested WLG members could engage with women supported by the service delivery model in connection with the legal and outreach case management process.
- g) increased **funding for brokerage and transport**, both of which are critical to helping women maintain bail. Without being provided with basic essentials such as food and clothes, transport to appointments and FO support to help them navigate the complexity of the system, the evaluation found that many clients would not be able to maintain bail.
- h) capacity for additional advocacy in relation to the impacts of **COVID-19 related infringements** where this has proved an issue for criminalised women, including in light of current court backlogs through which infringement-related matters may be likely to be processed during 2021.

Systemic advocacy

5. Genuinely gender-responsive approaches require advocacy at both the individual and system level. As the evaluation found, systemic advocacy tended to be led by one partner, with resourcing having an impact on the extent to which this advocacy could be coordinated across the partnership, or conducted by the service delivery agencies at an individual level. Accordingly, the evaluation found that funding for delivery of integrated services for criminalised women should ideally be accompanied by additional and dedicated funding for systemic advocacy, which can also support a more coordinated, strategic approach which incorporates:
 - a) The development of a **Systemic Advocacy Agenda** that identifies priority issues for advocacy including:
 - advocating for reforms to bail legislation;
 - increased sentencing options;
 - increased housing options specifically for women;
 - gender-responsive criminal justice approaches to programs such as CISP;
 - the adoption of harm minimisation, rather than abstinence based models for residential rehabilitation services; and
 - increased supports for women in child protection responses.
 - b) **Connecting advocacy activities to key learnings** highlighted through the evaluation, particularly learnings that relate to *prevention* of women's contact with the criminal justice system. For example, the evaluation found that achieving bail for women is vital, but that advocacy is needed to ensure that support services are actually available and accessible for women well before this stage, as well as afterwards, so that 'staying out' is achievable after 'getting out' of custody.
 - c) Drawing on FO's expertise, a strengthened focus on **advocacy across the broader service system**. FO has an in-depth understanding as to how barriers to services – such as strict eligibility criteria and limited housing options – impacts on women's ability to succeed on bail and remain safe and stable in the community. The evaluation found that gender-informed responses are needed at court, but also at a much earlier point in the system and across wider service provision.
 - d) Continuing to focus advocacy efforts on building broader understanding among policy and decision makers as to **gendered pathways** into criminal justice system contact, including the multiplicity of women's needs and underlying trauma, child protection and family violence.

This should include advocating for resourcing to establish a baseline data measure around what decision and policy makers currently understand around these pathways, given the challenges which the evaluation encountered in terms of measuring any shifts in understanding as a result of COVID-19.

- e) As noted in relation to the development of a Framework for Gender Responsive Approaches, the **production of advocacy tools** which can be used to increase understanding of decision and policymakers, as well as service providers, around responding to women who have come into contact with the criminal justice system:
- Lists of **practical considerations** that need to be taken into account by legal decision makers when making orders in relation to criminalised women, such as their access to transport; phones; and other material resources which are crucial to women being able to comply with bail conditions and sentencing outcomes based in the community.
 - Resources to support understanding around the **relationship of multiple, co-occurring issues to pre-existing and ongoing trauma** which mean that women may need additional supports to engage effectively with other services, such as rehabilitation or specialist family violence services, child protection, as well as community-housing providers and compliance based, court responses, such as CISP. These resources should specifically address the barriers of strict eligibility criteria, as well as the gap in service provision which arises when women are dismissed by services as being ‘too complex’.
 - Resources to inform other organisations which may wish to **work with women who have lived experience of the criminal justice system**. These resources should recognise and articulate the complexity of this work, including the shared histories of trauma which many women will have which will impact their involvement and require ongoing support. However, these resources should also recognise and articulate that women nonetheless come to the work with diverse and varied experiences – highlighting that not all women with lived experience of the criminal justice system are the same, as well as that, very importantly, working with people with lived experience of the criminal justice system is not the same as working with people with lived experience of other parts of the legal or service system. These resources should outline the lessons gleaned from the WLG experience, including the WLG’s experience in being involved in external projects as well as systemic advocacy activities to identify those approaches which are appropriate and those approaches which are not.

Leadership

In terms of leadership of women with lived experience who are engaged with WTJ, members of the WLG are of course best placed to develop recommendations for the group’s direction. However, some points to highlight from the evaluation findings include:

6. In consultation with the WLG, consideration should be given to how WLG members can be **better connected** to future work conducted by the project partners, including any role which they might play in the further development and delivery of the WTJ integrated service model and support that members may need as part of this role. This includes providing clarity for WLG members around their expected involvement and/or role within any service delivery model, as well as opportunities to participate in peer support.
7. WLG members should be supported to build their capacity so that they can develop further experience and leadership in **speaking out and advocating on issues** affecting women in contact with the criminal justice system. As part of this, WLG members should be connected with higher levels of government and decision makers, as evaluation findings suggest that this can have a significant impact on decision makers.

8. WLG members could consider sharing their experiences and perspectives not just of the criminal justice system but of their experience in **establishing a peer support group**. WLG members have insight not only about lived experience and the system, but about what has worked for them as a group and getting established - learnings which could be extremely helpful for other groups seeking to achieve similar outcomes.
9. WLG members and coordinators should embed a **continuous learning approach** in the design of the program. This should include developing the program as one of a learning program, where WLG members and coordinators work together to identify what is working well and what needs improving or adapting. Embedding and articulating a learning stance to the program means that WLG members and coordinators reflect, share learnings and then adapt as needed.

Evaluation and data collection

10. Building on successes and learnings of the program to date, the project partners should consolidate their evaluation and data collection tools by:
 - a) further developing an understanding of **'what success looks like'** for criminalised women who have repeatedly come into contact with the criminal justice system. Evaluation findings make clear that, for many criminalised women, helping women to stay out of jail is a long term objective. Any understanding of 'success' should therefore include intermediate outcomes that could be expected to be seen at earlier points in a woman's journey if the program is working well. The evaluation identified that earlier indicators of 'success' for women in this context include:
 - women staying returning to and/or staying engaged with assertive outreach support and legal representation when required, including during their court process and over a long period of time;
 - women having secure housing;
 - women returning to services for support, when required; and, critically
 - women staying alive once they are in community.
 - b) considering how to **capture longer term or sentencing outcomes** for clients, to understand the long term impact of specialist, gender-informed legal representation and coordinated case management more effectively. While evaluation findings suggest that support provided to women on bail was improving sentencing outcomes, challenges currently exist in terms of capturing long term data for clients who tend to fall in and out of contact and engagement over time. This type of long term data would therefore be a valuable addition to any future program evaluations
 - c) advocating for funding to establish an additional **cost/benefit measure** to compare the cost efficiency of the WTJ integrated service model with costs of incarceration of women
 - d) developing an understanding of 'what success looks like' in terms of **systemic advocacy**, and building data collection and analysis, including case studies, into any systemic advocacy conducted jointly or separately.

Learning through COVID-19

The WTJ program partners have the opportunity to use their success and effectiveness through COVID-19 to reflect and capture learnings. This could include a facilitated workshop to:

11. Identify **what worked well** across the CSP during COVID-19 at a time when other services were struggling to deal with capacity, shutting down or reducing their activity. Discussions should capture the gains and efficiencies that clearly emerged throughout COVID-19, continuing to embed them and adapting the program accordingly.

12. Identify effective steps in the adaptation of the WLG during COVID-19 and the **benefits which were gained** for WLG members during this time, in addition to challenges encountered.
13. Use COVID-19 findings to **tell the story of resilience** and show the results that were achieved during this time, including in future advocacy. This could include tracking outcomes for women granted bail during 2020 to inform advocacy for systemic reform.

Conclusion

Overall the evaluation found that the WTJ project was an urgently needed initiative in the context of a wider legal and service system which was not equipped to counter the systemic drivers pushing women into contact with the criminal justice system. This included impressive adaptations and accelerated service responses in the context of COVID-19.

Across the WLG, the CSP, and the project's systemic advocacy efforts the WTJ project highlighted significant service and legal gaps, as well as an urgent requirement for much greater and more nuanced understanding of criminalised women's experiences. Without this increased understanding, a gender-blind legislative landscape will continue to interact with highly gendered pathways, potentially reversing the trend seen during 2020 which saw a drop in women being held in Victorian prisons.

Conducted from the inception of a highly complex project and against a backdrop of a global pandemic, the evaluation was nevertheless able to collect and triangulate a significant amount of data. This outcome was only possible as a result of the commitment across the partners and the evaluation team to ensuring that the project was able to tell the story of its successes, as well as reflect on early challenges and adopt early learnings to continue improving over time.

That said, the WTJ project was still in its early stages, with shifts in understanding from decision and policymakers alike only just beginning to emerge, while the CSP and WLG alike had found a firm footing and were going from strength to strength. This signalled a need for continued and expanded support for initiatives like the WTJ project – a need which, in many ways, may have only become more acute as a result of COVID-19.

While the numbers of women incarcerated in Victoria in the early stages of the pandemic reduced by around 30 per cent, the longer term impacts of COVID-19 restrictions and its effects on the Victorian economy and the wider service system are likely to drive more women into contact into criminalisation. In the absence of much needed systemic reform, projects like WTJ – and the three valuable components which it comprised – will become more necessary than ever before.

1. SECTION ONE - INTRODUCTION

1.1 About this report

In this report, the Centre for Innovative Justice (CIJ)² presents the findings of an evaluation of the Women Transforming Justice (WTJ) pilot project. Commissioned by Fitzroy Legal Service Inc, the evaluation was developed and conducted over a two year timeframe (2018 – 2020), during which the WTJ project was established and then implemented.

The purpose of this report is to provide findings around the implementation and effectiveness of the WTJ pilot project in its first 18 months of operation. This report addresses the Key Evaluation Questions (KEQs) for the WTJ project - developed in collaboration with the WTJ project partners in the establishment phase - and makes recommendations for the future direction of the project partners' work.

There are four sections to the report:

1. Introduction and background to the WTJ evaluation.
2. Needs Assessment: being a literature scan addressing the rising rates of incarceration of women in Victoria; the needs of women in contact with the criminal justice system; and the current approach to addressing those needs.
3. Evaluation Findings.
4. Recommendations and conclusion.

The findings in this report are based on data independently collected by the CIJ, as well as data collected internally by WTJ project partners. To collate findings, the CIJ independently analysed all data provided by WTJ project partners and merged this with the data that was independently collected by the CIJ.

1.2 About Women Transforming Justice

The WTJ project was a multi-component program funded by the Victorian Legal Services Board seeking to provide an innovative and urgent response to the rising rates of women's incarceration in Victoria. The WTJ project aimed to do so at both the individual and systemic level through:

- the facilitation of a Women's Leadership Group (WLG) for women with lived experience of the criminal justice system;
- the development of an integrated Court Support Program for women; and
- advocacy for systemic reform.

After a period of development during 2018, the project commenced implementation in 2019.

Three WTJ project partners were involved in the project, being:

- Fitzroy Legal Service (FLS) (Program Coordination & Management, WLG Coordination and Systemic Advocacy, 'WTJ coordinator');
- Flat Out (Outreach and Case Management, 'WTJ case manager'); and
- Law and Advocacy Centre for Women (LACW) (Legal advice and representation 'WTJ lawyers').

² The CIJ sub-contracted an experienced evaluator from Clear Horizon to conduct much of the evaluation work, oversighted by the CIJ.

The overarching objective of the WTJ project was to support women to be released from, and stay out of, custody. It did so by providing skilled, integrated and women-specific legal representation and outreach-based case management, as well as by influencing decision-makers to take a gender-responsive approach. The WTJ project also had the following more specific objectives:

1. To ensure that women with lived experience of the prison and criminal justice systems are involved in the design, implementation and evaluation of the project; (Women's Leadership Program).
2. To provide criminalised women with skilled, integrated and women-specific legal representation and outreach-based case management that:
 - a. addresses the legal and social determinants of their criminalisation;
 - b. improves their chances of being released from custody; and
 - c. supports them in the community to obtain a non-custodial sentence; (Court Support Program).
3. To improve the capacity of decision-makers (Magistrates, prosecutors, community Corrections officers and policy makers) to recognise that women have particular pathways into the criminal justice system; that they offend in different ways; and that their needs and experiences within the criminal justice system warrant a different, gender-specific response (Systemic Advocacy).

Women's Leadership Program

A key focus of the WTJ project was on the facilitation and integral involvement of a Women's Leadership Group (WLG) comprised of women with lived experience of the criminal justice system, coordinated by the WLG coordinators at FLS. As noted above, this component accorded with the first objective of the project.

Court Support Program (CSP)

Another key focus of the WTJ project was the Court Support Program (CSP), which aimed to deliver expert, integrated and women-specific legal representation (through LACW), as well as gender-informed, outreach-based case management (through Flat Out). This was to improve women's prospects of being granted bail, as well as to support them to remain safe and stable in the community on release. The project management of the CSP also sat with FLS. As noted above, this component accorded with the second objective of the project.

Systemic advocacy

The third and equally important component of the WTJ was the provision of systemic advocacy around the needs of criminalised women, led by the WTJ project coordinators (FLS) and members of the WLG. As noted above, this component accorded with the third objective of the project.

Guiding principles

The WTJ project was guided by the following related principles:

- The drivers of women's criminalisation are gendered and flow from criminalised women's experiences of childhood abuse, family violence and related trauma;
- Women should be diverted from prison;
- Aboriginal women should be supported to connect with culture, community and Country and be linked in with Aboriginal Community Controlled Organisations (ACCOs) if this is their preference;
- Women with lived experience of prison and criminalisation should be involved in the design, implementation and evaluation of the project;
- Support for criminalised women should be gender-sensitive, culturally safe, trauma-informed, intensive, flexible and holistic;
- Women should be supported to determine their own priorities;
- Addressing women's criminalisation and over-incarceration requires service delivery at an individual level, coupled with system-level advocacy and reform; and
- Community-based and culturally safe and supported responses are more effective in disrupting the drivers of women's criminalisation.

Eligibility

The WTJ project aimed to target the cohort of women spending short periods of time on remand with the goal of diverting them from custody. Accordingly, WTJ was a voluntary project which accepted referrals for women:

- who were in custody on remand (at the time they were referred);
- with multiple needs who would benefit from intensive support;
- for whom involvement in the project would improve their prospects of bail or receiving a non-custodial sentence.

At inception, the WTJ project anticipated that a significant proportion of women referred to the CSP would have their first appearance in the Melbourne Magistrates' Court Bail and Remand Court (BaRC). The project also aimed to prioritise accepting referrals for women who had not yet had their first appearance before a Magistrate, given its objective of diverting women from custody. In addition, given the project's limited resources, women living in central and north-west Melbourne were identified as the priority focus.

1.3 Evaluation scope

This report covers the development of the WTJ project from late 2018 as well as the implementation and effectiveness of the WTJ project during the first 18 months of implementation, to the middle of 2020.

Key Evaluation Questions (KEQs)

The evaluation sought to answer the following high level key evaluation questions (KEQs).

1. To what extent did the WTJ program meet the social and legal needs of women in custody on remand or in the community and subject to some form of conditional release?
 - 1.1 *What are the legal and social support needs of women applying for bail in the criminal justice system?*
 - 1.2 *What legal and social support is currently provided to women applying for bail in the criminal justice system in Victoria?*
 - 1.3 *What is a gender responsive approach to providing these women with legal and social support?*
 - 1.4 *Does the design of the WTJ project meet these needs?*
2. To what extent did the WTJ program improve legal and social outcomes for women in custody on remand or in the community and subject to some form of conditional release?
 - 2.1 *What changes occurred for women accessing the WTJ program?*
 - 2.2 *For whom did change occur/not occur?*
 - 2.3 *What were women's legal outcomes?*
 - 2.4 *What were women's support/social/non-legal outcomes?*
 - 2.5 *Did women involved in the program gain strength, heal and grow?*
3. To what extent did the WTJ program deliver integrated, timely and quality support to women on remand or in the community and subject to some form of conditional release?
 - 3.1 *How timely was the legal and social support provided?*
 - 3.2 *How integrated was the legal and social support provided?*
 - 3.3 *Were women provided with quality legal and outreach support?*
4. To what extent did women involved in the WTJ program have opportunities to lead its design and operation and/or build their own skills?
 - 4.1 *To what extent were women involved in the planning and delivery of the project?*
 - 4.2 *To what extent were project staff accountable to women participating in the project?*
 - 4.3 *To what extent did participation in the Women's Leadership Program build women's capacity and skills?*
5. To what extent had the WTJ program improved decision-makers' understanding of the particular needs and experiences of criminalised women?
 - 5.1 *What do decision makers know about the particular needs and experiences of criminalised women and appropriate ways of responding?*
 - 5.2 *To what extent has the program been involved in strategic litigation, input into policy development and ongoing education and training in order to contribute to the development of laws, policies and programs affecting criminalised women?*
 - 5.3 *Is there evidence in decisions being made that decision makers have improved their understanding of the issues affecting women in the criminal justice system?*

Findings against each overall KEQ and sub-question are set out in Section 3 of this report.

1.4 Evaluation approach

The evaluation used a mixed methods approach to data collection and analysis. Qualitative data were captured through interviews with program partners, WTJ clients and WLG members; court observations; case studies; and case file reviews.

Quantitative data was collected by the CIJ through surveys and by the WTJ program partners, including program data and case files. To ensure credibility of the evaluation process and results, all evidence was triangulated. Evaluation activities continued throughout life of the project, with an emphasis on capturing learnings about implementation and adaptations as it developed.

For each stage of the evaluation, the CIJ sought relevant formal ethics approval from the Justice Human Research Ethics Committee (JHREC) and applicable low risk RMIT ethics approval processes respectively. The CIJ researchers conducted the evaluation in accordance with those approved processes, to ensure that the research was ethical, responsible and appropriately supported.

Data collection

Data collection methods included the following:

- a literature scan to investigate factors contributing to the increasing incarceration of women and the support needs of criminalised women;
- a review of program documentation (related to program design and implementation) and documents related to WTJ advocacy activities;
- de-identified WTJ client data (2019 and 2020) (68 records);
- a review of WTJ case files (32) and case studies (4);
- two rounds of semi-structured interviews with WTJ practitioners and program partners (conducted in November/December 2019 and July/August 2020);
- court observations;
- practitioner survey distributed through Victoria Legal Aid to practitioners in December 2019;
- interviews with WTJ clients (2);
- interviews with WLG members (5); and
- a final Findings and Reflection workshop with the WTJ program partners.

Here it is useful to note that, as the CIJ was involved from the inception of the project, the evaluation team at times were involved in identifying useful ways of gathering data, as well as working with the project partners to scope Key Evaluation Questions and approaches. This included working with the WLG to enable them to be involved in the determining the evaluation questions but, as the WLG was in its early stages, the evaluation team supported them to conduct some journey mapping and develop an understanding around 'Most Significant Learning' approaches so that members could participate in interviews in ways which they enabled them to feel comfortable. Interview tools were developed and agreed with all partners, including the WLG.

Also useful to note - and as discussed further below - issues around the evaluation team reviewing data and conducting interviews with clients were complex, given considerations around 'consent' as it related to an interaction between the legal and outreach team and women who were at a particularly vulnerable point in their lives. Steps were therefore taken to identify appropriate methods of data collection to account for these considerations, as well as to ensure that any CSP clients approached for interview were experiencing sufficient stability so as to ensure that the interview process was not re-traumatising or did not escalate risk in any way.

Table 1 Data collection methods

| Data source | Details |
|---|---|
| WTJ client data (2019 & 2020) | 29 records (2019) 39 records (2020) |
| WTJ case files (Flat Out) (2019 & 2020) | 32 case files |
| WTJ case studies (LACW) (2019) | 4 case studies |
| Semi-structured interviews (WTJ program partners) (2019 & 2020) | Conducted over two periods: Nov/Dec to March 2019 and July/August 2020. <ul style="list-style-type: none"> 6 interviews with WTJ providers (2019) 9 interviews with WTJ program coordinators and providers (2020) In total, 11 WTJ program partners were interviewed for the evaluation, with four people interviewed both in 2019 and in 2020. |
| Court observations (2019) | 21 matters observed over 11 days between July-Nov 2019. Of these, <ul style="list-style-type: none"> 13 bail applications were observed LACW/WTJ/FO were supporting in 4 matters |
| Practitioner survey (2019) | Distributed through Victoria Legal Aid in December 2019 (25 responses) |
| WTJ client interviews (2020) | 2 semi-structured interviews (July/August 2020) |
| WLG member interviews (2020) | 5 semi-structured interviews, focusing on Most Significant Learning (2020 August 2020) |

Data analysis and synthesis

Qualitative data were analysed thematically, taking note of outliers. **Quantitative data** from the surveys, case files and program data were analysed using descriptive statistics. Using an evidence table, the results from different datasets were merged and aligned against the KEQs, with similar or different themes then identified across the entire dataset. Both the qualitative and quantitative evidence were synthesised against the KEQs to develop draft findings. After presenting initial findings to WTJ program partners, additional feedback was incorporated into the evaluation findings and recommendations presented in this report.

Limitations

While every effort was made to ensure the rigour of the evaluation process and findings, the following limitations were associated with the methodology, some relating to COVID-19 impacts:

Court observations were conducted in the second half of 2019, with additional observations planned before the end of the evaluation period in 2020. In 2019, the WTJ program was very new and Magistrates and practitioners were only just becoming familiar with the program. The purpose of observations planned for 2020 was to capture any shift in awareness about the WTJ program since initial observations in 2019.

From March 2020, however, COVID-19 restrictions meant that court observations were no longer possible as courts sought to limit in-person proceedings. This affected the evaluation's ability to provide comprehensive answers to evaluation questions about Magistrates' awareness and understanding of the program.

Similarly, in December 2019 a **survey** was provided to Victoria Legal Aid (VLA) to distribute to practitioners so as to identify the extent to which legal practitioners were aware of the WTJ program. In order to identify any change in awareness or understanding, the survey was planned for redistribution towards the end of the evaluation in mid-2020.

Unfortunately, the timing of the survey redistribution coincided with the onset of Stage 4 restrictions in Melbourne. This appears to have impacted results, as the survey received no responses. As per the court observations, this limited the evaluation's ability to make findings about shifts in awareness and understanding of the program from the perspective of a broader audience. Survey results therefore need to be interpreted in the context of having been collected while the program was still in its early development.

Meanwhile, recruiting WTJ clients for **interviews** was always expected to be challenging. Many clients have unstable housing; do not have access to a phone or phone credit; or are grappling with multiple needs which mean that participation in an interview is difficult to manage. Further, care in the recruitment process must be taken to ensure that women who have been let down by so many other services in the wider system do not feel that their receipt of services from LACW or FO are contingent on their interview participation. Finally, considerable care is required to assess the current situation of any potential participant so as to determine whether participation is likely to escalate risk or be re-traumatising. Sample sizes in research with vulnerable groups in the community are invariably small for these types of reasons.

As client interviews were scheduled for 2020, however, these challenges were further compounded by the backdrop of COVID-19 restrictions and lack of access to much needed supports. Substantial efforts were made to contact potential participants for interview and to follow up initial indications of interest while women continued to manage the unprecedented challenges presented by the pandemic. For this reason it is significant that two WTJ clients were eventually able to participate in interviews. Themes which emerged from these interviews were also merged with themes from client case studies (4) and case files, to understand client experiences of the program.

1.5 COVID-19: context & challenges in 2020

In the final six months of the evaluation period, a State of Emergency was declared in Victoria, with stay-at-home restrictions implemented. Stage 3 restrictions were implemented from March to June 2020, followed by a second period of Stage 4 restrictions introduced in Melbourne from August – October 2020. This had a significant impact on the WTJ program itself, with all three components affected by the changed operating context, as set out below.

Changes to Magistrates' Court operations: As a result of COVID-19 restrictions, courts adjourned many matters and moved urgent matters online. Restrictions also had an impact on bail applications, with some applicants able to demonstrate "exceptional circumstances"³ in the unprecedented context of COVID-19 while, conversely, women on remand experienced increased restrictions on their liberty. These changes affected the way in which the CSP operated, both in terms of the WTJ lawyers' approach to bail applications, as well as the WTJ case manager's ability to be physically present in court. The impact of these changes on the CSP component is discussed in Section 3.3.

WTJ management moving online: Pausing face to face work had particular impacts for the members of the WLG and WLG coordinators, who needed to find a new way of supporting each other; maintaining momentum for the group; and continuing to work throughout the transition to online. These changes are discussed in relation to the findings about the WLG in Section 3.4.

Availability of housing and other support services: To protect health and prevent further COVID-19 outbreaks, in April 2020 the Victorian Government provided accommodation in vacant hotels and student accommodation for more than 2000 people without secure housing.

³ As evidenced in Re Broes [2020] VSC 128

The program was then extended into 2021. This was recognised as an unprecedented shift in the landscape for people who were experiencing housing insecurity. At the same time, many regular support services – such as alcohol and other drug (AOD) rehabilitation services, housing services (outside the emergency hotels program), and many government agencies – changed their operating practices. The effect this has had for clients of the WTJ program is discussed in Section 3.3.

Opportunities for systemic advocacy: The multiple shifts in the operating context also presented new opportunities for advocacy. The findings relating to the impact of COVID-19 restrictions on the systemic component of WTJ are discussed in Section 3.5.

1.6 Development of the WLG

Also important to note is the context of the development of the WLG. The following is an account of the development of the WLG, as reported by the members of the WLG in October 2020. It also draws on a journey mapping process initiated with the WLG members by the CIJ evaluation team earlier in the evaluation process, as noted above.

Journey of the Women's Leadership Group

From the commencement of the WTJ project, the WTJ coordinators consulted or met regularly with 36 women. Twelve of those women became members of the WLG over the life of the evaluation period, with six women meeting weekly as at September 2020.

As part of the development phase of the WTJ project, between June 2018 and October 2018, the WLG coordinator met with 15 women with previous experiences of prison and held a roundtable with nine women on remand in the Dame Phyllis Frost Centre. The aim of these meetings was to gather information from women who had been or were in prison about what kind of support criminalised women needed in order to be granted bail. This information helped to inform development of the CSP.

In October 2018, three women with experiences of prison decided to meet with the WLG coordinator on a weekly basis to provide input into the project. Those meetings started in late October 2018 and went for two hours each week. Group members received an honorarium payment for their time. None of the three women who attended the group meetings in October 2018 remained regular attendees. However, three women who joined the group between December 2018 and February 2019 continued to be involved, with six women meeting weekly as at September 2020, as noted above.

Six women lost contact with the group or decided not to be involved. This movement of women in and out of the group at times disrupted its focus. The group needed to spend time bringing new members up to speed. Incorporating the views and capacities of new women into the group also led to changes in the group's priorities.

Key stages in the group's journey

October 2018 – February 2019: This was the early stages of the group's development. It involved making connections and asking questions about the group's identity. This period also involved uncertainty about the group's purpose. Members were paid an honorarium each week for their time and expertise.

January 2019: WLG members were recruited to the *Stories of Strength* project ('the capacity building project') at the Federation of Community Legal Centres (FCLC). WLG members started attending a separate meeting – immediately following the WLG meeting – with FCLC staff about the capacity building project.

March 2019 – June 2019: This period evolved as confusing and difficult. In April 2019, the FCLC launched the *Free our Sisters, Free our Kids* campaign ('the campaign'), which involved members of the WLG. The considerable overlap between the goals of WTJ and the two external projects – the capacity building project and the campaign – created confusion among WLG members and WTJ staff. A great deal of strategic planning occurred, without associated action. A number of changes to staff in both FLS and FCLC also contributed to confusion, while timeframes and the boundaries of the work and the group were unclear. In April 2019, the WLG members became casual employees of FLS.

June 2019 – July 2019: The work of the WLG was separated from the capacity building project and the campaign. The campaign was "put on hold" and the FCLC decided it would not continue.

July 2019 – end of 2019: This period was about putting in place structure and boundaries, care and check-ins as well as education and workshops. The confusion and disruption connected to the group's involvement in the two other projects took some months to work through.

March 2020: The group moved online due to COVID-19. After a period of uncertainty, the group found a new way of working and established an additional meeting run by the WLG members themselves, without the assistance of the WLG Coordinators.

Overall, the WLG noted that working with people who have been in prison, particularly in a group setting, comes with inherent challenges and complexity which needed to be incorporated into the running of the project. All members of the WLG had experienced trauma, violence and some had experienced drug dependence, homelessness and child removal – both in their past and while they were connected to the WLG.

It was therefore common for WLG members to be juggling their professional work with upsetting and difficult personal circumstances and financial instability. Most women in the group also had limited experience with paid work in an office setting. The fact that WLG members were able to contribute to a large number of activities while dealing with this complexity therefore reflected their strength, resilience and commitment to the project.

2. SECTION TWO: NEEDS ASSESSMENT

This section presents the findings of a literature scan conducted to assess the level of need in the community for a program like WTJ; to understand the legal and social support needs of criminalised women; and to signpost elements of a gender responsive approach. The literature scan provides a further foundation against which the findings in Section 3 are assessed.

2.1 Backdrop to WTJ – escalating incarceration rates

Functioning as the backdrop to the development of the WTJ project is the dramatic increase in women's incarceration rates across Australia and, in particular, in Victoria. This state went from having one of the lowest general incarceration rates in the world in 1992 to one of the highest in 2018, comparable to Zambia, Jamaica and Algeria.⁴ Although women account for a small proportion of all people in prison in Victoria (7.1 per cent⁵ in 2019) and are incarcerated at a much lower *per capita* rate than men,⁶ the rate at which they are incarcerated is growing rapidly.

For example, as at 30 June 2018, there were 566 women in Victorian prisons, representing a 137 per cent increase in the female prison population over a ten-year period, compared with an 81 per cent increase in male prison populations.⁷ Even more dramatic is the increase in incarceration of Aboriginal women nationally, who experience periods in custody at over 21 times the rate of non-Indigenous women and 1.5 times the rate of Indigenous men.⁸ The number of women in prison dropped by 32% during the COVID-19 pandemic,⁹ although reports from the WTJ partners suggest that this decline has already started to reverse, in part because of the lengthy period during which clients are remaining on bail without access to vital supports.

Rather than related to the frequency or severity in relation to women's offending,¹⁰ acceleration in women's incarceration rates occurred in the context of legal and policy settings which were designed primarily for men¹¹ and which disadvantage women in specific ways as a result.¹²

The nature of these pathways mean that, in summary, women:

- are imprisoned for less serious offences than men;¹³

⁴ Jeffries, S. & Newbold, G. (2016) 'Analysing trends in the imprisonment of women in Australia and New Zealand' 23(2) *Psychiatry, Psychology and Law*, 184-206; Ooi, E., (2018) *Recent Trends in the NSW Female Prison Population*. Sydney: Bureau of Crime Statistics and Research; Walmsley, R. (2017) World female imprisonment list'. *World Prison Brief*, Institute for Criminal Policy Research.

⁵ Department of Justice and Community Safety, (2020) *Annual Prisoner Statistical Profile 2006-07 to 2018-19*.

⁶ In 2019, the female incarceration rate in Victoria was 22 women per 100,000 adult women, compared with 297 men per 100,000 adult men. This represented a doubling of the rate of women's imprisonment since 2008. *Ibid*.

⁷ Department of Justice and Community Safety, Corrections Victoria, above n 5.

⁸ Australian Law Reform Commission, (2017) *Pathways to justice – Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples: Final Report*.

⁹ i.e., in the 12 months from 31 July 2019 to 31 July 2020. Corrections Victoria, (2020) *Monthly time series prisoner and offender statistics data*. Department of Justice and Community Safety, Melbourne.

¹⁰ Walker, S., Sutherland, P. & Millstead, M. (2019) *Characteristics and offending of women in prison in Victoria 2012-2018* Crime Statistics Agency, Melbourne.

¹¹ The United Nations *Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders* ('the Bangkok Rules') stress the importance of gender-specific prisons and programs. United Nations Office on Drugs and Crime (2010). United Nations General Assembly Resolution 65/229.

