

TOP END WOMEN'S LEGAL SERVICE INC.

FREE LEGAL ADVICE FOR WOMEN

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23 January 2019

Mental Health Inquiry Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Lodged online at <https://www.pc.gov.au/inquiries/current/mental-health/make-submission#lodge>

Dear Madam or Sir,

Top End Women's Legal Service Inc – Submission in response to the Productivity Commission Draft Report – Incarcerated Women

The Top End Women's Legal Service Inc (**TEWLS**) is grateful of the opportunity to make a further submission to the Productivity Commission following the release of its Draft Report. We provide the below in addition to our submission of 5 April 2019 (which we enclose for your reference). As per our previous submission, our comments will be focussed on the experience of women incarcerated at Darwin Correctional Centre ('**DCC**').

We reiterate the immediate need for specialist domestic and family violence counselling and therapeutic casework in order to meet the needs of those incarcerated and reduce recidivism in the Top End. Access to holistic specialist legal assistance remains an issue, national legal aid funding only weights prisoners by reference to criminal matters thereby excluding civil and family law needs which we know to cause ongoing mental and emotional stress to those incarcerated.

In addition to the above, independent, non-forensic psychological services are fundamental in addressing the overrepresentation of those with a mental illness in the justice system.

Over the past 12 months TEWLS have conducted Legal Health Checks (**LHC**)¹ conducted with women incarcerated at DCC. Preliminary data shows the urgency in providing the above outlined services, with the checks identifying the following:

- 83% of women had experienced domestic and family violence either as a child or an adult;
- 83% had issues with alcohol and/or drugs;
- 53% had a pre-existing mental health condition;
- 92% did not think there was good mental health support whilst incarcerated; and
- 85% wanted to speak to a DFV or trauma counsellor.

The draft report refers to AIHW statistics of 2018 which highlighted that about 65% of female prison entrants had been told at some stage in their life that they have a mental illness, being a much higher proportion than that of the general population at 22%.² At DCC, the figure from

¹ A legal health check is a legal screening tool that we adapted to 'diagnose' the precursors to incarceration and to identify the multiple legal needs of women incarcerated in Darwin

² Mental Health Productivity Commission Draft Report Volume 1, October 2019, page 594

the snapshot of LHC participants stands at 53% and paints a clear picture of the level of service provision required to adequately service the cohort.

An emerging theme from our LHC was the high levels of complex trauma experienced by the women. In order to address this trauma therapeutic service provision is required. As stated in the draft report, inter-generational trauma is a driver of incarceration in the context of Aboriginal and Torres Strait Islander people³, and as such a barrier to rehabilitation and reducing recidivism.

We agree with the Commission's observations that the system can act as a gateway towards mental healthcare, acknowledging that prisoners often under-utilise healthcare in the community, this has been evident from our Legal Health Checks with many women feeling empowered to seek help whilst incarcerated and away from outside pressures.

We support the Commission's statement that successful intervention requires culturally capable mental healthcare for Aboriginal and Torres Strait Islander people.⁴ This is of particular importance given that our Legal Health Checks identified that 77% of participants were Aboriginal and/or Torres Strait Islander.

Since our earlier submission, the Northern Territory Government has recently released its draft Aboriginal Justice Agreement (**AJA**) 2019-2025, the AJA prioritises incarcerated women. This is a welcome development given that incarcerated women are often devalued and invisible at a policy, systems and structural level. We draw the Commission's attention to *Aim One: Reduce reoffending and imprisonment rates of Aboriginal Territorians*, in particular strategies 9 (Further develop correctional services therapeutic programs),¹⁰ (Strengthen tailored and targeted case management for offenders) and 11 (Expand prison and diversion programs for Aboriginal women).⁵ This is currently limited to Alice Springs and it is unclear what future application it will have in the Top End. TEWLS believes that the implementation of these strategies and the undertaking of the actions described within those strategies is central to reducing the suffering of those incarcerated and will go towards providing the necessary post-release support.

