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VALS' Submission to the Department of Justice in response to the Corrections Regulations – Regulatory Impact Statement – sent 23 February 2009

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INTRODUCTION

This submission contains a discussion of the Victorian Aboriginal Legal Service Co-operative Limited's (VALS) perspective on Corrections Regulation Reform as an Indigenous Australian organization and engages in a discussion of: cost effectiveness and crime prevention; culture; well-being; mental health; discipline; administrative process; appeal mechanisms; prisoner safety; prisoner classification; search; seizure and testing; use of instrument of restraint; prisoner money; access to visitors; the right to vote; Australian Capital Territory Prison and Coroner's recommendations.

Indigenous Australians

VALS agrees with the statement: "In a correctional setting more formal measures are required to ensure the human rights of prisoners and offenders, and other members of the correctional system, are not arbitrarily interfered with, and are balanced with the safety needs of the general community." (Corrections Victoria 2009:8). Given the over-representation of Indigenous Australians in the criminal justice system, VALS is acutely aware that Corrections Regulations should reflect an awareness of trends in the prison population specific to Indigenous Australians. The prison system is predominantly framed around trends relating to a non-Indigenous Australian male population. The needs of Indigenous Australians and female prisoners should influence the corrections system, not just be included as an add-on. The daily average number of Indigenous Australian prisoners 2007-2008 was 6505, representing 24.6% of prisoners nationally (Report on Government Services January 2009: volume 1).

VALS is disappointed that the Indigenous Issues Unit from the Department of Justice and the Aboriginal Justice Forum, who have specific expertise on Indigenous Australian issues, are not included in the list of stakeholders consulted. VALS has no recollection of being invited to a stakeholders meeting about the regulations.

A frequent argument that VALS communicates to the Government is that there has been an increasing trend towards inappropriate, unjust and ineffective "tough on crime" approaches in ignorance of the need for a more innovative and informed "smart on crime" approaches. The trend is apparent in statistics mentioned in the statement: '...the prison utilization rate increased from 89.0% at 30 June 2004 to 96.2% at 30 June 2007' (Corrections Victoria 2009:48). VALS defines a 'smart on crime' approach as one that recognises the shortcomings of the criminal justice system and attempts to deal with crime in an alternative manner.

Restorative Justice is an example of a smart on crime approach as it considers the long-term but also genuinely strives to address causes of crime and enable increased security for all. Prisons are a place where Restorative Justice can be practiced. There should be no waiting list for Restorative Programs in prison (i.e. drug and alcohol counseling).

Please see the attached paper on the pre/post release needs of Indigenous Australian women in Appendix "A" (A Little More Visible: Exploring the needs of Indigenous women post release from the Victorian Correctional System).

Cost Effectiveness

The way in which the regulations are reviewed should reflect the Charter of Human Rights and Responsibilities Act 2006. (Charter) VALS is concerned that the review of the regulations takes a cost-benefit approach, rather than a human rights approach. VALS is concerned that the criteria listed as influencing the decision making for the purposes of the review of the regulations does not promote a balanced scorecard approach as is claimed in the Statement (Corrections Victoria, 2009: 13). The following review criteria are removed from any notion of human rights:

- a) efficient use of public resources;
- b) effective management of prisons and community based corrections;
- c) flexibility;
- d) costs; and
- e) compliance with Victoria's legal system.

This does not accord with other elements of the Statement, such as the ongoing evaluation of the regulations will measure performance of prisons in relation to:

- public safety and prison security;
- prisoner wellbeing;
- prisoner health;
- prisoner rehabilitation/reparation;
- preparation for release/community integration.

If a cost-benefit analysis of the regulations is to occur then VALS argues that it is cost effective to seek and invest in preventative measures to criminal behaviour. Research indicates that money spent early saves money down the track. It is cheaper to support citizens to function in society than pay the bill for their imprisonment. UK Home Office research shows that if we didn't engage in crime prevention, crime rates would be 20% higher (Homel 2008). The total cost for Indigenous Australians in prison is estimated to be around \$400 million a year (Australian Institute of Criminology, *Reduction Matters: No 54: Cost Effectiveness of Early Intervention*, February 2007).

Role of Culture in the Wellbeing of Indigenous Australian Prisoners

According to research released this year, there is a need for renewed focus on the wellbeing of Indigenous Australians, as results (based on data from the 2002 *National Aboriginal and Torres Strait Islander Survey*) found that those with strong cultural attachment have significantly better self-assessed health, are more likely to be employed and are least likely to have been arrested in the past five years:

The findings also support the view that there are other means by which Indigenous disadvantage can be addressed and that restoration of Indigenous attachment to their culture may be an integral part of the solution (Dockery in ScienceAlert Australia & New Zealand 2009).

The objective of prisoner well-being can be met in part by prisons allowing Indigenous Australian services to enter the prison to provide a culturally appropriate service. The transition from prison to the community would arguably be smoother if

people have access to the same services/individuals in the community and prison. For instance, the Victorian Aboriginal Health Service which provides a service in relation to health and mental health needs should be available to Indigenous Australian prisoners.

Wulgunggo Ngalu Learning Place

The Wulgunggo Ngalu Learning Place (WNLP) is a positive initiative available to Indigenous Australian men on Community Based Orders. The WNLP aims to connect or reconnect Indigenous Australian men with their culture and is considered critically important as research indicates that Koori men who end up in prison have difficulties coming to terms with their Aboriginality in toady's society (Corrections Victoria 2005).

What makes WNLP a significant step is the direction it takes towards culturally appropriate, relevant, innovative and responsive measures employed specifically for Indigenous Australian men. WNLP provides transition planning for each participant. This highly tailored and specialized model should not only be made available for those requiring assistance in completing Community Based Orders. There is equal, if not more demand for a program such as this for those who are experiencing high levels of dislocation from society in prisons.

The WNLP is particularly modeled for males aged 18 and over, who are Aboriginal or Torres Strait Islander on a Community Based Order. VALS strongly encourages similar yet specifically tailored initiatives to be made available to Indigenous Australian women and youth in Community Based Order and prison situations.