¹² 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, Melbourne; McMahon, M. (2019) *No bail, more jail?: Breaking the Nexus between community protection and escalating pre-trial detention*, Research Paper No 3, Parliamentary Library; UK Government Home Office, (2002) *Statistics on Women and the Criminal Justice System: a Home Office Publication under Section 95 of the Criminal Justice Act 1991*; Sentencing Advisory Council, (2010) *Gender Differences in Sentencing Outcomes*. Victoria.

¹³ Swavola, E., Riley, K., & Subramanian, R., (2016) *Overlooked: Women and Jails in an Era of Reform* Vera Institute of Justice; Department of Justice and Community Safety (2019) *Women in the Victorian Prison System*, State of Victoria.

- present with higher rates of physical and psychological ill-health than their male counterparts, due in part to their experiences of victimisation from gendered violence;¹⁴
- are disproportionately impacted by homelessness;¹⁵
- are much more likely to be the primary carer of children;¹⁶ and
- experience short, repeat and damaging periods of incarceration.

Policing

At the front end of factors driving women into contact with the criminal justice system is the way in which certain offences are investigated and policed. Studies increasingly point to a 'tougher' police response which does not account for the context of the alleged offending behaviour.¹⁷

Vital to note, of course, is the disproportionate use of prosecution against Aboriginal people. Aboriginal women face imprisonment for more minor offences such as disorderly conduct; minor property and traffic offences; and breach of court orders.¹⁸ For example, a recent study found that over 80% of Aboriginal people arrested for possession of small amounts of cannabis were prosecuted, compared with just over 52% of non-Aboriginal people arrested for the same offence.¹⁹ A global report using data from 2013 to 2017 similarly found that Aboriginal women were more likely to receive harsher prison sentences for substance possession offences.²⁰

Further, despite recommendations by the RCFV calling for improved family violence policing practices²¹ increasing concerns suggest that these reforms may be having a counterproductive effect in some contexts. For example, Women's Legal Service Victoria reported that 57 per cent of women initially named as perpetrators on police applications for Family Violence Intervention Orders (FVIOs) were found to be victim/survivors.²²

¹⁴ Australian Institute of Health and Welfare, (2019) *The health of Australia's prisoners 2018*. Australian Government. <https://doi.org/10.25816/5ec5c381ed17a>

¹⁵ Department of Justice and Community Safety, above n 13.

¹⁶ Walker et al, above n 10.

¹⁷ Russell et al, above n 12.

¹⁸ MacGillivray, P. & Baldry, E. (2015) *Australian Indigenous Women's Offending Patterns* Brief 19 Indigenous Justice Clearinghouse; Anthony, T. & Blagg, H. (2013) 'STOP in the Name of Who's Law? Driving and the Regulation of Contested Space in Central Australia' 22(1) *Social and Legal Studies*, 43; Cunneen, C. & Tauri, H. (2016). *Indigenous Criminology*, Bristol, United Kingdom, Policy Press; J. Purdy, (1996) 'Postcolonialism: the emperor's new clothes' 5(3) *Social and Legal Studies* 405; Heffernan, E., Anderson, K & Dev, A. (2012) *Inside Out—The Mental Health of Aboriginal and Torres Strait Islander People in Custody*, Queensland Government; Finnane, M. & McGuire, J. (2001) 'The uses of punishment and exile: Aborigines in colonial Australia' 3(2) *Punishment and Society* 279.

¹⁹ McGowan, M. & Knaus, C., *NSW police pursue 80% of Indigenous people caught with cannabis through courts* (10 June 2020) The Guardian <<https://www.theguardian.com/australia-news/2020/jun/10/nsw-police-pursue-80-of-indigenous-people-caught-with-cannabis-through-courts>>.

²⁰ Linklaters LLP and Penal Reform International, (2020) *Sentencing of women convicted of drug-related offences: A multi-jurisdictional study by Linklaters LLP for Penal Reform International* <https://cdn.penalreform.org/wp-content/uploads/2020/02/LinklatersPRI_Sentencing-of-women-convicted-of-drug-related-offences_WEB.pdf>.

²¹ See recommendations 41 to 59, State of Victoria, Royal Commission into Family Violence (2016). *Summary and Recommendations*, Parliamentary Paper No. 132 (2014 – 2016)

²² Ulbrick, M. & Jago, M. (2018) 'Officer, she's psychotic and I need protection': police misidentification of the 'primary aggressor' in family violence incidents in Victoria. Women's Legal Service Victoria, Monash University.

Women may already be less inclined to report violence for fear of having their children removed or to avoid punishment from a partner.²³ The prospect of being misidentified as the perpetrator of that violence is therefore likely to leave women even more at risk - pushed into criminalisation by proactive policing measures which were intended to increase their safety.

Charges

Globally, women are generally accused of low-level, mostly non-violent offences, which tend to result in shorter sentences when compared with male offenders.²⁴ Offences committed by women are predominantly property or economic crimes and low-level substance-related offences.²⁵ Some studies suggest that this is partially related to the relative ease of prosecuting less serious substance-related offences, resulting in a gender disparity in the “war on drugs”.²⁶ Studies also suggest that most violent offences by women are isolated incidents.²⁷

Corrections Victoria data illustrates that the type of charges against women has changed since 2008,²⁸ with a decrease of 7 per cent in matters linked to at least one “crime against the person”; and an increase in the proportion of substance-related charges.²⁹ In addition, there were substantial increases between 2012 and 2017 in the number of remanded women charged with burglary, substance and other property offences as the most serious offence, while a greater proportion of women charged with these offences reported heavy substance use.³⁰

Most markedly, however, is the prevalence of charges relating to new breach bail offences.³¹ In 2018, 66 per cent of un-sentenced women were linked to a breach bail charge, compared with only 21 per cent six years previously. A similar increase occurred in relation to sentenced women, from 11 per cent in 2012 to 51 per cent in 2018.³² Overall, there was a 630 per cent increase in the number of women facing breach of order charges, most commonly breach of bail and breach of intervention order, as the most serious charge between 2012 and 2017.³³ At 2018 women were also facing more *numerous* charges.³⁴ For women on remand, the proportion facing only one charge dropped from 10 per cent in 2012 to 3 per cent in 2018, and the proportion of those with more than five charges increased from 46 per cent to 54 per cent by 2018.³⁵ Given the low-level nature of women’s offending, breach bail and breach order offences are therefore likely to be adding disproportionately to the list of charges that women face upon contact and re-contact with the criminal justice system.³⁶

²³ Flynn, C. (2011) ‘Responding to the Children of women in prison: Making the invisible visible’, *Family Relationships Quarterly* 19, Australian Institute of Family Studies; Hannon, T. (2006) ‘Children: Unintended victims of Legal Process - A review of policies and legislation affecting children with incarcerated parents’. Discussion Paper, Flat Out Inc. and Victorian Association for the Care & Resettlement of Offenders, Melbourne.

²⁴ Belknap, J. (2007) *The Invisible Woman: Gender, Crime and Justice*, Thomson Wadsworth; Wright, E.M, van Voorhis, P., Salisbury, E. & Bauman, A. (2012) ‘Gender-responsive Lessons and Policy Implications for Women in Prison: A Review’ 39 (12) *Criminal Justice and Behaviour* 1612; Swavola, et al, above n 13; Department of Justice and Community Safety, above n 15.

²⁵ Wright, et al, above n 24.

²⁶ Huber, A., (2016) ‘Women in criminal justice systems and the added value of the UN Bangkok Rules,’ in H. Kury et al (ed), *Women and Children as Victims and Offenders: Background, Prevention, Reintegration*, Springer International Publishing 145 – 171.

²⁷ Stathopoulos, M. (2012) *Addressing Women’s Victimization Histories in Custodial Settings*, No 13, Australian Centre for the Study of Sexual Assault, 7-8.

²⁸ Department of Justice and Community Safety, (2020) *Annual Prisoner Statistical Profile 2006-07 to 2018-19*.

²⁹ Walker, et al, above n 10.

³⁰ Department of Justice and Community Safety, above n 15, 10.

³¹ i.e., the offences of *Contravene a conduct condition of bail* and *Commit indictable offence while on bail*, introduced in 2013. Walker et al, above n 10, 23.

³² *Ibid*, p 23.

³³ Department of Justice and Community Safety, above n 15, 8.

³⁴ Walker et al, above n 10, 21.

³⁵ *Ibid*.

³⁶ Russell et al, above n 12. Here we note that there is less likelihood that women will be charged with breaches of parole given the limited use of parole.

Bail

The rise in “breach bail” charges reflects just one component of reforms which have arguably had the most dramatic effect on women’s prison numbers in recent years, driving an increased movement of un-sentenced people into and through custodial settings.³⁷ That said, studies have noted increasing rates of remand populations for some time,³⁸ with authors identifying a lack of housing and support services as particular barriers to women being granted bail.³⁹

Kilroy notes that a lack of address for service is often used as a reason for police or prosecutors to oppose bail, with prisons in turn increasingly operating as “de facto mental institutions, homeless shelters and ‘dry out’ facilities.”⁴⁰ Many commentators note the way in which women’s broader disadvantage is increasingly being used to justify refusal of bail, substituting correctional settings for social supports in the community.⁴¹

Some studies have specifically examined the extent to which gender plays a factor in bail decisions. For example, a 2004 UK study found that a lack of available alternatives to remand, as noted above, influenced judicial decision making.⁴² Similarly, a 2006 qualitative study of decisions made by Magistrates in five metropolitan courts found that gender influenced remand decisions most significantly in cases that cannot easily be categorised by the seriousness of the offence. In these cases, it was found that defence lawyers often employed an “explicitly gendered narrative” to construct their client as “deserving” and thereby aid bail outcomes.⁴³ Arguably this is a concerning inversion of the paternalistic narrative which sees women remanded to custody in absence of other supports. Another researcher linked the growing numbers of women incarcerated in Victoria with increases in women facing substance-related charges such as trafficking, and the assumed risk of flight associated with these offences.⁴⁴

More specifically, however, studies point to increasing restrictions on the legislative entitlement to bail as driving growth in incarceration rates around Australia.⁴⁵ Nowhere is the numerical shift more apparent than in relation to women in Victoria.⁴⁶ For example, while the number of women received into prison under sentence has remained relatively stable,⁴⁷ the number of un-sentenced women received into Victorian prisons rose from 241 to 719 between 2012 and 2018, accounting for 87 per cent of all female receptions in 2018⁴⁸ and for 42.4 per cent of all women in custody, up from 24.8 per cent in 2008.⁴⁹

³⁷ Sentencing Advisory Council, (2016) *Victoria’s Prison Population 2005 to 2016* Victoria.

³⁸ Bamford, D., King, S. & Sarre, R. (1999) *Factors affecting remand in custody: a study of bail practices in Victoria, South Australia and Western Australia*, Australian Institute of Criminology; Kilroy, D. (2016) ‘Women in Prison in Australia’ Conference Paper, Current Issues in Sentencing Conference, Australian National University.

³⁹ Sheehan, R. & Trotter, C. (2019) ‘Policy Developments in Victoria: Better Pathways Strategy’ in Sheehan, R. & Trotter, C. *Women’s Transitions from Prison: Post- Release Experience* Routledge.

⁴⁰ Kilroy, above n 38.

⁴¹ Bumiller, K. (2008) *In an Abusive State: How Neoliberalism Appropriated the Feminist Movement Against Sexual Violence*, Duke University Press; Bumiller, K. (2013) ‘Incarceration, welfare state and labour market nexus: The significance of gender in the prison system’ in Carlton, B & Segrave, M. (ed) *Women Exiting Prison* Routledge, 13-33.

⁴² Edgar, K. (2004) *Lacking Conviction: The Rise of the Women’s Remand Population* Prison Reform Trust.

⁴³ Steward, K. (2006) ‘Gender considerations in remand decision-making’ in *Gender and Justice: New Concepts and approaches* (eds) Frances Heidensohn.

⁴⁴ Sheehan, R. (2013) ‘Justice and Community for Women in Transition in Victoria, Australia’ in Malloch, M. & McIvor, G. (eds) *Women Punishment and Social Justice: Human Rights and Social Work* Routledge.

⁴⁵ Yeong, S. & Poynton, S. (2018) ‘Did the 2013 Bail Act increase the risk of bail refusal?’ *Crime and Justice Bulletin*, No. 212, NSW Bureau of Crime Statistics and Research.

⁴⁶ Australian Bureau of Statistics, *Prisoners in Australia, 2019* (Catalogue No 4517.0, 2019).

⁴⁷ Walker et al., above n 10.

⁴⁸ *Ibid*, 14.

⁴⁹ Walker et al., above n 10; Jeffries, S. & Newbold, G., above n 4; Ooi, E., above n 4.

This significant growth in the movement in and out of Victoria's women's prison correlates with multiple amendments to Victoria's *Bail Act 1977* during this time. As noted above, in 2013 two offences were introduced which related to people's conduct while on bail and which required an accused to "show cause" as to why further bail should be granted. The introduction of these offences was followed by a spike in the number of "breach bail" conditions offences recorded, which rose 173 per cent overall in the 10 years up to 2018.⁵⁰

In addition to these new offences, a review of the *Bail Act* in 2017 prompted further reforms which resulted in a much wider range of offences attracting a "reverse onus" in relation to the presumption of bail. These offences were included under two Schedules, Schedule 1 requiring an accused to show "exceptional circumstances" and Schedule 2 requiring an accused to show "compelling reason" why they should be granted bail. The "show compelling reason" test is more difficult to meet than the "show cause" test, with the "exceptional circumstances" test more difficult again. By nature of offence type alone, however, offences listed in both Schedules do not attract the presumption of bail.

The amended bail legislation also includes offences that only place the accused in a reverse onus position in specific circumstances, such as when offences are alleged to have been committed while on parole;⁵¹ where a weapon was used; or where the offence was committed in the context of family violence.

Where women have been misidentified as predominant aggressors in family violence matters, as noted above, proactive policing can therefore converge with punitive bail reforms to put women at even greater risk of incarceration. This is particularly the case when, as Russell and colleagues have noted, women's own experiences of family violence are rarely taken into account in bail decisions.⁵²

More broadly, recent studies have pointed to the disproportionate impact that these reforms have had on women, noting that their prohibitive requirements mean that women may not even apply for bail, or are frequently unsuccessful when they do.⁵³ In particular, McMahon's recent study highlighted the growing emphasis on risk assessments – the privileging of "risk" and "community protection" increasingly used to promote crime prevention, rather than to assess whether an accused will attend court when their matter was heard.⁵⁴

Other authors have observed the increasingly gendered interpretation of risk, with Carlen describing the shift in focus from "serious risk to a public safety" to "risk of committing another crime" – women experiencing the greatest social needs in turn perceived as most "at risk".⁵⁵ Edgar similarly notes growing perceptions of the risk of further offending through the lens of an accused's vulnerability.⁵⁶ Stathopoulos has also outlined the way in which remand means fewer opportunities for rehabilitation, leading to an increase of women released into the community with their support structures ruptured and in turn more likely to reoffend.⁵⁷

⁵⁰ Crime Statistics Agency, (2018) *Spotlight: Breaches of orders – The Impact of Legislative Changes*.

⁵¹ Here we again note the restrictions on access to parole.

⁵² Russell et al, above n 12.

⁵³ Ibid.

⁵⁴ McMahon, M, above n 12.

⁵⁵ Carlen, P. (2002) *Women and Punishment: The Struggle for Justice*, Willan Publishing.

⁵⁶ Edgar, K, above n 42, utilising Morgan, PM & Henderson, PF (1998) "Remand decisions and offending on bail: evaluation of the Bail Process Project," Home Office Research Study 184, London. Home Office.

⁵⁷ Stathopoulos, above n 27.

Narrowing of sentencing options – and sentences to ‘time served’

In addition to the number of women on remand, wider studies suggest a narrowing of sentencing options.⁵⁸ Former Deputy Chief Magistrate Jelena Popovic has previously noted that women “provide sentencing dilemmas for Magistrates” because the multiple needs they are experiencing which are not addressed by appropriate support make fines or community based orders less viable yet “detention for the sake of imposing a form of punishment on persons whose crimes are generated by need...is not appropriate”,⁵⁹ an observation echoed by multiple other authors.⁶⁰

Further, although the abolition of suspended sentences,⁶¹ may have been anticipated to propel a rise in community-based sentences, by March 2019, Victoria’s rate of community-based sentences stood at the lowest rate in Australia.⁶² This is despite indications that community-based sentences cost a tenth of a custodial sentence, with successful completion more likely to lead to a reduction in reoffending than custodial responses.⁶³

In 2010 the United Nations General Assembly adopted *The Bangkok Rules*⁶⁴ which, amongst other things, noted that community-based orders were far more appropriate for women because their offences are commonly low-level and because prison stays, regardless of length, can be intensely damaging. Emerging evidence, however, suggests that the structure of a community corrections order (CCO) sets women up to fail.⁶⁵ Although the Sentencing Advisory Council’s 2017 examination of CCOs did not include analysis of women’s gender-specific needs or risks, data upon which it relied suggests that women are more likely to breach a CCO through non-compliance than men.⁶⁶

More broadly, authors suggest that supervision practices and the risk assessment tools used by Corrections Victoria, are based on the behaviours, risks and needs of men, with little regard for the caring responsibilities and economic marginalisation unique to women’s lives.⁶⁷ This may result in women spending time in custody for breach of orders that were originally in place for low-level offences and would not otherwise warrant a custodial sentence.⁶⁸

As indicated by Victoria’s low rate of CCOs, however, the option of a community-based sentence is not available for many criminalised women, with many sentenced to short periods in custody, and an increasing number to ‘time served’.⁶⁹

⁵⁸ Drug and Crime Prevention Committee, Parliament of Victoria, (2010) *Inquiry into the Impact of Drug-Related Offending on Female Prisoner Numbers*, Parliamentary Paper No 371.

⁵⁹ Ibid.

⁶⁰ Segrave, M. & Carlton, B. (2010) ‘Women, trauma, criminalisation and imprisonment...’ 22(2) *Current Issues in Criminal Justice* 287-305; Kilroy D., Barton, P., Quixley, S., George, A. & Russell, E. (2013) ‘Decentering the Prison: Abolitionist approaches to working with criminalised women’ in Carlton, B. & Seagrave, M. (eds) *Women Exiting Prison* Routledge, 156-180.

⁶¹ *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic).

⁶² Sentencing Advisory Council, (2020) *Community-Based Sentences*, Victoria

<<https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-trends/community-based-sentences>>

⁶³ Picard, S., Tallon, J. & Kralstein, D. (2019) ‘Court-Ordered Community Service: A National Perspective’, Center for Court Innovation, <<https://www.courtinnovation.org/publications/community-service>>; Andrews, D. & Bonta, J. (2010) ‘Rehabilitating criminal justice policy and practice’ 16(1) *Psychology, Public Policy, and Law*, 39-55.

⁶⁴ United Nations Office on Drugs and Crime, above n 11.

⁶⁵ Swavola et al, above n 13; Kendall, K. (2013) ‘Post release supports for women in England and Wales’ in Carlton, B. & Segrave, M., *Women Exiting Prison* 34-55; Turnbull, S. & Hannah-Moffat, K. (2009) “Under these conditions: Gender, Parole and the Governance of Reintegration.” 49(4) *British Journal of Criminology* 532-51; Hannah-Moffat, K. (2010) ‘Sacrosanct or Flawed: Risk, Accountability and Gender- Responsive Penal Politics’ (22)2 *Current Issues in Criminal Justice: Beyond Prison: Women, Incarceration and Justice?* 193-215.

⁶⁶ Sentencing Advisory Council, (2017) *Contravention of Community Correction Orders*, Victoria, 46-8.

⁶⁷ Swavola, above n 13, 32; Sheehan, R., Mclvor, G. & Trotter, C. (2010) *Working with Women Offenders in the Community*, Taylor and Francis; K. Kendall, above n 65, 41.

⁶⁸ Russell et al, above n 12.

⁶⁹ Sentencing Advisory Council (2020) *Time served prison sentences in Victoria*, Victoria.

For example, as at June 30 2018, around 40 per cent of sentenced women had an effective sentence length of less than 12 months, compared with only around a quarter of men in prison.⁷⁰ Further, in the 12-month period to 30 June 2018, 47.2 per cent of women discharged from prison spent less than one month, and 86 per cent spent less than 6 months, in custody.⁷¹

For a significant proportion of women incarcerated in Victoria, extended time on remand is equal to, or greater than, the sentence they eventually receive if convicted. In fact, only 62 per cent of un-sentenced women in 2018 were sentenced to imprisonment for at least one of their reception charges, with the remainder either sentenced to ‘time served’ or receiving no sentence at all.⁷² This is in line with findings from the Sentencing Advisory Council that “time served” sentences in Victoria increased overall from five to 20 per cent over the seven financial years to 30 June 2018.⁷³ The increase was even greater for Aboriginal women, with 61.4 per cent discharged from an un-sentenced period in detention in 2018-19.⁷⁴ As is the case with men, there have also been significant changes over the last decade in the circumstances in which women, whether sentenced or un-sentenced, are discharged from prison, including in whether people on sentence are discharged on parole.⁷⁵

Data from the ABS National Prisoner Census indicates that, as at 30 June 2019, close to 38 per cent of all women in adult prisons in Victoria (sentenced and un-sentenced), and approximately 49 per cent of Aboriginal women, had a prior experience of custody.⁷⁶ In Victoria, 43.7 per cent of all people in custody (male and female) released during the 2015 -16 financial year returned to prison within two years.⁷⁷ More broadly, the Queensland Productivity Commission (QPC) found that the proportion of people returning to prison for a new sentence within two years of release was increasing, rising from 29 per cent in 2007 to 40 per cent in 2017.⁷⁸ With an increased number of offences attracting a reverse onus in relation to bail, or women receiving a custodial sentence for more minor offences,⁷⁹ these systemic drivers are interacting with women’s gendered pathways into offending to entrench them further and further in ongoing contact with the criminal justice system.

2.2 Gendered pathways into criminalisation

While the drivers of women’s contact with the criminal justice system are also relevant to men – including socio-economic disadvantage, low educational status and racism⁸⁰ – many disproportionately impact on, or are specific to, women. In particular, in its 2010 study of gender difference in sentencing outcomes, the Sentencing Advisory Council suggested that increased rates of women’s criminal justice system could be partially explained by growing economic marginalisation, with wage inequality; lower accumulated superannuation; and sole parenting responsibilities all putting women at higher risk of offending than single men and couples.⁸¹

⁷⁰ ‘Effective sentence length’ is the period of imprisonment to be served by a sentenced prisoner in the current episode, calculated as the period between the date of reception into prison custody and the earliest date of release. Corrections Victoria, above n 4.

⁷¹ Corrections Victoria, above n 4, Table 3.9.

⁷² Walker et al., above n 10, 3.

⁷³ Sentencing Advisory Council, above n 69.

⁷⁴ Corrections Victoria, above n 4.

⁷⁵ Corrections Victoria, above n 4, Table 3.10.

⁷⁶ Australian Bureau of Statistics, *Prisoners in Australia, 2019* (Catalogue No 4517.0, 2019) Table 29.

⁷⁷ Australian Productivity Commission (2020) *Report on Government services, 2020* (Steering Committee for the Review of Government Service Provision) Table CA.4.

⁷⁸ Queensland Productivity Commission, Queensland (2019) *Inquiry into Imprisonment and Recidivism* Final report, Queensland Government.

⁷⁹ Russell et al, above n 12.

⁸⁰ Indig, D., McIntyre, E., Page, J. & Ross, B. (2010) *2009 NSW Inmate Health Survey: Key Findings Report* Justice Health.

⁸¹ Sentencing Advisory Council (2010) *Gender Differences in Sentencing Outcomes*, Victorian Government; Heimer, K. (2000) ‘Changes in the Gender Gap in Crime and Women’s Economic Marginalization’ 427(1) *Criminal Justice*.

In what Belknap calls a “feminisation of poverty,”⁸² this means that women are being sent to prison for offences that are a direct result of economic marginalisation or need, as identified above. Evidence certainly indicates that women follow gendered pathways into criminalisation.⁸³ Studies show that, when compared with men, incarcerated women “demonstrate higher levels of previous victimisation, poor mental health and serious mental illness, [and] substance misuse”⁸⁴ as well as high rates of insecure housing and chronic, often untreated, ill-health. A study for the Keeping Women Out of Prison Coalition found that:

- 77 per cent had a diagnosed mental health condition (86 per cent for Aboriginal women);
- 23 per cent had other kinds of disability;
- more than a quarter had experienced a head injury that had left them unconscious (an indicator for brain injury);
- 71 per cent had been in an abusive relationship;
- 61 per cent were parents (66 per cent for Aboriginal women);
- 72 per cent had been in prison before (87 per cent for Aboriginal women);
- more than one third would leave prison into homelessness or housing instability; and
- around 78 per cent would leave prison with no support services in place.⁸⁵

Some of these multiple and interrelated factors are summarised below, noting that all of these issues are compounded by the legacies of colonisation and ongoing institutional racism experienced by Aboriginal and Torres Strait Islander women.

Trauma and abuse

Social and financial exclusion, of course, is often directly interact with women’s experiences of trauma. Certainly the broader link between offending and victimisation has a strong empirical association,⁸⁶ with an Australian study examining the trajectories of victim/survivors of child sexual abuse over multiple decades finding them to be “almost five times more likely to be charged with an offence than their peers in the general population”.⁸⁷ This link is even more pronounced for women, including high rates of histories of childhood victimisation (particularly sexual abuse) and associated contact with child protective services; as well as subsequent victimisation as adolescents and adults (including sexual assault and family violence).⁸⁸

⁸² Belknap, above n 24.

⁸³ Salisbury, E., & van Voorhis, P. (2009) ‘Gendered Pathways: A Quantitative Investigation of Women Probationers’ Paths to Incarceration’ 36(6) *Criminal Justice and Behaviour* 541-566.

⁸⁴ Stathopoulos, above n 27, 6-7.

⁸⁵ Phelan, L, Satiri, M. & Scott, M. (2019) ‘Profile of women in prison in NSW’, Keeping Women out of Prison Coalition: Sydney.

⁸⁶ Jennings, W., Piquero, A., & Reingle, J. (2012) ‘On the overlap between victimization and offending: A review of the literature.’ 17(1) *Aggression and violent offending*, 16-26; See also the Law Australia Wide Survey by the Law and Justice Foundation of NSW. For example, overall, 1.7 per cent of all respondents to the Legal Australia-Wide Survey reported that they had been alleged to have recently committed a crime during the 12-month reference period. However, this percentage increased to 5.2 per cent of the sub-group of respondents who reported having been a victim of crime. Conversely, while 13.3 per cent of all respondents reported having experienced a crime, the proportion was much higher (41.1 per cent) for those respondents who were also alleged to have committed a crime during the survey reference period. Coumarelos, C., Macourt, D., People, J., McDonald, H.M., Wei, Z., Iriana, R. & Ramsay, S. (2012) *Legal Australia-wide survey. Legal need in Australia* Law and Justice Foundation of NSW,

⁸⁷ Ogloff, J.R.P., Cutajar, M.C., Mann, E. & Mullen, P. (2012) ‘Child sexual abuse and subsequent offending and victimisation: a 45-year follow-up study’ *Trends and Issues in Criminal Justice*, No. 440 Australian Institute of Criminology.

⁸⁸ Stathopoulos, M. & Quadara, A. (2014) ‘Women as offenders, Women as victims: The role of corrections in supporting women with histories of sexual abuse’, Corrective Services NSW; Prison Reform Trust, (2017) *There’s a reason we’re in trouble: Domestic abuse as a driver to women’s offending*, United Kingdom; Wright, et al. above n 24; Stone, U. B., (2013) ‘I’m still your Mum: Mothering inside and outside prison’ (Master of Arts thesis,

Kilroy's review of multiple studies concluded that approximately 85 per cent of women in prisons in Australia are, or have been victim/survivors of abuse.⁸⁹ This percentage does not account for underreporting due to associated stigma. Researchers in Australia have described a "triumvirate of gendered needs" resulting from victimisation, substance abuse, and mental illness,⁹⁰ or alternatively as a "constellation of circumstances".⁹¹

This convergence is also recognised in Victoria's Women's Correctional Services Framework, as well as in Corrections Victoria's Standards for the Management of Women Prisoners in Victoria.⁹²

Overall the convergence means that incarcerated women are more likely to have experienced suicide attempts and substance overdoses;⁹³ as well as face an increased risk of harm and premature unnatural death in the period following their release from prison.⁹⁴ Evidence indicates that family and sexual violence can lead women to offend in a variety of ways,⁹⁵ including through self-medicating; being forced into sexual exploitation; resisting violence through physical force (and being misidentified by police as the predominant aggressor as a result); or through associated poverty, often entrenched through financial abuse by a partner.⁹⁶

Parenting status

In 2018 around 65 per cent of un-sentenced women and 70 per cent of sentenced women reported having children,⁹⁷ although the proportion of women in custody who had primary responsibility for the care of dependent children dropped from 26 per cent of un-sentenced women in 2012, to 12 per cent in 2018, and from 34 per cent of sentenced to 25 per cent over the same timeframe.⁹⁸ This potentially points to the increasing rates of child removal experienced in Aboriginal communities over this time, as well as restrictions on women regaining custody of their children once statutory authorities intervene.

Regardless of whether they were primary carers of children when entering custody, incarceration clearly disrupts opportunities to maintain contact with children. Concerns about children's wellbeing feature strongly amongst incarcerated women,⁹⁹ concerns which are likely to be heightened where children are in the care of the state or a violent partner.

Royal Melbourne Institute of Technology; Australian Institute of Health and Welfare, above n 14; Swavola et al, above n 13; Segrave, & Carlton, above n 60; Loxley, W. & Adams, K. (2009) *Women, drug use and crime: findings from the drug use monitoring in Australia program*, Research and public policy series, No. 99, Australian Institute of Criminology; Salisbury & van Voorhis, above n 83; Bartels, L., Easta, P. & Westgate, R. (2020) 'Understanding women's Imprisonment in Australia' 30(3) *Women and Criminal Justice*, 204-219; Day, A., Casey, S., Gerace, A., Oster, C., & O'Kane, D. (2018). *The forgotten victims: Prisoner experience of victimisation and engagement with the criminal justice system* (Research report, 01/2018). Sydney, NSW: ANROWS.

⁸⁹ Kilroy, above n 38.

⁹⁰ Stathopoulos, above n 27; Bartels, L., Easta, P. & Westgate, R. (2020) 'Understanding women's Imprisonment in Australia' 30(3) *Women and Criminal Justice*, 204-219.

⁹¹ Russell et al., above n 12.

⁹² Department of Justice and Community Safety, (2017) *Strengthening Connections: Women's Policy for the Victorian Corrections System*. Department of Justice and Community Safety, (2014) *Standards for the Management of Women Prisoners in Victoria*, 10.

⁹³ Stone, above n 88; Wright, et al, above n 24; Segrave & Carlton, above n 60.

⁹⁴ Davies, S. & Cook, S. (2000) 'Dying out, dying outside: women, imprisonment and post-release mortality' (Conference Paper, Women in Corrections: Staff and Clients Conference convened by the Australian Institute of Criminology in conjunction with the Department for Correctional Services SA, 31 October – 1 November 2000).

⁹⁵ Salisbury & van Voorhis, above n 83; Richie, B.E., (1996) *Compelled to crime: The gender entrapment of battered black women* Routledge.

⁹⁶ Day et al, above n 88; Gilfus, M. (2002) *Women's experiences of abuse as a risk factor for incarceration* (Applied Research Forum, National Online Resource Center on Violence Against Women).

⁹⁷ Walker et al, above n 10, 1.

⁹⁸ Ibid.

⁹⁹ Goulding, D. (2004) *Severed connections: An exploration of the impact of imprisonment on women's familial and social connectedness*, Centre for Social and Community Research, Murdoch University.

Research with Aboriginal women in custody also indicates that a significant majority will be biological mothers with care of children prior to their experience of incarceration.¹⁰⁰ In addition, Aboriginal cultural expectations involve caring for children in extended family and kinship structures.¹⁰¹ This means that a majority of Aboriginal women in custody are likely to have biological children, as well as caring responsibilities for additional children.

