It’s time to talk about race, colonialism…and abolition.

Joint Submission from Sisters Inside and the Institute for Collaborative Race Research on Discussion Paper 2 of the Women’s Safety and Justice Taskforce: *Women and girls’ experience of the criminal justice system – Proposed focus areas*

Contents

Introduction

Established in 1992, **Sisters Inside** is an independent community organisation based in Queensland, which advocates for the collective human rights of women and girls in prison, and their families, and provides services to address their individual needs. Sisters Inside believes that no one is better than anyone else. People are neither "good" nor "bad" but rather, one's environment and life circumstances play a major role in behaviour. Given complex factors lead to women and girls' entering and returning to prison, Sisters Inside believes that improved opportunities can lead to a major transformation in criminalised women's lives. Criminalisation is usually the outcome of repeated and intergenerational experiences of violence, poverty, homelessness, child removal and unemployment, resulting in complex health issues and substance use. First Nations women and girls are massively over-represented in prison due to the racism at the foundation of systems of social control.

The **Institute for Collaborative Race Research** is an independent organisation, not tied to the institutional interests of any university, association, or academic discipline. Their primary purpose is to support antiracist, anticolonial intellectual scholarship which directly serves Indigenous and racialised communities. ICRR seeks to create deeper engagement with crucial political questions in an institutional context not dominated by whiteness. Its members are invested in activist, community-based scholarship and communication on race, colonialism, and justice. ICCR provides specialised additional support for those engaged in disruptive interdisciplinary research, sustaining a network of established scholars, early career researchers, students, activists and community members who collaborate in the interests of justice.

We provide to the Women's Safety and Justice Taskforce this joint submission which responds to the **Discussion Paper 2 'Women and girls' experience of the criminal justice system'.** This Discussion Paper seeks input into the proposed focus areas for consultation.

Page 9 of this Paper asks "should we explore any other cross cutting issues" [in addition to diversity, disadvantage, trauma and Aboriginal and Torres Strait Islander overrepresentation]? Our answer is yes. We propose that the Taskforce introduces an explicit and consistent focus on race – and through this focus, addresses core issues of colonialism and carcerality. Only such an explicit focus can give the Taskforce the tools to understand the structural violence of policing and incarceration in the colony, including how it is intersects with patriarchal and heteronormative forms of coercion.

As in our previous submissions, we reiterate our concerns about the framework within which the Taskforce conducts its work. In particular, we are concerned with the construction of false binaries that inhibit attempts to gain a full understanding of 'women and girls' experience of the criminal justice system'.

As in the previous Discussion Paper and in the Terms of Reference, the Taskforce still understands women in only two ways – as victims or as perpetrators (referred to as offenders or accused persons). This has particular implications for Aboriginal and Torres Strait Islander women; it means the Taskforce refuses to hear them. By definition, victims are powerless and require saving, while perpetrators are morally illegitimate and require control. In the Discussion paper and throughout its work to date, the Taskforce, the state and white feminists presume to speak for these 'victims' and about these 'perpetrators'. While deploying this authority to speak, they do not speak about the racial and colonial violence that they themselves are implicated in and/or complicit with. As Nayuka Gorrie has pointed out, the victim/offender framing has significant implications for the way Aboriginal and Torres Strait Islander women and girls are addressed and engaged; 'in our refusal to

be victims here we must surely be the perpetrators of violence for having the audacity to speak back to white women (who are very nice and mean well)'.

In addition, while the Taskforce recognises the 'particular problems experienced by…LGBTQIA+' we have concerns that the unique experiences of trans, gender diverse and non-binary people are erased and excluded from this process. The Taskforce continue to work with a list of categories of all 'women' who deviate from the norm of white, cis, straight, middle-class, middle age, city-dwelling woman. This bullet point grouping positions them as other, and their identities as marginal or secondary considerations in the question of DSFV. However, it is precisely these people who find themselves over-represented as victims and offenders in the system that the Taskforce claims to be interrogating. They are, in fact, at the centre of these questions and should be at the centre of discussion about them.

How is it possible that the Taskforce itself and the Terms of Reference continue to under-represent those people who are over-represented in the system? This contradiction represents a core limitation that remains unaddressed by the Taskforce and which cannot be attributed to a scarcity of time or resources; the point has been made many times in many different ways. Instead the Taskforce's continued marginalisation of these groups reflects the violence of the state's imagining – specifically its refusal to see or address fully the experiences of women, girls, and non-binary peoples' experiences of the criminal legal system.

This issue of overrepresentation in the criminal legal system, and underrepresentation in the Taskforce and public discussion, is not an intellectual one. It has distressingly real consequences.