Mental Health

VALS' prefers the concept of prisoner well-being to prisoner health. VALS includes mental health within a concept of prisoner well-being, rather than using the traditional terminology of mental health. Indigenous Australian's experience of the traditional mental health system is that it does not take a holistic approach and hence limited its scope to assist Indigenous Australians. The term 'well-being' has broader scope than the term 'mental health'. VALS is concerned by claims of the following practice:

Our involvement with Indigenous Australian women in prison would indicate that often mental health issues are responded to punitively. Lashing out at prison officers, aggressive behaviour, verbal abuse and non-compliance with prison rules or direct orders, often result in breaches of prison rules. A 'smart' approach to prisoner behaviour is better than a 'tough' or punitive approach. Where the prisoner involved has a known mental health issue, it would be worth discovering whether this status bears on the presented behaviour. We submit that it does and so warrants a culturally specific response, the absence of which leads to the over-representation of Indigenous Australian women in the management unit (Cerveri et al 2005: 19, 33-34).

One disciplinary action in prison that women have been reported as being subject to at a greater rate than men is a Separation Order. An administrative action under the

Corrections Act 1986, Separation Orders act to lock prisoners away alone in a cell for up to 21 days, generally for 23 hours each day:

On close examination of many of these incidents that have attracted Separation Orders, it becomes clear that women's expression of distress, depression or other mental health issues are often responded to punitively. The ambiguity of offences such as 'fail to obey order' means that women may be isolated on a separation order for not clearing the laundry before making a phone call if that was the preferred order of a particular officer. Rules like 'contrary to good order' could involve behaviours such as swearing at a prisons officer, again often depending on what is acceptable to that particular officer (Cerveri et al 2005:15).

Discipline

VALS argues that there is need for disciplinary criteria to be more gender responsive. Released in 2004, the Prison Discipline Regime Review, commissioned by the Correctional Services Commission, provided evidence of discrimination that women were experiencing in internal discipline matters. Women were revealed as being charged with more offences relating to good order than male prisoners (Cerveri et al 2005).

The potential negative effect of option 3 (general offence provision in legislation) involves public scrutiny of which offences fall within the category of general offences (Corrections Victoria, 2009: 17). The general offence provision is for offences that need to be introduced before the Regulations are amended again (i.e. offences relating to new technology) (Corrections Victoria, 2009: 84). It is essential that it is clear to prisoners what actions are considered general offences and the provision is not enforced if prisons are not aware that a certain behaviour is an offence.

Administrative Processes

Transparency and accountability in Corrections Regulations is crucial. If certain aspects of the regulations are to be administrative, it is imperative that such aspects are transparent and it is act to hold someone to account. VALS argues that option 1 (combined legislated and administrative process in relation to investigating alleged prison offences) needs to have safeguards to ensure that the administrative processes are transparent because they are not in legislation (Corrections Victoria, 2009: 18). Information about the administrative process should be made available to the community without the requirement of a Freedom of Information application.

Appeal Mechanisms

The Charter includes the right to a fair hearing (section 24). VALS' questions whether prisoners are receiving access to a fair hearing in light of the fact noted in the Statement that the current appeals mechanism is being used at a drastically low rate (7 judicial review proceedings in relation to Governor's Hearings since 2002, therefore averaging 1 per year) in comparison to the projected use of an improved appeals system in the form of a specialist tribunal for appeals (2,775 reviews per year).

VALS expects that the low number is for similar reasons as there are low number of complaints about police that is fear of harassment and reprisal. Investigating complaints about police (i.e. lack of independence) should not be forgotten about in the prison context either.

VALS is concerned that the improved appeals system is rejected in the Statement on the grounds of financial costs and hampering prison management. VALS reminds the reader of the importance of the right to a fair hearing. Also, it is important that whilst any hearing is pending that no reprimands or punishments should be meted out. VALS does not accept the notion in the statement that: '[t]he rights of prisoners to be assured a Governor's Hearing conducted according to law are safeguarded by the existing complaint mechanisms and the availability of judicial review' (Corrections Victoria, 2009: 16).

VALS adds that access to legal advice is essential to ensure a fair appeal process (this is also the case for a hearing). The Prisoner's Legal Service, Centre for the Human Rights of Imprisoned People, and Mental Health Legal Service (Access Pilot Project) should be funded appropriately on an on-going basis in light of this issue. Community Legal Centres such as VALS should also be provided more funding in order to better meet the needs of Indigenous prisoners claiming human rights violations.

Prisoner Safety

The safety of prisoners is paramount. The incident in early January 2009 where a bomb threat at the Melbourne Magistrates' Court led to the evacuation of 200 people from the court building, except the remand prisoners, is totally unacceptable. The large-scale evacuation acts as an indication that risk to human life was perceived to be real and the decision of the Victoria Police not to evacuate the prisoners raises serious human rights questions (Schockman 2009). As Corrections Victoria voices Charter compliance, the 'appalling disregard for the remand prisoners comes at a time when the State Government's responsibility to protect the lives of its citizens is under close scrutiny' (Schockman 2009:3).

The Victorian Charter requires of the State Government to aim to ensure that every person has the right not to be arbitrarily deprived of life.

The Victoria Police have stated that its evacuation policies are designed to ensure the safety of all people. The decision not to evacuate the prisoners in the Melbourne Custody Centre is a stark implication that the lives of prisoners are somehow worth less than the lives of everyone else ...in deciding not to evacuate the prisoners, the Victorian Police failed to discharge its responsibility to ensure a safe and secure society for all members of the Victorian community (Schockman 2009:3).

This incident should be reviewed and appropriate changes made to prevent a reoccurrence. VALS argues that the failure to evacuate the prisoners is in breach of the Charter (section 9: right to life).

Prisoner Classification

The practice of classifying a prisoner and then placing them at a prison for prisoners of a higher classification is questionable in light of the Charter, as is the practice of automatically placing remand prisoners in maximum security setting. As at September 2003, male and female Indigenous Australian prisoners were more likely to be on remand (22%) than non-Indigenous Australian prisoners (19%) (Pollard & Thomas 2001). Cerveri et al (2005), discussing Indigenous Australian women, argues that one reason for the high statistic is that when appearing before the Magistrate the granting of bail is less likely to be considered appropriate often due to homeless.

The mere fact that Indigenous Australian women are more likely to be on remand means that they, as a group, experience less-favourable treatment because of the structure of the classification system ... The very system of classifying all remand prisoners as maximum security, irrespective of any individual features of that prisoner means that Indigenous Australian women experience less favourable treatment because they are more likely to be homeless, a feature of systemic racism (Cerveri 2005: 31).