Evidence also indicates that Aboriginal women in custody are likely to have experienced removal from their own families as children.¹⁰²

It is therefore unsurprising that Aboriginal women in custody describe removal of children as the most significant injury to their health and social and emotional wellbeing, as it reinforces pre-existing, as well as introducing new trauma.¹⁰³

Of particular relevance here is a study by the Victorian Department of Justice and Regulation which found that women who had been separated from their children were more likely to return to custody than women whose connection with their children had been supported.¹⁰⁴ A recent ACT study similarly observed that even short periods of separation can have profoundly devastating impacts on the mother-child bond.¹⁰⁵

Results from a survey of women in prison in the US found that some women develop family-like relationships within prison and “seek relief from the stress of separation from loved ones by forming bonds with other women in prison or participating in surrogate families.”¹⁰⁶ The need that criminalised women experience for family reunification is therefore difficult for women to achieve without appropriate legal and service support.¹⁰⁷ These supports can be scarce, however, with many women unaware of services that are available.¹⁰⁸

Housing

The availability of safe and affordable housing is clearly central not only to women’s reunification with children, but to avoiding further contact with the criminal justice system. UK research noted that stable accommodation could reduce the risk of re-offending by 20 per cent,¹⁰⁹ while a Victorian Parliamentary Inquiry found that the lack of adequate housing options for women in contact with the criminal justice system was “the most overwhelming problem” it identified.¹¹⁰ This included acknowledgment by the Committee that women were being placed on remand or having release postponed *purely due to lack of available housing*.

¹⁰⁰ Bartels, L. (2010). *Indigenous women's offending patterns: A literature review*. Research and public policy series no. 107. Canberra: Australian Institute of Criminology; Lawrie, R. (2003) ‘Speak Out Speak Strong – Researching the Needs of Aboriginal Women in Custody.’ 8 *Australian Indigenous Law Report*, 81– 4.

¹⁰¹ Jones, J., Wilson, M., Sullivan, E., Atkinson, L., Gilles, M., Simpson, P.L., Baldry, E. & Butler, T (2018), ‘Australian Aboriginal Women Prisoners’ Experiences of Being a Mother: A Review’ 14(4) *International Journal of Prisoner Health* 221.

¹⁰² Sullivan, E., Kendall, S., Chang, S., Baldry, E., Zeki, R., Gilles, M., Wilson, M., Butler, T., Levy, M., Wayland, S., Cullen, P., Jones, M. & Sherwood, J. (2019) ‘Aboriginal mothers in prison in Australia: a study of social, emotional and physical wellbeing’ 43(3) *Australian and New Zealand Journal of Public Health* 241-247.

¹⁰³ Kendall, S., Lighton, S., Sherwood, J., Baldry, E. & Sullivan, E. (2019), ‘Holistic Conceptualizations of Health by Incarcerated Aboriginal Women in New South Wales, Australia’ 29(11) *Qualitative Health Research*, 1549-1565.

¹⁰⁴ Shlonsky A., Rose, D., Harris, J., Albers, B., Mildon, R., Wilson, S., Norvell, J., Kissinger, L. (2016) *Literature review of prison-based mothers and children programs: Final report*.

¹⁰⁵ Women’s Centre for Health Matters, (2019) *The stories of ACT women in prison: 10 years after the opening of the AMC*, Canberra, ACT.

¹⁰⁶ Booker Loper, A. & Gildea, J. (2004) ‘Social Support and Anger Expression Among Incarcerated Women’ 38(4) *Journal of Offender Rehabilitation* 27-50, 28. In this study, women who perceived higher levels of social support from fellow inmates tended to express higher levels of anger.

¹⁰⁷ Covington, S. & Barbara, B. (1999) ‘Gender-Responsive Programming and Evaluation for Female in the Criminal Justice system: a shift from *What Works?* To *What is the work?*’ (Conference Paper, Annual Meeting of the American Society of Criminology, Toronto).

¹⁰⁸ Flynn, above n 23.

¹⁰⁹ Social Exclusion Unit, Office of the Deputy Prime Minister, (2002) *Reducing re-offending by ex-prisoners*, Australian Government, Canberra; Stathopoulos, above n 27.

¹¹⁰ Drug and Crime Prevention Committee, above n 58.

Meanwhile, women who do have access to safe and stable housing prior to entering custody can lose it by the time they return to the community, with a criminal record, multiple support needs and a lack of prior experience with stable housing making accommodation difficult to find and maintain.¹¹¹ Corrections data also shows that women who reported experiences of homelessness or housing insecurity before entering prison were more likely to report daily substance use (70 per cent) than those with stable accommodation (58 per cent).¹¹² This suggests that substance use puts women at risk of losing housing or may result from experiences of homelessness.¹¹³ Overall, women in prison indicate that early support to find housing would have prevented them from offending or reoffending.¹¹⁴

Physical health

According to the Australian Institute of Health and Wellbeing (AIHW), 45 per cent per cent of women received into Australian prisons have a chronic physical health condition, compared with 28 per cent of men entering custody. Yet they are significantly less likely than men in prison to have consulted a doctor in the previous 12 months, and, given they are in custody for shorter periods, to be able to access necessary treatment and support while in prison.¹¹⁵ The AIHW reports that 1 in 50 women going into custody are pregnant.¹¹⁶ As the AIHW report offers data in relation to categories of “male” and “female” and “Indigenous” and “non-Indigenous”, this tends to obscure Aboriginal women’s experiences as the minority in both categories. However, participants in a study with Aboriginal women in custody reported high rates of reproductive health problems, many of which were associated with gendered violence.¹¹⁷ Aboriginal women in custody report an average age of just over 18 at their first pregnancy.¹¹⁸ Aboriginal women are also likely to experience other health issues, including diabetes, heart attack and stroke.¹¹⁹

Substance dependence

Research identifies high rates of substance misuse and dependency amongst justice-involved women, including in the lead up to and during offending; at time of arrest; and subsequent to incarceration.¹²⁰ A study by the Australian Institute of Criminology conducted in multiple Australian jurisdictions revealed that 71 per cent of imprisoned women had used illegal substances in the month prior to their imprisonment and that the majority of this group were in turn identified as ‘drug dependent’.¹²¹ In particular, studies indicate that women who come into repeated contact with the criminal justice system have been introduced to substance misuse from an earlier age than non-persistent offenders, and have higher rates of dependence.¹²²

¹¹¹ Flat Out Inc. and the Centre for the Human Rights of Imprisoned People, (2010) Submission to the Drugs and Crime Prevention Committee, *Inquiry into the Impact of Drug-Related Offending on Female Prisoner Numbers*, Melbourne.

¹¹² Department of Justice and Community Safety, above n 13. 11.

¹¹³ Ibid.

¹¹⁴ Prison Reform Trust, above n 88.

¹¹⁵ Australian Institute of Health and Welfare, above n 14.

¹¹⁶ Ibid.

¹¹⁷ Kendall, above n 103, 1557.

¹¹⁸ Australian Institute of Health and Welfare, above n 14.

¹¹⁹ Meehan, T., Jones, D., Stedman, T., Johnson, D., Suetani, S., Foreman, E. (2017) ‘The physical health of Indigenous and non-Indigenous patients participating in residential rehabilitation programs: a comparison study’ 25(2) *Australasian Psychiatry*, 164-167.

¹²⁰ Bartels, L. & Easteal, P. (2016) ‘Women prisoners’ sexual victimisation: ongoing vulnerabilities and possible responses’ 2(3) *Journal of Criminological Research, Policy and Practice*, 206; Day et al, above n 88; Prison Reform Trust, above n 88; Johnson, H. (2004) ‘Drugs and crime: A study of incarcerated female offenders’ Australian Institute of Criminology: Research and public policy series.

¹²¹ Forsythe, L. & Adams, K. (2009) *Mental health, abuse, drug use and crime: does gender matter?* Trends & issues in crime and criminal justice Canberra: Australian Institute of Criminology, 384

¹²² Johnson, above n 120; Loxley & Adams, above n 88; Forsythe & Adams, above n 121.

The link between substance dependence and criminal justice system contact appears especially strong for Aboriginal and Torres Strait Islander women, with a 2013 Victorian study with Aboriginal women in prison classifying 93.9 per cent as having a current substance misuse issue.¹²³ A 2018 study identified rising rates of methamphetamine use to be particularly associated with contact with the criminal justice system, alongside very high prevalence (88 per cent) of serious mental illness.¹²⁴ Crucially, literature identifies a significant co-occurrence between childhood sexual abuse and substance dependence – suggesting that this is just one step on the path from victimisation and offending, rather than a “cause” of offending itself.¹²⁵

Mental health

Numerous studies indicate that women involved in the criminal justice system have higher rates of mental health issues than their male counterparts.¹²⁶ In 2010, the NSW Inmate Health Study found that rates of mental illness were higher for women in prison (54 per cent), than men in prison (47 per cent), noting the established link with prior experience of trauma.¹²⁷ More recently, a study by Ogloff and colleagues of people in Victorian prisons found that 46 per cent of women in the study met one criterion of Post-Traumatic Stress Disorder, compared with 14.7 per cent among men.¹²⁸ In particular, women were more likely to have experienced a mental illness if they were sexually victimised, survivors of trauma, or have histories of substance misuse. In turn, these factors correlated directly to criminal justice system contact, particularly repeat contact.¹²⁹

Mental health has been recognised as a critical factor in Aboriginal criminal justice system involvement since the Royal Commission into Aboriginal Deaths in Custody reported in 1991.¹³⁰ Recent research suggests that this remains the case,¹³¹ and that Aboriginal women carry a particularly heavy mental ill health burden. Research with Aboriginal women in Victorian prisons indicates that 92.3 per cent of participants presented with a form of mental illness.¹³² These findings align with studies in other states.¹³³

¹²³ Ogloff, J.R.P., Pfeifer, J.E., Shepherd, S.M. & Ciorciari, J. (2017) 'Assessing the Mental Health, Substance Abuse, Cognitive Functioning, and Social/Emotional Well-Being Needs of Aboriginal Prisoners in Australia' 23(4) *Journal of Correctional Health Care* 398, (although we note that the numbers in the study were small).

¹²⁴ Goutzamanis, S., Higgs, P., Richardson, M & Maclean, S. (2018) 'Increasing amphetamine use and forensic involvement among clients of three residential Indigenous alcohol and other drug services in Victoria, Australia' *Drug Alcohol Review* 37, 671-675, 673; Australian Institute of Health and Welfare, above n 14.

¹²⁵ Stathopoulos, above n 27; Day et al, above n 88.

¹²⁶ Bartels & Easteal, above n 120; Day et al, above n 88; Goulding, above n 99; Australian Institute of Health and Welfare, above n 14; Stathopoulos, above n 27.

¹²⁷ Indig, et al, above n 80; Jackson, M., Hardy, G., Persson, P. & Holland, S. (2011) *Acquired Brain Injury in the Victorian Prison System*, Research Paper Series No 04, Corrections Victoria, 6.

¹²⁸ Ogloff, J.R.P., Patterson, J., Cutajar, M., Adams, K., Thomas, S. & Halacas, C. (2013) *Koori Prisoner Mental Health and Cognitive Function Study: Final report* Department of Justice, Victoria.

¹²⁹ Bartels & Easteal, above n 120; Swavola, above n 13; Fuentes, C.M. (2014) 'Nobody's Child: The Role of Trauma and Interpersonal Violence in Women's Pathways to Incarceration and Resultant Service Needs' 28(1) *Medical Anthropology Quarterly*, 84-104; Wright, et al. above n 24.

¹³⁰ Commonwealth of Australia *Royal Commission into Aboriginal Deaths in Custody* (1991) Final Report, Vol 1-5

¹³¹ Heffernan, E., Anderson, K., McEntyre, E., & Kinner, S. (2014), 'Mental Disorder and Cognitive Disability in the Criminal Justice System' in Dudgeon, P., Milroy, H. & Walker, R. (eds), *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice*, Commonwealth of Australia 165.

¹³² Ogloff et al, above n 123; Ogloff, et al, above 128. Note: both the 2013 and 2017 publications by Ogloff and colleagues refer to a single project conducted in 2012. Where a point is made in one publication only, that source is cited.

¹³³ McEntyre, E. (2019) 'But-Ton Kidn Doon-Ga: Black Women Know - Re-Presenting the Lived Realities of Australian Aboriginal Women with Mental and Cognitive Disabilities in the Criminal Justice System' 19(2) *Australian Indigenous Health Bulletin*; Baldry, E., McCausland, R., Dowse, L. & McEntyre, E. (2015) *A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system* UNSW Sydney; Heffernan et al, above n 18.

Disability

According to the AIHW, almost a third of Australians in prison report having a long-term health condition or disability, with women slightly more likely to report this than men.¹³⁴ Although results vary across studies, research also suggests that close to a third of people in prison have an intellectual disability,¹³⁵ compared with an estimated 2.9 per cent of the total population.¹³⁶

Further, a 2011 Victorian study found that 33 per cent of women in custody had an acquired brain injury (ABI),¹³⁷ with recent research also pointing to the high association between ABI and family violence victimisation.¹³⁸ People with a disability in prison commonly also present with high physical and mental health needs.¹³⁹ Some researchers suggest that criminal justice systems are used to 'manage' behaviours related to a person's disability, including through forced treatment, seclusion and restrictive practices.¹⁴⁰ This criminalisation of disability is a particular risk for people with cognitive and/or psychosocial disability,¹⁴¹ including where this is undiagnosed. Recent inquiries have also highlighted concerns about rules governing fitness to plead and the indefinite detention of people with disability without conviction which can result.¹⁴²

Limited availability of therapeutic and disability support in the community, as well as the lack of secure therapeutic facilities, can mean that women experiencing psycho-social conditions are held in detention for long periods.¹⁴³ Social and economic marginalisation and victimisation further increases the contact with criminal justice systems for people with a disability.¹⁴⁴

Gambling

Understanding of the intersection of gambling and offending has been increasing in recent years. Studies have suggested that criminal justice system involvement should be considered as a form of gambling harm in terms of the multiple ways in which it can drive people towards, or back into, offending.¹⁴⁵ This includes offending directly linked to the need to raise money for gambling (commonly theft, deception or substance-related offences which frequently attract custodial sentences); offences linked with breach of CCO and parole conditions; and indirectly, as an activity that contributes to social and economic disadvantage.¹⁴⁶

¹³⁴ Australian Institute of Health and Welfare, above n 14.

¹³⁵ Hellenbach, M., Karatzias, T. & Brown, M. (2017) 'Intellectual disabilities among prisoners: prevalence and mental and physical comorbidities 30(2) *Journal of Applied Research in Intellectual Disabilities*, 230–41.

¹³⁶ Australian Bureau of Statistics, (2012) *Intellectual Disability Australia, 2012* (Catalogue No 4433.0.55.003).

¹³⁷ Jackson et al, above n 127.

¹³⁸ Ibid; Brain Injury Australia, (2018) *The Prevalence of Acquired Brain Injury Among Victims and Perpetrators of Family Violence*, <https://www.braininjuryaustralia.org.au/wp-content/uploads/BRAININJURYAUSTRALIAfamilyviolencebraininjuryFINAL.pdf>

¹³⁹ Hellenbach et al, above n 135.

¹⁴⁰ Baldry, E. (2014) 'Disability at the margins: limits of the law' 23(3) *Griffith Law Review* 370, 383.

¹⁴¹ Law Council of Australia, (2018) *People with Disability, The Justice Project Final Report –Part 1 4*.

¹⁴² Australian Law Reform Commission, above n 8; McSherry, B., Baldry, E., Arstein-Kerslake, A., Gooding, P. McCausland, R. & Arabena, K. (2017) 'Unfitness to Plead and Indefinite Detention of Persons with Cognitive Disabilities', Melbourne Social Equity Institute, University of Melbourne; Australian Human Rights Commission, (2014) *Equal Before the Law – Towards disability justice strategies*, Sydney; Australia OPCAT Network (2020), Submission to the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Working Group on Arbitrary Detention, *The implementation of OPCAT in Australia*; Australian Human Rights Commission, (2016) *Indefinite detention of people with cognitive and psychiatric impairment in Australia*, Submission to the Senate Community Affairs References Committee; Baldry et al, above n 140.

¹⁴³ Victorian Ombudsman, (October, 2018) *Investigation into the imprisonment of a woman found unfit to stand trial*.

¹⁴⁴ Baldry, above n 120; Winford, S., Howard, A. & Richter, J., (2018) *Recognition, respect and support. Enabling justice for people with an acquired brain injury*, Centre for Innovative Justice, RMIT University, Melbourne See also the CIJ's *Supporting Justice* project at <https://supportingjustice.net/>

¹⁴⁵ Campbell, E, Vivian, A. & Wulfsohn, L. (2017) *Compulsion, convergence or crime? Criminal justice system contact as a form of gambling harm* Centre for Innovative Justice, RMIT University, Melbourne.

¹⁴⁶ Drug and Crime Prevention Committee, above n 58; Campbell et al, above n 145.

People in prison are a cohort with one of the highest rates of problem gambling¹⁴⁷ with studies indicating rates up to 20 times that found in the general population.¹⁴⁸ An Australian study of 127 women in prison found that 64 per cent exhibited lifetime prevalence of problem gambling. Electronic Gaming Machines (EGMs) were reported as the most frequently used form of gambling, followed by casino games, Keno, TAB, betting and other forms (such as ‘scratchie’ tickets, Lotto and wagering on sport).¹⁴⁹ Largely linked to the proliferation of EGMs, this study suggests that rates of gambling issues may now be higher among women in prison than their male counterparts.¹⁵⁰

Importantly, the link between family violence and gambling harm is also becoming increasingly well understood. A systemic review and meta-analysis by Dowling and colleagues found that 38.1 per cent of gamblers reported being victim/survivors of intimate partner violence and 36.5 per cent being perpetrators.¹⁵¹ A study in 2016 also found a statistically significant correlation between EGM density and police-recorded family violence rates among postcodes. Research also shows a strong positive correlation between financial losses per adult and police family violence callout rates.¹⁵²

Submissions to the Royal Commission into Family Violence suggested that victim/survivors of family violence may seek respite in gaming venues, in turn developing problem gambling behaviours.¹⁵³ Conversely, problem gambling by a violent male partner may mean that a woman is coerced into assuming responsibility for his debt, or providing access to her own Centrelink benefits – in turn driving her into contact with the criminal justice system.¹⁵⁴ R-Coo Tran’s analysis of “diasporic trauma and escape gambling” also highlighted complex and nuanced interpretations of the relationship between gambling and offending in certain communities disproportionately represented in Victoria’s prisons,¹⁵⁵ as noted below.

Culturally and Linguistically Diverse communities

Across Australian jurisdictions, Victoria has the largest proportion of people born overseas in custody.¹⁵⁶ In particular, the number of women born in Vietnam in prison almost doubled during the period from June 2008 to June 2009¹⁵⁷ with Vietnamese-born women consistently the largest CALD population of women in custody since 2012.¹⁵⁸

¹⁴⁷ Williams, R., Royston, J. & Hagen, B. (2005) ‘Gambling and problem gambling within forensic populations’ 32 *Criminal Justice and Behaviour* 665; Abbott, M. & McKenna, B. (2005) ‘Gambling and Problem Gambling Among Recently Sentenced Women in New Zealand Prisons’ 21(4) *Journal of Gambling Studies*, 559-581.

¹⁴⁸ Riley, B. & Oakes, J. (2014), ‘Problem gambling among a group of male prisoners: Lifetime prevalence and association with incarceration’ 48(1) *Australian & New Zealand Journal of Criminology* 73-81.

¹⁴⁹ Riley, B., Larsen, A., Battersby, M. & Harvey, P. (2017) ‘Problem Gambling and Female Prisoners Lifetime Prevalence’ 17(3) *International Gambling Studies* 401.

¹⁵⁰ Ibid.

¹⁵¹ Dowling N, Suomi A, Jackson A, Lavis T, Patford J, Cockman S, Thomas S, Bellringer M, Koziol-McLain J, Battersby M, Harvey P, Abbott M. (2016) ‘Problem Gambling and Intimate Partner Violence: A Systematic Review and Meta-Analysis’. *Trauma Violence Abuse*. 17(1) 43-61.

¹⁵² Brown, H., (2018) *A review of gambling-related issues* City of Greater Dandenong, 21.

¹⁵³ Campbell et al, above n 145.

¹⁵⁴ Ibid

¹⁵⁵ Tran, R-Coo & Spivakovsky, C (2019) ‘Criminalised Vietnamese Women, “Problem Gambling” and Experiential Rifts: Towards a Criminology of Diversity’ *Theoretical Criminology*; Le, R. & Gilding, M. (2016) ‘Gambling and drugs: The role of gambling among Vietnamese women incarcerated for drug crimes in Australia 49(1) *Australian & New Zealand Journal of Criminology* 134–151.

¹⁵⁶ Australian Bureau of Statistics, *Prisoners in Australia, 2019* (Catalogue No 4517.0, 2019).

¹⁵⁷ Flat Out Inc. and the Centre for the Human Rights of Imprisoned People, above n 111, 1.

¹⁵⁸ Department of Justice and Community Safety, (2017) *Strengthening Connections: Women’s Policy for the Victorian Corrections System*, Victorian Government.

CALD women can experience the prison system in a harsher and more punitive way than many other women.¹⁵⁹ Linguistic and cultural barriers between CALD women, prison staff, and other women in custody can result in increased marginalisation and discrimination, with women's isolation from communities functioning as a further barrier to support.¹⁶⁰ Where language is a barrier, a 2010 study revealed that translators are often only used as a 'last resort' with attempts to call interpreters sometimes denied.¹⁶¹ This can result in CALD women being unaware of prison rules, leading in turn to accidental breaches. Language barriers can also result in CALD women being reluctant to ask for help or being unaware of medical and support services available.¹⁶² The prison system can also be alienating for CALD women due to the lack of consideration for different religious beliefs and dietary requirements.¹⁶³

Studies also note the threat of deportation for women who are foreign nationals convicted while on various form of visa.¹⁶⁴ This may include where women have lived in Australia since childhood and have no connections with their country of origin – yet may face deportation and devastating separation from their children. Important to note, it is also a form of family violence perpetration, in which coercive and controlling male partners threaten to report their female partner to immigration departments or to have their children removed.¹⁶⁵

Aboriginal and Torres Strait Islander communities

As at 30 June 2019, the proportion of all women entering custody in Victoria who identified as Aboriginal or Torres Strait Islander was close to 14 per cent,¹⁶⁶ with more than a three-fold increase in Aboriginal or Torres Strait Islander women in custody between 2012 and 2018.¹⁶⁷ This increase occurred at a significantly disproportionate rate compared with the Victorian Aboriginal population;¹⁶⁸ non-Indigenous incarcerated women; and all men in prison, including Aboriginal men.¹⁶⁹

This increase does not appear to be driven by an increase in offending by Aboriginal women offending but, rather, by increased police involvement in some Aboriginal women's lives.¹⁷⁰ In addition to increased policing and restrictive bail laws, over-representation of Aboriginal women in the justice system is inextricably linked to individual and collective trauma from "dispossession of land, disruption of culture and kinship systems, removal of children, racism, social exclusion, institutionalisation and entrenched poverty."¹⁷¹

¹⁵⁹ Flat Out Inc. and the Centre for the Human Rights of Imprisoned People, above n 111; Armstrong, K., Chartrand, V. & Baldry, E. (2005) Submission to New South Wales Anti-discrimination Commissioner, *Beyond Bars – Inquiry into treatment of women*; Cerveri P. K., Colvin, K., Dias, M., George, A., Hanna, J., Jubb, G., Vidyasagar, A. & Weigall, C. (2015) *Request for a Systemic Review of Discrimination Against Women*, Victorian Prisons, Federation of Community Legal Centres and Victorian Council of Social Services.

¹⁶⁰ Flat Out Inc. and the Centre for the Human Rights of Imprisoned People, above n 111.

¹⁶¹ Ibid.

¹⁶² Armstrong et al, above n 159.

¹⁶³ Flat Out Inc. and the Centre for the Human Rights of Imprisoned People, above n 111.

¹⁶⁴ Goulding, above n 99.

¹⁶⁵ Campbell et al, above n 145.

¹⁶⁶ Corrections Victoria, above n 4.

¹⁶⁷ Walker, above n 10, 15. A breakdown of legal status on entry shows significant increases in the numbers of sentenced Aboriginal women, increasing from 10 per cent in 2012 to 24 per cent in 2018, while increases in Aboriginal women entering prison on remand increased from 14 per cent to 17 per cent.

¹⁶⁸ Victorian Aboriginal people constitute 0.8% of the state's general population. Australian Bureau of Statistics, (2017) *Census of Population and Housing: Nature and Content, Australia, 2016* Catalogue No 2901.0.

¹⁶⁹ As at 30 June 2019, the proportion of the male prison population that identifies as Aboriginal was 10%. Corrections Victoria, above n 4.

¹⁷⁰ See State Government of Victoria, *Victorian Government Aboriginal Affairs Report 2019* (2019), Table 15.2.1 (see caveats regarding this data).

¹⁷¹ State Government of Victoria, (2018) *Burra Lotjpa Dungaludja. Victorian Aboriginal Justice Agreement: Phase 4. A partnership between the Victorian Government and Aboriginal community*, 18; See also Parker, R. & Milroy, H. (2014) 'Aboriginal and Torres Strait Islander Mental Health: An Overview' in Dudgeon, P., Milroy H., & Walker, R. (eds) *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice* Commonwealth Government.

This is overlaid with personal, as well as intergenerational, trauma.¹⁷² Aboriginal women are more likely than non-Indigenous women to have grown up in state care¹⁷³ and to have experienced serious family violence and sexual abuse.¹⁷⁴ Aboriginal women in custody also disproportionately sustain physical injuries from violence¹⁷⁵ and are more likely than men in prison to have acquired brain injuries (ABIs), in part related to family violence.¹⁷⁶ Research with Aboriginal women in custody notes the clear link which women draw between experiences of abuse and substance dependence, and then substance dependence and imprisonment.¹⁷⁷ Systemic failures within correctional services and a lack of responsiveness to the gendered and cultural needs of First Nations women have also been identified as reinforcing criminalisation.¹⁷⁸

Increases in the number of Aboriginal women in prison have also been attributed to a lack of investment in prevention and diversion options,¹⁷⁹ as well as failures to address long-term needs upon release.¹⁸⁰ Central to this is the concept of Aboriginal social and emotional wellbeing (SEWB), with cultural needs a foundation for SEWB to be maintained.¹⁸¹

¹⁷² Crime Research Centre, University of Western Australia, (2007) *Low Risk - High Needs: Indigenous Women and the Corrective Services System*; Lawrie, above n 100; Sullivan et al, above n 102; Wilson, M. Jones, M., Butler, T., Simpson, P. Gilles, M. Baldry, E., Levy, M & Sullivan, E. (2017) 'Violence in the Lives of Incarcerated Aboriginal Mothers in Western Australia' 7 (1) *SAGE Open* 1-16.

¹⁷³ Recent research with mothers in custody in NSW found that 60 per cent of Aboriginal women in custody participating in the study reported being removed from their families as children. Sullivan et al, above n 102.

¹⁷⁴ Lawrie, above n 100; Stubbs, J. & Tolmie J., (2008) 'Battered women charged with homicide: advancing the interests of Indigenous women' 41(1) *Australian & New Zealand Journal of Criminology* 138-161; Blagg, H., Morgan, N., Cunneen, C. & Ferrante, A. (2005) *Systemic Racism as a Factor in the Overrepresentation of Aboriginal People in the Victorian Criminal Justice System*, Equal Opportunity Commission of Victoria; Jackson et al, above n 127 'Acquired Brain Injury in the Victorian Prison System' (Research Paper Series No 04, Corrections Victoria, April 2011) 6; Kendall, above n 103; Parker & Milroy, above n 171.

¹⁷⁵ Jackson et al, above n 127; Kendall, above n 103.

¹⁷⁶ Jackson et al, above n 127.

¹⁷⁷ Lawrie, above n 100, 82; Kendall, above n 103; Sullivan et al, above n 102; Bartels, L. (2012) 'Violent Offending by and against Indigenous Women' 8(1) *Indigenous Law Bulletin*, 19-22; Abbott, P., Lloyd, J. Joshi, C., Malera-Bandjalar, K., Baldry, E., McEntyre, E., Sherwood, J., Reath, J., Indig D & Harris, M. (2018) 'Do Programs for Aboriginal and Torres Strait Islander People Leaving Prison Meet Their Health and Social Support Needs?' 26(1) *Australian Journal of Rural Health*, 6-13; Baldry, E. & Cunneen, C. (2014) 'Imprisoned Indigenous Women and the Shadow of Colonial Patriarchy' 47(2) *Australian & New Zealand Journal of Criminology*, 276; Baldry et al, above n 140; Baldry, E., Ruddock, J. & Taylor, J. (2008) *Aboriginal Women with Dependent Children Leaving Prison Project: Needs Analysis Report*, Indigenous Justice Clearinghouse, Homelessness NSW; Jones et al, above n 101; MacGillivray & Baldry, above n 18; Ogloff, et al, above n 123 & 128.

¹⁷⁸ Crime Research Centre, above n 172.

¹⁷⁹ Victorian Equal Opportunity and Human Rights Commission, (2013) *Unfinished Business, Koori Women and the Justice System*, 3.

¹⁸⁰ Haswell, M., Williams, M. Blignault, I., Grand Ortega, M. & Jackson Pulver, L. (2014) *Returning Home, Back to Community from Custodial Care: Learnings from the first-year pilot project evaluation of three sites around Australia* Muru Marri, School of Public Health and Community Medicine, UNSW Australia, Sydney, 73.

¹⁸¹ Sullivan et al, above n 102, 246; Day et al, above n 88, 47-48; Ogloff et al, above ns 123 & 127; Bourke, S., Wright, A., Guthrie, J. (2018) 'Evidence Review of Indigenous Culture for Health and Wellbeing' 8(4) *The International Journal of Health, Wellness, and Society*, 12-27; Salmon, M., Doery, K., Dance, P., Chapman, J., Gilbert, R., Williams, R. & Lovett, R. (2019) 'Defining the Indefinable: Descriptors of Aboriginal and Torres Strait Islander people's culture and their links to health and wellbeing: A Literature Review', Aboriginal and Torres Strait Islander Health Team, Research School of Population Health, The Australian National University.

2.3 Impacts of incarceration

Even short periods in custody can be profoundly damaging for women.¹⁸² Custody can replicate the dynamics of gendered violence,¹⁸³ including through use of restraints and practices such as strip searching.¹⁸⁴ Similarly, it can exacerbate existing mental health issues, housing and economic insecurity, as well as family separation.¹⁸⁵ As the Law and Advocacy Centre for Women recently noted, “even one day in prison can derail a woman’s life – she may lose her house, her job, her children, her connections to support services.”¹⁸⁶

As noted above, the majority of incarcerated women are mothers and are more likely to be primary carers, without a partner who can provide safe care in their absence.¹⁸⁷ This means that imprisonment can function as a “double punishment”.¹⁸⁸ When in prison, women who have lost custody of their children are usually at higher risk of self-harm.¹⁸⁹ Further, custody offers little opportunity for mothers to prepare for re-entry back into a family environment.¹⁹⁰

Little research is available on the specific conditions that women experience on remand, although a study by the UK Prison Reform Trust noted that:

- overall conditions for women on remand were inferior to those of men;
- women were subject to inadequate support in the early days of custody;
- women experienced excessive periods of time in cells with little options for purposeful activity; and
- women’s contact with families was profoundly disrupted.¹⁹¹

Women on remand come into the system with multiple needs, stripped of supports on which they previously relied. Given the speed with which women move through the remand system, they are often precluded from AOD, housing and counselling services available to women who are sentenced. This is also often the case for women serving sentences of less than 12 months.¹⁹²

For those already seeking assistance in the community, remand acts to disrupt these efforts. As noted earlier, Russell and colleagues’ recent study found that the vulnerabilities which should be argued to justify a therapeutic response, act instead to propel women into custody.¹⁹³

¹⁸² Edgar, above n 42; Victorian Equal Opportunity & Human Rights Commission, above n 183.

¹⁸³ Miller, S.L. (2005) *Victims as Offenders: The Paradox of Women’s Violence in Relationships* Rutgers University.