We remember with respect the tragic death of Ms Veronnica Baxter, a Queensland born Aboriginal woman who died in custody in an all male correctional facility in New South Wales. She was refused bail and denied access to hormone medication prescribed to her. We highlight the tragic story of Ms Veronnica Baxter to demonstrate the severity of the consequences of failing to attend to and centre the voices of those who are most affected by the criminal legal system and the proposed changes to it. At present, there is no possibility for adequately considering the experiences of Aboriginal and Torres Strait Islander women, girls, trans, non-binary and gender diverse people in the criminal legal system let alone ensuring any prospects for their safety and justice. This is because the Taskforce proposes and pre-empts the prospect of only considering 'women and girls' experiences *as victims* in relation to sexual violence while continuing to ignore their experiences as victims of state-sanctioned violence. It is hard to take seriously the Queensland government's claimed commitment to 'women and girls' safety' when it erases so many of the forms of violence they experience.

Separating out 'women as victims' and 'women as offenders' is a clear example of how the Paper and Taskforce approach erases racial and colonial violence. In the Queensland context, almost every woman and girl who is incarcerated has also been a victim of abuse or violence. In the case of Aboriginal and Torres Strait Islander women, non-binary people and girls, incarcerated 'offenders' are also 'victims' of abuse by the settler state, which has a long history of deploying police and prisons as mechanisms to control, dispossess and harm Aboriginal and Torres Strait Islander peoples. This is not a past practice. Race based hyper incarceration of Aboriginal women in Queensland has escalated sharply over the past ten years, and continues to rise with the constant introduction of new laws (see ABS Prisoner numbers and prisoner rates by Indigenous Status and sex, States and territories, 2006-2020).

We draw your attention to the comments we have made previously about the Taskforce's inability to address these experiences of Aboriginal and Torres Strait Islander women and girls due to a

persistent refusal to consider the critical impact of state supported racial and colonial violence. These concerns are outlined in depth in our previous submissions (see our joint statement on the Taskforce's terms of reference '*In No Uncertain Terms: the violence of criminalising coercive control*' and our Submission in response to Discussion Paper 1 entitled *'The State as Abuser: Coercive Control in the Colony'*). We again reiterate this vital and fundamental point.

Currently, the state is a primary abuser of racialised women and their communities – and especially an abuser of Indigenous peoples in the context of ongoing colonialism. The taskforce to date has centred its work on acknowledging and addressing violence perpetrated by individual men. It treats systemic racial and gendered violence conducted by and through white patriarchal institutions such as courts, the judiciary, parliaments and police as aberrational or historic rather than foundational and escalating. The state is rarely understood as a violent actor in its own right and is predominantly framed as the solution to violence – the saviour of women – despite overwhelming evidence to the contrary. The framing and proposed focus areas canvassed in Discussion Paper 2 makes it clear that the Taskforce intends to continue failing in this regard.

Cross-cutting issues

The discussion paper presents a list of 'cross cutting issues' which includes:, diversity, intersecting disadvantage, recognising and responding to trauma, over-representation of Aboriginal and Torres Strait Islander women and girls as victims of crime and as accused persons, the nature and culture of the criminal justice system and alternative justice models, protecting and promoting human rights and the need to achieve just outcomes by balancing the interests of victims and accused persons. We are advised by the Taskforce that each 'issue' cuts across the themes presented in the paper. However, it is clear that almost all of the issues identified operate as a means by which the state can displace and avoid attending to race within the criminal legal system.

Indigenous women and girls are routinely identified statistically as a racial category - as the most subject to forms of violence and abuse - as well as those most often criminalised and incarcerated by the state. Despite this, rather than centring the experiences and authority of Indigenous women and using this knowledge to understand the actual operations of the criminal legal system and inform systemic changes to benefit all women the taskforce persists in characterising Aboriginal and Torres Strait Islander women as exceptions to a white norm. In their supposed 'diversity', 'trauma' and 'disadvantage' they are framed as bearers of high risks or vulnerabilities, which the justice system struggles to adequately service despite its best efforts.

However, the reality is that in the settler colonial state, race is ever present, in all engagements with the criminal legal system. We argue that Indigenous women, girls and non-binary people are not 'marginalised by the justice system' but actively targeted and brutalised by it. They are not at its edges, poorly serviced by it, but at its centre, suffocatingly subject to its control. The refusal of the Taskforce to attend to race explicitly while noting 'diversity', 'trauma', 'disadvantage' and the racialized category of Indigeneity and 'human rights' is as disingenuous as it is violent.