Search, Seizure and Testing

The Standard Guidelines for Corrections in Australia that outline the guiding principles for the management of prisoners includes that prisoners must 'be treated with respect as human beings and not be subject to harsh or degrading treatment, physical or psychological abuse' (Corrections Victoria 2009:53). The following depiction on strip searching suggests prisoners experiences exist to the contrary.

A strip search involves a prison officer naming every item of clothing, whereupon the prisoner removes it. Once the prisoner is naked, she is required to flip her ears, run her fingers through her hair, open her mouth and remove any dentures if applicable, lift her breasts, bend over and part the cheeks of her buttocks (Cerveri et al 2005: 20).

At the Dame Phyllis Frost Centre (DPFC), between 2001-2002 there were 18,889 strip searches and one item of contraband was found (Cerveri et al 2005). VALS supports the proposed Regulations change to not authorise random strip searching. Reports highlight the significance of this change, especially to women, in addition to it creating a more Charter compliant regulation:

...the women we work with consistently report to us that following a strip search they feel demoralized, humiliated and traumatized ...given the importance to women of maintaining contact with their families ...most female prisoners would submit to strip searches to maintain contact (Cerveri et al 2005: 20-21; Tarrengower 2001 in Cerveri et al 2005: 21).

The Standard Guidelines for Corrections in Australia also contains the principle that prisoners must be managed ‘without discrimination on the grounds of offence type, race, colour, gender ... mental impairment ... or other status’ (Corrections Victoria 2009: 53). The impact of strip searches is heightened through arguments made that strip searches are often in essence experienced as an act of sexual violence and ‘for Indigenous Australian women, who report a higher rate of previous experience of sexual assault, this trauma is compounded’ (Cerveri et al 2005:36).

Use of Instrument of Restraint

The amendments in the proposed Regulations are a positive step towards increased transparency and accountability in the use of restraints.

Prisoner Money

Transparency of a system for managing Indigenous Australian prisoner’s money (i.e. trust) is important in light of the history of the practice of institutionalised Indigenous Australians having their monies mismanaged (Corrections Victoria, 2009: 77). For instance, both the Queensland and New South Wales Governments have implemented schemes to pay back monies owed to Indigenous Australians who worked on missions etc.

Access to Visitors

The extended definition of “family” provided in the Corrections Act 1986 (Vic) to include a near relative of the prisoner and any other person who has a long-standing close personal relationship with the prisoner is a positive step towards improving family connections and maintaining prisoner well-being. The impact of this definitional change is specifically significant for some members of the Indigenous Australian community who have family circles and structures that exist in a manner outside of what may have been traditionally considered as typical of the nuclear family.

However, in order to enable Indigenous Australians to have full access to “family” a spent conviction scheme should be introduced. Indigenous Australian’s are disproportionately affected by the requirement that a visitor must have no criminal conviction given their over-representation of in the criminal justice system. The absence of a spent conviction scheme results in community members being prevented

from volunteering at prisons and Indigenous Australian prisoners being denied the well-being associated with being visited.

Right to Vote

The Regulations should reflect the findings of a recent High Court case of an Indigenous Australian female prisoner regarding the rights of prisoners, namely the right to vote. This Indigenous Australian woman, has been nicknamed the “Eddie Mabo of Electoral Law”. While in jail she fought a High Court case that overturned an attempt to remove the right to vote from all serving prisoners’ (Law Report Interview, 2009).

Australian Capital Territory Prison

The Regulations should reflect the learning’s of the ACT Government. After the ACT government enacted a Bill of Rights, a new prison was built and the design and construction complied with the Bill.

Coroner’s Recommendations

The regulations should reflect the recommendations of Coroners in relation to deaths in custody. Reporting on the implementation of such recommendations should be monitored.

CONCLUSION

The main points VALS made in its submission to the Department of Justice in response to the Corrections Regulations – Regulatory Impact Statement are:

1. Corrections Regulations should reflect an awareness of trends in the prison population specific to Indigenous Australians.
2. Human rights principles should be at the forefront of a review of the Regulations ahead of cost effectiveness principles.
3. If a cost effectiveness analysis is to take place, it should be acknowledged that prevention of crime is cost effective.
4. Something similar to Wulgunggo Ngalu Learning Place should be made available to Indigenous Australian women and youth and those in prison situations.
5. Those with strong cultural attachment have significantly better self-assessed health.
6. The term ‘well-being’ is preferred over the term ‘mental health’ as the former is a more holistic concept.
7. Disciplinary criteria should be more gender responsive.

8. Where general offence provisions exist it is essential that it is clear to prisoners what actions are considered general offences and the provision is not enforced if prisons are not aware that a certain behaviour is an offence.
9. If certain aspects of the regulations are to be administrative, it is imperative that such aspects are transparent.
10. A specialist tribunal for appeals should be introduced. The extent to which the current appeals system safeguards rights is questionable in light of the low number of appeals.
11. Access to legal advice is essential to ensure a fair hearing and appeal process.
12. The incident in early January 2009 where a bomb threat at the Melbourne Magistrates' Court led to the evacuation of 200 people from the court building, except the remand prisoners should be reviewed and appropriate changes made to prevent a reoccurrence. VALS argues that the failure to evacuate the prisoners is in breach of the Charter.
13. The practice of classifying a prisoner and then placing them at a prison for prisoners of a higher classification is questionable in light of the Charter, as is the practice of automatically placing remand prisoners in maximum security setting.
14. The amendments in the proposed Regulations are a positive step towards increased transparency and accountability in the use of restraints.
15. VALS supports the proposed Regulations change to not authorise random strip searching.
16. Transparency of a system for managing Indigenous Australian prisoner's money (i.e. trust) is important in light of the history of the practice of institutionalised Indigenous Australians having their monies mismanaged.
17. In order to enable Indigenous Australians to have full access to 'family' who visit them whilst in prison a spent conviction scheme should be introduced.
18. The Regulations should reflect:
 - findings of a recent High Court case of an Indigenous Australian female prisoner regarding the right to vote.
 - learnings of the ACT Government which introduced a new prison compliant with the ACT Bill of Rights.
 - recommendations of Coroners in relation to deaths in custody.