¹⁸⁴ Stathopoulos, above n 27. The use of this practice has been reduced in Victoria since an investigation by the Victorian Ombudsman (Victorian Ombudsman, 2017).

¹⁸⁵ Sheehan, R. & Levine, G. (2007), ‘Parents as prisoners: Maintaining the parent-child relationship’ (Criminology Research Council Project Grant; Swavola, above n 13).

¹⁸⁶ Gleeson, H., *Jamming the Revolving Door of Women in Prison, Jill Prior is putting a new spin on Lady Justice* (3 February 2020) ABC Online News < <https://www.abc.net.au/news/2020-02-02/jill-prior-lacw-legal-centre-women-prison/11803104>>

¹⁸⁷ Stone, above n 88.

¹⁸⁸ Moloney, K.P. & Moller, L.F. (2009) ‘Good Practice for Mental Health programming for women in prison: Reframing the Parameters,’ 123(6) *Journal of Public Health* 431-433.

¹⁸⁹ Mitchell, B.K. & Howells, K. (2002) ‘The Psychological Needs of Women Prisoners: Implications for Rehabilitation and Management’ 9(1) *Psychiatry, Psychology and Law* 34-43; Hooper, C.A. (2003) ‘Abuse, interventions and women in prison: A literature review’, Literature Review, London: HM Prison Service, Women’s Estate Policy Unit.

¹⁹⁰ Easteal, P. (2001) ‘Women in Australian Prisons: Cycles of Abuse and Dysfunctional Environments’, 81(1) *The Prison Journal* 87; Kilroy, D. (2005) ‘The Prison Merry-go-Round: No Way Off’ 6(13) *Indigenous Law Bulletin* 25; Wybron, D. & Dicker, K. (2009) *Invisible Bars: The Stories behind the Stats* Women’s Centre for Health Matters, Canberra.; Richie, B.E., (2001) ‘Challenges Incarcerated Women Face as They Return to Their Communities: Findings from Life History Interviews’ 47(3) *Crime and Delinquency* 368-389.

¹⁹¹ Edgar, above n 42.

¹⁹² Bartels, L. & Gaffney, A. (2011) *Good Practice in Women’s Prisons: A Literature Review* (Background Paper No 41, Australian Institute of Criminology; Corston, J. (2007) *The Corston Report: A Review of Women with Particular Vulnerabilities in the Criminal Justice System*. UK Home Office.

¹⁹³ Russell et al, above n 12.

According to the *Standards for the Management of Women Prisoners in Victoria*, women on remand “are treated without restrictions other than those necessary to maintain the good order, security and management of the prison and the safety of the prisoner”.¹⁹⁴ Despite this, however, many women’s prisons allocate remanded and sentenced women to the same facility. This is likely to be a result of the inability of the existing estate of women’s prisons to keep pace with rising incarceration rates, although little research has examined the resulting implications.¹⁹⁵

More recently, the roll-out of risk management practices in the face of COVID-19 significantly changed the experience of remand for women. During COVID-19 restrictions, all people newly received into Victorian prisons were required to undergo 14 days “protective quarantine”; family visits were suspended; and access to programs and services were significantly restricted.¹⁹⁶

Women in protective quarantine were housed in single-person cells equipped with basic amenities, a television, and a minimum daily ‘check’ by prison staff. Aside from video court appearances; prison emergencies; or where deemed necessary by the health team, time out of cells only occurred where “operationally possible,” meaning that women newly remanded to prison were likely to be spending 22 or more hours in a confined space – the threshold associated with the definition of solitary confinement.¹⁹⁷ Being held in a cell for extended periods is also likely to mirror prior experiences of surveillance and control.¹⁹⁸

Coinciding with quarantine, the suspension of family visits compounded the devastating disruption of even a short period in custody for women with caring responsibilities, or who were seeking reunification with children removed from their care.¹⁹⁹ This is because barriers to communicating with children during this time, sometimes due to delays in the Department or the foster parent facilitating contact, would inevitably weaken a woman’s case for family reunification.

Bail programs or support

Recent Victorian data indicates that a staggering 51 per cent of women on remand had not applied for bail between 2015 and 2016.²⁰⁰ Russell and colleagues’ observations of women’s appearances in the Bail and Remand Court during 2019 suggests that this trend was continuing,²⁰¹ at least prior to a shift in approaches to bail during the COVID-19 pandemic.

¹⁹⁴ Department of Justice and Community Safety, above n 92, 20.

¹⁹⁵ L. Bartels, P. Eastal & R. Westgate, above n 88, 8.

¹⁹⁶ Corrections Victoria advised that people in protective quarantine had access to increased clinical support and greater ability to contact family and friends via phone and video. In addition, those quarantined while on remand were informed of the purpose and limited nature of confinement and were offered four days ‘discount’ from their sentence for every day spent in quarantine. However, it was unclear how this form of ‘discount’ was incorporated where women on remand were not ultimately convicted of any offence or were sentenced to ‘time served’, as is the case for many women charged with low-level offences.

¹⁹⁷ See the *Mandela Rules*, Rule 44. Corrections Victoria publications indicate that prisoners who exhibited symptoms or who were confirmed to have the virus were to be held in similar circumstances, with the exception that confirmed cases may be housed in communal cells with other infected prisoners.

¹⁹⁸ Moloney, K.P., van den Bergh, B.J. & Moller, L.F. (2009) ‘Women in prison: the central issues of gender characteristics and trauma history’ 123 *Public Health* 426-430; Stathopoulos & Quadara, above n 88.

¹⁹⁹ The psychological support and monitoring available to people held in protective quarantine by Corrective Services is discussed in Caruana, C., *COVID-19 and incarcerated women: a call to action in two parts (Part 2, May 2020)* Centre for Innovative Justice, RMIT University. At <https://cij.org.au/news-and-views/covid-19-and-incarcerated-women-a-call-to-action-in-two-parts-part-two/>

²⁰⁰ Department of Justice and Community Safety, (2019) *Women in the Victorian Prison System*.

²⁰¹ Russell et al, above n 12.

High quality legal support and information about bail, therefore, have been highlighted as essential for criminalised women,²⁰² as have viable alternatives to remand.²⁰³ The benefits of bail hostels, a feature of UK bail support programs, have also been highlighted.²⁰⁴ Although there is limited evidence regarding bail hostels in Australia, a number of shortcomings have been noted to include restrictions on visitors and on the presence of children.²⁰⁵

Similar to the lack of supports for women on bail, in 2015 the Victorian Ombudsman concluded that the growing number of women in prison was influenced by the lack of a medium security prison or transition centre.²⁰⁶ Just as relevantly, the lack of pre-release planning has been highlighted as a major barrier for women,²⁰⁷ with most post-release programs not designed to consider gender specific needs.²⁰⁸ Aboriginal women, in particular, say that they do not feel like they are consulted with around their needs for transitioning out of prison.²⁰⁹ Abbot and colleagues have similarly found that Aboriginal women are particularly poorly serviced by post-release programs,²¹⁰ although the Victorian Government has made commitments to developing alternatives to custody and transition programs for Aboriginal women.²¹¹

Lack of housing and financial stresses can also limit women's access to support services once released. Day and colleagues found that women were unable to access services due to unaffordable travel, and that financial difficulties can force women into returning to abusive situations or sources of income.²¹² What's more, during the recent COVID-19 crisis, beds in some AOD rehabilitation services halved, while some stopped taking referrals altogether.²¹³

Given the existing barriers to services which can help women to prepare for release, combined with restricted access to support and housing in the community, this means that women are increasingly likely to be released from remand or sentence without the opportunity to address the gendered factors contributing to their offending. Where post-release supports are overseen by Corrections Victoria, critics have also expressed concerns that they form part of a "reintegration industry"²¹⁴ which serves only to extend correctional control over a woman's life²¹⁵ without addressing any of the systemic factors known to drive women's criminalisation.

²⁰² McMahon, above n 12.

²⁰³ Corston, above n 192.

²⁰⁴ Bartels & Gaffney, above n 192.

²⁰⁵ Presneill, A. (2018) 'A Viable Solution? Bail Hostels in the Act' ACT Inspector of Correctional Services Prison Reform Trust, above n 88.

²⁰⁶ Victorian Ombudsman, (2015) *Investigation into the rehabilitation and reintegration of prisoners in Victoria*.

²⁰⁷ Trotter, C. & Flynn, C., (2016) 'Literature Review: Best practice with women offenders' (Monash University Criminal Justice Research Consortium)

²⁰⁸ Swavola et al, above n 13.

²⁰⁹ Baldry, E. (2010) 'Women in Transition: From Prison to...' 22(2) *Current Issues in Criminal Justice*, 253.

²¹⁰ Abbott, et al, above n 177.

²¹¹ In response to this service gap, the Victorian Government has committed under Goal 2.3 of *Burra Lotjpa Dungaludja (Fewer Aboriginal people progress through the criminal justice system)* to 'explore the feasibility of a residential program similar to Wulgunggo Ngalu Learning Place to provide cultural and gender-specific supports for Aboriginal women involved in the corrections system.' In October 2019 the Koori Justice Unit within the Department of Justice and Community Safety (DJCS) commissioned Djirra to undertake the *Aboriginal women's residential program feasibility study* alongside Djirra's project partners – the Centre for Innovative Justice (CIJ) and PwC's Indigenous Consulting (PIC). On 13 February 2020 the Government also announced funding for a new Aboriginal Women's Transitional Housing facility, which will consist of six one-bedroom units and an onsite culturally responsive intensive case management service. Some of the units will have access to a second bedroom for women entering the facility with children. <https://www.premier.vic.gov.au/housing-to-help-aboriginal-women-leaving-prison/>

²¹² Day et al, above n 88.

²¹³ Caruana, C., above n 199.

²¹⁴ Carlen, P. & Tombs, J. (2006) 'Reconfigurations of penalty' 10 *Theoretical Criminology*, 337-360.

²¹⁵ Carlton, B. & Baldry, E. (2013) 'Therapeutic correctional spaces, transcarceral interventions: post-release support structures and realities experienced by women in Victoria, Australia' in Carlton, B. & Segrave, M. (ed), *Women exiting prison: critical essays on gender, post-release support and survival*, Routledge, 140-181; K. Bummiller, (2013) 'Incarceration, welfare state and labour market nexus: The significance of gender in the prison system' in Carlton, B & Segrave, M. (ed) *Women Exiting Prison*, Routledge, 13-33; Kendall, K. (2013) 'Post release supports for women in England and Wales' in Carlton, B. & Segrave, M., *Women Exiting Prison*, 34-55.



In summary

This brief scan of the available literature provides an insight into the systemic drivers which interact with gendered pathways to entrench women's contact with Victoria's criminal justice system. In doing so it highlights the multiple needs of women who are in contact with the criminal justice system – needs which are not addressed by available social supports in the community. It also highlights the profoundly damaging effects that incarceration can have in terms of compounding these needs and associated disadvantage.

This review similarly highlights the necessity for services which can prevent women from spending time in custody by supporting them in gender-informed and culturally appropriate ways in the community. The WTJ program aimed to meet this requirement. This report now turns to consider the extent to which the WTJ program responded to systemic drivers and met women's interrelated, multiple support needs in ways which the existing service system may not.

3. SECTION THREE: FINDINGS

3.1 Relevance

This section draws on literature scan findings in Section 2 as well as all evaluation data to answer the following KEQ:

KEQ 1: To what extent did the WTJ program meet the social and legal needs of women in custody on remand or in the community and subject to some form of conditional release?

Summary Finding: The evaluation found that the design of the WTJ program met many of the immediate social support and legal needs of women which were identified in the literature and through evaluation findings. Data from across survey results, participant interviews, the literature scan and WTJ program data indicated that women's needs in the context of their contact with the criminal justice system were multiple, interrelated and not adequately met by the wider service system. Data also indicated that trauma and abuse were driving factors in women's experiences of criminalisation; while legal and longer term outreach-based service provision, as well as connections with peers, were mechanisms which could provide vital support.

While the original aim of the WTJ project was to involve WLG members in supporting CSP clients, this was not occurring during the life of the evaluation. Certain gaps in the design and service provision were also identified, which included the need to increase cultural safety; support with child protection matters and a dedicated housing pathway. Evidence strongly supported the finding, however, that the program was operating within the context of a wider service system which was inadequate, siloed and which cemented inaccessibility for many justice-involved women, in part because of narrow service eligibility criteria.

In this context, custody was functioning as a proxy for services in the community. Ultimately, therefore, the evaluation found that the design of the CSP was meeting women's immediate legal and social support needs, while operating within the confines of a largely inadequate service system.

3.1.1 What are the legal and social support needs of women applying for bail in the criminal justice system?

Sub-question finding: Women applying for bail in the criminal justice system had multiple, interrelated needs, with trauma and abuse the driving factors. This made legal and ongoing support crucial, as was peer support, particularly in the context of a wider service system which was generally not equipped to meet these needs.

Multiple, interrelated needs

Survey respondents identified the following as the most commonly presenting support needs for women applying for bail in the criminal justice system:

- Housing
- AOD support
- Mental health support
- Legal assistance
- Family violence services
- Help with child protection or children.

When survey respondents were asked to rank the common issues that were most specific to women, the ranking changed somewhat, with family violence (20); children (19); mental health (11); housing (8); and AOD support (9) identified as the most common needs that specifically present for women (as opposed to the general population). Survey comments (7) largely highlighted the interrelated nature of the many issues affecting women in custody, with one noting that violence underpinned the most commonly presenting issues:

FF *Mental health, homelessness and drugs run into each other and are interlinked. Violence is often a background to all three [Survey respondent].*

WTJ program data also revealed the overlapping nature of issues affecting women on bail, with 65% of WTJ clients experiencing more than issue and almost half experiencing five, including family violence, mental health, AOD, child protection issues, and unstable housing. Many had family violence and child protection/child related issues.

One of the WTJ clients interviewed for the evaluation observed that, when she was in prison, she noticed that three main issues had an impact on the criminalisation of many women:

FF *A lot of women have stability, children or domestic violence issues. The majority of women have all suffered around that in prison. If those three factors were sorted, then there would be barely any women in there. Those are the three main factors – but drug use relates to [all] those [Client 01].*

Driving factor: trauma and abuse

As noted in the literature scan, women's experience of trauma underpinned many of their presenting issues. It was also emphasised by WTJ practitioners that trauma was a recurring theme for the majority of women in contact with the criminal justice system, with the most urgent needs of housing, mental health and substance dependence all ultimately seen as the end result of women having experienced some form, or multiple forms, of trauma.

FF *Statistics say that 80-90% of women [in contact with the criminal justice system] have experiences of child abuse, family violence, links with offending and all of that is very true to me, from my experience. Women generally have an adverse childhood event – adolescents struggle to stay in school, there's drugs and alcohol, relationships deteriorate, they become homeless, use drugs. They're pimped and experience violence and homelessness. This is all the interplay of conditions and women's offending [WTJ provider 03].*

FF *I'd been a ward of the state, there'd been abuse, I'd been in the youth justice system, I'd seen the private jail, then back as a public – I'd been in and out...since I was 16 [WLG member 04].*

Once involved in the criminal justice system, women's prevailing experience continued to be one of trauma, with prison and the effects of criminalisation being especially traumatic for women with children. WTJ client interviews relayed women's experiences of losing custody of their children, as well as their subsequent interactions with child protection services. Losing children to child protection was identified by both WTJ clients interviewed for the evaluation as a catalyst for a sense of their lives spiralling out of their control. As one recounted:

FF *If I had the support that I needed before this happened ... my ex-partner [committed a violent offence] at my house and then the children were removed from me. I fought so hard to get them back but I needed another house to live at and I didn't want to traumatise the kids – but it was so stressful having to find another house and [child protection and other government agencies] offered no help at all. All they did was remove my kids from me, and I was told to keep them I must remain in contact but all the money, the rego, the cost of the petrol to be able to see them – I couldn't keep up with it and it all went to crap [Client 01].*

One of the WTJ clients relayed the trauma and helplessness she experienced when she lost her children on entering prison for the first time, as well as the enduring impact which being in prison had on her ability to reconnect with them:

FF *When I was in custody the first time, I had to give my kids up. Basically it was just suck it up, it didn't matter to them. Just a 15 minute discussion and that was it before I went to court, such a rush job. And to give up my kids and everything, all in 15 minutes, I was screwed. And you can't talk to anyone in there. You are literally stuck. Then you gotta work to get what you had back. But it's harder once that happens [Client 02].*

Poverty was another issue raised as an underlying factor driving women's criminalisation:

FF *The majority of the women I worked with were below the poverty line. So having to manage getting to appointments, relying on public transport, not being able to put petrol in your car, all goes back to the welfare payments..., they are so far below what is needed to live...we have every program in the world for financial counselling and "here's how to save money", but if you don't earn enough money to live, there is nothing to save. So we're wasting all of this money on these ridiculous programs, that money would be better put in someone's bank accounts [WTJ provider 04].*

As the following comment highlights - and as reflected in the literature scan - poverty and trauma coincide to create a perfect storm for women in a system which quickly seeks to criminalise their survival behaviour:

FF *With the bail laws the way they are – if I got done for stealing a chicken, I get caught and I get bail, I'm struggling financially then I go and steal chicken and potatoes this time to feed myself or my family – then I go back to court and have to explain why I should get bail. Then that causes AOD issues because of the stress. The aim should be dealing with this stuff before it gets to that point [WLG member 04].*

Finally, almost all interview participants and survey respondents highlighted safe, stable accommodation as a crucial need for women in contact with the criminal justice system. Not only was unstable housing a key contributing factor to many women ending up in jail or on remand in the first place, but literature also indicated that some Magistrates decide to keep women in custody, rather than release them, where women have no accommodation available or arranged.

Legal and longer term support crucial

In terms of women's legal needs, complex bail legislation, combined with the large number of women not applying for bail when on remand, indicated a very strong need for women to be provided with legal representation and support. As noted in the literature scan, a large number of women on remand do not apply for bail,²¹⁶ with court observations suggesting that this trend was continuing, at least in 2019.²¹⁷

Due to the interrelated nature of the multiple obstacles that women in contact with the criminal justice system face, ongoing, outreach-based support was clearly crucial for women when in the community. Client interviews suggested that, if one need was not addressed, it could have a domino effect in terms of other issues, especially when women experienced the loss of their children. Findings also indicated a need for services to engage women released on bail for sustained, intensive periods to ensure that they had stable and safe housing; and to ensure that women developed trust in relevant services so that they continued to engage. Client interviews similarly emphasised the need for long-term support.

²¹⁶ Department of Justice and Community Safety, above n 13.

²¹⁷ Russell, et al, above n 12.

FF *Just having someone there [in the longer term after prison], you just need that person to be there for those days when you have a need. Even still to have someone have a check-in in their diary. It's not like, 'you're better now, off you go'. It feels good to have someone check in. The long term stuff is what keeps you right [Client 02].*

A wider service system which does not meet women's multiple needs

Reflecting literature scan findings, participant interviews (WLG, client and WTJ partners) all noted that the individual legal and social support needs of criminalised women sat within a broader context of systemic drivers. Participants indicated that the system impacted on different women in discriminatory ways to drive up the numbers of women in prison:

FF *...[there is] a broad systemic issue which is around the laws themselves and how they operationalise to disadvantage women and that's in terms of the bail laws themselves, the way they play out in terms of targeting women who commit offences, they're involved in offending that is lower level, but frequent enough to catapult them into a very high threshold in the legal test. And then there's also the personal circumstances that women who are criminalised face. ... essentially, it's complex and it's dependent in terms of the role that women have in society and the fact that laws are not necessarily made with women in mind [WTJ provider 05].*

Beyond individual legal and social support needs, participant interviews highlighted the need for a system that was gender responsive and understood the kinds of responses and support which women needed to ensure that they did not end up in prison in the first place.

Connecting with peer support

Finally, one WLG member identified the need for women to be supported to be connected with community, to help lose their sense of shame. An important part of this was seen as connecting with other women with lived experience:

FF *...everyone always talks about that – “can we fit you in with the local netball club?”, as if you can just walk in and make friends and make connections! If you're already dealing with DV or have been a ward of the state, or have been in custody – people ask you questions, you feel shame or you feel uncomfortable so you don't go back. There needs to be a lot more about peer stuff in that sense – women who have come through the same experiences and who are now doing OK [WLG member 04].*

3.1.2 What legal and social support is currently provided to women applying for bail in the criminal justice system in Victoria?

Sub-question finding: Literature scan findings, combined with all evaluation data, painted a picture of a service system that was stretched, sub-par, and over-subscribed, with practitioners needing to identify and access existing “scraps on the table” for their clients. Strong themes also emerged around the inadequacy of supports for women, including the lack of joined-up service responses; strict eligibility criteria excluding women from certain supports; stigmatisation and lack of understanding from relevant services; and custody functioning as a proxy for services in the community. COVID-19 also had additional impacts in terms of service availability.

‘Scraps on the table’: Inadequate support services

A majority of survey respondents (19 out of 24) rated the adequacy of support services to meet women's most common presenting needs as “Very Poor” (7) or “Poor” (12). Survey respondents commented that services were not available in regional areas; that waiting lists were long; and that eligibility criteria meant that women who had multiple needs – such as AOD issues combined with mental health – were not able to access many services.

FF *It's near impossible to find any form of housing other than a boarding house, regardless of the situation in which a client presents. There are services for Mental Health, [AOD] and Family Violence support in the area but they are extremely overwhelmed and have waiting lists which mean people are left without support for very long periods of time [Survey respondent].*

FF *There are major issues with accommodation. The bail support programs have waiting lists. It is difficult for people in custody to get into residential drug programs [Survey respondent].*

This rating was worse when respondents were asked to rate the adequacy of services specific to women's needs (such as family violence, support with children, mental health and housing). The majority rated the adequacy of services designed specifically to address women's needs as "Very Poor" (14) or "Poor" (4) (the remaining rating them "Average" (5) and "Above average" (1)).

Overall, interviews and survey responses indicated that emergency accommodation had extensive waiting lists; lack of basic amenities; and that it was generally not safe for many. The following outlines the difficulties which this presented for services trying to support women on release:

FF *Yes referrals can happen, but there is a limitation that I can't do my job without appropriate services that consider all of these things – there is just no housing for this, and I spend my time scrabbling around for scraps on the table [WTJ provider 03].*

Lack of joined-up support

The literature scan and evaluation data also indicated that services were not "joined up", with women being released into the community without any supports. This was especially difficult for women who had lost support of family and friends due to their incarceration. As one WTJ client noted, when she was released on bail after her first period in prison without having being linked into WTJ, she had "no help, no one was helping me". Despite suffering from psychosis, no one provided support and she was not diagnosed until she entered prison for the second time. Leaving prison without any support, the client struggled to stay in the community:

FF *I went back to my old address and it [did] my head in. Because I couldn't cope – I'd lost my network of friends and family and I lost myself. ... I had psychosis for a long time without being diagnosed... I actually didn't want to go back [to prison] but I did need it because I got the help I needed at the time for my mental state. Before that they just thought I was off my head all the time, and that I was uncontrollable, but it wasn't that at all [Client 02].*

This echoed the critique explored in the literature scan that custody was functioning as a proxy for adequate social supports in the community.

Strict eligibility criteria excludes many women

In addition to the absence of supports in the community, the evaluation found that services were even more limited for women who had been in custody, as many had strict criteria around criminal history or substance use. This was a recurring theme throughout all interviews.

FF *Services say women won't engage, or they are too high risk. But they can't engage with the strict and narrow requirements of that service – so I spend a lot of time advocating for women to allow for equity of access...educating services about women's needs and appropriate responses. There is quite a limited number of services who can immediately understand our way of working – there are also a lot of stereotypes - like the "good deserving victim" or the "mean awful perpetrator" – when neither are correct nor accurate [WTJ provider 03].*

Many services – such as accommodation and AOD rehabilitation services – also had eligibility restrictions which meant that many women who had been in custody were blocked from accessing those services. This was a recurring theme during first round interviews in 2019, and a theme that became even stronger in 2020 as a result of the impact of COVID-19 on the operation of many support services:

- FF** *Also part of the problem is that many of the women [in contact with criminal justice system] ... were women who had a relationship to drugs, and so many of the housing models are abstinence based. So there are very few opportunities or places for women who are having to respond to addiction or a relationship with drugs. It basically sends the message that, if you use drugs, you're not entitled to housing [WTJ provider 04].*
- FF** *[A] lot of those rehab programs, they also behave in really punitive ways and so they kind of behave like prisons...something that we really don't have a lot of in Victoria, is appropriate rehabilitation programs and ones that don't take into consideration women's safety [WTJ provider 04].*
- FF** *In regional areas we struggle with services on offer. If a new service does open or places/funding becomes available, they fill up immediately [Survey respondent].*

Court observations noted this strict eligibility criteria having a detrimental impact on a woman applying for bail, with a service with which the woman had been connected while on bail asking her to leave after she had committed minor, theft-related offences during an arranged outing. The woman's WTJ lawyer argued that the behaviour was the result of a mental health episode. The OPP argued that the behaviour constituted a clear breach of bail and represented "a failure of the woman to take up the opportunities offered to her by the service". Arguments by her WTJ lawyer from LACW and the presence of the FO case manager persuaded the court to grant the woman bail [Court observation, November 2019].

Echoing this, interview participants suggested that rehabilitation services often played a monitoring and surveillance role, as opposed to a supportive role, for criminalised women with support needs. WTJ project partners suggested that this monitoring and surveillance approach could be distinguished from the client-centred, supportive role which WTJ endeavoured to offer.

Stigmatisation

Another recurrent theme which emerged through all participant interviews – and especially interviews with women with lived experience – was that the approach to women when they came into contact with all stages of the system – from police, to lawyers, courts and support services on release – was one that fostered stigmatisation and shame. As told by a WTJ client:

- FF** *I needed a lot of support (before I went to prison) with housing, my children, domestic violence – but I was too scared to contact any services because I was scared my children would get removed and that's what happened anyway. I went to DHHS for help and said I need help, my partner is on drugs, so they said they'd take the kids but if I leave him they'd let me have them – but they offered me absolutely no support to do that and no housing support either [Client 01].*

Once in the community, practitioners and clients explained that stigmatisation in the service response also made it much harder for women to approach and access services for support:

- FF** *We stigmatise – depends where she presents. You need to be capable of phoning yourself, to get yourself there, to have dealt with your D&A. These women often never have been included as part of society. They are just surviving in the very best way they can. [WTJ provider 09]*

The stigmatisation for women could have enduring effects, with one WTJ client reporting that her interactions with child protection and other services led her to feel intense shame and to relapse. This client was too ashamed to connect with other support, even when she had a good connection with her AOD counsellor:

FF *I explained it to [child protection], and they said if you are not able to protect yourself you can't protect your kids....I started seeing an AOD counsellor and grew a good bond, and I was linked in with her before the kids got removed – then when all this happened, she literally rocked up to the door, calling out, "I'm here to support you" through the window, door, and I couldn't open it because I felt such shame [Client 01].*

Another WTJ client highlighted the impact of stigmatisation on her ability to access any help.

FF *They are so horrible on women these days and I don't know whether that is because I reoffended, and I'm hanging around with people seen as criminals – they put a label on you, straight away police [are] very judgmental - unless you are bashed, they don't care. I had no petrol vouchers, no Myki, rent in arrears – child protection offered no numbers and no help at all, they just expect you to do it all on your own. [It was] three months before I was trying to leave – I told them that, but [they] offered no emergency accommodation or anything. I was looking in [a particular geographic area], but [there was] so much travel and it was very difficult. Stupid me, I relapsed [Client 02].*

Lack of understanding impacts women's ability to meet bail conditions

One WTJ practitioner explained that decision makers often did not seek to understand the issues which could impede women maintaining bail, which made it exceedingly hard for women to maintain bail even before they were able to access any services. There was also an expectation that, upon release, women would have access to basic things, such as transport and phones, in order to attend appointments.

Yet case files and interviews all indicated that most women did not have access to these essentials, with the WTJ case manager having to transport women to multiple appointments as well as to provide them with Myki cards, phones and phone credit. Many women did not have any identification documentations, making it impossible to obtain a phone, let alone make a phone call. In not seeking to understand these barriers, decision makers effectively made it even harder for women to maintain bail in the community, as evidenced in the following story:

FF *... She got bail but... to then not even think about those very small practicalities of, she's very young, she doesn't have a car, she doesn't have a licence, how is she going to report? Those are the things that are not asked in the court room and they seem really small and insignificant, when you don't have any money or any means of transport apart from public transport, they're really important things. So sometimes it's something as small as that, can lead someone to breach their bail conditions. And it's just a bit ridiculous is that all it could take would be for the Magistrate or lawyer or even police prosecutor to just ask that question. "What is the best police station for you to report to?" It's not difficult but it doesn't seem to happen [WTJ provider 04].*

COVID-19 impacts on current approach

The support available for women in the community or on bail significantly changed as a result of COVID-19. Some interview participants observed that the approach to housing during the restrictions – whereby emergency hotel accommodation was made available in order to prevent COVID-19 outbreaks – had some positive effects for women. The changed landscape, however, also had significant impacts on the availability of services, with many services either ceasing to operate during COVID-19 or significantly reducing their intake.

FF *...New pathways have opened up as others have closed. I'd say we are seeing about double the number of women – about 20 at the moment on the books...it is a highly stressful job, a lot of action, crisis response. – we hope that we don't have too many women in crisis on the same day. ...*

FF *So there are the women who are stably housed and have no major mental health issues – the response has improved their outcomes because they have ‘phone attended’ CISP appointments, including a couple of women who ‘passed’ CISP. But then there are women who are rough sleepers and have high [AOD] issues all working against them during COVID because no supports are open. In terms of immediate support needs – it’s almost like one group has done better, for example [a particular AOD service] has had a 75% increase in attended appointments. But the other women have fallen off.... outside that, you are living under a bridge during COVID – in a highly policed environment, which is a risk for these women [WTJ provider 03].*

FF *... So there is availability of those [COVID] hotels but there’s still no longer term housing for women and just for women. ... But then beds in rehab have been cut 50% - they are not taking referrals. ... It has flow on effects for our clients. We’ve had clients who have had a bed lined up, then the provider is no longer taking on a lot of women, so that was her chance of getting out - gone [WTJ provider 10].*

Further, increased police presence had exacerbated the risks for criminalised women of being picked up and charged with breaching bail for extremely minor offences.

FF *...post-COVID, the need for advocacy and getting doors open has grown exponentially. ... We need access to mainstream services for these women, it’s always been an element but even more so now. Trying to keep people safe from becoming criminalised in a highly policed outdoors – so many ways in which women on bail can have that revoked so quickly [WTJ provider 07].*

FF *A lot of things are systemic issues – especially at the moment. Housing is a massive issue, particularly for women. There is supported COVID accommodation, but there is still a significant number of women experiencing homelessness, so it is very difficult to do effective outreach. [It’s] difficult to link into mental health without an address, it’s hard enough anyway. Clients don’t have access to a phone [WTJ provider 06].*

All of this contributed to a service climate that made it extremely challenging to provide the outreach that women needed.

3.1.3 What is a gender responsive approach to providing women with legal and social support?

Sub-question finding: Evaluation data indicated that a gender responsive approach recognised and addressed the multiplicity of women’s needs and addressed the underlying trauma experienced by so many women who ended up in custody. It also directly addressed the lack of services for women and provided ongoing support, including practical supports essential for women experiencing social and economic marginalisation. Evaluation data also indicated that the current system was far from gender responsive, entrenching trauma and stigmatisation.

Literature scan findings

Themes identified by the literature scan in terms of a gender responsive approach included:

- acknowledging gendered pathways to prison – as most women’s offending is non-violent, with links to abuse, victimisation, AOD, homelessness;
- addressing the “triumverate of women’s needs”: ie addressing multiplicity of needs;
- gender informed, integrated and holistic accommodation options;
- gender specific bail programs;
- recognising family violence and child protection matters and their impact on women; and
- recognising that most behaviours are a result of underlying trauma.