Conclusion

We appreciate the opportunity to make this submission and to support ongoing development for women incarcerated in the Top End of the Northern Territory, and nationally. We thank you for your consideration of the above and would be pleased to be contacted by phone on (08) 8982 3000 or email to admin@tewls.org.au should you wish to discuss the submission further.

Yours faithfully,
TOP END WOMEN'S LEGAL SERVICE INC.

Vanessa Lethlean

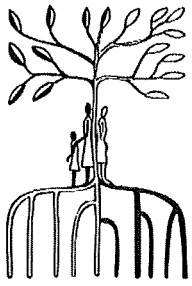
Managing Solicitor

Enclosed TEWLS submission dated 5 April 2019

³ Mental Health Productivity Commission Draft Report Volume 1, October 2019, page 597

⁴ See above, page 589

⁵ https://justice.nt.gov.au/data/assets/pdf_file/0005/728186/Draft-northern-territory-aboriginal-justice-agreement.pdf



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5 April 2019

Mental Health Inquiry Productivity Commission
GPO Box 1428
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Lodged online at <https://www.pc.gov.au/inquiries/current/mental-health/make-submission#lodge>

Dear Madam or Sir,

Top End Women's Legal Service Inc – Submission – Incarcerated Women

The Top End Women's Legal Service ('TEWLS') welcomes the opportunity to make a submission to the Productivity Commission Discussion Paper on Mental Health.

Our submission will be focussed on the experience of women incarcerated at Darwin Correctional Centre ('DCC'). In this context, we emphasise the need for specialist external services to address incarcerated women's complex and multifaceted trauma symptomology, and foundations, in order to:

- Reduce re-offending;
- To improve mental health; and
- To increase prospects for re-establishing health and well-being for these women, their families and their communities.

In particular, we advocate for change in respect of existing deficiencies, and specifically the availability of specialist domestic and family violence counselling cognisant of intersectionality connectivity.

Our submission reflects a strong evidence base indicating that a significant majority of women incarcerated have domestic and family violence indicators, which can serve as a foundational basis and establish vulnerabilities for a broad range of subsequent harmful addictive behaviours and incarceration. TEWLS' holistic service provision, premised on best practice linked-up, multidisciplinary connectivity, where counselling and related support services are

cognisant and inclusive of domestic and family violence, advocates for services to be made available for women incarcerated at the DCC to reduce recidivism and to improve post DCC pathways.

About TEWLS

TEWLS is a community legal centre focused on the advancement of women's rights. Founded in 1996, TEWLS is funded by the Commonwealth Attorney General's Department and the Department of Prime Minister and Cabinet. TEWLS team of six provide high quality, responsive and culturally appropriate legal advice, casework, community legal education and advocacy in civil law to women living in the Greater Darwin region.

TEWLS offers holistic legal services in Darwin, Palmerston, at the Royal Darwin Hospital, at Dawn House Women's Shelter, on six Indigenous communities in the Greater Darwin Region, at Adult Migrant English Programs, and within DCC. The most frequently requested areas of assistance include family law, domestic and family violence, housing and tenancy, consumer law, debts, fines and welfare rights, sexual assault, discrimination, compensation for victims of crime, and complaint matters.

TEWLS is the only scheduled legal service providing a civil and family law advice and representation service within the women's sector at the DCC. With strong connectivity established over many years, a TEWLS Solicitor and Indigenous Community and Project Officer the Women's Sector every third Thursday, in line with available resources. Where capacity exists, community legal education presentations are provided on salient topics.

TEWLS is currently running a Legal Health Check project at DCC, to identify unmet legal need and to collect precursor and matrix data, not previously collated at DCC.

TEWLS' submission

Where are the gaps in mental health services for people in the justice system including while incarcerated?

For women incarcerated at DCC, the most significant mental health service gap pertains to specialist domestic and family violence counselling and therapeutic casework.

As a consequence of longstanding legal service provision, and Legal Health Check records completed to date, we submit the majority of the women currently incarcerated at DCC have

domestic family violence indicators, meaning they have experienced or are at risk of experiencing domestic family violence. Additionally, a majority self-identify benefits to improve their mental health were they to be able to access a specialist domestic violence counsellor whilst incarcerated.