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APPENDIX A: A Little More Visible: Exploring the needs of Indigenous women post release from the Victorian Correctional System

Executive Summary

The Victorian Aboriginal Legal Service Co-operative Limited (VALS) has been referred to as situated at the 'tertiary end' of the criminal justice system¹. Its primary role is to provide legal aid and assistance to Aboriginal and Torres Strait Islander peoples. VALS does not directly work with Indigenous women re-entering the community from prison. However, the high rate of re-offending among Indigenous women in Victoria suggests that if Indigenous women were supported during their transition from the correctional system to the community, there would be a decreased chance that they would have to utilize VALS' services in the future. Given the extent of the problem, it will take all government and community organisations at every stage of the criminal justice system to work together to improve services for Indigenous women. As the Attorney-General Mr Rob Hulls describes the Aboriginal Justice Agreement Phase: 2 (2006), "a recommitment between Government and Indigenous Victorians to the challenges ahead". This report aims to improve the post-release service delivery for Indigenous Australian women in general.

There are currently few post-release programs that are developed for Indigenous women. The post-release period can sometimes be perceived as 'the last stage' of rehabilitation. However, for some Indigenous women it can be seen as the start, the start of healing and identifying the cause of their offending. It is vital that Indigenous women have access to culturally appropriate services and facilities to support them during this period.

The purpose of this research project *A Little More Visible: Exploring the needs of Indigenous women post release from the Victorian Correctional System* is to provide an overview of the issues affecting Indigenous women during the post-release period and the programs available to them. In order to construct informed recommendations, this report draws on relevant literature in the area (to establish some of the key issues that contribute to the rate of re-offending among Indigenous women) as well as interview and questionnaire data from relevant agencies within the Melbourne and Geelong region (to gain information about programs culturally specific to Indigenous women's experiences).

The findings of the report support issues identified in the literature review, including problems Indigenous women experience with services, such as finding adequate housing and addressing their financial difficulties. The data suggests that Indigenous women experience a number of frustrations and lack of access to services. In particular, indirect discrimination within the correctional system affects the extent to which their required needs for re-entering the community can be met.

The report recommends:

Improvement in the accessibility and number of client positions in current drug and alcohol treatments in the correctional system and the community.

¹ Thankyou to my internship supervisor, Greta Clarke, for pointing this out.

The Koori Transitional Support Program be mandatory for the first year and be reviewed in 2010.

Consideration of locating Koori Transitional Support caseworkers across Victoria
Secure financial assistance for Melbourne City Mission Structured Training and Employment Project to employ an Indigenous woman to conduct the program, with a minimum of twelve client positions.

Increase the amount of the crisis payment.

Health care cards should be received by Indigenous women prior to release from prison.

Greater flexibility for government organisations, including Centrelink, when working with Indigenous women during the post-release transitional period.

Development of a new research project into the needs of Indigenous women during the pre and post release transition. Relevant literature should be drawn upon. This project should be undertaken in conjunction with government, non-government agencies and Indigenous Australian women.

Acknowledgments

First I would like to acknowledge the contributions of the people who took the time to participate in the project. Their knowledge, experience and insight are invaluable.

I thank Greta Clarke, my supervisor at VALS, for her continuous advice, direction and knowledge during my internship.

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1. Introduction

The development of the Victorian Aboriginal Justice Agreement Phase 2 (AJA2) has been described as a symbolic step in the recommitment to the work undertaken during the Victorian Aboriginal Justice Agreement: Phase 1 (2000-2004). Importantly, the AJA2 identified gender as a factor that should be considered in the design of specific responses to the over-representation of Indigenous women in the justice system. This is a significant step as social justice organisations have persistently criticised the invisibility and discrimination of Indigenous women since the Royal Commission into Aboriginal Deaths in Custody report in 1991. Despite its 339 recommendations, the report failed to adequately address the circumstances of Indigenous women in prison, even though 11 of the 99 deaths investigated were of women.

Examination of the available literature suggests that emphasis has been placed on the experience of incarceration for Indigenous Australian men. Moreover, the concerns and needs of Indigenous peoples in the post-release also tend to be discussed from a male viewpoint, while the situation for Indigenous women remains blurred. Continuing to neglect their distinct needs may further marginalize Indigenous women, and entrench inequalities in service delivery.

The existing literature investigating the post-release experiences of Indigenous women does identify certain crucial issues regarding re-entering the community which include housing, dealing with violence, kinship obligations, financial issues, employment and training and access to health services (ATSI, 2002). Accordingly, existing services to Indigenous women need to be targeted and culturally sensitive. Importantly more work also needs to be done on assessing currently unmet needs.

2. Objectives

This research project aims to:

review the literature available on Indigenous women post-release from the Victorian Correctional System (VCS)

investigate factors contributing to the high recidivism rate among Indigenous women in the VCS

explore current concerns of organisations who work with Indigenous women post-release from the VCS

Setting the scene:

As of the 8th May 2007, 15 women in the Victorian prison identified themselves as Indigenous, representing 6% of the total female prisoner population

As at 30th June, 2002, the expected time for a sentenced Indigenous woman to serve in prison was 15 months. As at 30th June, 2006 the expected sentence length increased to an average of 25.5 months

As at 2006, 60% of the Indigenous women in prison custody had served prior episodes of adult imprisonment

3. Methodology

Research was conducted using the following methods:

Literature Review

Interviews and questionnaires by representatives of relevant organisations

1) Literature Review

The literature was reviewed for two reasons:

To provide some direction for the overall research.

To identify appropriate organisations to interview/survey.

2) Surveying relevant agencies

The literature identified the need to interview people in two areas. First, those working in a small number of programs and facilities provided by the correctional system specifically for Indigenous women post-release. Two government workers were subsequently interviewed for this research. Prior to interviewing government personnel I received ethics approval from the Department of Justice Human Ethics Committee (January, 2008).

Second, as the literature claimed that recidivism among Indigenous women has a strong correlation with unstable housing and financial difficulties, secondary issues such as drug and alcohol use, domestic violence and medical concerns must also be explored. Non-government agencies were therefore approached based on their involvement with these issues in the community. Some of the representatives acknowledged that their programs “were not specifically deigned or to cater for post-release”. The agency’s reputation among the Indigenous community was equally important. Five community workers participated, two were interviewed and three completed questionnaires².