Perspectives of WTJ providers and WLG members

FF *What is a gender responsive approach? Women's incarceration/criminalisation almost flows from gender based violence and underpins their experiences of incarceration and criminalisation. If you don't come back to that trauma then it is not gender responsive. Relationships are at the heart of service provision, with women developing their own priorities; meeting women where they are at both physically and emotionally. Also providing non-time limited support, centring views of women who have been in prison. Because criminalisation has a structural basis, service delivery has to be enhanced by system level advocacy. Even traditional program delivery must be connected to system change... [WTJ provider 10].*

These findings echoed the perspectives of two WLG members in terms of a gender responsive approach, who nominated the following as crucial:

- support around women's trauma (such as family violence, sexual abuse, grief and loss);
- taking a person-centred approach and providing ongoing support;
- consideration of responsibilities like children;
- safe and adequate housing; and
- financial assistance and material aid.

Two WLG members described a gender responsive approach to be as follows:

FF *....that women who are homeless, affected by AOD issues, fleeing [family violence], have mental health issues and children in their care should not be incarcerated. [WLG member 02]*

FF *Involving children in outcomes, rulings and decisions; we want to stop the cycle, women become incarcerated; children get removed [and] go into care, experience trauma and harm; go onto juvenile detention centres and as adults go to prison and the cycle begins again. SHAME. [WLG member 01]*

Women also identified the very practical support which they saw as equating to a gender responsive approach, including:

- the provision of cab vouchers or help with transport;
- counselling support;
- parenting programs and reuniting children with mothers;
- community support;
- personal security camera systems for those with safety concerns;
- health and wellbeing support;
- flexibility around appointments – such as being provided by phone, through outreach; being culturally appropriate, and connected to people with lived experience; and
- clear, simple plain language support.

Current system entrenches trauma and stigmatisation

As one WTJ practitioner noted, the current system was far from gender responsive when it asked women to reveal their most traumatic experiences in a court full of strangers:

FF *...the idea that you should be expected in a court room of people, most of whom you've never met, to disclose the worst things that have ever happened to you, that is patriarchal violence and in many cases that's colonial violence as well for Aboriginal women...*

I think shame comes into that as well because I mean imagine having to stand in front of a Magistrate and say 'I have all of these lived experiences. I have no money. I have no house. My kids have been taken.' The amount of shame that is attached to those experiences. It is just such an abusive process against women [WTJ provider 04].

FF *You get no empathy from the police prosecutors and you expect that but, there were Magistrates that I found appalling. Including women Magistrates, they are just as bad in a lot of cases. I guess my (goal) would be wanting to keep women out of that court room and avoid all of that before you even got there [WTJ provider 04].*

Participants also queried what it meant to be “free” from custody in the context of limited options for many women. While prison was far from a preferred alternative, equally a gender responsive approach needed to think about what women were being released into when leaving custody:

FF *I think we perhaps need to think about empowerment a bit more. Like yes you can't really be empowered while you're incarcerated but are you empowered while you're “free” if your freedom looks like being in a home that's violent or on the street [WTJ provider 04].*

FF *For example, when working with Aboriginal women – who are affected by the ongoing legalisation of child removal....that issue is front of mind when they are talking with a child protection worker [WTJ provider 01].*

From the perspective of the WTJ project partners and WLG members, a gender responsive approach also meant advocating for change at the systemic level, as well as bringing consideration of how the law impacted women unequally or differently to bear in court decisions. This is discussed in more detail in relation to systemic advocacy in Section 3.5, below.

3.1.4 Does the design of the WTJ project meet these needs?

Sub-question Finding: Evidence from across the project strongly indicated that it was meeting women’s legal and support needs, albeit within the limits of a deeply inadequate service system. While the original aim of the WTJ project was to involve WLG members in supporting CSP clients, this was not occurring during the life of the evaluation. Certain gaps in the design and service provision were also identified, including the need for greater cultural safety; child protection assistance; and a dedicated housing pathway.

WTJ court support program (CSP)

Originally, the plan for the WTJ project was to create a Women’s List at the Magistrates’ Court, where FO and LACW would work together to provide integrated support for women on the List. Despite the efforts of the WTJ coordinator in 2018 to establish the List, the Court ultimately decided against this option. Consequently, the project was re-designed to ensure that its aims of reducing the numbers of women in contact with the criminal justice system could be met.

As noted above, evidence strongly indicated that the design of the CSP provided much needed legal and non-legal support for women who would otherwise have limited or no support – whether it be when they were on remand or, if successful on bail, when they were in the community. This was reflected in the contrast of one WTJ client’s previous experience:

FF *...[on my first time being released from prison] I had no support previously [before being in contact with WJT]. I was meant to have a CISP worker helping me but there was nothing there at that time. So I ran amok when I was on bail. I was going through lots of things, domestic violence, I had no money, nowhere to go, no family or friends. It took me two weeks to get back home. Everyone turned their back on me. [Client 02]*

The WTJ CSP appeared to be a fairly unique offering in the Melbourne Magistrates’ Court. More generally, court users tended to be referred to court-sponsored programs or referred to other external services, without the support of a case manager who was able to provide the intensive outreach that justice-involved women require.

FF *Often at court we get lawyers or other services coming up and asking about us – it's fairly unusual what we offer [WTJ provider 03].*

One participant noted that a vital feature of the WTJ approach was the fact that clients did not have to be approved for a grant of legal aid – the aim being to address women's contact with the criminal justice system by providing legal support at the earliest stage, irrespective of the seriousness of the charge:

FF *...the big thing is not having to focus on whether matters are able to be legally aided. The whole system is set up to throw dollars at the high end of very serious offences, and it's very frustrating that there is such limited funding for people entering the CJ system for the very first time. The financial effects of that are massive. Once someone has been imprisoned for the first time, it is very hard to come back from that...and LACW is focused on stopping that. [WTJ provider 06]*

Brokerage was also an important part of the CSP component:

FF *Brokerage is also a real value of this program...[it] is magnificent to be able to broker things that women need. [WTJ provider 03]*

Evidence was clear, however, that the CSP existed within a system that was simply not set up to support or understand the needs of criminalised women. While the CSP design remained highly relevant to women's needs, the literature and all participant interviews supported the finding that the program existed and operated within the reality of inadequate and often completely inaccessible services for these women.

FF *...obviously we operate in the confines of the law, the tests are there, they're immutable and we do law reform to try and deal with that. We also do advocacy, we speak to Ministers and try to have influence but the reality is that it's a political situation where...those laws aren't going to change soon. So you can try and have influence in that way, but it's very difficult. So the CSP works within a system that's already weighted against people and I think that they do an excellent job but they're also working under conditions that are difficult because of the structure of the court and because of the lack of services that are available [WTJ provider 05].*

Women's Leadership Group

WTJ and WLG participant interviews indicated strong support for involving women with lived experience as peer support for women on bail. This was in line with the overall WTJ project design, but was not occurring in practice at the time of the evaluation. This is discussed further below in relation to the WLG process more generally.

FF *You can see the level of complexity in their lives, the enduring presence of mental health, AOD issues, how pervasive it is. There are huge numbers of women with AOD issues, and to be – for the options to be so limited, so that any breach leads to homelessness or relapse. Recovery is long, so they need enduring support. ... We don't often use peers of lived experience in these places, but we should. The Leadership Group speaks of having support from someone who understands experience [WTJ provider 09].*

Gaps in WTJ model

In terms of the model being relevant to women's needs, all practitioner interviews observed that lack of a housing pathway for WTJ clients was a significant gap in the model.

FF *It's doing as well as it can with respect to brokering housing support and being very insistent and advocating on an ongoing basis on client's behalf. [Case manager] will go out and make sure these things are being done. ... but I think having more investment in suitable accommodation options is necessary – not a motel, not a boarding house, secure, stable and safe accommodation [WTJ provider 10].*

FFSo for that model to really work, we would have to look at housing...I wonder whether this impact of them going in and out, in and out, does that make things worse?... although I really don't want them to be in custody, I want them to get bail, I just worry about what might be going on that we're not noticing. [WTJ provider 04]

FF There are still some key gaps that...we're not going to be able to [address] as three small organisations in the scheme of a much bigger problem. I think if I were to say... is "is the [CSP] a useful program for individual women who are accessing it? Yeah absolutely. Is the support package that [FO] provides tailored to women? Yeah absolutely." But at the end of the day, they're not able to magic a house...what they can do is link people into house for a short term and hope for the best and provide support along the way. And that's a lot and that's really great, but it's not enough. It is enough in some circumstances, but often it's not enough [WTJ provider 05].

FF There is not a suitable, supported housing for women. But most [available housing options] really don't suit the general client type that I work with, with active mental health, AOD, chaotic lives – [there's] not a service around that suits all these needs ...and their unregulated trauma. Sometimes they actually do better in shit hotels, because they are not kicked out, but then safety is an issue. Every report I read for these women points to there need[ing] to be more of this...– all of that would lead to less women in jail. It really is likely to be very cost effective [WTJ provider 03].

Considerable effort was made to find a housing pathway for the project, but systemic barriers were identified:

FF WTJ made initial efforts to establish a housing pathway [in the] design.....The system is broken. There is a key need to have strong pathways to provide women specific AOD support. Women just can't get into rehab – [there are] so many hoops to get into AOD programs in Victoria ... Housing is like moving the Titanic [WTJ provider 01].

Another gap highlighted in one interview was the need to consider how to make the program more culturally safe for women.

FF ...one of the workers was Aboriginal and was at FO. I think that made an enormous difference. The project needs to do more to be more culturally safe. There is not currently a strong cultural overlay... [LACW] has a strong reputation and credibility but one Aboriginal worker was not enough, but for that time it was wonderful to offer that to Aboriginal women if they needed it [WTJ provider 01].

Capacity to provide advocacy and support for child protection matters was also nominated.

FF Advocacy about child protection – is a bit of a gap. At the system and project level, there was no strong knowledge base... – how to manage contact with child protection workers... LACW has child protection lawyer experience but not sure how that works. ... It's a sector wide, structural problem. Lawyers are all specialist in certain areas. Women in criminal justice system tend to have child protection issues [WTJ provider 01].

Design of CSP is strong but needs more capacity or expansion

Almost all interview participants emphasised that the most important gap was not the model itself, but the limited resources and capacity.

FF ... [FO case manager] is very responsive, but it's only a matter of time before we have to knock someone back. Training people to work in that way – it is quite a radical approach for social work. So FO is a good match for that type of work with lawyers. Working with a service where the baseline is that women should not be in custody, it is so radical but yet shouldn't be – it's just part of what we do [WTJ provider 06].

FF *There are times I don't need a social worker long term, just one month – so we need more social workers to be able to make these types of referrals. Some women have been on the program for 6 months now because of high needs, and we just can't allocate sufficient time – we need more of [case manager's] role [WTJ provider 08].*

Participants also identified the need for longer, ongoing support as part of the model:

FF *We don't actually know who ultimately is able to stay out of the system – even to help women understand the brutal, dehumanising way of people speaking to you. The management/support for that is so long [WTJ provider 09].*

Learning and adapting of design/model

The WTJ program partners adapted the model as each component evolved, which was seen as a strength by all. This included recognising the inherent challenges in three organisations coming together to conduct work with multiple objectives, challenges which had nonetheless resulted in a level of commitment from all organisations to learning and adapting over time.

FF *Something that is constructed and then to find that identity... obviously there have been bumpy parts – but to be able to support people to find their space and what they think it would look like – it evolves – partnerships don't just happen [WTJ provider 09].*

FF *... emphasis [of WTJ in 2020] has been more on systemic advocacy and WLG being more of a key element of that. The focus has been a little bit away from CSP....But advocacy activities are much more intensive. In terms of the service delivery component, there have been changes in terms of stability, and personnel involved, and relationships are really strengthened – it's really good this year [WTJ provider 10].*

The evaluation observed adaptations and changes to all aspects of the model, reflected in lessons captured at different intervals of program implementation and reported to the program partners by the CIJ in an interim evaluation report at the end of 2019. This included the fact that the model was initially designed to ensure that each component fed into the other. WTJ partners and WLG members expressed a commitment for this to occur.

A shift in funding in early 2020 also meant the design needed to adapt to the level of resourcing. For example, at the CSP level, there were two case managers in 2019, while in 2020 there was only one case manager on 0.8FTE, with reduced funding for LACW lawyers as well. While there was a strong need for more capacity/case support to ensure that the design could continue to meet women's legal and social support needs, evidence in KEQ 3.2 below made it clear that the CSP was able to adapt so that it could meet the high number of referrals coming through, a strong testament to the commitment and ingenuity of the program partners.

FF *So now we have much higher numbers [of referrals] coming through, but there's only me. ...we couldn't follow women as intensively and court reports are shorter – we have adapted to be more goal/task oriented... [WTJ provider 03].*

FF *For example, during COVID, she does regular check ins and calls clients that have been not in contact and reminds them about masks, that we can send some...[WTJ provider 10].*

In addition, the original WTJ design anticipated that the WLG members would provide peer support for the CSP, which – due to the evolution of the WLG, discussed in KEQ 4 below – had not occurred at the time of the evaluation. Similarly, all partners observed that systemic advocacy – which was intended to be a three-way partnership under the banner of 'WTJ' – tended to occur through FLS, with LACW and FO bringing their individual voices/expertise to particular issues.

FF *Also systemic advocacy, ideally that would occur through the partnership but that hasn't been the case, so it has become more of a FLS role [WTJ provider 05].*

The impact of shifts in resources on the WLG and systemic advocacy is discussed further below.

Adaptations to the model due to COVID: ongoing support

Given the massive upheaval in the courts and broader service system resulting from COVID-19, the WTJ model proved to be markedly adaptable and agile in responding to the pandemic crisis. All WTJ participant interviews suggested that the program partners were quick to respond to the heightened needs of women on remand and on bail in the community during the COVID-19 crisis, as well as to the needs of women members of the WLG.

FF *A strength has been the way FO and LACW have been able to implement COVID- safe strategies putting clients first. While other services have said “no” or only taking half, we’ve said “let’s do it and figure out how we can do it”, and continued to provide service despite difficulties and step into the space that’s been vacated. ...we are smaller, specialist and can be more agile...The underlying philosophy of both organisations being decentralised and clients don’t have options apart from us, so we can be a lot more adaptable – and have been [WTJ provider 10].*

One adaptation was that the case manager was no longer able to attend court:

FF *I write a letter, now my face isn’t there in court – ... this woman was on bail because of FO involvement – it was a crucial factor in the Magistrate feeling that the risks were acceptable [WTJ provider 03].*

Another participant noted that a challenge for the model was the length of time that many women were needing to be supported as they waited for adjourned matters to be heard.

FF *...the service system has reduced its capacity and there’s more demand because people are losing their jobs and there’s more family violence... FO is one of the few organisations that’s still able to maintain some direct contact... that has implications for their capacity. And it also means the engagement with our services are longer. So in the past, someone would be bailed and they’d have their matter heard 2 or 3 months down the track, we’re looking at much more longer times ...it’s a bit challenging from a funding perspective and sustainability perspective as well [WTJ provider 05].*

FF *The program hasn’t changed, the service delivery hasn’t changed... it continues. But COVID has highlighted the NEED for the program. It’s in the spotlight. [Clients] say, ‘thank you so much, if it wasn’t for you...I’d have no idea what to do’ [WTJ provider 08].*

FF *So COVID leads to people becoming increasingly vulnerable. I recommend WTJ to clients because it is the only service that I know of that was continuing to provide support and to help with needs of clients. Responses from Magistrates have been incredibly positive, the program has good reputation [WTJ provider 06].*

FF *...we could have started exit planning in October/November...but if funding sunsets then what will happen to those women? While ever we exist, that will continue to happen. CISP is great first step, but...WTJ is assertive support that is needed. For women at the higher needs end of spectrum, the CISP model just doesn’t cut it in terms of really providing opportunities for these women to change. [WTJ provider 07]*

3.2 Outcomes

This section answers the question:

KEQ 2: To what extent did the WTJ program improve legal and social outcomes for women in custody on remand or in the community and subject to some form of conditional release?

There are four sub-questions in this section.

Summary Finding: The evaluation found that the CSP had improved legal outcomes for the majority of women accessing the program, with 76% of WTJ clients being granted bail at their first bail application. Women were also being supported with their non-legal needs, with support provided by the WTJ case manager including intensive outreach; practical supports such as transport to and from appointments, as well as food or phone vouchers; and assistance for women to find housing as well as advocating for referrals to other services – work which was intensive, time-consuming and complex.

From March 2020, when COVID-19 restrictions meant that many services either closed or reduced intake significantly, the project partners recognised the potential health risks posed by the pandemic within the prison system, as well as the significant delays in court proceedings. LACW consequently redoubled its efforts to pursue bail applications, while FO focused on continuing to provide face to face intensive outreach to the greatest extent possible. This made the WTJ CSP component a critical support for women on remand or on bail, one of the few services which continued to provide face to face support during this time.

Over the same period, the female prison population decreased by nearly 30% as a result of pressures on the system related to COVID-19, although the project partners noted that the numbers had started to rise again towards the end of 2020. While it cannot be said that the decrease in prison numbers occurred as a result of LACW and FO's efforts through the CSP, 20 WTJ clients were successful with their first bail applications during this period, which was not an insignificant proportion.

3.2.1 What changes occurred for women accessing the WTJ program?

Sub-question Finding: Evidence across the evaluation found significant changes for women accessing the WTJ program. This included in relation to legal outcomes, with 76% of women being granted bail during the life of the evaluation period, although clients interviewed noted a wider feeling of powerlessness when faced with the overall legal response. Significant non-legal support was provided, with evidence across the evaluation pointing to the difference which this made to women's lives. That said, long term changes were complex and challenging to achieve against the backdrop of women's multiple needs and systemic drivers impacting their contact with the criminal justice system.

Changes in securing bail for women accessing WTJ

A total of 68 client referrals were made to the WTJ program from January 2019 to July 2020. A significant majority - 52 women - were successful in being granted bail in the first instance. This meant that 76% of women referred to WTJ were granted bail at first application, with WTJ support through LACW and FO. This is a significant change, with literature indicating that many women without support and who are unsentenced do not even apply for bail. Indeed, across all the available data, the evaluation found that:

- “but for” LACW's support through WTJ, women who would otherwise not have had representation were provided with representation; and
- “but for” FO support in court through WTJ, women who would otherwise not have been successful in being granted bail were successful.

Based on current statistics and research relating to the experience of women on remand, the evaluation found that it was highly likely that, without the integrated, specialist support provided through the WTJ partnership of the lawyer and social worker in these matters, many of these women would have spent days in custody without any support until their matter was finalised. These women would have most likely then been released without any support in the community, as remains the pattern for significant numbers of women moving through the criminal justice system.

Another important outcome was that, through the WTJ project, women actually received legal support which may not have been provided at all without LACW. The targeted legal support which LACW provided to women was therefore an outcome *in itself* for clients. The high numbers of women between 2015-16 who were on remand and did not even apply for bail (51%) indicated that simply providing legal support to these women on remand was a major project achievement.

The following remarks by a Magistrate recorded during a court observation show the effect that the combined support of LACW and FO had on the Magistrate's decision to grant bail in that instance:

FF *I have to have regard to the fact that you've got a history of failing to answer bail, and I suspect in terms of some of the things now explained to me, that's not entirely surprising... But you will now have [FO's] support and they'll make sure that in relation to the dates you need to be at court, you'll be at court. In those circumstances, I'll grant you bail... [Magistrate, court observation, November 2019].*

One WTJ client also emphasised that having the support of the WTJ lawyer in her securing bail was a significant change for her:

FF *She 100% got me out on bail. When we found out what judge we had, she said we are going to do a 2.5 hour bail app, no matter what it takes. [The Magistrate] gave me compassionate bail, because [my LACW lawyer] really emphasised how important it was to be with my son [Client 01].*

Still a sense of powerlessness over final decision for women

It is important to note that changes for women who were successful in securing bail were still occurring within the context of their ongoing contact with the criminal justice system. For example, another WTJ client noted that, even though LACW helped her to secure bail, since being on bail, her matter has been adjourned twice as a result of COVID-19.

During this time, the same client had received significant support from FO to stay in the community to the point where she had progressed significantly with all aspects of her life. This contrasted with her first experience on bail, where she had no support and immediately returned to prison upon release. Nonetheless, the ongoing adjournments had contributed to her sense that, despite her progress, the legal process was completely out of her hands and that she was powerless:

FF *It feels good [to have made all these changes] but at the same time, I feel like it doesn't matter what you do. I'm still in the same boat. The court will say 'oh she's done all that' but my life is still on hold [Client 02].*

Context of changes for women being granted bail

In examining the changes which occurred for women accessing the WTJ program, it is important to consider these in light of any changes to the overall context during this time. Prior to March 2019, Corrections Victoria data show that the average monthly trend for numbers of women in custody (both sentenced and un-sentenced) was climbing, with an observable increase in the numbers of women in custody who were un-sentenced.

The following graph shows the general increase in the numbers of women in prison over two years from July 2017 to July 2019, with a notable proportion of the rising numbers of women in prison represented by women who were un-sentenced. Indeed, by January 2019, almost half of the women in prison (approximately 49%) were un-sentenced.

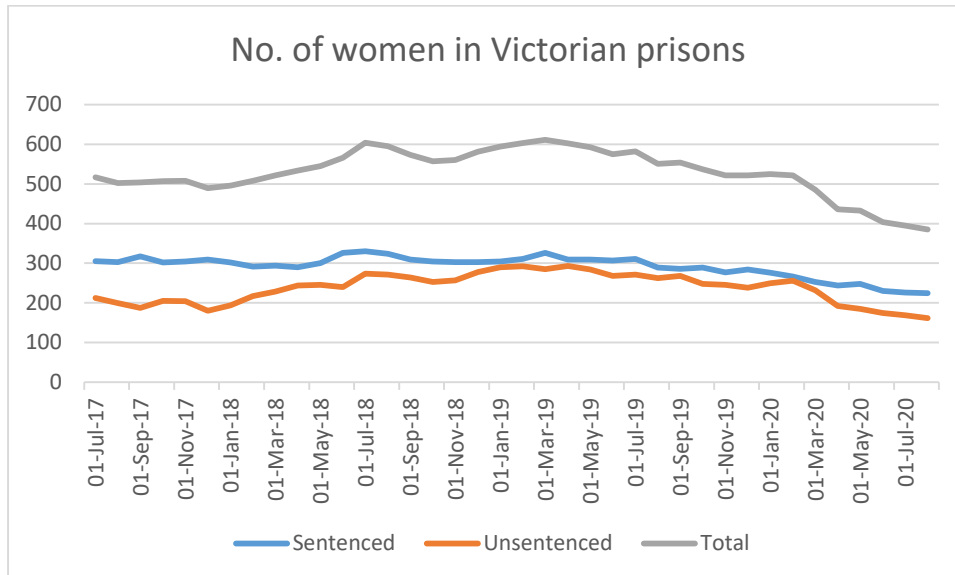


Figure 1 Monthly numbers of women in prison from July 2017-July 2020

Some important dates to consider when interpreting the data above (and what it meant for changes for women who were supported by the WTJ program) include:

- May 2018: Amendments to the Victorian *Bail Act* were introduced.
- January 2019: first referral was made to WTJ (29 referrals, 23 successful in 2019).
- March 2019: the number of women in prison peaked at 611 (326 sentenced; 285 unsentenced).
- From March 2019: the average monthly number of women in prison declined.
- From March 2020: COVID-19 drove a significant reduction in the numbers of women in prison for a specific period of time. WTJ made 37 bail applications, with 29 successful in receiving bail at first application in 2020. Of these, 20 were successful bail applications that occurred in the period March to July 2020.

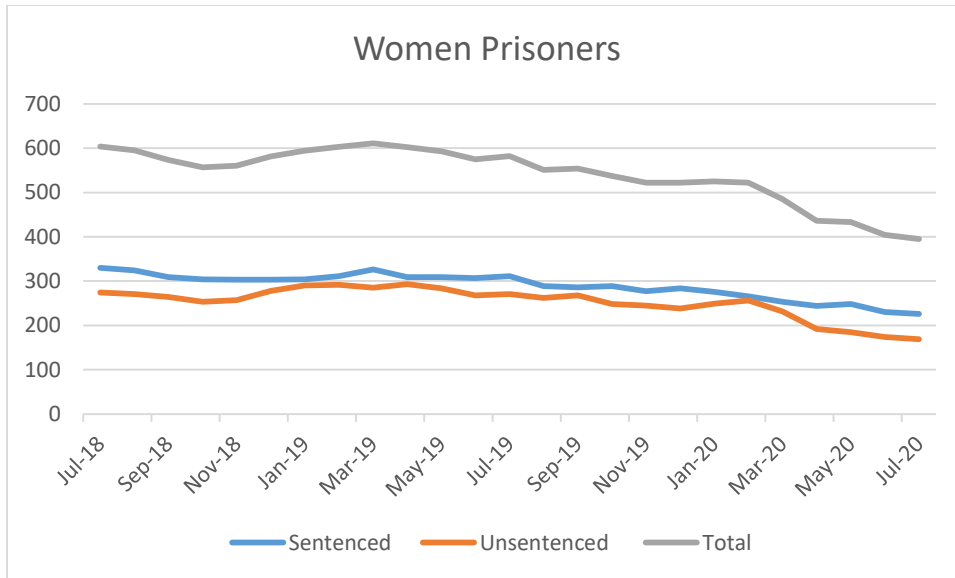
On these figures, it is not possible to determine the extent to which the WTJ program was contributing to the overall reduction in numbers of women in custody from March 2019 – if at all. However, it is interesting to note some patterns in the numbers of women in custody over the past 18 months. The following observation was made prior to the COVID-19 restrictions in March 2020:



The project is meeting its objectives in giving women access to bail. We are seeing numbers of women in DPFC reduce week on week, and WTJ plays a part in that. ... Given there are about 380-90 total women in prison, so having 23 women [in 2019] achieve bail through WTJ is not insignificant. [WTJ provider 07]



The following graph shows the decline from March 2019 more clearly:



From March 2020, court and social services were significantly impacted by COVID-19 restrictions. As discussed in Section 1.5, the fact that courts were adjourning many matters led to LACW redoubling its efforts to make bail applications, arguing for the “exceptional circumstances” threshold to be met in relation to COVID-19, as evidenced by the following:

FF *Magistrates can see we’re doing everything we can to get them out and that we’re using referrals. There are a number of Magistrates who have said “without FO’s support, I would not be releasing you on bail” [WTJ provider 06].*

FF *I think it’s different now because the court recognises the program – in [the] early days it needed lots of explaining – now it’s more streamlined because they recognise it, the Magistrate just goes “yep ok”... the risk of client reoffending is still deemed far too high in some cases, but definitely where we submit it, the application goes a lot more smoothly because of WTJ [WTJ provider 08].*

Again, the graph on the following page shows a significant decline in the numbers of women in prison from March 2020, which clearly corresponded with the onset of the State of Emergency in Victoria and the heightened activity across all courts to reduce the numbers of people in custody across the board. The decline in the numbers of women in custody was most marked for the numbers of women who were un-sentenced.

While the evaluation data did not suggest that the WTJ program was responsible for this overall decline, the contribution of the WTJ program to the numbers of women in prison was not insignificant (particularly for women who were not sentenced), with 20 women who were supported by the WTJ program released on bail between March 2020 and July 2020.

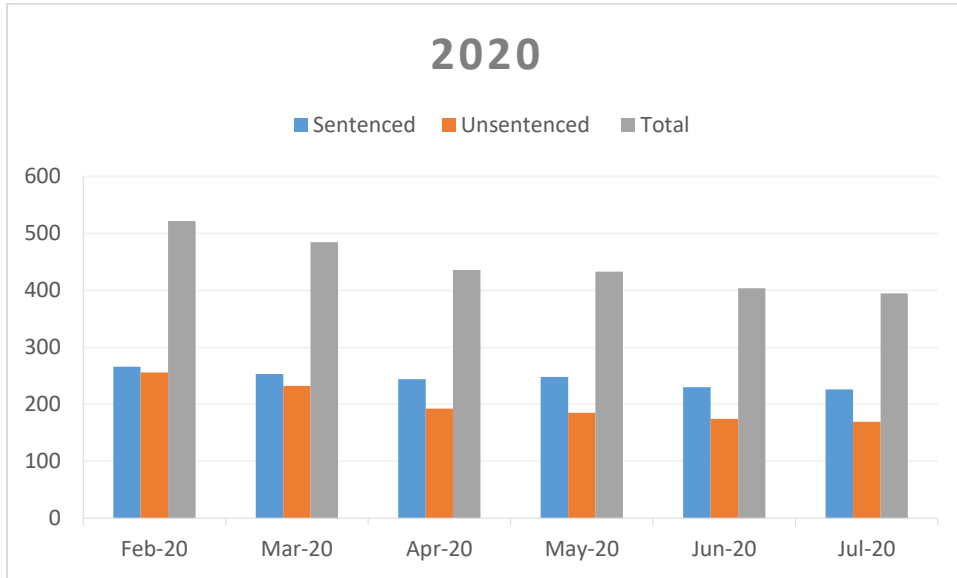


Figure 2 Numbers of women in custody declining since COVID-19

Women accessing the WTJ program were provided with ongoing support

Another sign of change occurring for women accessing the WTJ program was the ongoing nature of the support provided. Case files, case studies and interviews all showed instances where women were provided with legal support through WTJ on more than one occasion. There was also evidence of LACW’s policy of actively pursuing bail where initial applications had failed where it was deemed as having a likelihood of success in a higher jurisdiction. In the following case study, which occurred in 2019, LACW pursued a bail application to the Supreme Court, producing connection with FO as evidence to support release.

CASE STUDY

An Aboriginal client received WTJ support through LACW and FO and was released on bail at first application. The client breached bail and spent months on remand waiting for the bail application, which was eventually refused. LACW took the bail application to the Supreme Court. Ultimately, the Judge granted bail, noting the significant support available through the WTJ program as set out in the material filed with the court. The client also received support with child protection, emergency housing, referrals to culturally and age appropriate residential rehabilitation services and AOD outreach counselling; transport to appointments and accommodation; linking with Centrelink support; and further cultural support from FO’s Support and Advocacy Workers. In addition, the worker identified that the client may have an acquired brain injury and undertook to fund an assessment to investigate this.

WTJ project partners recognised that, each time that a woman returned to the service (i.e. either to FO or LACW), this provided an opportunity to continue to build a rapport with the client and support her to find stability. Given the multiple needs experienced by all WTJ clients – needs which go largely unaddressed by the wider service system – women simply re-connecting with WTJ was another outcome which participants regarded as a project success in its own right.

CASE STUDY

The client attended court on multiple occasions with LACW and FO for the Magistrate to monitor progress. When the case finalised some months later she was linked in with multiple support agencies, had reconnected with her mother, was assisted to access housing and had stabilised in relation to her mental health treatment. She was sentenced to a good behaviour bond.

Changes for women accessing WTJ program due to non-legal support

Once released on bail, women referred to WTJ were being supported in other fundamental aspects of their life. One client indicated the extent of the support and the impact which the support had for her in terms of remaining in the community. The client described having had no support on her first time on release, while the support she had subsequently received from FO included transporting her to and attending CISP appointments with her; and linking her with relevant support services. The client had successfully completed CISP and AOD counselling; found stable housing; and was about to commence employment.

Another client had been connected with other legal services as a result of her ongoing connection with her WTJ lawyer, including help with her child protection issues:

FF *When I got released [due to LACW] my milk dried up. DHHS wanted to take [my baby] to my mum's. [LACW] linked me in with [a child protection lawyer] and she straight away got DHHS out of my life [Client 01].*

FF *... we have had some huge wins. One of our clients we are working with, she had child protection involved, had an application for her child's removal at birth - but she has primary care of her baby now. She's fairly stable, she's not in an ideal situation, but [Flat Out] has supported her with all of that [WTJ provider 07].*

Once released on bail, program data, interviews and case studies all showed that social outcomes for women included that they were connected with housing, AOD services, counselling, mental health services and medical appointments; provided with court support; transported to appointments and to court appearances; received help in gaining access/reunification with children; and were supported with family violence issues and safety.

Simply ensuring that women actually attended court was an achievement in this context. This was because, due to a variety of factors, women with multiple unmet needs and unstable housing are often unable to attend court. This in turn has ongoing ramifications for their interactions with the criminal justice system.