Discussion Paper 2 continues to erase and evade the continuing operation and impacts of racism and colonialism in Queensland's criminal legal system. Colonialism is repeatedly framed as an inherited trauma that Aboriginal and Torres Strait Islander people bear; the impact of past and present colonialism on Queensland's criminal legal system and other non-Indigenous people and structures is entirely erased. Aboriginal people are described as bearers of 'complex' disadvantage and trauma, without reflection on the structures of continuing racism and colonialism that entrench and sustain

this. Where racism is mentioned in the Discussion paper, it is described as historical or as a perception or a fear held by Culturally and Linguistically Diverse communities, rather than as a continuing reality. Racism is rarely considered as a factor shaping Aboriginal women, girls', trans, non binary or gender diverse peoples experiences; they are rarely even described as 'perceiving' or 'fearing' racism. Instead their 'complexity' and disadvantage are emphasised, as if these characteristics themselves account for their brutal and intensive treatment by the criminal justice system.

We further note that Discussion Paper 2's proposals to consider reforms that extend or expand current policing and carceral systems are always made in solid terms. Specific feedback is sought about how these already proposed reforms might be better discussed and achieved.

However, proposals to consider issues that are not as positively endorsed by police and state agents - such as the impact of community 'fears' of racism, post incarceration support and experiences - are included tentatively. Feedback is sought about whether these items should be considered at all. This is surprising given that in the foreword to the Paper, the Taskforce Chair acknowledges that the criminal legal system is often unable to recognise or accommodate trauma-based responses. And, while the Chair raises the broad question as to whether alternative justice models be considered, the discussion paper reduces such 'alternatives' to increased victim participation with what it knows to be a violent system.

Consequently, we argue for a broadening of what the Taskforce understands as 'the nature and culture of the criminal justice system and alternative justice models' which includes understanding how the so-called justice system operates as an apparatus of colonial control. By centring race and colonialism as a focus area, the Taskforce can finally take seriously the calls from Indigenous scholars, advocacy groups and activists abolitionist alternatives. These include defunding of police, justice reinvestment and the decriminalisation of health, social and economic problems such as mental illness, poverty and homelessness.

We reiterate in the strongest possible terms: it is not possible to deliver safety and justice for women in Queensland without addressing racism, colonialism and the violence perpetrated by the carceral state.

Part 1: Women and girls' experience of the criminal justice system as victims-survivors

The taskforce proposes to focus on sexual offending against women. It makes the false claim that 'system reforms that respond to the needs of women and girls as victims of sexual offences will also benefit women and girls' experiences of the criminal justice system in other matters'. When considering the experiences of Aboriginal and Torres Strait Islander women, girls and non-binary people, we know that they have not been well-served by system reforms. Only those operating from the most privileged position could make the automatic claim that all attempts to address sexual violence will improve women's experiences of the criminal legal system.

Since first colonisation, the colonial state has positioned Aboriginal women as victims of sexual violence in order to legitimise the extension of its authority over them, and to subject them to further abuse. For instance, indifference to sexual abuse on the frontier was enabled by beliefs that Aboriginal women were treated worse by their own men. Queensland's brutal and micromanaging protection legislation used the language of 'protecting' Aboriginal women from predation in order to economically and sexually exploit them. Aboriginal children and women were used as labour under government sanctioned work arrangements justified as 'civilising and protecting', but which actually subjected many to sexual abuse sanctioned by the state.

This is far from a historical practice. In the contemporary context child removal results in greater risk of sexual violence, yet is often justified using the language of 'protecting' vulnerable Aboriginal children. The Northern Territory Emergency Response, now acknowledged as a hierarchical, coercive and unsuccessful policy intervention, which required the suspension of the *Racial Discrimination Act* was similarly justified using white moral panic regarding sexual offending in Indigenous contexts. In short, attempts to 'protect' racialized women from sexual violence are regularly weaponised against whole communities. For Aboriginal and Torres Strait Islander women, non-binary people and girls, sexual violence and state intervention are deeply enmeshed.

The Taskforce needs to broaden its understanding of violence and attend to violence beyond that perpetrated by 'bad individuals'. The refusal to even acknowledge state sanctioned and enacted violence makes us question the legitimacy of the Taskforce's commitment to safety and justice for all women.

The Discussion paper proposes that the Taskforce consider the impact of 'rape myths' in attending to cultural and attitudinal chance across all sectors of society. However, it makes no suggestion that it should attend to racial myths and stereotypes. In its refusal to name race as a cross cutting issue it fails to recognize how spotlighting sexual violence in Indigenous communities reproduces myths which extend the authority of the state over Indigenous lives. This includes the story of the violent black male perpetrator – again deployed to specific political effect in the NTER.