During interviews the use of a semi-structured style was employed. This style was deemed most suitable as this allowed respondents more flexibility to express their opinions and explore a topic in more detail (Bourma, 1996). For example, concerns regarding custody and pre-release were raised spontaneously by representatives of community organisations. Although the project is predominantly looking at the post-release period, pre-release issues have been included in the findings section where it is acknowledged that pre-release has an impact on the effectiveness of services and programs post- release.

4. Findings

4.1 Literature Review

The rate of imprisonment of Indigenous women across Australia has continued to increase since the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) and it is currently the fastest growing population of people in prison (Lawrie, 2003). Furthermore, Indigenous women are arrested and re-incarcerated at one of highest rates in comparison to other groups in Australia, with recidivism as high as 70% among this population (Cameron, 2001). Clearly post-release facilities are not appropriately and effectively catering for Indigenous women as the rate of recidivism is a key indicator of a prison system’s achievement in re-integrating people back into the community. In Victoria, Indigenous women are 12 times more likely to be incarcerated than non-Indigenous women (Department of Justice, 2005).

The post-release period has been acknowledged as a vital opportunity to address and improve particular circumstances in which many Indigenous women found

² See Appendices A and B

themselves in prior to being imprisoned. A number of these women suffer particular socio-economic disadvantages including low incomes, reduced life expectancy, high unemployment rates, carer responsibilities and poor education levels. Indigenous women are also more likely to be victims of violence and to live in communities where violence is prevalent, particularly in remote and rural areas. In some instances, the causes of over-representation are more complex and profound (ATSI, 2002). In some surveys, too, Indigenous women have identified the effects of colonisation as the cause of offending behaviour.

Thus, effective and culturally specific post-release rehabilitation, facilities and services are crucial in breaking the cycle of the “revolving door”, and preventing Indigenous women returning to prison.

Issues affecting post-release services for Indigenous women

i) Systemic Discrimination

There are few post-release services and programs that are designed and implemented for Indigenous women. The main explanation by the VCS is the low numbers that Indigenous women represent in the whole prison population. As a consequence, Indigenous women experience systemic discrimination in terms of program delivery, typically receiving variants of Indigenous male or of mainstream female services (ATSI, 2002).

The small number should not undervalue the impact this has on Indigenous women, their children and their communities. In response to the stress of not having regular contact with their children it is not uncommon for Indigenous women to self-harm or become depressed or despondent about their children’s needs. While the Dame Phyllis Frost Centre in Melbourne does have the facilities so that children can reside with their mothers in custody, due to restrictions of this report, these facilities will not be examined in great detail. It is understood, however, that there are restrictions on the facilities based on length of sentence, impacting on a majority of Indigenous women. Programs provided post-release require a basic framework and flexibility when working with and supporting Indigenous women in the community.

ii) Length of Sentence

A majority of Indigenous women in the VCS are imprisoned for a minor offence including public order offences that receive short sentences. Resource limitations within correctional services have meant that Indigenous women with very short-term sentences may not be assessed for service/program delivery (Borzycki, 2005). These women are offered little if any support while they serve their sentence, therefore compounding the circumstances Indigenous women were taken from prior to imprisonment

According to Kilroy (1999), Indigenous women with short-term sentences are given very little respect within the prison culture. Furthermore, institutionalization makes them lose confidence in their ability to make decisions. Indigenous peoples are more likely to suffer the disadvantages associated with imprisonment, including homelessness, unemployment, illiteracy, poor mental and physical health and alcohol or other drug problems (Hunter, 2001).

iii) Culturally Appropriate Concerns and Needs

Indigenous women share similar basic needs to non-Indigenous women when released from prison including food, shelter and health care. However, Indigenous women do not represent a homogenous group and their experiences are different depending on what other categories of disadvantage they occupy (Cerveri, Colvin, Dias, George, Hanna, Jubb, Vidyasagar & Stubbs, 2005). It is essential that Indigenous women also be recognised as a separate group with distinct needs.

A study conducted by the Aboriginal Justice Advisory Committee (ATSI, 2002), suggested Indigenous women re-entering back into the community needed to have ongoing support from professionals in a cultural sense. In addition, the report recommended that necessity for more Indigenous specialists, to provide appropriate counseling on a one to one basis. This will help them deal with problems such as sexual assault and drug abuse issues, especially concerning their anxiety and fear upon release and then the ongoing maintenance within the community, that supports them in their traditional roles as mothers and family carers.

As mentioned above, some Indigenous women have acknowledged that the experience of colonisation is the cause or a contributing factor for their offending behaviour. To address these issues, the correctional system has implemented programs for Indigenous women that are primarily designed for Indigenous men. However, the experience of oppression and dispossession is different for Indigenous women and men.

The issues of healing and wellness are critical issues for Indigenous women exiting prison. Healing is not a program; rather it is a process and is not something that should only be available at the post-release period (ATSI, 2006). The programs offered in custody and post-release mimic the rigid and inflexible nature of the correctional system. Culturally appropriate services that support the process of healing should be available at any point when a woman is ready. This may be before an Indigenous woman comes into contact with the criminal justice system, or after she has been in and out of prison over a number of years. Unfortunately, the correctional system offers little help to support the healing process for Indigenous women after they leave prison.

iv) Housing

The provision of suitable housing has been identified as an essential part of a person's successful transition from prison to the community. Studies conducted by Baldry, McDonnell, Maplestone and Peeters (2001) and Meehan (2002) examined the trends in the provision of accommodation services to people who have exited prison. It was established that this group are a high needs group that require specific policies to address their housing needs. In addition, people released from prison who do not have stable accommodation are two and half times more likely to be reimprisoned than people who have stable accommodation (Office of Housing and Office of Correctional Services Commissioner, 2001).

In Victoria the process to set up and secure housing is fraught with many difficulties. For example, public housing which is cheap and permanent accommodation has a waiting list of up to ten years. Due to the high demand, Priority Segmented Waiting Lists (SWL) were introduced through the Department of Human Services as a method to help identify homeless individuals who have the greatest needs. People in prison are not deemed to be "homeless in prison", and are therefore unable to apply for

public housing through any of the SWL categories. In addition, people in prison are cut off SWL, as they fall under 'state care' whilst incarcerated (Ogilvie, 2001).

Private rental is another option. This raises separate problems including the ability to financially access this option. The Office of Housing has an initiative called the bond loan scheme. The bond loan is interest free and when women leave the property, they pay back the loan. Women still have to come up with four weeks rent in advance and it is expected that potential applicants will have references from previous landlords.