Intensive outreach being provided over long periods for women

While bail applications had a high success rate through WTJ, FO data suggested that supporting women to remain in the community was intensive and challenging, with women sometimes unable to engage or falling out of contact. Nonetheless, the fact that women were released on bail, rather than being kept on remand, gave the case managers the opportunity to provide women with intensive support and to connect them with the services they needed – with the aim of then increasing their chances to stay out of jail by supporting them to find stability.

Some women referred to WTJ who were refused bail in the first instance continued to receive ongoing support from LACW and FO while on remand. The literature scan and all participant interviews, including WTJ clients, suggested that many of these women would not otherwise have access to legal/non-legal supports while on remand.

FO case files (32) showed that the majority of WTJ clients had one period of support (18/32); but 12 women had two periods of support; and two women had more than two periods of support (3 and 4). The case files also showed the long term nature of the support provided. For women who had one period of support, FO most commonly provided support for between 6-12 months (8 women), followed by 3 - 6 months (5 women). The following table shows the length of support provided by the WTJ case manager through FO, for women who had only one period of support (18):

Table 2 Length of WTJ case management support for women with only one period of support

| Period of support (in months) | Number of women |
|-------------------------------|-----------------|
| > 1 month | 1 |
| 1-3 months | 3 |
| 3-6 months | 5 |
| 6-12 months | 8 |
| 12 months + | 1 |

For women who had more than one period of support provided through FO (14), only one woman had engaged over a short period (6 days, followed by 3 days). All other women with more than one period of support had several months of support at first and subsequent engagements. Case studies and case files revealed evidence of positive outcomes for women where the CSP was able to provide assistance on multiple occasions and on an ongoing basis, with the following case study highlighting the pathways through which women were returning for support.

CASE STUDY

Bail was refused for the WTJ client at the first hearing. LACW subsequently supported the client during the plea hearing and submitted that she should be released on deferral of sentence to engage and receive support from WTJ's FO worker, as well as from CISP. The Magistrate agreed. The client was remanded again for missing the next hearing, after warrants were issued.

A month later, LACW again applied for bail, with the support of the WTJ case manager from FO. The WTJ lawyer outlined the circumstances which meant that the client was not able to attend court, as well as the client's longstanding and ongoing support needs around mental health, AOD dependence, family violence and housing issues. LACW also noted that the client's prior convictions were over 10 years old and that she had been working hard to build a new life. The client was released on bail, with the condition that she continue to work with FO through the WTJ program.

Long term change more challenging given context

The primary measurement of success in terms of programs like the WTJ is generally viewed through the lens of reduced recidivism. Yet this fails to take into account the context of the lives of criminalised women. Given that women with multiple needs which go unaddressed by the existing service system will potentially take years to find their way out of the system, if at all, WTJ practitioners noted that a 'successful' outcome should ideally be re-framed so that positive change was also understood in terms of whether a woman stayed in contact with the services to seek support during her most vulnerable times.

FF *There's no hope if the woman does not get consistent, constant support. But if they come back to you – then you can start to help them. First time, second time, maybe they go back in, but on the third time finally you help them to get on the right track [WTJ provider 11].*

Long-term, sustained change was hardest for clients with a multiplicity of needs. Many of the WTJ project's clients had experienced significant trauma in their lives. Findings from the literature scan, interviews and practitioner surveys recognised that moving these women away from the criminal justice system would potentially take years of effort – both from the women concerned and from support networks around them. When working with women who were experiencing multiple needs which had not been met by the wider service system, it was therefore important to reconsider what “success” looked like in terms of their contact with the criminal justice system.

The WTJ commitment to securing bail for women meant that clients who previously would have remained in prison for weeks or months without even applying for bail had access to a service which would actively seek their release, even if the initial application for bail failed. Women who had subsequent need for LACW support were again being provided with intensive outreach support from WTJ (through FO) in subsequent matters.

CASE STUDY

The bail application was granted with LACW and FO support. After being released to the community, the client remained engaged with the FO worker and had accessed the supports which had been put in place. The client's FO worker helped her to identify her primary goals, including obtaining employment in hospitality or reception work; counselling for AOD; reconnecting with her children and starting access visits.

Following a short period on remand, LACW represented the client for her plea hearing, with the outcome that the client was again released into the community on a deferral of sentence to work on her clearly specified support needs with the support of her FO worker. Although the client was again charged and remanded for theft-related offences, LACW immediately rain a bail application with FO support.

The FO worker was able to articulate the impact of being excluded from essential services due to the client's citizenship status and the effect of this on her ability to rebuild her life and undergo a recovery process in the community. The bail application was successful and the client was released on bail to go back on the sentence deferral with the Magistrate that had previously heard her plea, on the basis that she would continue to engage with the support provided through WTJ.

There was also some evidence to suggest that the ongoing support provided by LACW and FO while clients were on bail had impacted sentencing.

FF *Because of support from WTJ] the court has been able to see the work [the woman has done] in the community and she's been given a non-custodial sentence instead. We are definitely seeing successes [WTJ provider 10].*

Another WTJ participant also observed that – as a result of WTJ support – there were signs of some women maintaining status in the community for longer, which required some thought in terms of how WTJ should support women over the longer term.

FF *First, we got them out quickly, but now they are maintaining their status in the community, how can we address each individual's particular issues? If [case manager] is working frontline, the transition between frontline and to a different person for the longer term has to be a slow gradual transition...So we either increase social workers or the transition needs to be done smoothly, for the long term [WTJ provider 08].*

Impacts of COVID-19 for women accessing WTJ

The impacts of COVID-19 on the courts, support services and therefore the operation of the WTJ program are all discussed in Section 1.5. For women connected with the WTJ program during this time, clients accessed support that would not have otherwise been available. While many support services closed or reduced capacity during COVID-19 restrictions, FO continued to operate. This meant that the CSP was one of the only services providing outreach to women on bail. Similarly, women who accessed the WTJ program for legal support benefited from LACW redoubling its efforts to pursue bail applications.

FF *During COVID-19, at the service delivery, [WTJ] had amazing agility to be responsive. LACW worked to get as many women out as possible, with FO engaging needed supports [WTJ provider 09].*

3.2.2 For whom did change occur/not occur?

Sub-question finding: Change occurred for women experiencing multiple, interrelated support needs, including for women who identified as Aboriginal Torres Strait Islander (ATSI) and Culturally and Linguistically Diverse (CALD). Again, long term change was difficult against a backdrop of structural disadvantage and an inadequate wider service system.

CSP client data

Case files and program data supported the finding that change was happening for women with multiple, interrelated support needs. This included clients who identified as ATSI or CALD. In 2019, women who identified as ATSI (38%) or CALD (24%) made up a significant proportion of women who received WTJ assistance, with three also identifying as LGBTIQ+.

- 2019: of 22 clients who identified, 11 WTJ clients identified as ATSI;
- 2020: of 37 clients who identified, 15 identified as ATSI;
- 2019: of 16 clients who identified, 7 identified as CALD;
- 2020: of 19 clients who identified, 6 women identified as CALD.

Almost all WTJ clients were affected by trauma and/or were affected by multiple, complex issues including mental health, family violence and unstable housing. For example, of 27 WTJ clients in 2019 for whom data was available²¹⁸ and of 39 WTJ clients in 2020, almost 80% did not have stable housing. The following table highlights the complexity of issues experienced by clients:

²¹⁸ As noted, in 2019, 29 women accessed the WTJ program. Complete data sets relating to the issues experienced by clients in 2019 were available for 27 of the 29 clients.

Table 3 Issues experienced by WTJ clients (2020)

| Issue | No. of clients experiencing the issue at referral (2020)* | Proportion of WTJ clients (2020) |
|--|---|---|
| Unstable housing | 23 | 70% |
| Family violence (current) | 23 (5 unknown) | 67% |
| Family violence (past) | 22 (10 unknown) | 64% |
| Children Plus involvement of Child Protection | 19 (6 unknown) 18 (i.e. only one client had children in her care) | 57% (and 55% with child protection involvement) |
| Mental health | 30 | 91% |
| AOD | 31 | 94% |

* Out of a total 33 WTJ clients, with 39 referrals made to WTJ in 2020.

In 2020, the majority of WTJ clients (82%) needed support with at least three of these issues, with almost half having support needs across all five areas of housing, family violence/trauma, child protection, mental health and AOD. Available data for women who accessed the program in 2019 told a similar story, with 69% of all 2019 WTJ clients needing assistance with at least three of these issues (20 out of 29 women). All of this suggested that the support provided through WTJ had been able to reach some of the most vulnerable women in the community since it commenced operation.

In 2020, bail applications had also been successful for women where the most serious charge was: Unlawful assault (2); Reckless conduct endangering life (2); Intentionally causing injury (2); Armed robbery (1); Aggravated burglary and Intent to assault (1). All other most serious charges for other WTJ clients primarily related to theft, receiving stolen goods, substance possession and other more minor offences. A similar pattern of successful bail applications in terms of the most serious charges was evident among 2019 bail applications.

Irrespective of the type of charge, most WTJ bail applications (46/68; 68%) across 2019 and 2020 were required to meet the higher threshold for bail (exceptional circumstances), as the following table shows.

Table 4 Category of bail for WTJ clients

| Bail threshold | 2019 | 2020 |
|---------------------|---|--|
| Exceptional | 19 (16 successful at first bail app, 1 unsuccessful, 2 unknown) | 27 (21 successful at first bail app, 6 unsuccessful) |
| Compelling | 0 | 4 |
| Unacceptable | 0 | 2 |
| Unknown | 10 | 6 |
| Total | 29 | 39 |



Long term change is difficult

While bail applications had a high success rate, FO data suggested that supporting women to stay out of jail following a grant of bail was intensive and challenging in terms of keeping up contact, with women sometimes disengaging or falling out of contact. Nonetheless, as noted earlier, the fact that women were out on bail rather than on remand provided FO with the opportunity to deliver women with support and connect them with the services they needed.

The numbers of women with more than one period of engagement with WTJ showed that WTJ clients moved in and out of remand/on bail. This was due to multiple issues for which women needed support and which impacted their ability to maintain bail; as well as women being remanded/breaching bail for minor offences, as the literature scan explored.

Certainly, all practitioner interviews noted that “keeping out” was more of a challenge than “getting out”, particularly as a result of the multiplicity of systemic issues impacting women. Housing was identified as a need for the program to be able to improve longer term outcomes.

FF ... Why are we criminalising mental health? That prison is a mental health service is incredible. We could have longer term programs but, other than that, how do we decarcerate and build community capacity? Women just want to belong...– one [client] said ‘I haven’t felt like a woman for a long time until now’. If so many responses are leading to criminalisation, shouldn’t we respond at a different place? [WTJ provider 09].

FF In terms of keeping her out, I think that’s a much more complex situation... that women keep coming back to the same supports and the same lawyers...I think that’s a testament to how it works well...I think sometimes we have to recognise that that’s a journey you go on and that sometimes when you’re criminalised, sometimes the systems work in a way that keeps you criminalised, so I think it’s hard to put too much weight on the fact that women don’t stay out of custody with respect to how well our program is working. But I definitely think we’re better at getting them out than keeping them out [WTJ provider 05].

3.2.3 What were women’s legal outcomes?

Sub-question Finding: Women’s legal outcomes were significant, with 76% of women across the evaluation period being granted bail at the first bail application.

Substantial rates of successful bail outcomes

A total of 52 women had been granted bail at first application from 2019-2020 (out of 68 referrals), as evidenced in the table below:

Table 5 No. of WTJ clients released at first bail app:

| | 2019 (12 mths) | 2020 (7 mths) | Total |
|----------------|---------------------|---------------------|-----------|
| Yes | 23 (16 exceptional) | 29 (21 exceptional) | 52 |
| No | 4 (3 exceptional) | 8 | 12 |
| Unknown | 2 | 2 | 4 |
| Total | 29 | 39 | 68 |

The evaluation data indicated that women accessing WTJ were supported in the community to maintain bail, and women who engaged with WTJ were being connected to necessary supports.

FF *100% [this program is helping women to get out on bail]! Being able to call a service and say that this women should get out of custody, today – that is very rare. Also it is great for my own mental health, working with this relationship – it's so great to have it. We are fighting in court, fighting for services out of court and for services to take a chance with a client, everything is a fight and so this means so much. [The outcomes are] reflective in the way WTJ is able to engage with clients, in a way that CISP would not engage. When I first started working with it, I couldn't believe it, honestly, it's amazing [WTJ provider 06].*

Where clients had been supported to apply for bail on two or three occasions, most of these were also successful. There was also some evidence to show that Magistrates were becoming more familiar with the program, leading to better outcomes:

FF *It's been an evolution ...Letters provided by FO are very good. At the onset, courts didn't know. But now, the Magistrate recognises it and has taken on their advice/input positively, especially during COVID. [Case manager] – her name is flying around court, they are recognising people from the project. ... This has been a real difference (in 2020) because Magistrates know LACW but the association with WTJ gives them more comfort. The rehab process for vulnerable clients, it reassures them. [Int 08] In terms of the number of women LACW manage to get out on bail, I don't know off the top of my head, but my sense is that it's really remarkable rate, especially given how difficult it is to get people out on bail...that definitely has got an impact on the woman herself, but also a systemic impact in terms of... having some kind of trust from the court in terms of delivering a service that we promised to deliver.... [WTJ provider 05].*

3.2.4 What were women's support/social/non-legal outcomes?

Sub-question Finding: Women's non-legal outcomes were also significant, with the intensive focus of the outreach provided by FO assisting women to gain much needed support, albeit against a backdrop of a service system which was further stretched in terms of assisting women because of the impacts of COVID-19.

Complex, intensive work

WTJ project partners observed that work with criminalised women was highly complex, intensive and something which needed to be sustained over the longer term. WTJ clients were provided with intensive outreach, which meant that FO could contribute to women's non-legal outcomes, such as finding stable accommodation; helping them to attend appointments; bringing women to court; and providing women with practical and financial assistance, such as travel vouchers, phone and SIM cards, and food vouchers.

Once out on bail, women in the community received intensive outreach from FO, including referral for AOD services, brokerage, attending court and DPFC, housing referrals, mental health assessments, transport (including transport to court), court letters, housing applications, income assistance/Centrelink, food vouchers, travel passes, support for appointments, support for reunification with children; and support to access counselling.

The WTJ case manager from FO engaged with all clients using various modes of communication: text, phone and, even during COVID-19, in person, where that support was needed. An analysis of case files (32) showed that the WTJ case manager provided a wide variety of support, touching on all aspects of women's needs in the community, including communication with other services (support provided for 30 clients) and with a lawyer (29 clients). Table 5 below shows the kinds of support which the case manager provided and the number of clients who received that support.

It is important to note, however, that it is very difficult to quantify outreach of the intensive nature provided by FO. For example, data provided by FO indicated that, for one referral alone, it took one case manager 77 phone calls to arrange it successfully. The following table should therefore be read in the context of what “communicating with other services” means in terms of resources, time and persistence.

Table 6 Kinds of support provided to WTJ clients in community

| Type of support provided | Number of clients (out of 32) |
|---|-------------------------------|
| Communication with Lawyer | 29 |
| Communication with friends/family | 22 |
| Communication with other services + govt agencies | 30 |
| Communication with police | 6 |
| Attending court | 22 |
| Attending prison | 19 |
| Attending appts with client | 18 |
| Transporting client | 7 |

Equally, it is important to highlight the types of practical and financial brokerage provided by FO, which included travel vouchers; supermarket vouchers; phone or phone credit; support for accommodation; food and clothes; parking; and other assistance including medical services; lap tops; an air conditioner for a new client with a baby; and a new bed.

All WTJ practitioner interviews noted the evidence of non-legal outcomes for women engaged with WTJ. Some of the outcomes for clients included health and child protection outcomes, as discussed below:

FF *I took her to her pre-birth meeting with the hospital. Got her in contact with St Kilda Mums and a bigger room in a hotel – and we met at the pre-birth meeting. She was refusing to pick up the phone from Child Protection but she could tell me stuff and she gave me permission to say her side of it. There was concern, eye rolling from them – but I engage in education of different services, so that’s what I did in that case. Her mum came down for 2 weeks to supervise, and her Child Protection supervision was no longer required – they will just get some more screens from her. So that was a really good outcome. I went and visited them and she was so thankful and so happy – in her head she was frozen in fear because of her kid going to be ripped away from her, so she was really grateful, she said “you’ve been there for me” [WTJ provider 03].*

FF *Another client had already had her 4 children removed, and was pregnant with her 5th – she was likely to have her child removed again. So we could see that Child Protection might have been an issue. [Admin support] does the initial contact, and makes contact about 4-5 times. About 5 weeks later...she contacted us during COVID – she was pregnant and homeless, so we helped her with that ... she was not getting drug screening. I tried to figure out her hesitation – and reckoned she didn’t trust Child Protection. So I was liaising between her and Child Protection – the only antenatal check-up she actually had was the one I took her to [WTJ provider 03].*

The following observation also demonstrates where FO and LACW were successful in supporting women with other matters, preventing issues from escalating for clients by providing early support:

FF For example, [the client] had a number of very complex things happen – her department of housing property was trying to evict her, and immediately [Case manager] phoned me. I got some preliminary advice and [Case manager] was able to refer her to a tenancy lawyer all in the course of a day. The client still has to resolve the matter but that client had an immediate and significant need in terms of the eviction – and we were able to get her legal and non-legal answers... Also she's been able to get family law advice, so it is satisfying working in tandem to be able to address so many complex needs and refer her to the right place or support [WTJ provider 06].

FF I had one woman, when we first met, she talked about trauma, offloading her mental trauma – but now she's made a statement to a social worker, she's made very big step in terms of healing. ... having that connection, because this client has lots of anxiety – [Case manager] will just stand outside and have a chat, the client is comfortable in her own setting, in the garden, and trusts [case manager] to divulge [WTJ provider 08].

FF ...with WTJ I can say just leave criminal charges to me, and they'll happily tell [case manager] 'these are my other needs'...[case manager] asks about what we can do to help her, like linking her with a child protection lawyer and getting connections established between the client and the lawyer. I just don't know as much about housing as social workers. I think CISP like it too when they know WTJ is connected – knowing the outreach worker, so they can contact the client [WTJ provider 08].

COVID-19: Supporting women during COVID-19 required more intensive outreach

As noted above, during COVID-19, FO was one of the only services providing intensive, face to face outreach to support non-legal outcomes.

Also [case manager] is still able to meet even in person during restrictions. I think the client feels that her complex and legal matters are being supported. She seems a lot calmer in terms of her housing, she's still got some trouble with her kids, but having the relationship with [Case manager] is very significant to her and likely to make a significant difference to her and her outcomes [WTJ provider 06].

COVID-19 also impacted women who were on bail but who had to wait a long time for the adjournment. This was a challenge for making sure that the women maintained bail:

The court element is difficult now because matters are being adjourned for number of months – it requires more assertive outreach and to make sure the women stay engaged [WTJ provider 10].

3.2.5 Did women involved in the program gain strength, heal and grow?

Sub-question Finding: Noted at the outset as a limitation, COVID-19 impacted the ability for the evaluation to interview WTJ clients, so it was difficult to answer this question with evidence from clients themselves. That said, evidence across the evaluation suggested that WTJ had supported strength and healing for some women, noting that this occurred against a backdrop of multiple needs and structural disadvantage which meant that measures of “success” needed to be understood in different ways. On occasion, survival was itself a significant outcome.

Differences made by legal and outreach support

Both WTJ client interviews provided some insight as to how WTJ may have helped contribute to their healing and strength. This was the case for both clients, even though one had limited interaction with FO and the other had limited interaction with LACW. In both cases, the long term support from a LACW lawyer (in the former) and the FO case manager (the latter), were acknowledged by the clients as having contributed to their improved situation. This is evidenced in the following client experience of LACW support:

FF *I was a DHHS child myself, experienced domestic violence all my life; then as soon as you have a criminal history, the change is on you completely. They didn't want to give me bail ... – then I got released [due to LACW] – and my milk dried up, because DHHS wanted to take him to my mum's. [LACW] linked me in with [another lawyer] and she straight away got DHHS out of my life. They couldn't justify separating me from my son prior to him being born, I've proven myself [Client 01].*

A similar story was provided by the second WTJ client, who highlighted the positive change she had experienced as a result of her support from the FO case manager:

FF *I had someone to talk to; she wasn't judgmental. She had a really good personality. She came to my CISP appointments; she'd take me shopping; she looked for different services and I got to see a psychologist for my mental health. I had not had that before [Client 02].*

Despite their progress with the support they had received, both clients also reported feelings of powerlessness due to the ongoing involvement of the criminal justice system:

FF *There's only so much you can do – they say if you do this and this and this. And I've done everything they've asked of me. ... It feels like what I used to have and sometimes it just doesn't feel good enough [Client 02].*

FF *Prosecution wants me to do more jail, but I'm out here, I'm doing all these programs and they say we still want to lock her up and do more jail. If I continue to do this I hope they give me a CCO and see me off [Client 01].*

Although longer term data on clients' legal outcomes was not available, the case files revealed an example of one woman who received a CCO due to support from WTJ while on bail.

FF *...there are a number of women starting to come back for the service – because every time you come back, you make a little progress – their time out of custody will be longer. ... Having FO present in court, then providing transport for Corrections and court dates, these are significant outcomes on practical issues, so warrants are not issued and they are not re-remanded [WTJ provider 01].*

As noted above, a consistent theme emerging from the evaluation interviews was that outcomes needed to be framed within the context of what "success" looked like for women as individuals. Each individual experience was different, which meant that healing and growth was different for each woman.

Although staying out of prison was a positive outcome, therefore, WTJ practitioners noted that, for this particular cohort of women, *staying alive* was also a significant outcome. As one WTJ practitioner noted, the cohort supported by WTJ had a high incidence of suicide. As a result, having a period without any deaths was therefore significant:

FF *There has not been one woman I know of who has passed away – a few have said 'I'll kill myself' but that's quite significant, to have no deaths when women are fresh out of prison – it is really significant. Yes the outcome is to be out of jail, but actually the outcome is that she is out of jail and that is the only time that person has been able to get out of jail. Other women have other issues, but she's making connections – she's still alive – she's ringing – we need to lower the bar as to what success looks like for these women – because if we look at: Is she still alive? Is she still connected? Is she still out of prison? Then she has a better chance of staying out of jail. The nature of the work though is that, in the long term, if they are successful or staying out – or perhaps we don't find out – then we never get to see what happens in the long term [WTJ provider 03].*

Tragically, however, during the life of the project one of the members of the WLG was re-incarcerated and then died upon leaving prison.



The risks for women who had experienced trauma, abuse and subsequent criminal justice contact which were constantly present reflected the high stakes to which WTJ providers were attempting to respond, and the sensitive and difficult contexts in which WLG members were participating in the work of the group.

One WTJ practitioner also pointed out the challenges inherent in trying to help women to heal and grow, when the system as a whole was not supportive of that kind of growth:

FF *I just found that many women don't want services in their lives, I think that made things harder for them because you're under more surveillance and there's more expectations. But I do think it's helped get them bail. [WTJ provider 04]*

3.3 Process

This section answers the question:

KEQ 3: To what extent did the project deliver integrated, timely and quality support to women on remand or in the community and subject to some form of conditional release?

Summary Finding: Challenges arose in relation to initial program implementation in 2019, which affected timeliness of referrals and support in some instances. This included challenges in relation to staffing changeovers which saw some connections with clients decline during this period.

However, an interim evaluation report provided by the CIJ to the WTJ project partners at the end of 2019 as well as improvements made to integration of the CSP in 2020 meant that, by early 2020, LACW and FO were working together in a very timely manner to support women. Strong evidence across the evaluation pointed to FO and LACW consistently providing integrated legal and social support (“wrap around support”) for clients. There was also strong evidence of lawyers and the case manager working together to identify and access the most appropriate, immediate support for women’s needs.

Further, there was strong evidence of women being provided with quality legal and outreach support, that would otherwise not be available to these women *but for LACW and FO*. This was especially true during COVID-19, where both organisations maintained their commitment to supporting women to be granted bail and providing intensive outreach.

Overall the evaluation found that the program was not only operating very effectively by 2020 but could be described as exceeding expectations during what was a particularly difficult time as a result of COVID-19 restrictions. A focus on continuous improvement and learning, adopted informally at first, was increasingly cemented.

3.3.1 How timely was the legal and social support provided?

Sub-question Finding: Some staffing challenges during 2019 impacted timeliness of referrals and support. However, adaptations in 2020 not only saw improvements in timeliness but improvements against a backdrop of significant service pressure due to the impacts of COVID-19. Important to note, the CSP service provision was described as particularly timely in comparison with the service provision provided by the court-based Court Integrated Services Program (CISP).

Early implementation challenges

The WTJ program experienced challenges with initial implementation in 2019, which affected timeliness of referrals and support in some instances. Some key issues with referrals in 2019 included staff changes at FO and FLS, and resulting uncertainty from LACW as to WTJ capacity for referrals. These challenges were noted in an interim evaluation report provided by the CIJ to the WTJ project partners at the end of 2019.

Adaptations and improvements made to WTJ in 2020 meant that LACW and FO were working together in a very timely manner to support women. 2020 interviews and program documentation showed that WTJ partners had adapted the program to improve understanding around referrals, as well as to improve project management/communication. For example, referrals to FO from LACW identified the kinds of supports which were required, in turn speeding up the process for connecting the client with relevant support.

Another example was that, prior to COVID-19, the FO case manager was arriving at court almost immediately to support clients. During COVID-19, the WTJ case manager responded to urgent texts to provide relevant supports and support letters.

FF *I have no hesitation to contact her, we don't leave anyone hanging out to dry. If we send emails, we know to respond as appropriate – if it is urgent, we text and we respond. We are working together very closely because we are prioritising the need to deal with it as it comes up, we give an immediate response [WTJ provider 08].*

FF *One woman was not responding to calls or texts – and she needed a two line referral – they ring me and 15 minutes later, she has a court support letter. I carried on work with the woman straight after her release – it can be just one line [WTJ provider 03].*

One survey respondent also made comment about timeliness:

FF *Case management was extremely helpful, as was appropriate and timely referrals to other organisations. They don't just finish with the person once they get them bail, they then help with the range of issues that led to the offending and assist with making sure that the person doesn't get back in trouble [Survey respondent].*

One of two clients also indicated that she saw the legal support as very timely, noting that she had an excellent relationship with her lawyer:

FF *...[LACW's] just a phone call away – very flexible ...[WTJ provider 02].*

Timely when compared with CISP

In particular, some participants noted the timeliness of WTJ when compared with CISP. Rather than having to wait days for an assessment, FO was able to conduct same day assessments.

FF *LACW's service delivery model is really responsive...which is really important in that initial time period when someone is being remanded...So if I compare it to CISP...it's not necessarily a fair example, but ... usually there's a fair bit of delay in being able to make a time to assess the person, produce a report, provide it to the court [WTJ provider 05].*

FF *CISP – there are wait times, 1-2 weeks for assessment. But WTJ is immediate – we are often able to get an assessment conducted in the cells, within an hour. It's incredible. I've never worked with that before. My time is freed up and... it carries more weight if referrals are made by a social worker [WTJ provider 06].*

FF *It's more hands on and assertive than the CISP model, it's absolutely proving what is really critical to women's needs and experiences...There is an extraordinary amount of work by the case management component of the program. ... if someone needs crisis accommodation, [administrative role] can do the ringing around. It's been invaluable and the role has paid massive dividends. Now that the wheels are turning really well, we had a brief with [funder], they asked a question about our COVID-19 response, and we were able to talk about our response [WTJ provider 10].*

FF *... this model is much more integrated [than CISP] and much more responsive and there's a quicker turn around....Those relationships are there. They speak the same language. They know what they're looking for and how to work together and they can support the women pretty seamlessly....[WTJ provider 05].*

Timeliness an important feature during COVID

Notably, this timeliness was able to continue during COVID-19, with FO's ability to transport women a very important factor in supporting women to be granted bail:

FF *Project is really getting traction right now, all services are pulling back by way of COVID – our ladies require outreach. No outreach left elsewhere but [case manager] is still providing outreach where necessary, even in Stage 4. I can call her and say 'I've got a bail app' and I'll get a response in 10 mins. I'll ask, is there something you can do to help? She's a recognised community worker so is able to do that transport. Sometimes it's just a small amount of service to facilitate getting someone out of custody [WTJ provider 08].*

3.3.2 How integrated was the legal and social support provided?

Sub-question finding: Early implementation challenges impacted on integration in the program establishment phase during 2019. These challenges were identified and addressed, leading to a high level of trust, integration and support across disciplines, which was particularly evident during COVID-19 restrictions.

Early implementation challenges

WTJ practitioner interviews in 2019 indicated that WTJ legal practitioners and social workers were positive about their working relationships; confident in the partnership and their ability to work well together; and motivated by shared aim/goal to support women to stay in the community. There was also a high level of trust between delivery organisations.

However, organisational changes at FLS (as the WTJ project manager) and FO had affected integrated WTJ support during the first 12 months of implementation and had contributed to a slowing down of referrals in mid-2019. This meant that integrated support was not being provided consistently, as evidenced in the following example provided to the WTJ project partners in the interim evaluation report:

FF *The client was initially referred and working with the Flat Out case manager. The client got bail to go on WTJ. But then there were staff changes – and a new worker had to pick up, the connection was lost. Then [FO] had a duration without a social worker; the client re-offended. The new staff member reconnected, built a relationship – it was very clear that when the client dropped off, she reoffended. She’s still on bail now but I’ve not heard of her reoffending [WTJ provider 08].*

Factors were subsequently identified to improve integration, including:

- better triage;
- strategic planning around how best to provide wrap-around support;
- communication between all three services;
- shared documentation;
- central data collection; and
- clear criteria about what each service was providing and who would be involved.

As one interview participant put it, “centralising a bundle of data, the backend stuff” was identified at the time as an area that could help improve integrated service delivery for the women.

FF *... it is resource intensive, you need to take the time to communicate and be responsive and be truly integrated. There’s the relationship from services but also at a more senior level, and all needs to be supported by strong processes - ... the more opportunities to be in communication together the better [WTJ provider 01].*

2020: learning and improvements in implementation

Consequently, in early 2020, the three partners addressed gaps in integration by ensuring that regular meetings were held with all three partners. Facilitated by FLS, the sharing of information and more regular communication at regular meetings were identified as contributing to improved integration after these changes.

The improvements/adaptations made in 2020 strengthened the integrated response for clients. In 2020, referrals significantly increased, even during COVID-19 and with reduced capacity (see KEQ 2). Changes in interview responses from WTJ project partners between 2019 and 2020 indicated that, as a result of the adaptations, FO and LACW were better able to provide integrated support for clients.

FF *We have really improved the relationship with LACW (since 2019). The lawyers are just wonderful, we are relying on each other a lot. One good thing about being the only worker – I know everything about everyone, so our working relationship has really strengthened. We meet fortnightly, and discuss every woman ... – last week [LACW] said ‘I feel I understand so much more about the community support side of things - I can explain to the court and answer questions better’. She said “I never realised how much work went into making those connections with services” [WTJ provider 03].*

There was also strong evidence of the LACW lawyer and FO case manager working together to identify and find the most appropriate, immediate support for women. The FO case manager and LACW lawyers indicated that they communicated regularly outside of the meeting process:

FF *... partners have been quite remarkable in 2020 – even if [we] have to try 2-3 times, meetings happen. It’s been much more possible to move forward [WTJ provider 09].*

WTJ project partners acknowledged that the integrated support provided through the CSP stemmed from strong communication and interpersonal relationships between LACW and FO, with project management support from FLS.

FF *We have been working with LACW better and better over time and we understand how it benefits both of us. So women who don’t have a phone will often get in touch with the lawyers because the legal issue is the motivating issue for contact. Lawyers will say – [Case manager] has been trying to find you to give you food vouchers, or it might be women being taken in on remand and on the second time they will engage. ... We had a case of a woman being remanded yesterday for stealing a bag of chips and not wearing a mask – she had just been bailed two days ago and then remanded yesterday – so I got her a phone, most don’t have ID but you need ID to get a phone – so LACW got us a phone – and now the woman is totally on top of what her case plan is, the lawyer wants to know and is totally on top of it....I’m really enjoying working with lawyers and courts so closely – it is so good seeing each of our work and seeing how we complement each other [WTJ provider 03].*

They also reflected on what key elements of integrated service looked like in practice for the three organisations. Key themes were that integrated support needed:

- open and good communication;
- rapport and interpersonal relationship between workers;
- shared philosophy and goals; and understanding of each other’s roles.