In the Northern Territory, there are two government funded health services who provide assistance to incarcerated clients. The Prison Health Service provides medical assistance, while the Forensic Mental Health Service provides at-risk assessments and temporary case management of persons who enter the DCC mentally unwell. Private providers and primary health services may also provide specialist mental health services to prisoners in the Northern Territory, where an example is the introduction of Ruby Gaea to the DCC. In 2016, TEWLS facilitated Ruby Gaea's commencement of services to women incarcerated in the DCC after identifying high levels of sexual assault disclosures and associated traumas.

While some services are available to women incarcerated in the DCC, it is our experience that clients are continuing to present at the TEWLS DCC legal clinic with untreated psychological and physical injuries. In our experience, while some clients' issues are in respect of responses and response timeframes following the completion of a medical request form other clients' issues are in respect of the lack of domestic and family violence related services available within the DCC.

We include two recent anonymised client stories which demonstrate the shortfalls in the provision of mental health services to women at the DCC. The stories also reflect the extent to which women at DCC have experienced significant family and domestic violence and are now experiencing the associated trauma which has flowed from past events.

Josie's story

Josie is young woman who was in a relationship with Peter for three years. During their relationship, Josie was physically, sexually and psychologically abused by Peter, and sought to escape the relationship on multiple occasions.

While Josie's past experiences meant that a referral to Ruby Gaea for counselling services was possible, Josie has been unable to access counselling and related support services in respect of her domestic and family violence related experiences.

When being sentenced in respect of her criminal matters, the judge indicated that Josie's past trauma from domestic and family violence was a contributing factor to her offending and that in order to break the cycle of recidivism, Josie should seek specialist assistance.

Rebecca's story

Rebecca is an Indigenous woman who has been in an on/off relationship with Tony for over a decade. During their relationship, Rebecca instructs that she would intentionally offend so that she could return to the DCC where she knew she would be safe. Rebecca has a long history of incarceration and is often unable to connect with domestic and family violence services on the outside because of Tony.

Rebecca has expressed to TEWLS that she would appreciate meeting with a specialist domestic and family violence counsellor while incarcerated at the DCC. Rebecca instructs that she is "more ready" to understand cycles of domestic and family violence and trauma when she is incarcerated.

In contrast to the lack of mental health services available to our clients, TEWLS is confident that each of the above client experiences would have been different had they presented with similar issues outside of DCC. It is our view that the presentations would have been met with the timely provision of mental health services, including holistic health services for immediate and ongoing domestic and family violence related mental health support. Of note, the availability of programs to address mental health in DCC would aim to reduce contact and costs associated with both legal systems contacts and reincarceration, whilst improving individual familial and community engagement and outcomes.

What interventions in the justice system most effectively reduce the likelihood re-offending, improve mental health and increase prospects for re-establishing contributing lives?

Access to specialist domestic family violence counselling, and access to holistic specialist legal assistance

The current specialist domestic family violence counselling gap at the DCC is a lost opportunity. In not providing holistic, wrap around servicing, women are unable to address their own trauma and mental health, meaning that upon their return to the community, they are unable to break out of their own cycle of detention. Holistic servicing, including culturally safe and appropriate mental health services, is a critical step in breaking the cycle of recidivism.

The current service provision by TEWLS at DCC is crucial in helping women deal with their civil and family law problems. Often the weight of these legal issues poses quite a significant mental burden on clients who have not received legal assistance in relation to their matter and

are not aware of the pathways and options available to them. The ability for TEWLS to provide this crucial legal assistance is important in helping women be in the best place to be able to re-establish and integrate into their life once outside of the DCC.

Unfortunately, incarceration presents as a crucial potential intervention opportunity for women to access primary and preventative medical, support, therapeutic and related services, that may not otherwise be available or have the ability to be engaged with, outside incarceration. As noted in the NT Ombudsman in their 2008 report, "women constitute a small but growing part of the NT prisoner population. Their small numbers present a challenge and an opportunity for the Territory to get things right."¹ TEWLS submits that such access and provision should be a priority agenda item for women incarcerated at the DCC.