The Dame Phyllis Frost Centre is one of three Victorian prisons that have a housing initiative, THM Corrections Housing Pathways. Services are co-ordinated by housing placement workers. Their role is to provide housing information and assistance for people who have a history of homelessness and who are likely to be homeless on release from prison. The preliminary findings from an evaluation conducted in 2004 reveal that Indigenous women participated in this initiative at a higher rate than that of Indigenous men (11.5% and 4.9% respectively) (ATSI, 2004). The assessment suggests that this could be because of the efforts of housing placement workers to house Indigenous women. The evaluation also indicates the initiative's positive impact on reducing re-offending.

According to Lawrie (2003), access to stable housing is the core necessity, which affects the transition from prison into the community through a variety of ways. First a home provides a basis to regain access to children. Indigenous women cannot access financial assistance without having permanent accommodation, as this is one of the criteria that must be completed. Additionally, a lack of housing can interfere and hinder the effectiveness of programs including drug and alcohol treatment.

Financial Needs

Upon release from the correctional system women are entitled to a crisis payment, which is half of a Newstart or Disability Support payment. Some of the criteria that need to be met to be eligible for the payment include sufficient identification and the appropriate release papers when applying at a Centrelink office. Another benefit, health care cards, are not given over the counter as they "must be" and are mailed out (VACRO, 2006). Holding a health care card would reduce the amount of financial strain on women.

Findings

Indirect discrimination against Indigenous Women

A number of Indigenous women are classified as low security, which is the classification of Tarrengower women's prison. However, many Indigenous women opt to be placed at Dame Phyllis Frost Centre as "it is more accessible for family members including children to visit" with greater accessibility to public transport (Community Worker 2). The Dame Phyllis Frost Centre, being a maximum-security prison, has "harsh conditions that come with that" including restrictions on access to children (Community Worker 2). This indirectly discriminates against Indigenous women, who are classified as minimum or medium security because they are effectively controlled by regulations appropriate to a maximum security prisoner.

A further restraint on Indigenous women is the provision of inadequate information about their children:

“One thing I do know that Indigenous women do have some frustration around in prison is getting information from Victorian Aboriginal Child Care Agency or Department of Human Services. Custody issues and stuff like that. A lot of them do not know what is happening with their children or where they are. They do not [have] proper access to those services...I have real concerns around that” (Government Worker 2).

Lack of Drug and Alcohol Treatment Resources in the Correctional System and the community

The matter of Indigenous peoples serving shorter sentences was raised by the RCIADIC report.

Recommendation 92 attempted to address this through a dualistic approach, emphasising to the sentencing court that in considering a disposition in a criminal matter for an Indigenous offender, the court must exhaust all other possible options, issuing a term of imprisonment as a last resort (Edney, 2004). This recommendation has achieved little for Indigenous women being sentenced, partly because of the lack of resources within the community service sector. As one participant recognised, the consequence of this was the prison system being used “as a quasi detoxification program... because there is a lack of services in the community for women with substance abuse issues” (Community Worker 3). Community worker 3 listed as a further concern, the reality that Indigenous women were “serving short sentences”. This indirectly discriminates against Indigenous women, as their accessibility to utilize these correctional facilities are restricted by the length of their sentence.

Anecdotal evidence suggests that the intention of the courts in imprisoning Indigenous women for offences relating to drugs and alcohol is for them to receive treatment for these issues. The treatment program is a 12-week period. However, due to extensive waiting lists because of the deficient drug and alcohol treatment resources in Victorian women’s prison and the short sentences Indigenous women are given, they often do not receive any significant treatment while incarcerated. Compounding the primary issues of re-settling a woman into the community after being released, the prison setting has been identified as an environment that can exacerbate health problems, including substance abuse. Consequently, agencies in the community have the task of re-settling women back into the community and dealing with substance abuse issues that have not been treated. Therefore the post-release period, “that we are not investing enough in”, can be considered as a high risk period.

Direction of programs in the prison setting

Community worker 5 felt that “imprisonment, as terrible as it is for most of the women can also be a time for them to look at themselves - in regards to changing their life options work, [it] is a good avenue”. This representative expressed the need for the correctional system to take a more active role in “improving women’s self-esteem and worth” through “various training and workshop courses”.

Community worker 2 recognized the limitations of the correctional system’s facilities:

“ lack of culturally sensitive programs and so forth. So, the big question here is why should our women have to do this?” (Community Worker 2).

Until the correctional system’s ideologies change as to what their role is in rehabilitating Indigenous women and their overall role in society, than the outcomes will remain the same.

Housing Concerns for Indigenous Women Post Release

Five of the seven participants recognised that the primary need for Indigenous women to make a successful transition from prison to re-entering the community was suitable housing. As one participant stated:

“One of the biggest problems for Koori women being released is accommodation.... accommodation and employment.... Yeah so if accommodation’s not there well then your back on the street ...or take accommodation that you normally wouldn’t take so you can get a bed” (Government Worker 1).

Housing Resources

Attached to the identification of housing as being a significant concern for Indigenous women post-release were the troubles that are faced in finding and/or securing stable accommodation. This included lack of resources and support. As community worker 1 expressed:

“...Look I think in terms of post release I have issues with the post release systemwhen people are exiting prison that is the most crucial time that they need the support. Now agencies such as *Flatout*, who provide housing for women exiting prison, have got very few resources to be able to cater for the demand. So a lot of these women fall through the gaps” (Community Worker 1).

Furthermore, many of the community workers expressed a high level of frustration over the planning given by the correctional system towards the post release period:

“Starting the process the day of release is not good enough. All the work falls onto the Co-operatives” (Community 4).

Some of these workers went on to explain that they had received funding for new programs and facilities. However, there was still not enough financial support for agencies to provide services to meet the level of demand that they were experiencing.

The Connection Between Housing and Recidivism

Participants identified the process of securing housing prior to release from prison as problematic. In some circumstances Indigenous women:

“... haven’t been able to secure housing whilst they have been in prison. And often if that support isn’t there the first thing they will do is go back into their old habits. So that is the most crucial time that people exiting prison need support” (Community Worker 1).

Community Worker 4 described the relationship between financial issues, housing and recidivism, “they re-offend to keep a roof over their head.” This demonstrates a clear relationship between poor post- release housing experiences and recidivism.