All partners acknowledged the challenges in a three way partnership, as well as the benefits.

FF *The design of project partnership meant that project management would sit outside of service delivery – which meant that it was difficult to see what was happening in service delivery. ... For those delivering, it means project management is disconnected from them. And it was a lot of work just to do the coordination because there was no incidental contact with service delivery – ...it was hard to be involved without being an impost. That’s just the structure [WTJ provider 09].*

FF *...open communication...is really important and understanding the roles of the lawyers and social workers play and also that both services are really committed to the same goal which is centring the women’s needs in their approach...[WTJ provider 05].*

FF *Having a close working relationship where people are open to discussing issues and challenges, because it is tricky and hard to navigate. Think it’s also very important that clients see a unified approach. Tandem, respect, communication. So much of the system is adversarial, so it is important to be able to work together [WTJ provider 06].*

FF *When individuals are aligned, it makes a huge difference. It requires resources to be invested at the front end to save money down the track – but it is not a huge investment when compared to costs down the track [WTJ provider 10].*

Participants also noted the importance of being mindful of the differences in terms of focus and confidentiality between professions:

FF *...there's a different focus for both professions and sometimes that can lead to a tension but if there's proper communication and a commitment to centring the woman then you end up with a situation where you can actually both support her... [WTJ provider 05].*

FF *There are differences in how confidentiality is sorted. Report writing is critical. Non-legal working in a legal context, there needs to be...joined up collaboration. [WTJ provider 09]*

FF *I can be a lot less guarded with social workers who are not answerable to the court in some way. For example, their main roles in the therapeutic court – it can really require clients to forego a lot of general confidentiality and privacy, there needs to be a willingness to forego that to access support. So I can be guarded with social workers who are employed by the court because of my duty to client [WTJ provider 06].*

Ultimately, the integrated support was seen by both LACW lawyers and FO as leading to better outcomes for women. It was also highlighted as helping practitioners in their own work:

FF *Working with LACW and FO...it absolutely makes a difference when I'm in court...A lot of the time, I'm not just asking for CISP – it adds a layer through WTJ –...With CISP, you need to make applications before you get to them. But we have women who are vulnerable, with cognitive deficits – all of this expectation on the woman to organise all of that. But FO can coordinate appointment times to make sure the client gets there with a taxi voucher, or provide direct transport [WTJ provider 08].*

3.3.3 Were women provided with quality legal and outreach support?

Sub-question finding: For many criminalised women, experiencing legal support of any kind is a significant outcome. The gender responsive legal assistance and intensive outreach support provided by WTJ, however, was of particularly high quality, limited only by the restrictions of the wider support system.

'But for' WTJ support

The evaluation found strong evidence that women were being provided with quality legal and outreach support, that – *but for LACW and FO* – would otherwise not be available to these women. This was especially true during COVID-19.

FF *Linking in with [WTJ] has definitely surpassed my expectations. It has made such a huge difference to my working life...and to the life of my clients. People are getting out of jail, which means so much. Clients have so much going on, I think programs like this that try to address all of those things – I am not aware of anything like it [WTJ provider 06].*

Interviews and case studies showed that LACW and FO workers were going to great lengths to provide quality ongoing support to women. As one client reported:

FF *[LACW] is amazing – I talk to her like she's my best friend....She connected with me, understood where I was coming from, agreed about going to trial and she's very determined to get me acquitted – I was gobsmacked. She follows up with me...just a phone call away – she's very flexible, she's great – My lawyer before was really arrogant, not committed, not connected. [LACW] gets to know me, asks me questions, doesn't lie, straight to the point, committed. Other lawyers are not listening whether I like it or not. [LACW] explains it, straight to the point [Client 01].*

As observed above, quality legal outcomes for another client did not necessarily correlate with a positive view of her legal experience. This client noted that, even though the WTJ lawyer helped her to secure bail, she did not see any significant difference between earlier support provided by duty lawyers, the main reason being that she felt that the legal process gave her no voice.

FF *I understand they know what's going to happen but give us time to understand 'why' and 'what' is going on...it makes you feel hopeless [Client 02].*

As discussed in KEQ3.3, the same client was still supported to maintain bail in the community and noted that she had received extensive quality support from the FO case manager.

Participants all noted that FO provided more than case management, being ongoing, intensive support, aiming to help women stay out of jail.

FF *... I was working with a woman with multiple needs, working with her WTJ worker, and I had never worked with someone as responsive...[case manager] has followed up with every single aspect of her legal matters, actively progressing referrals, so I can focus more on criminal charges which is to massive personal and professional benefit. Getting linked in with appropriate services... it's very time consuming [WTJ provider 06].*

Quality limited by available services and broader system

Irrespective of the quality of the WTJ support, all evidence strongly supported the finding that the quality of the support provided was limited by the wider system in which the program operated. For example, both WTJ client interviews described their experiences of legal decisions having to be made in a moment. As noted above, while one client understood the need for her lawyer to act quickly in order to respond to changed circumstances in the court, another client explained that she felt rushed, which impacted her ability to have a say.

Another limitation on the quality of the program was the lack of quality support service and housing options, especially during COVID-19. During COVID-19, there were limits on the WTJ case manager's ability to refer to supports because many services were operating at reduced capacity or not at all. Nonetheless, FO continued to provide intensive outreach and face to face support where safe and possible, even where other services were not doing so.

FF *[WTJ] has done very well in assisting....getting women out of jail. Right now, outreach provided through WTJ is unlike anywhere else. It's proven actual support. [Case manager] offers face to face when it is safe to do so. It could be just... dropping off vouchers, to a client's room, and they are not expecting that. ... [WTJ provider 08].*

FF *During COVID – not being able to transport women has been a challenge – those chats in the car are often the best times to build that relationship.... Our time for face to face is less, but we do it – outdoors and at a safe distance – but it is really depending on where they are living. Getting colder too and it's in public. Still every couple of weeks, I drive around and deliver things – my work car is now a pantry...[WTJ provider 03].*

The fact that the quality of wider services was so poor or lacking was noted by some participants as meaning that chances of criminalisation for women were increased:

FF *[FO] are the only options that are out there at the moment for women who are distressed. They do appreciate being able to vent and to have someone who will listen and not judge, not kick them out. [WTJ provider 03].*

FF *... Chances of criminalisation are increased, because if you offend on bail, you automatically get remanded. They are completely alone, scared shitless, all sick in winter...[clients] have said "FO are the only ones I can talk to" the only ones who understand and don't judge...housing services are not answering the phone. [Clients will say] "I will ring for 15 days, and it takes money for every call. FO is the only service that I can get through to" so women identifying that – since dry up of funding, I've had to say I can only offer A or B, but both are shit options [WTJ provider 03].*

3.4 Leadership

This section answers the question:

KEQ 4: To what extent did women involved in the project have opportunities to lead its design and operation and/or build their own skills?

There are three sub-questions for this KEQ. The evidence was drawn largely from the WLG activity log; WLG interviews and interviews with WTJ program partners, including WLG coordinators, as well as feedback on the evaluation findings from the WLG members. The first part of this section addresses wider contextual considerations before moving on to address the relevant KEQs. It includes references to another project and an advocacy campaign in which the WLG members were invited to be involved by external organisations.

Summary Finding: The original design of the overall WTJ project was premised on women with lived experience having direct input into all aspects of the program, including the CSP. While the WLG members had input into the design and implementation of the WLG and in systemic advocacy (ie the first and third objective of the project), initial challenges meant that they were not able to have input into the operation of the CSP (the second objective), in part because of pressures on CSP staff and challenges in coordinating information exchange. Rather, the focus in the early stages of the project was on providing support for the members to form a cohesive group, as well as providing training and leadership opportunities.

As a result of these training and leadership opportunities, WLG members subsequently became involved in many WTJ advocacy activities throughout 2019 and 2020, including providing input into submissions; delivering presentations and consulting; or establishing networks with various organisations. The WLG was provided with strong, ongoing support by the WTJ coordinators, which WLG members recognised as critical to their cohesion as a group. Despite challenges of COVID-19, WLG members felt empowered and ready to take ownership and guide their own direction, including to provide more support to peers.

The skills and strength women gained through their participation in the WLG were clear right across the evaluation data – skills and strength which were particularly significant in light of the newness of their work; a lack of previous experience in terms of systemic advocacy and office environments; and the fact that the members of the WLG were participating in the group against a backdrop of ongoing stigmatisation and challenges in their lives.

3.4.1 To what extent were women involved in the planning and delivery of the project?

Sub-question finding: The involvement of women in the planning and delivery of the project faced some early challenges. Challenges in terms of the WLG establishment, as well as the CSP operation, functioned as a barrier in terms of the WLG's involvement in the CSP component of the project. However, women in the WLG were involved in the development of the overall project, the operation of the WLG itself, as well as the project's systemic advocacy activities. After initial implementation challenges, WLG members were also ready to take ownership and had demonstrated marked resilience in moving the group program online.

Early challenges

As noted above, the original design of the WTJ project was premised on women with lived experience having direct input into the CSP. This was in the expectation that women with lived experience would not only inform the design (which occurred) but the delivery of the overall WTJ project. As indicated by the timeline included in the report's Introduction, however, the WLG needed to adapt to a considerable amount of change, both in membership and direction of the group – with the group's adaptability over the life of the WLG's existence seen by members as a considerable strength.

In the early stages of the group during the first half of 2019, the WLG members were keen to be connected with women referred to the CSP, as well as with women who had been released from prison or who were in prison. This initially proved complex for a number of reasons, including the fact that it was difficult for women who had been incarcerated to re-enter a prison or to have contact with other women who were on a community corrections order or on parole.

Further, many members of the WLG did not feel ready to be working with other women who had been released from prison, as they were aware of how challenging this work would be and needed a great deal of support themselves. Involvement in other external projects also proved confusing and contributed to the challenges which members of the WLG were experiencing.

Members of the WLG and WTJ coordinators all acknowledged the early challenges in establishing the group and in being drawn into other projects unrelated to WTJ. They also noted that members required different levels of support and training before embarking on the next step.

As indicated above, WLG members were initially uncertain as to their role and their level of control over their involvement with other organisations. Interviews reflected a theme around a lack of clear boundaries for the group, which meant that, in the first six months of 2019, they were led into other projects over which the members felt they had little control or say.

FF *At first it was really hard to wrap our heads around the service structure and the politics behind the group – the sessions were short – two hours a week...we were all hyper-vigilant and excited – the facilitator was trying to take us in a direction... all these boundaries that we'd continually hit...it was a real ongoing challenge of actually finding the purpose of the group. It's still organic and continues to evolve as time goes on. Last year there were two other projects... – using the same timeslot... it became a real mess – all intertwined into one – what we did [in one group] was discussed [in the other] and vice versa – they were labelled as different but there were not many boundaries.... We were also doing a campaign alongside that – it was a complete flop – it wasn't designed by us, we were asked to come along, and we then realised that we were supposed to lead it even though we had no idea about it – it was just a disaster [WLG member 01].*

FF *...the WLG come into contact with lots of different people and I think that was confusing and frustrating ... so that was I think really hard for the group to adjust to. ... I think it meant that the group members couldn't separate between what was WTJ work and [another organisation's] work and so I think the lack of boundaries and clearly defined work between those projects was a really big disruption [WTJ provider 04].*

FF *...when this project started, it was understood that the WLG would be working quite specifically around bail and trying to inform the project workers and the case managers, all of that wasn't obviously possible and really that comes back to ...not assuming that the women were able to understand – ...some of them could understand their experiences, but in terms of being able to understand the political landscape that that's part of, is another thing...[WTJ provider 04].*

Interviews indicated that the group had nonetheless been given the support it required to focus on building foundations for members to learn about themselves and their own experiences; to understand how they worked as a group; and to provide training and leadership opportunities:

FF *WLG formation – it was a really exciting and positive aspect of project. 10 women connected closely – 6 were regulars. We had strong attendance. Lot of members came on relatively early in post-prison lives, so regularly faced a number of challenges and impacts on ability to contribute. It can take bit of time to move forward with group and also stabilise energy in the room. ... Also there was a kind of 'grabiness' from whole parts of the system – where did we want to put our efforts? It was not always easy for them to connect to system. How to make sure our time was well spent and we had numerous requests – that was tricky to manage. [WTJ provider 01]*

FF *[The project coordinator] met with women who had been in prison and collected detailed information about what support on bail should look like; their feedback fed into the program design... Some of that work was disrupted by [involvement in another program] that got started and not all of them were in the right place for that [WTJ provider 01].*

FF *I had been hoping that it would be a group that were selected rather than thrown together – there's no locus for criminalised women without breaking people's privacy. I was expecting that it would be an issue – and it was – it was ramshackle and chaotic. I saw fairly early on – there were issues at a staffing level – several projects were mixed together – and people were not sure how to manage women with lived experience. It was seen from an ideological and thinking point of view - everyone had to be brought onto the same page. [FLS project coordinators] came on board and they were very much about getting some structure and order - some order had to come out of the chaos. All of it changed – the conduct in the group improved – the whole thing of women working with women – that became a focus and I saw that evolve over time [WLG member 3].*

Following the WLG's involvement in other projects, in mid-2019 the WLG decided to focus primarily on building the skills and capacity of group members. Following that decision, group members began to feel much more satisfied, as the complexity of the group work itself demanded considerable time and focus. For example, members described an ongoing tension between flexibility and structure, as well as between WLG members driving the group's agenda - which the group described as leading to lots of enthusiasm and ideas, but little direction or progress - and having structure and boundaries imposed on the group, which could lead to feelings of being told what to do. This remained an ongoing subject of discussion within the group, with the support provided by WLG coordinators acknowledged by all WLG interviews in helping the women to come together and stay together, especially during COVID-19.

The WLG members also spent considerable time identifying appropriate training and capacity building activities for the group; working to address individual members' support needs; as well as participating in a considerable number of systemic advocacy activities, discussed further below. The WLG members all described their involvement in the group as a significant learning curve, with the novelty of the work being something which all involved – including group members and coordinators alike – needed to navigate.

One area in which the WLG members were not as involved as they had hoped to be, however, was in the delivery of the CSP and in the peer support work which they had originally planned would eventuate as a result of this connection. Group members noted that, because of their workload, it was difficult for the LACW lawyers and FO workers to find time to meet regularly with the group. Further, the group members indicated that the WLG coordinators had not been able to facilitate a close connection between the WLG and the LACW lawyers and FO workers.

FF *The WLG were going to be doing a coffee day for women coming out of custody or dealing with the court system – it didn't end up happening that way... which is really sad. It was supposed to be like a big hug... We need to be taking ownership and saying 'this is what we need to be doing' – taking the basket off management and carrying it – they can put an egg in now and then, but we need to carry it [WLG member 4].*

FF *...it would be really great...if we could have an analysis of the CSP from the women in the WLG...it hadn't worked out that way because the women were just not in that position... It would be really useful if we were able to draw more learnings from the CSP into the advocacy component because I think it lends a lot more weight when we are....trying to have an influence in those spaces [WTJ provider 05].*

FF *So peer support did not emerge as expected in 2019. It took some steps seeing how it could work, but hoped it could be more directly connected to CSP. [FO] has strong AOD background so it bodes well for the kind of support FO can provide to the group. Would love to see some sort of peer support connection for women who are referred to the project. Something that could happen with time, last year was a time of learning and some were not out of prison that long [WTJ provider 01].*

Prepared to take ownership

Despite the early challenges in establishing themselves as a group, as well as the challenges of COVID-19, the WLG members reported that they felt more prepared and were ready to take ownership and guide their own direction. This included a joint decision between the WLG members and the WLG coordinators to establish an internship role, described below.

FF *We've decided that we need to give direction to management, rather than the other way around [WLG member 1].*

FF *We've started our own separate meeting...we're creating more connection. We're not always having to rely upon management to be there – we still feedback to management – but we're trying to become independent and leaders ourselves...[WLG member 2].*

FF *...we decided to create an internship role for one of the women to work alongside [WLG coordinator]...to be a go to person for the women instead of management being the go to people...Having someone do that internship role it creates a bit of safety in my mind – when the funding is gone, we will have someone there who has got the lived experience knowing how to facilitate and hold the group [WLG member 1].*

COVID-19 moved the group online

In response to COVID-19, the WLG went online. This was a challenge for all members, both in terms of finding their purpose in the new setting, and because some activities for the group were paused. During COVID-19, the overall focus was to ensure that the WLG was maintained:

FF *...when COVID happened, we were very unsure about if the women were going to be able to work from home but it seems they kind of rose to the challenge and have been able to meet us at a weekly meeting. I'd say there are a couple of members that this time has been a bit harder for and so there are members of the group that aren't meeting regularly or who are floating in and out of the group or coming in and out of contact with us. And so that's from trying to hold women when they are in contact and trying to support them, but it has been really tricky for at least 50% of the group to stay connected to the work [WTJ provider 09].*

FF *The group-think and bouncing off each other went – it looked like working from home wasn't going to be sustainable, work fell apart a bit, but it's since been addressed...by management and it's been addressed internally by the group – the best thing that's come out of it is that for ages we were trying to cohere as a group. We needed to understand that we need to take responsibility for the group within the group [WLG member 3].*

It was also a source of frustration for those members who still wanted to use the time online to proceed with activities:

FF *It's important to feel like we've actually done something, rather than sitting and doing a few questions each week – that's not helping me and it's not helping anybody in the wider community. If this is the way it goes, I need to have a clear vision of where something's heading – I know that's hard with that kind of role. If we tried the webinar, we might get stuck and that could be the end of the road for the group or it gets put on hold. ... We're an amazing group and we can do amazing things – I know we could do such awesome things, but it doesn't feel like we're cohesive – the same conversation keeps happening over and over again [WLG member 4].*

FF COVID changed a lot – I was used to being there in person – switching to Skype was a big switch, I started to lose focus of what the group was really about, I started to lose motivation – the whole process of going to the group was important – my motivation was gone – a lot of people were impacted in the same way – we had to figure out other stuff in our individual lives, the group became the least of my problems [WLG member 5].

FF COVID has put a huge spanner in the works – we were going to write a resource manual for practitioners about women who have been criminalised – what women’s needs are if they can’t keep appointments, what it’s like in a crisis and what it takes to have to reach out for help. We had direction at the beginning of the year – we were going to meet with lots of services, really start networking – we really re-evaluated ourselves – we were going to write a research paper – present at a webinar – there was lots of organic stuff going on....[WLG member 1].

Nonetheless, core members had sustained contact and maintained connection and acknowledged the support of the coordinators. Some even found that working online was a great improvement:

FF I love working from home – because I have severe anxiety, the whole thing of getting to work - parking and worrying about getting a fine versus the stress of taking public transport - I have a lot of anxiety on public transport – I don’t want to bump into anybody – I was going to and from the station trying to avoid people. I would get to work and be really flustered...so it’s great be able to go to work (virtually) and participate safely – it gives us more options – maybe face to face once or twice a month would be good. I did my course all online last Semester – just another example of various areas in society that can look at other ways to operate [WLG member 2].

FF It’s been really supportive – when members are having issues, the group has been great for that – it’s about opening this up to the world, not just for the members. Laura and Jill are amazing and have got so much patience and knowledge. Even though they haven’t lived it, they have so much passion for supporting people and changing things, I’m privileged to be learning from them. The group gives me a curiosity into learning more and finding out more – I just needed a bit of support in learning how to raise things and take it to the next level [WLG member 4].

3.4.2 To what extent were project staff accountable to women participating in the project?

Sub-question finding: WLG members noted that there had not been a strong feeling of transparency between the CSP and the WLG because of a lack of available information and because WLG coordinators had not been able to coordinate a strong connection between the WLG and CSP. WLG coordinators were described by all WLG members as highly committed and sensitive, but the concept of “accountability” was also confusing for WLG members in terms of the relationship between the role of WTJ staff and the WLG members as employees of the project. This was not a reflection on the WLG coordinators but, rather, the complexity of ensuring that people with lived experience are appropriately compensated for their contributions.

Accountability a confusing concept

The early concept of project staff’s accountability to the WLG members appeared to change as the group developed. WLG members noted that “accountability” was in many ways a confusing concept, with accountability from their perspective meaning “being transparent”. To this end, WLG members noted that there had not been a strong feeling of transparency between the CSP and the WLG as the WLG did not know what was happening in the CSP. At times the group asked the WLG coordinators for more information about the experiences of women referred to the CSP – such as numbers and types of issues which they were facing – and also to meet with the staff delivering the CSP. As noted above, neither of these things occurred on a regular basis.

In addition, while the WLG coordinators provided some information about the operation of the CSP to the group, members noted that it was hard to know the full extent of the picture. For the WLG members, this lack of connection meant that there had not been strong accountability with respect to that aspect of the WTJ project.

FF *WLG was not involved in the service delivery – the list of what we wanted to do always got taken in other directions, so that was possibly why we didn't really end up involved in the service delivery aspect [WLG member 4].*

More broadly, accountability of WTJ project staff to WLG members seemed to have varied. After setting new boundaries, the group and coordinators identified that foundations needed to be developed before the group had capacity and confidence to engage in advocacy or other activities. As such, women needed to be “ready” for such challenging and sensitive work.

FF *Generally groups that emerge as a collective – are selected and paid. No one was understanding that women didn't know who the 'service system' was...we had to ask what is the purpose of this group? Are they a tick box? So it led to a focus on transformational healing and safety, even learning – listening, communicating and understanding context of women's experiences [WTJ provider 01].*

FF *... there's always challenges with the WLG mainly because we're dealing with complexity ...When we designed the program, we hadn't specified initially that a social worker had to be involved in the group and the idea had been that there would be a certain structure but obviously people come in with their own lives and experiences...what we've really quickly learnt is that there's a lot of support that needs to happen [WTJ provider 05].*

The learning about the need for women to be properly supported before conducting the work meant that the purpose of the group had evolved and was still evolving.

Employing the WLG members

One of the significant features of the WLG highlighted by all WLG interviews was the fact that the WTJ program started employing the members. This decision was made following advice from Pro Bono Australia and Social Security Rights Victoria, which indicated that group members who were receiving Centrelink and who were also receiving a regular honorarium from WTJ would need to declare that honorarium and their Centrelink would be deducted accordingly.

The WTJ coordinators were advised that meeting with a group of people regularly to obtain their advice was more accurately reflected in a part time or casual employment relationship, or the women being “independent contractors”. Given that context, the decision was made to offer casual employment to the women in April 2019, with this context discussed with the group.

While this development was welcomed by members, it also had an interesting effect on individual members' sense of project accountability. Some members indicated that being a paid employee was both a positive and a challenge. On the one hand they valued being employed and paid for their lived experience:

FF *I've always struggled to maintain a job – it's always been too stressful – the WLG is something I could maintain and enjoy doing – getting paid is an incentive but being able to speak about these issues is the real reason why I stay in and it gives me a platform where I can speak about what I know [WLG member 5].*

FF *At the beginning it was something for me to do. It kept my thoughts stable, gave me a purpose, it was something to look forward to – like minded women surrounded me. As time went on, though, I recognised how much of a healing space it was and how empowering. It must have been before the funding came through – it was an honorary amount then we moved to the payroll. That was huge – to be paid for my lived experience [WLG member 1].*

On the other hand, the same members also observed that being employed came with some challenges. They expressed feeling accountable to management rather than other way round:

- FF** *At the beginning for a lot of women, it was a really new, exciting space to be part of – in a sense we were attending to be told what to do – we would say ‘OK, what next?’, really taking direction. Once the pay came in, it took the ownership away from us – “what would you like us to do in order to get paid?” [WLG member 1]*
- FF** *The transition from being participants to being employed was completely different – I really appreciated being employed, I have a job, I can put something on my resume – I feel like it’s more concrete on the resume. I like it, but sometimes I don’t know if sometimes it makes it more difficult. It gives the work more meaning and purpose though, it’s helped me, I rely on the pay – Centrelink was never enough – it helped me to pay the bills and shows that I’ve been able to be employed even with a criminal record. Even if there was no pay, I’d still continue, it’s not about the \$, but it still helps [WLG member 2].*
- FF** *The way this project started was that women were being compensated – that carries different responsibilities to going on to the payroll. That was the first complication – the mutual obligations then altered – that’s presented a whole host of its own challenges – ...a lot of the time we’ve felt that we’re being managed – it’s born out of necessity – but hasn’t been as organic as when it was messier [WLG member 3].*

One WLG member also noted that, during COVID-19, being paid created some additional pressures. This WLG member suggested that some members could potentially feel that they needed to provide accounts of their experiences and participate in the group’s work, despite grappling with significant challenges during this time. In this way, group members could feel obligated to disclose their experiences simply because of the existence of an employment relationship, even where WLG coordinators – who were described as extremely supportive and sensitive by all WLG members - did not approach them with any expectation of this.

Rather than point to any shortcoming in the WLG approach or in the importance of properly and appropriately compensating people with lived experience for their time, this points to the complex considerations inherent in any work with people with lived experience, particularly people with multiple needs which include histories of trauma and abuse.

3.4.3 To what extent did participation in the Women’s Leadership Program build women’s capacity and skills?

Sub-question finding: WLG members noted that the project had built their capacity and skills in significant ways. In particular, WLG members felt that they had developed their ability to think critically and to engage in systemic advocacy in a meaningful way. Some WLG members also felt that, previously, their advocacy was entirely connected to their individual story but that they could now speak about the system and bring a gendered lens to their work. This enabled them to manage the experience of feeling re-traumatised when telling their own individual story. As noted above, since COVID-19, WLG members also felt that they had developed even further, pushing themselves and each other to take responsibility for their contribution to the project and finding accountability within themselves. This significant shift was reflected in the establishment in June 2020 of a Monday meeting that WLG members attend without the WLG coordinators.

Significant education and training activities.

More broadly, activity logs and interviews showed that WLG members had engaged with a considerable amount of education and training throughout 2019 and 2020. The kinds of activities in which the members had engaged, as well as some early signs of partnerships emerging between the WLG and other organisations, are set out in Table 7 below:

Table 7 WLG activities 2019 and 2020

| 2019 WLG activities ²¹⁹ | 2020 WLG activities ²²⁰ |
|---|--|
| <p>WLG introduced to advocates</p> <p>Attended presentations about Victorian women's prison activism and the Victorian community service system</p> <p>Received mental Health First Aid Training (Red Cross)</p> <p>Training in Consent, boundaries and self-care (Consultant-Maya)</p> <p>WIRE training</p> <p>Beyond 000 (Police Accountability Project, FKCLC)</p> <p>Abolition workshop</p> <p>Trauma and the effects of trauma, including on children.</p> <p>Training in Most Significant Learning and Most Significant Change</p> <p>Training in Journey Mapping</p> | <p>WIRE requested WLG's comments on revised booklet in relation to women responding to violence</p> <p>Co-design process to develop a work plan</p> <p>WLG members developed podcast with Philanthropy Australia for WLF/FLS</p> <p>WLG members participated in the Good Shepherd Financial accountability focus group</p> <p>2 members of WLG applied for membership of VSAC (FSV), with one successful</p> <p>WLG members to consult to Justice Connect in terms of their Homeless Project</p> <p>Partnership with Co-Health developed to facilitate WLG opportunity to provide input (stalled due to COVID-19)</p> <p>Partnership with Council for Homeless Persons who also have a lived experience group (stalled due to COVID-19)</p> <p>WLG wrote a collective article for Parity on the relationship between homelessness, mental health and women's criminalisation</p> <p>WIRE invited the WLG to have a member present on a panel of 4 responding to COVID-19 and safety.</p> <p>Two members of WLG participated on the panel of the webinar launch of <i>Constellation of Circumstances</i> Report</p> |

Positive changes

There was therefore strong evidence of many positive changes for WLG members as a result of training and capacity building opportunities, and as a result of the support provided by WLG coordinators. The group was largely seen by members as an empowering, supportive environment for learning and building skills:

FF ... I like the education part, nearly two years on, the amount of education I've received – stuff I hadn't even thought about, it's been amazing [WLG member 2].

FF I've learned how to be a voice for women and speak about the things that other people haven't had a chance to speak about...I've gotten a lot of experience and skills... – what it means to be an advocate – I've also got a network [WLG member 5].

²¹⁹ Activity log 2019

²²⁰ Activity log 2020

FF *So we've done work around peer work or lived experience work. We've done stuff around Black Lives Matter...a couple [of the women] have participated in webinars...which was really quite a challenge. But I was really impressed with how they managed it...one was a webinar in safety...run by Women's Information Referral Exchange and the other one was the launch of the "Constellations of Circumstances: report ... [WTJ provider 04].*

FF *I've really liked the learning – the YouTube clips etc – like the one on depression versus oppression – it really triggered a light in my head – I did a lot of research on it and I thought "why haven't I thought of this?"...I've been looking at women's incarceration rates – looking at researching a bit more – doing assignments each week, learning to read material and putting your own thoughts into it. It's given me that back – the drive to pull things apart and look at them more closely...[WLG member 4].*

WLG members were confident, committed and prepared to move to the next stage of the work:

FF *This work has made a huge difference for me already – I've got a sense of power with my lived experience – I don't need to be an academic. I'm on the Victim Survivors Advisory Council. I also helped WIRE to create an employment pathways plan – lots of other opportunities get offered. I feel recognised, I feel appreciated [WLG member 1].*

FF *I'm always going to be a part of making a difference for women – that is set in stone – and if the group ends, I can apply somewhere else and try and make a change there [WLG member 5].*

Support critical to maintaining engagement

The supportive and empowering environment for women that had been created through the WLG was identified by members as critical to their ongoing engagement and learning. Members indicated their commitment to the group and the strength which they had gained from the group:

FF *I'm amazed that we have actually stuck all it out – the friendships and the bonds – there's never been a disagreement between the colleagues – sure we have different insights and opinions – but there's never been any really heated moment, there's so much empathy and understanding. We're always saying the same thing – it's such a loving and empowering environment. I can't even put it into words, what it means to be able to feel recognised and speak safely and openly [WLG member 1].*

FF *I have a stronger desire now – I never want to leave the group, I want to continue and move forward and do amazing things. Even if I were offered full time work, I would say that I have something...I'm really committed to...maintaining the group [WLG member 2].*

Being a part of the group had also boosted confidence:

FF *... going there I felt like I had a voice, they made me feel welcome, they helped me see that I could take my experience with the system turn into something better. Being in the group allowed me to interpret what I had been through as basic survival skills that people go through in life. When I started it was intimidating, I didn't fit in, everyone was older and highly intellectual, but I had to be sober, I had to be at the workplace, the women were like replacement family – they saw my potential and saw what I was capable of –... – got me to sit down and see myself differently, in my head I was a criminal – but WLG allowed me to change my perspective [WLG member 5].*

FF *The group are always looking to help each other – the women do really care about all the others...and really resonate with each other's stories. We all come from all sorts of backgrounds of some sort of trauma. Realising that [about shared histories of trauma] made a big difference to me...[The co-ordinators] were very supportive – they raised these issues about what we can do better to make sure nobody is left out and we worked around what we could do to support each other. For me it was giving me some time and reducing the work, but we had to cater to everyone individually [WLG member 5].*

Evidence of the women having developed skills and capacity was supported by the fact that two members spoke at the launch of the *Constellation of Circumstances* report:

FF *..we got excellent feedback from everyone who reached out afterwards and wrote to us about it that [what the women said had] a thematic approach to the systemic issues that were being presented. ... applying expertise to that discussion and I thought that was a really sophisticated and nuanced approach to discussing the issues ... so I think that that was a real indicator in how much growth there has been in learning in terms of developing advocacy skills for these women [WTJ provider 05]>*

FF *“Constellation of Circumstances” was an important piece...two women spoke and it was very powerful. The ability to do that, in that forum...that is very powerful [WTJ provider 10].*

To this end, the WLG members considered that the breadth and number of advocacy activities in which they had been involved was also relevant to answering the question at 3.4.1: *To what extent were women involved in the planning and delivery of the project?* In other words, the WLG were involved in delivering a key component of the project in the form of the project’s advocacy activities. Further, group members and project partners all observed that the WLG’s participation in advocacy activities should be seen in the context of it being conducted by women who faced continued stigma, and who had little experience, if any, in a professional work environment.