What evidence is there about the long term benefits and costs of these interventions?

The need for the interventions described above is clearly evidenced through statistics. Over 60% of TEWLS clients have domestic and family violence indicators, and, female Indigenous prisoners experience greater rates of mental health and more extensive substance abuse histories than male prisoners, with many entering prison following a history of sexual or physical abuse.²

Domestic and family violence is a foundational issue for a broad range of women's offending, and the significantly increasing rate of female incarceration. It is in addressing the mental health issues underpinning these behaviours and offending that set women up for long term benefits in terms of reintegration, and the ability to move forward post release.

TEWLS perceives the provision of heightened services as an innovative and new opportunity that may be effective in the NT context to showcase results with a small group of women incarcerated in the DCC.

¹ Ombudsman NT, *Women in Prison NT: Report of the Investigation into complaints from women prisoners at DCC 2008*, Ombudsman NT, 11 April 2008.

² Johnson, H (2004). Key findings from the Drug Use Careers of Female Offenders study. Trends & Issues in crime and criminal justice No. 289. Canberra.

What are the main barriers to lowering the overrepresentation of people living with a mental illness in the justice system and what strategies would best overcome them?

A significant barrier to lowering the overrepresentation of women living with a mental illness in the justice system is the lack of dedicated ongoing resourcing to support programming that deals directly with mental health for women incarcerated at DCC, and detention facilities Territory wide. The strategies to best overcome the barriers currently seen at DCC is dedicated support, noting guaranteed funding for these crucial proposals.

The opportunity presented through incarceration is a time to prioritise access and utilise mental health support services available, often at a time when there are less competing pressures (such as child care obligations, financial pressures, exposure to domestic and family violence, housing stresses and homelessness etc.). TEWLS also advocates for supportive Throughcare and access to services upon release from the DCC, to help assist women in the transition from incarceration to reintegration into society, which can often present a whole range of challenges and difficulties in re-exposure to mental health triggers and issues.

The complex matrix of incarcerated women's addiction behaviours equally requires and deserves a strategy of holistic and comprehensive linked up service provision. Whilst we understand that the DCC supports and would welcome a visiting external specialist domestic and family violence counsellor, this is not currently available to women incarcerated within the DCC due to resource restraints.

Whilst TEWLS has secured and facilitated sexual assault counselling for women at DCC via Ruby Gaea, the specialist sexual assault service in Darwin, there is insufficient capacity within existing specialist family and domestic violence services to address the presently identified need to specifically address domestic violence indicators and trauma in tandem with substance abuse and harm reduction strategies.

In addressing the identified gap, we note, a large portion of women incarcerated at DCC would benefit greatly from increased access to non-forensic psychological services. TEWLS strongly advocates for all women to have access to an independent external mental health specialist/counsellor. Given the high rates of family and domestic violence and associated trauma experienced by the women at DCC, it would be important that any specialist in this position has extensive knowledge in assisting women in these areas. Further, due to the overrepresentation of Indigenous women at DCC, TEWLS submits that the specialist should have particular experience in working with Indigenous women.

An essential component of specialist domestic family violence counselling is independence. Indeed, an external expert, independent of the DCC and respective Departments, is required to ensure a robust, best-practise, therapeutic framework that permits connectivity post-release.

TEWLS identifies two ways to potentially address the identified service gap, being funding by the NT Department of Health, and potentially, funding by Medicare should the Federal Health Minister direct that Medicare benefits be payable in respect of professional services rendered at DCC, pursuant to the relevant exemption.³

Conclusion

We appreciate the opportunity to make this submission and to support ongoing development for women incarcerated in the Top End of the Northern Territory, and nationally. We thank you for your consideration of the above and would be pleased to be contacted by phone on (08) 8982 3000 or email to admin@tewls.org.au should you wish to discuss this submission further.

Yours faithfully,

TOP END WOMEN'S LEGAL SERVICE INC.

Vanessa Lethlean
Managing Solicitor

³ *Health Insurance Act 1973* (Cth) s19(2).