Finance

Two of the participants discussed Centrelink’s role in providing women with the financial assistance to secure safe housing. The participants explained the consequences of not receiving sufficient support:

“... if they go and get their first cheque at Centrelink that’s all going to go on their accommodation so then they’re accommodated but no food no nothing. There needs to be a lot more planning in terms of releasing a prisoner. I hate the word prisoner.... But you know what happens in prison in terms of planning is very limited. They can only work within the prison system. What happens outside....they can try but there is no guarantees that that agency’s gonna continue working. That’s why I’m saying that you need a support person out there like a case manager almost” (Community Worker 1).

Community Worker 4 described the current trend of centrelink cutting back on staff and the follow on effects this is having on Indigenous women attempting to access services and facilities:

“Housing and Centrelink have to come on board. They need to work together so these women don’t come out with nothing and homeless.... Also Centrelink is cutting staff. If they ask about housing they will be sent to the computers. They will just walk out of there if they don’t know how to use a computer” (Community Worker 4).

Type of Service

When participants were asked if it was crucial that pre and post-release services work together to be effective, some of the responses described this partnership as “crucial” and “essential” as “no one service can provide all that is required by a women exiting the system” (Community Worker 3).

Service Choice

In regards to Indigenous women using programs, the main point made was that “it should be a choice if mainstream or Indigenous specific services” are accessed (Community Worker 4).

Culturally Appropriate Facilities for Indigenous Women

A problem mentioned in some of the responses from community workers was the complexity of issues Indigenous women face once they are released from the correctional system. Although not all of the programs run by organisations are specifically designed for women post release from prison, they are tailored for Indigenous women and have a primary area of focus. If there are other issues, “a great deal of time [is] spent helping the women to address some of these issues” (Community Worker 5).

Therefore workers need to be trained in a number of areas.

Furthermore, the necessity to provide facilities in a culturally appropriate manner was expressed by some participants:

“What is more important is that these services are culturally aware, sensitive and safe.... Aboriginal women have and continue to be reluctant to access mainstream services... because of past experiences with removal of children and so forth” (Community Worker 3).

Several organisations achieved this through the employment of Indigenous workers, who have first hand experiences across a broad range of issues, “recognise the diversity among women living in rural, remote and urban areas [and] the diversity within these discrete communities” (Community Worker 2).

Some of the participants acknowledged that their programs and services are not specifically designed for women re-entering the community.

“Currently there are no specific pre and post release programs available for Aboriginal women. Since this is the case, all mainstream providers offering these services should undergo ongoing cultural awareness training” (Community Worker 2).

Examples of Services

Koori Transitional Support Program

The Department of Justice has developed a new program in identification of the culturally-specific needs of Indigenous peoples returning to the community. The program, which is due to commence in prisons during 2008, aims to meet the pre- and post-release needs of Indigenous men and women exiting prison in a culturally-responsive approach. This is done primarily through the employment of Koori case workers who have “have links to Koori community and Koori agencies”. If an Indigenous woman chooses to leave the Metropolitan Melbourne region and, for example, re-locates to Mildura, her assigned case worker:

“...would not be able to do the work for them in Mildura the case worker post release they need to if there is a caseworker in Mildura link them in with that person or they need to link them in the services and then broker out services. There is this amount of money that we have and we want you to provide a service for them... so it’s like a broker ridge” (Government Worker 2).

There are possible concerns with this approach including that Indigenous women may ‘fall through the cracks’ with a lack of follow up or support. Numerous non-government workers recognised that they do not have the resources to cater for the demand. Providing the funds to work with this Indigenous woman does not necessarily mean those organisations can employ more staff. In addition, there may also be a lack of qualified people to employ.

It is crucial that relationships with family and children are strengthened before release from prison. The Koori Transitional Support Program is mindful of the necessity to include family in the transitional period:

“... it’s also making sure too that when it comes to a Koori offender making sure that the families involved in their case management. So having family members involved in the case management rather than the system” (Government Worker 2).

Including family members may also decrease the likelihood of re-offending among Indigenous women post release. As one participant stated:

“The most crucial time is the first 3 months after release. This is the time that women want to see children and catch up with family, etc. If the woman has served a lengthy sentence and has lost her home and her children are in care, she literally has no where to go and no strong supports to give her assistance or guidance. It is highly likely that the woman will resort to feeling hopeless and begin the same cycle that had her incarcerated in the first instance” (Community Worker 3).

The KTSP program aims to actively engage Indigenous women in their rehabilitation. Thus the program “ needs to be voluntary because the onus needs to be on the offender to you know change their behaviour and not re-offend... and to make a real change for the better” (Government Worker 2). The KTSP is aware that childcare is important in enabling Indigenous women to attend appointments. Therefore reimbursement for childcare could be accessed through the KTSP. Government Worker 2 acknowledged that lack of accessibility to transport sometimes are “definitely the case why this breaches of parole because they haven’t got.” Despite this, if an Indigenous woman is on parole or a straight release she will receive no reimbursement of transport costs for attending appointments or programs.

Structured Training And Employment Project

Melbourne Citymission developed a structured training and employment project (STEP) specifically for Indigenous women. Implemented in 2007, the project aims to assist Indigenous women to secure employment and increase the motivation and interpersonal skills of the women. However “due to the complex issues many of the women experienced once they were released a great deal of time was spent helping the women to address some of these issues” (Community Worker 5).

An Indigenous consultant was employed to run a discussion with Indigenous women to ensure the program would meet their needs. Melbourne City Mission is trying to secure funding to employ an Indigenous worker for the coming financial year to continue the work already started. The STEP recognised the importance in future “to work closely with Indigenous women in prison and then assist them to explore work options through a broker once released” (Community worker 5). This would allow Indigenous women and the worker to build a relationship and individual program prior to release.

“Sisters Day Out” Workshop

The Family Violence Prevention and Legal Service (FVPLS) has secured funding from the Department of Justice (Vic) to deliver a “Sisters Day Out” workshop in the women’s prisons. The workshops are currently being conducted in various local communities throughout Victoria.

The workshops focus on family violence and sexual assault. These sessions also allow “pampering” for the women such as hairdresser, manicure, facials and massage. In addition, there are also sisters “yarning circle” sessions. It is the intention of FVPLS to liaise with Indigenous women in the VCS about what type of information they would like and how they would like the sessions to be conducted.