WLG members noted that the majority of the group had never participated in advocacy or public speaking before, and had never written submissions or other forms of papers. At times many experienced disruptions to their work as a result of needing to navigate complex life circumstances; financial and other disadvantage; caring responsibilities; and interventions from statutory authorities. For the members of the WLG to have participated in such a wide range of advocacy and engagement was therefore a particularly significant achievement of the project.

FF *I want to participate in more education and then turn it into activism – we’re a lot further than we’ve ever been – and doing pretty well. I’d like to be involved in campaigns – it’s all got to come to a common purpose – we’ve got strength in numbers – to start something and build something up with the girls, standing up, speaking out and speaking up [WLG member 1].*

3.5 SYSTEMS CHANGE

This section answers the question:

KEQ 5: To what extent had the project improved decision-makers' understanding of the particular needs and experiences of criminalised women?

Summary Finding: Through FLS, WTJ conducted numerous presentations, workshops, meetings and network participation – where the involvement by WTJ and WLG members sought to influence awareness of decision makers as well as policy and practice. While longer term change stemming from these advocacy activities was difficult to capture after only 18 months of the project's operation, key successes were identified as a submission to and reference in the report of the Parliamentary Inquiry into Spent Convictions; the *Constellations of Circumstances* report and WLG involvement in the launch; and a test case in the Supreme Court which sought to highlight the links between women's experiences of violence and subsequent criminalisation.

While change is a long process, signs were emerging of shifts in understanding from lawyers, Magistrates and services, as well as a keen interest in the issues facing criminalised women from policymakers across a number of different contexts. That said, shifts had emerged to varying extents – pointing to considerable work still needing to occur, supported by frameworks which could formally articulate the project's Gender Responsive Approach, as well as a Systemic Advocacy agenda.

3.5.1 To what extent has the program been involved in strategic litigation, input into policy development and ongoing education and training in order to contribute to the development of laws, policies and programs affecting criminalised women?

Sub-question Finding: The WTJ project was involved in a significant amount of systemic advocacy activities, including one opportunity identified by FLS for strategic litigation. Systemic advocacy activities were largely conducted by FLS as WTJ coordinator.

Systemic advocacy across multiple organisations

The table below sets out the advocacy activities that were conducted throughout 2019 and 2020. It is important to note, however, that the table largely reflects the advocacy work conducted through the FLS banner. All WTJ partners noted that advocacy tended to be conducted by individual organisations, rather than as "WTJ", while all promoting the same message. This had its strengths, such as when three organisations came to the table to speak to the same message. As one participant noted, it could also lead to some confusion as to "who is speaking to what".

FF ...obviously we're three pretty prominent organisations working together to form a project with its own unique brand and we're also known for our expertise in our own areas... sometimes there's a little bit of confusion about who's speaking to what and for what purpose and when you're speaking for WTJ and when you're speaking for your own organisation. ... So that's definitely a difficulty and a tension. But I think it adds strength. So that the fact that you have three reputable organisations talking about the same thing and the same message also has a lot of strength. And I suppose the pragmatic response is whatever works to get the women out, whatever works to get the Minister interested in our proposal....It's definitely the partnership that makes it strong. It's the partnership that's brought us together [WTJ provider 05].

FF It's an interesting model with three partners – it's much more separate [in terms of advocacy]. But all three of us are often on the same working groups, but not really coming from 'WTJ' – each coming from their own niche, so 'WTJ' may not have been doing systemic advocacy. ...but we do draw on our collective experiences at times, even if the model has been an initial leap into what's possible – and it's enabled LACW to do the work [WTJ provider 09].

One participant noted that, at the beginning of COVID-19, the three different organisations were able to come together and advocate for women in prison to be released:

FF *FO, FLS, LACW – being able to speak as collective voice at the start of COVID-19. Being able to speak from a particular position – was of huge benefit and weight.... having those partnerships has enabled a much stronger voice [WTJ provider 09].*

In terms of FLS representing WTJ, FLS made a written submission to the Royal Commission into Victoria's Mental Health System and the WLG also made a separate written submission, based on their lived experience. In 2019, FLS also made a written submission and gave oral evidence to the Parliamentary Inquiry into Spent Convictions, drawing on the experiences of WTJ, in addition to a written submission which was co-written with the WLG. The program partners noted that being proactively asked to provide oral evidence was an indication of the Committee's acceptance of the program's expertise in the area, as compared with a general call for written submissions. In its Final Report, the Parliamentary Inquiry referenced the oral evidence given by FLS and the written submission of WTJ in its findings about issues affecting women.

Strategic litigation

In the case of *Hill v The Queen [2020] VSCA 220*, FLS sought to highlight the complex link between family violence and women's criminalisation in an appeal against sentence to the Supreme Court of Victoria, Court of Appeal. On behalf of the applicant FLS argued that, in imposing the original sentence, the judge had erred in not making a positive finding of family violence, and in not taking family violence into account in sentencing. Leave to appeal was ultimately refused, but the litigation represented a strategic attempt to bring the complexities of gendered violence and the gendered nature of women's criminalisation into sentencing jurisprudence.

An excerpt of the Applicant's written case was reproduced in the judgment below:

FF *"[36] As it was expressed in the written case:*

Protracted domestic violence causing or contributing to the development of pathological dependent personality traits and anxiety... is a very different psychological pathway towards violence offending from motivations of possession and control. The epidemic of male violence towards female victims justifying the elevation of general deterrence as a sentencing factor for 'intimate relationship/confrontational' aggravated burglaries can hardly have the same effect when sentencing a woman whose offending occurred against the background of domestic violence perpetrated against her. Moreover, the applicant's psychological crisis was a reaction not just to [her husband's] departure, but to his continued interaction with her following the conclusion of their relationship.

"Violence by women toward former partners and their new partners is not prevalent. It might be said to be uncommon or even rare. Women who offend for reasons other than those which make this offending prevalent among males ought not bear the increased weight accorded to general deterrence. The explanation for why an otherwise loving and caring woman who attained the age of 54 with no relevant prior convictions should behave in a manner so out of character lay in her psychological state. Her psychological state was informed by her experience as the child of a drunken father; as the victim of sexual abuse by a male neighbour; and as the victim of domestic violence by her husband. Her offending was a function of her dependence rather than an assertion of possession and control.

"The finding, by the sentencing judge, that the offending was for the purpose of anger and punishment was not open in all the circumstances. This characterisation of the offending led to an over-estimate of its gravity and treatment in a manner consistent with graver offending". (citations omitted)

The court acknowledged that the submission was a powerful one. Ultimately, however, it was not sufficiently persuaded, as noted in the excerpt of the judgment, below.

FF “[37] As will be apparent from the extracts we have set out, the appeal submission on the applicant’s behalf was powerfully expressed and clearly articulated. In the present context, the reference to ‘an epidemic of male violence towards female victims’ draws attention to the decisions of this Court in *Filiz v The Queen and Director of Public Prosecutions v Meyers*. In each of those cases, a male offender had committed violent offences, including aggravated burglary, against a former partner following a relationship breakdown. On both occasions, this Court emphasised that such offending would be severely dealt with... [38] In the present case, the offending was perpetrated by a female against her former male partner (and his new partner). But, in our respectful view, the judge was quite correct to view it as falling into the same category of post-separation, anger-driven violence. (citations omitted)

Although the appeal was ultimately unsuccessful, the argument was nonetheless explored and interrogated in the most superior court in Victoria, a sign that systemic advocacy could be a powerful tool in systemic change.

More broadly, the WTJ project’s systemic advocacy activities which involved WLG members are set out in the table below. WTJ advocacy activities which did not involve WLG members are set out at Appendix 1 (Table 9). Further, the WTJ coordinator engaged in additional workshops (1), presentations (1) and forums (1) to raise awareness.

Table 8 WLG advocacy and engagement activities 2019-2020

| WLG activity 2019/2020 | |
|----------------------------------|---|
| Submissions | <p>Supported to contribute to FLS submission to the Parliamentary Inquiry into Spent Convictions. (2019)</p> <p>Submission on behalf of WLG into the Parliamentary Inquiry into Homelessness (2020)</p> <p>Supported to provide submission to the Royal Commission into Mental Health (2020)</p> <p>Joined campaign calling for the release from prisons and youth detention centres of all people (2020)</p> |
| Connections/consultations | <p>2 members of WLG applied for membership of Victim Survivors Advisory Council (VSAC), with one being successful (2020)</p> <p>Participated in in-person consultation with Family Safety Victoria about the experiences of criminalised women and the family violence service system (2019)</p> <p>WLG members participated in the Good Shepherd Financial accountability focus group (2020)</p> <p>Developed a partnership with Council for Homeless persons who also have a lived experience group. This had since stalled due to COVID-19.</p> <p>Consulted by Jen Nicholls, a criminalised woman who is undertaking a PhD at Federation University exploring primary health care needs of women.</p> |



| | |
|---------------------------------|--|
| | <p>Contributed comments to WIRE’s revised booklet for women who have been responding to violence</p> <p>Developed partnership with Co-Health to facilitate WLG opportunity to input into their policies and practices and to co-present in forums around their findings from the service sector. This had since stalled due to COVID-19.</p> |
| <p>Media</p> | <p>Recruited to participate in Free our Sisters, Free our Kids campaign run by the Federation of Community Legal Centres. The Free our Sisters, Free our Kids campaign was connected to the Stories of Strength project, funded by the VLSB and managed by the Federation of Community Legal Centres. (2019)</p> <p>Five members interviewed by journalists from <i>The Age</i>, <i>ABC</i> and <i>Channel 9</i>. Resulted in 2 newspaper articles and 1 television news segment. (2019)</p> <p>Participated in interviews by Philanthropy Australia Journalist for 'story-telling' podcast; launched 2020</p> <p>WLG wrote a collective article for Parity on the relationship between homelessness, mental health and women's criminalisation (2020)</p> |
| <p>Presentations to:</p> | <p>Launch Housing workers</p> <p>Victoria Legal Aid Summary Crime Teams</p> <p>Health sector professionals at conference organised by Women's AOD Service, Royal Women's Hospital</p> <p>Reintegration Puzzle conference as a panel that spoke from lived experience of criminalisation (2019)</p> <p>Accountability for Harm Forum convened by Flat Out Family Violence Justice Project worker (2019)</p> <p>WLG member presented on a panel of 4 responding to COVID-19 and safety for WIRE (2020)</p> <p>Two members of WLG participated on the panel of the webinar launch of <i>Constellation of Circumstances</i> Report. Attended by 130 plus people; now available on YouTube where over 120 people have listened to the webinar.</p> <p>WLG completed a consultation with the Geelong Integrated Practice Network (2020).</p> |

3.5.2 Is there evidence in decisions being made that decision makers have improved their understanding of the issues affecting women in the criminal justice system?

Sub-question finding: As noted at the outset of this report, COVID-19 hindered some planned activities for the WLG to advocate on issues affecting criminalised women. COVID-19 also hindered court observations and surveys in 2020, which were designed to gather more information about Magistrates' decisions relating to criminalised women and the extent to which these decisions revealed an understanding of the particular needs and experiences of women in the criminal justice system. However, evidence from across the evaluation indicated that signs of improved understanding from decision makers were emerging, although establishing this improved understanding on a consistent basis remained a persistent challenge.

Systems change a long term prospect

Observing the impacts of advocacy around issues related to the criminalisation of women in terms of systems change is a long term prospect. As one participant noted:

FF *Person by person, we see some understanding – we've got some really good working relationships. We've got a bit of a name now with some Magistrates [WTJ provider 03].*

FF *Some of these issues are very difficult to get any movement on – the impact from a small project always going to be difficult. ... it is like shifting the Titanic. We are able to do the work but shifting is hard [WTJ provider 01].*

After just 18 months, it was not reasonable to expect that WTJ advocacy would have had a significant impact across the system. Nonetheless, there were instances where WTJ activities appeared to have had some effect on people interacting with the CSP, the WLG and with advocacy activities more generally.

FF *We recently had a launch of a report that...we co-authored and FLS published and it was attended by over 130 people and some of it was from government, so we can say 'Oh yes, that's great, people are listening to this stuff.' But again, it's hard to say whether or not it has any impact at all. We've met with Ministers and their advisers, we're in advisory committees - again, hard to say. One thing I will say though is that we did present...at the Parliamentary Inquiry into spent convictions and ... WTJ was specifically quoted in the report recommending that Victoria have a spent conviction scheme [WTJ provider 05].*

FF *...we are part of a statewide awareness on this issue – numbers are down from over 600+ over 12 months ago to 515 (at Feb 2020) ... that is not nothing; it's been increasing year on year and then there was a decrease. So 35 out of 500 – fewer than when we started, and that is something. WTJ is really well connected to services and recognised as source of expertise. IBAC also approached [WTJ coordinator] to present on women's/family/gendered issues in criminalisation [WTJ provider 01].*

FF *Our advocacy has allowed a gaze on reforming the Bail Act and the gendered impacts of that, the unintended consequences. Who are the women being criminalised by the Bail Act? Are we criminalising poverty and homelessness? How do we make visible the voices of women who have been so criminalised? We can see the needs of women, and we can see the gaps and the lack of dignity given to them and their needs. Seeing success of the legal/non-legal response...having CLCs involved is creating capacity for much more activism around the rights of women [WTJ provider 09].*

The project partners also noted that one of the benefits of COVID-19 was that WTJ now had the opportunity to give more strategic consideration to feeding lessons from CSP cases into advocacy. All partners identified an interest in moving to a more strategic approach to each component of the WTJ project.

FF *...because of the COVID situation and because things have slowed down, there's a lot more opportunity to dig deeper and drill down into the kind of matters we are actually dealing with, the types of cases that LACW and FO are working on and getting an understanding of that data and what people are actually facing...resources [in terms of time] are an issue and... because people involved in the WTJ are busy, it makes it hard to extract the expertise. I feel like we're really lucky because we're working with excellent experts and so it would be great if we could work out a way to draw on that expertise in a way that doesn't suck up resources [WTJ provider 05].*

Gender responsive approach gaining interest but a persistent challenge

In some early court observations in 2019, LACW put forward gender-based submissions for clients, which were observed to have swayed Magistrates. Submissions were made by LACW to the point where Magistrates were observed to have said: “why didn't I know this all before?”

While there was limited evidence as to what decision makers knew about particular needs of criminalised women, there were signs that the WTJ program was slowly developing to a point where early indicators of change in people's understanding were emerging. For example, there was some enthusiasm from other organisations for WLG members to be involved in various activities, which suggested a level of interest in the issues from people working in the system.

FF *... to think we get so many requests from people, all sorts of organisations wanting input from the WLG...it's a really clear sign that people are starting to understand that women with lived experience are valuable...So I think that's great, it's good that people are reaching out even if we don't necessarily think it's the best form, but we kind of work with them to get there later on down the track [WTJ provider 05].*

WTJ practitioners also noticed other lawyers who were not connected to WTJ showing interest in the program's approach:

FF *WTJ is being looked to as a successful approach to bail apps...So private lawyers are wanting us to write support letters etc for bail. ... For a relatively small program operating less than a year – that's an impressive ripple effect [WTJ provider 07].*

FF *The Women's Correctional Advisory Council...seem to be seeking more information about why more women are being criminalised...WTJ is working with the public interest team – there was a lot of involvement with the voices of the leadership group around policy and advocacy [WTJ provider 09].*

FF *[We're working on] raising awareness of the gendered impact of bail reforms for women – plus the challenge of spending on prisons versus housing etc. We make visible the lack of capacity in the service system – plus we work with allies to WTJ across government and Corrections to carry the work into other places. For example, we have a broader relationship with Sisters Inside [WTJ provider 09].*

As noted above, court observations and case file data from 2019 indicated that Magistrates had at times been swayed by the gender-based arguments put to them by LACW about clients. Comments from Magistrates suggested that some had taken into consideration issues which LACW had put before them and granted bail as a result – with children a significant factor.

That said, examples also existed of LACW putting forward submissions regarding gender, and of Magistrates nonetheless refusing bail. This suggested that, while there was evidence of Magistrates taking on LACW's reasons as to why they should grant bail, there was not necessarily evidence that the understanding of issues affecting women in the criminal justice system overall was improving on a widespread or consistent basis.

FF *Mainstream service providers still seem to want women who are compliant and nice and not displaying survival behaviours – there is little understanding of that. I do feel we do a lot of education around criminalisation for these services [WTJ provider 03].*

SECTION FOUR: RECOMMENDATIONS AND CONCLUSION

Some of the systemic limitations to the WTJ program's objectives - such as the introduction of reforms to the *Bail Act* and an overall lack of much needed social housing – sat outside the WTJ project itself. Nevertheless, there are significant opportunities for the WTJ program to continue to contribute to the overall goal of decarceration of women.

Accordingly, the CIJ recommends that the WTJ project partners consider opportunities in relation to the following broad categories, being: partnership; model/approach; integrated service model; systemic advocacy; leadership for women with lived experience; evaluation and data collection; and capturing learnings through COVID. The number of recommendations reflect the complexity of the approach – with three partners and the WLG being involved in program delivery – as well as the complexity of the issues the project was seeking to address throughout the evaluation.

Partnership

1. The CSP delivered by LACW and FO was a key success of the WTJ project and reflected the strength of the relationship between those organisations. The manner in which the CSP was connected to FLS and the complex collaboration which resulted created opportunities, as well as challenges, particularly in relation to data systems and collection; connection with the WLG; and shared and separate advocacy activities. Accordingly, the project partners should **review the roles and responsibilities** of the partners to ensure that they promote:
 - Service delivery which is sufficiently resourced and designed to be highly integrated, flexible and sufficiently responsive to referrals;
 - Stronger integration and reciprocal, open communication across service delivery, advocacy and the involvement of women with lived experience of prison, including in the context of time poor environments;
 - Clarity around expectations and responsibilities for data collection;
 - A continuous learning approach, which recognises as a strength the need to adapt the partnership and elements of the project as they evolve;
 - A shared understanding of the components of effective service integration.
2. The outcomes of that review could inform the development of a **Service Integration Framework**, which sets out the criteria for effective service integration when working with criminalised women. The Framework should incorporate a continuous learning approach, supporting learning to identify where adaptations to program design or service delivery need to occur in recognition of what is highly complex work. The Service Integration Framework can also be adapted as partners learn more about good service integration in the context of wider systemic and structural drivers.

Model/approach

3. The WTJ project piloted a unique and innovative offering that responded effectively to the needs of criminalised women and the complex context of women's incarceration in Victoria. To capture and build upon the lessons learned, the WTJ partners should develop a **Framework for Gender Responsive Approaches** which articulates the key components of the WTJ program and can drive wider service system reform in relation to criminalised women. This Framework should articulate:
 - the key elements of the CSP piloted by WTJ (the WTJ integrated service model);
 - best practice to integrating the experiences of women with lived experience of incarceration into the model's development and operation;
 - systemic advocacy priorities in support of the WTJ project's goal of supporting women to be released from and stay out of custody, as well as associated outcomes of success; and

- the production of advocacy tools which can be used to increase understanding of decision and policymakers, as well as service providers, around responding to women who have come into contact with the criminal justice system. These advocacy tools are detailed further under 'Systemic Advocacy'.

Integrated service model

4. The project partners should pursue funding to **expand the availability of and access to integrated services** with specialist and gender informed legal representation and intensive outreach-based social support for women. The evaluation found that the extent to which the CSP was able to accelerate service provision and advocacy during COVID-19 restrictions was a testament not only to the dedication of LACW and FO but also to the strength of the relationships which had developed between them during 2019.

While the CSP was effectively and efficiently adapting to available resources, the evaluation found that ongoing and expanded resourcing was essential for this type of complex work to remain sustainable, while also remaining voluntary, flexible and responsive. Funding should therefore be sought to include additional scope and resourcing for:

- a) **dedicated, intensive and assertive outreach** to ensure the capacity to be highly responsive to referrals.
- b) the establishment of a **dedicated housing pathway**, particularly in light of the restrictive or narrow admission criteria of other services. As originally envisaged by the WTJ program design, establishing a housing pathway for women in contact with criminal justice systems is critical, particularly in light of restrictive or narrow admission criteria of many services.
- c) provision of, or connection with, **longer, ongoing support** to help women to transition from a short term crisis response to a longer term response.
- d) **strengthened cultural safety** for Aboriginal and Torres Strait Islander clients, as well as for clients from CALD communities. Given the overrepresentation of Aboriginal and Torres Strait Islander and CALD women both in the criminal justice system and WTJ, any service must have adequate funding for identified positions to strengthen the program's cultural safety.
- e) strengthened capacity to **respond to child protection issues**, with resources dedicated to addressing the connection between women's contact with the criminal justice system and their experiences of trauma, family violence, homelessness and having their children removed.
- f) exploring the feasibility of **integrating a peer support component** into the service delivery model. This could include consideration of whether and how any interested WLG members could engage with women supported by the service delivery model in connection with the legal and outreach case management process.
- g) increased **funding for brokerage and transport**, both of which are critical to helping women maintain bail. Without being provided with basic essentials such as food and clothes, transport to appointments and FO support to help them navigate the complexity of the system, the evaluation found that many clients would not be able to maintain bail.
- h) capacity for additional advocacy in relation to the impacts of **COVID-19 related infringements** where this has proved an issue for criminalised women, including in light of current court backlogs through which infringement-related matters may be likely to be processed during 2021.

Systemic advocacy

5. Genuinely gender-responsive approaches require advocacy at both the individual and system level. As the evaluation found, systemic advocacy tended to be led by one partner, with resourcing having an impact on the extent to which this advocacy could be coordinated across the partnership, or conducted by the service delivery agencies at an individual level. Accordingly, the evaluation found that funding for delivery of integrated services for criminalised women should ideally be accompanied by additional and dedicated funding for systemic advocacy, which can also support a more coordinated, strategic approach which incorporates:

- a) The development of a **Systemic Advocacy Agenda** that identifies priority issues for advocacy including:
 - advocating for reforms to bail legislation;
 - increased sentencing options;
 - increased housing options specifically for women;
 - gender-responsive criminal justice approaches to programs such as CISP;
 - the adoption of harm minimisation, rather than abstinence based models for residential rehabilitation services; and
 - increased supports for women in child protection responses.
- b) **Connecting advocacy activities to key learnings** highlighted through the evaluation, particularly learnings that relate to *prevention* of women's contact with the criminal justice system. For example, the evaluation found that achieving bail for women is vital, but that advocacy is needed to ensure that support services are actually available and accessible for women well before this stage, as well as afterwards, so that 'staying out' is achievable after 'getting out' of custody.
- c) Drawing on FO's expertise, a strengthened focus on **advocacy across the broader service system**. FO has an in-depth understanding as to how barriers to services – such as strict eligibility criteria and limited housing options – impacts on women's ability to succeed on bail and remain safe and stable in the community. The evaluation found that gender-informed responses are needed at court, but also at a much earlier point in the system and across wider service provision.
- d) Continuing to focus advocacy efforts on building broader understanding among policy and decision makers as to **gendered pathways** into criminal justice system contact, including the multiplicity of women's needs and underlying trauma, child protection and family violence.

This should include advocating for resourcing to establish a baseline data measure around what decision and policy makers currently understand around these pathways, given the challenges which the evaluation encountered in terms of measuring any shifts in understanding as a result of COVID-19.

- e) As noted in relation to the development of a Framework for Gender Responsive Approaches, the **production of advocacy tools** which can be used to increase understanding of decision and policymakers, as well as service providers, around responding to women who have come into contact with the criminal justice system:
 - Lists of **practical considerations** that need to be taken into account by legal decision makers when making orders in relation to criminalised women, such as their access to transport; phones; and other material resources which are crucial to women being able to comply with bail conditions and sentencing outcomes based in the community.

- Resources to support understanding around the **relationship of multiple, co-occurring issues to pre-existing and ongoing trauma** which mean that women may need additional supports to engage effectively with other services, such as rehabilitation or specialist family violence services, child protection, as well as community-housing providers and compliance based, court responses, such as CISP. These resources should specifically address the barriers of strict eligibility criteria, as well as the gap in service provision which arises when women are dismissed by services as being 'too complex'.
- Resources to inform other organisations which may wish to **work with women who have lived experience of the criminal justice system**. These resources should recognise and articulate the complexity of this work, including the shared histories of trauma which many women will have which will impact their involvement and require ongoing support. However, these resources should also recognise and articulate that women nonetheless come to the work with diverse and varied experiences – highlighting that not all women with lived experience of the criminal justice system are the same, as well as that, very importantly, working with people with lived experience of the criminal justice system is not the same as working with people with lived experience of other parts of the legal or service system. These resources should outline the lessons gleaned from the WLG experience, including the WLG's experience in being involved in external projects as well as systemic advocacy activities to identify those approaches which are appropriate and those approaches which are not.

Leadership

In terms of leadership of women with lived experience who are engaged with WTJ, members of the WLG are of course best placed to develop recommendations for the group's direction. However, some points to highlight from the evaluation findings include:

6. In consultation with the WLG, consideration should be given to how WLG members can be **better connected to future work** conducted by the project partners, including any role which they might play in the further development and delivery of the WTJ integrated service model and support that members may need as part of this role. This includes providing clarity for WLG members around their expected involvement and/or role within any service delivery model, as well as opportunities to participate in peer support.
7. WLG members should be supported to build their capacity so that they can develop further experience and leadership in **speaking out and advocating on issues** affecting women in contact with the criminal justice system. As part of this, WLG members should be connected with higher levels of government and decision makers, as evaluation findings suggest that this can have a significant impact on decision makers.
8. WLG members could consider sharing their experiences and perspectives not just of the criminal justice system but of their experience in **establishing a peer support group**. WLG members have insight not only about lived experience and the system, but about what has worked for them as a group and getting established - learnings which could be extremely helpful for other groups seeking to achieve similar outcomes.
9. WLG members and coordinators should **embed a continuous learning approach** in the design of the program. This should include developing the program as one of a learning program, where WLG members and coordinators work together to identify what is working well and what needs improving or adapting. Embedding and articulating a learning stance to the program means that WLG members and coordinators reflect, share learnings and then adapt as needed.

Evaluation and data collection

10. Building on successes and learnings of the program to date, the project partners should consolidate their evaluation and data collection tools by:
- a) further developing an understanding of **'what success looks like'** for criminalised women who have repeatedly come into contact with the criminal justice system. Evaluation findings make clear that, for many criminalised women, helping women to stay out of jail is a long term objective. Any understanding of 'success' should therefore include intermediate outcomes that could be expected to be seen at earlier points in a woman's journey if the program is working well. The evaluation identified that earlier indicators of 'success' for women in this context include:
 - o women staying returning to and/or staying engaged with assertive outreach support and legal representation when required, including during their court process and over a long period of time;
 - o women having secure housing;
 - o women returning to services for support, when required; and, critically
 - o women staying alive once they are in community.
 - b) considering how to **capture longer term or sentencing outcomes** for clients, to understand the long term impact of specialist, gender-informed legal representation and coordinated case management more effectively. While evaluation findings suggest that support provided to women on bail was improving sentencing outcomes, challenges currently exist in terms of capturing long term data for clients who tend to fall in and out of contact and engagement over time. This type of long term data would therefore be a valuable addition to any future program evaluations
 - c) advocating for funding to establish an additional **cost/benefit measure** to compare the cost efficiency of the WTJ integrated service model with costs of incarceration of women
 - d) developing an understanding of 'what success looks like' in terms of **systemic advocacy**, and building data collection and analysis, including case studies, into any systemic advocacy conducted jointly or separately.

Learning through COVID-19

The WTJ program partners have the opportunity to use their success and effectiveness through COVID-19 to reflect and capture learnings. This could include a facilitated workshop to:

11. Identify **what worked well** across the CSP during COVID-19 at a time when other services were struggling to deal with capacity, shutting down or reducing their activity. Discussions should capture the gains and efficiencies that clearly emerged throughout COVID-19, continuing to embed them and adapting program elements accordingly.
12. Identify effective steps in the adaptation of the WLG during COVID-19 and the **benefits which were gained** for WLG members during this time, in addition to challenges encountered.
13. Use COVID-19 findings to **tell the story of resilience** and show the results that were achieved during this time, including in future advocacy This could include tracking outcomes for women granted bail during 2020 to inform advocacy for systemic reform.

Conclusion

Overall the evaluation found that the WTJ project was an urgently needed initiative in the context of a wider legal and service system which was not equipped to counter the systemic drivers pushing women into contact with the criminal justice system. This included impressive adaptations and accelerated service responses in the context of COVID-19.

Across the WLG, the CSP, and the project's systemic advocacy efforts the WTJ project highlighted significant service and legal gaps, as well as an urgent requirement for much greater and more nuanced understanding of criminalised women's experiences. Without this increased understanding, a gender-blind legislative landscape will continue to interact with highly gendered pathways, potentially reversing the trend seen during 2020 which saw a drop in women being held in Victorian prisons.

Conducted from the inception of a highly complex project and against a backdrop of a global pandemic, the evaluation was nevertheless able to collect and triangulate a significant amount of data. This outcome was only possible as a result of the commitment across the partners and the evaluation team to ensuring that the project was able to tell the story of its successes, as well as reflect on early challenges and adopt early learnings to continue improving over time.

That said, the WTJ project was still in its early stages, with shifts in understanding from decision and policymakers alike only just beginning to emerge, while the CSP and WLG alike had found a firm footing and were going from strength to strength. This signalled a need for continued and expanded support for initiatives like the WTJ project – a need which, in many ways, may have only become more acute as a result of COVID-19.

While the numbers of women incarcerated in Victoria in the early stages of the pandemic reduced by around 30 per cent, the longer term impacts of COVID-19 restrictions and its effects on the Victorian economy and the wider service system are likely to drive more women into contact into criminalisation. In the absence of much needed systemic reform, projects like WTJ – and the three valuable components which it comprised – will become more necessary than ever before.

APPENDIX 1: ACTIVITY LOGS

Table 9 WTJ advocacy activities without WLG involvement, 2019-2020

| Advocacy | Activities |
|---------------|---|
| 2019 advocacy | <p>Submissions: Specialist Family Violence Case Management Guidelines; Parliamentary Inquiry into Homelessness; Royal Commission into Victoria's Mental Health System and to the Parliamentary Inquiry into Spent Convictions</p> <p>Attendance at: Corrections Victoria and DHHS Housing Justice Stakeholder group; Family Violence Housing Assistance Implementation Taskforce; Family Safety Victoria Diverse Communities and Inclusion Working Group; Women's Remand Stakeholder Working Group; Women's Corrections Services Advisory Committee (WCSAC)</p> <p>Meeting with the Hon. Ben Carroll, Minister for Corrections; WTJ project manager attended initial IBAC roundtable.</p> |
| 2020 advocacy | <p>Meeting with Sharon Keith VLA to build the profile of WTJ. Briefing summary post Interim evaluation report to be given to Sharon and possible meeting with the Summary and Crimes program to update them on WTJ</p> <p>Attended the IBAC roundtable</p> <p>Research exploring the impact of the bail laws on women, attended MMC over 5 days to observe bail applications.</p> <p>Joined campaign calling for the release from prisons and Youth detention centres of all people</p> <p>In partnership with many others supported "Joint submission to Special Rapporteur on Rights of Indigenous people</p> <p>Supported and signed the Joint submission to Select Committee on COVID-19-19 OPCAT places of detention organised by Felicity Geary QC, Professor Thalia Anthony and Professor Lorna Bartels</p> <p>Contributed the Royal Commission into Disability centring the voices of women who have been criminalised, with a particular focus on mental health as a disability</p> <p><i>Constellation of Circumstances</i> report published and released. A partnership between FLS, La Trobe and Deakin University</p> <p>Presented the report on two radio shows to diverse listeners</p> <p>In partnership with La Trobe and Deakin University applied for a VLF Knowledge grant to more deeply explore the relationship between family violence and criminalisation.</p> |

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