5. Recommendations

This report makes a number of recommendations:

Transitional Programs:

Koori Transitional Support Program

Consideration should be given to making newly developed post release programs, including the Koori Transitional Support Program (KTSP) mandatory for the first year. The implementation of this could be an important step in making community organisations and the Indigenous community aware of new programs.

Planning for the post-release period should begin 12 weeks prior to release, rather than the 8 weeks specified in the KTSP. If women have less than a three-month sentence, planning for the post-release period should begin immediately.

The KTSP should be reviewed after two years. This would allow new initiatives to be included in the program, including drug and alcohol treatment. During the two-year assessment the KTSP, re-offending rates between Indigenous women in metropolitan Melbourne and regional/rural areas. If there is lower rate of successful transitions of Indigenous women in regional/rural areas, consideration should be given to employing KTSP caseworkers to specific locations across Victoria. This would give Indigenous women more interactive, long-term support.

Melbourne Citymission: Structured Training and Employment Project (STEP)

Secure long-term financial assistance to employ an Indigenous worker to conduct the program.

Secure sufficient funding to make available twelve places specifically for Indigenous women clients post-release

Future Research and Programs

This project acknowledges that it is a snapshot of some of the major concerns during the post-release period for Indigenous women. The report recommends the need for further research into this area:

The study should include: a detailed literature review, including programs in other countries and Australian States and Territories; research into the needs of Indigenous women through interviews with Indigenous women currently in the VCS; and consultation with relevant non-government agencies across Victoria.

This proposal could be done in conjunction with the review of the KTSP. After two years, caseworkers would be aware of possible re-structuring and improvements.

The development of drug and alcohol treatment specifically designed for Indigenous women post-release is one avenue the correctional system should explore. This would relieve some of the pressure that this places upon non-government organisations. Workers would also be trained and aware of concerns relating to experiences of the prison setting.

5.2 Finance

Centrelink should give greater consideration to the financial requirements of re-settling a woman into the community.

In addition greater flexibility should be given in working with Indigenous women during this period of time, as women can feel unsettled, stressed and anxious.

This project recommends:

Review of the amount of the crisis payment, possibly increasing it to a full 4 weeks of Newstart. This will cater for bond, rent, food and transport costs within the first 2 weeks of release. This can be given to women in the form of an Electronic Benefits Transfer card upon release.

A Health Care Card should be issued prior to women release from the correctional system.

Greater flexibility in accessing housing and welfare payments. Criteria including level of identification required, and permanent residency need to be accommodated.

To receive payments such as Newstart, there should be greater flexibility over the first 4 weeks regarding the number of jobs women have to apply for to receive the payment. This will allow women to concentrate on securing housing, networking with medical agencies, possibly re-connecting with family and over all stability.

Indigenous Specialist Officers have been an important step in improving services for Indigenous peoples. It is recommended Centrelink implement an Indigenous employment scheme, specifically training workers and incorporating them at all levels of the organisation.

Conclusion

This study is a snapshot of the key issues Indigenous women experience on re-entering the community from the correctional system. These findings support the issues recognised in the literature review.

The report acknowledged two new programs developed by FVPLS Victoria and Melbourne City Mission that cater for Indigenous women's needs. These services are pertinent to reducing the rate of recidivism among Indigenous women. As the KTSP is commencing this year, it is too early to access its level of success.

Recommendations in section 5.1 relating to transitional services and 5.2 relating to finance include suggestions for possible improvements and changes to current programs and services to allow greater accessibility and efficiency in program delivery for Indigenous women. It is important that pre- and post-release programs work in conjugation with one another to retain a high level of efficiency.

Indigenous women have an important role within communities. It is hoped that Indigenous women in Victoria are acknowledged in the correctional system as an important and valuable population through the development of culturally appropriate programs and services.

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APPENDIX

Research Questions

1. What does the organisation your representing aim to do working with Indigenous women during post release?
2. What facilities or programs does the organisation provide Indigenous women during post-release? Do they address any of the following?
 - *Employment
 - *Health – drug rehabilitation, physical and mental health
 - * Housing issues
 - * Dealing with violence
 - * Crime prevention strategies
 - *Re-integration into their community
3. How are the facilities and programs culturally and spiritually sensitive to Indigenous women’s issues and needs?
4. Do the programs recognise the diversity among Indigenous women in remote, rural and urban areas?
5. Are the programs during post release compulsory? Why?
6. Are the post-release programs specifically designed to enable Indigenous women to access them? If so, how?
 - *Child-care
 - * Location taken into account
 - *Financial reimbursement for attending
7. What time frame are the programs and facilities post release provided to Indigenous women? Why (e.g. has it been identified as the most crucial period post release)? Should this time frame be extended?
8. What are the major issues Indigenous women have said that are not being addressed in custody and during post release?
9. Is it crucial that pre-release and post-release services work in conjunction with each other to be effective?
10. Is there any other information or comments you would like to add?

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Landscape of risk: Exploring the needs and concerns of Victorian Indigenous women during the post-release period

Questionnaire

1. What does the organisation you're representing aim to do working with Indigenous women during post-release?

2. What facilities or programs does the organisation provide Indigenous women during post-release?

Do they address any of the following?

- *Employment
- *Health – drug rehabilitation, physical and mental health
- * Housing issues
- * Dealing with violence
- * Crime prevention strategies
- *Re-integration into their community

How are these crucial to preventing re-offending?

3. How are the facilities and programs culturally and spiritually sensitive to Indigenous women's issues and needs?

4. Are the programs during post release compulsory? Why?

5. Are the post-release programs specifically designed to enable Indigenous women to access them?

If so, how? *Child-care

- * Location taken into account
- * Financial reimbursement for attending

6. Do the programs recognise the diversity among Indigenous women in remote, rural and urban areas?

7. In custody, do Indigenous women use family visitation facilities regularly? If not possible, are Indigenous women provided with sufficient information regarding the well being of their children?

8. What time frame are the programs and facilities post release provided to Indigenous women? Why (e.g. has it been identified as the most crucial period post release)? Should this time frame be extended?

9. Is it crucial that pre-release and post-release services work in conjunction with each other to be effective? Why?

10. What are the issues that Indigenous women have listed as concerns in prison that are not being addressed in custody and during post release?

11. Is there any other information or comments you would like to add?