The Taskforce demonstrates its inability to understand intersectionality (which is named as a cross cutting issue), in its narrow attention to cultural and attitudinal change about rape myths. It presumes these myths can be remedied by a media and a state who are in fact responsible for these violent representations of racialized and gender diverse sexual assault victims. It also presumes that such attitudes can be remedied via a more diverse police, legal profession and judicious officers – by populating structures with more diverse people - rather than changing those structures themselves.

We do not support limiting the focus on women and girl's experience of the criminal justice system to their (here separated) experiences as victims and survivors of sexual violence. We urge the Taskforce to understand both the enmeshment of victimization and criminalization, and the sovereign authority of Aboriginal and Torres Strait Islander women, non-binary people and girls to speak on their own experience of these issues.

Further we have concerns about the presuppositions of the discussion paper regarding women's under-reporting, and consideration of the role of police. Trying to find ways to increase reporting and force more Aboriginal women into contact with the criminal legal system is not always the improvement that the Taskforce imagines. We have concerns that the voices and experiences of Aboriginal and Torres Strait Islander women, girls and non-binary people will be marginalized in favour of the authorative claims of police and other stakeholder groups, which the Taskforce has deemed most relevant in its own ToR. They assume that they are best placed to address sexual violence, but the experiences and voices of Aboriginal and Torres Strait Islander advocates, experts and survivors tells us otherwise.

We observe in the narrow scope of this discussion paper and its questions, the future investment in the white welfare industrial complex. Again, in this arm of the state long complicit with policing and incarceration, the violence experienced by Aboriginal and Torres Strait Islander women, girls and non-binary people continues unabated. By divorcing sexual offences from other forms of violence the Taskforce is reproducing the narrow silo approach to women's safety and justice that continues to fail. The discussion appears to preempt a state driven service provision response to a very narrow conceptualization of violence as experienced by women, girls and non-binary people. This service provision industry does not mitigate carceral violence, but instead too often works in tandem with it - for example by removing children of those women who report abuse while the women themselves are criminalized.

Part 2: Women and girls' experience of the criminal justice system as accused persons

We support an examination of the underlying factors that contribute to the increasing levels of women and girls coming into contact with the criminal legal system. This is an issue of pressing concern, particularly for Aboriginal and Torres Strait Islander women, girls and non-binary people. However, at present the 'cross-cutting issues' as they are identified cannot allow this examination to occur. Unless the Taskforce directly attends to race and colonialism, the story it tells will further pathologise and margainlise Aboriginal and Torres Strait Islander women, girls and non-binary people. If the Taskforce wishes to genuinely examine of the experiences of Aboriginal and Torres Strait Islander women, girls and non-binary people it must commission Indigenous expertise in this area to undertake the work.

Further, the discussion paper is restrictive in the way that it exclusively examines the role of police. It refuses to recognize the problem created when the state uses the violence of police to police violence. It therefore also refuses to consider alternative interventions including abolition, defunding police and/or decarceration strategies.

Given Aboriginal and Torres Strait Islander women, girls and non-binary people are over-represented in low level offences, the Taskforce could instead be using its resources to undertake an audit of the criminal code and review the criminalization of acts that relate to women's survival and safety. These include homelessness, public nuisance, and poverty related offences. If the taskforce is committed to women's safety and justice in its fullest sense, acknowledging that the criminal legal system retraumatizes and recrimialises, it should be concerned with minimizing incarceration as well as social gendered violence exclusively.

We are concerned by the causal pathways established by this Discussion Paper in its reference to the trauma and 'high rate of disadvantage and maltreatment in childhood for Aboriginal and Torres Strait Islander people'. This approach focuses on the Aboriginal and Torres Strait Islander mother and child as the site of intervention, not the state or the systems that brutalise and impoverish them. The discussion paper claims that over representation in custody is matter of 'over-policing' and yet again refuses to name race as the mechanism by which such overpolicing operates.

We are troubled by the following discussion paper claim: 'Research shows that when police treat women fairly and provide them an opportunity to have a voice in the encounter, they are more likely to comply with police, even when the encounter results in a criminal justice response'. The desire for compliance is telling. The refusal to recognise the reality of state violence in the lives of Aboriginal and Torres Strait Islander women, girls and non-binary people suggests that the Taskforce does not have the capacity to ensure their safety, and in fact is willfully indifferent to it. In such circumstances, it should not seek to increase these women's reporting to and compliance with police.

Finally, we note that the Discussion Paper asks whether the Women in Prison 2019 recommendations should be reviewed. However, it fails to mention the Royal Commission into Aboriginal Deaths In Custody recommendations that relate to Aboriginal and Torres Strait Islander women, girls and non-binary people. In contrast to the approach of the Taskforce, the RCIADIC recommendations focus on decreasing rather than increasing the enmeshment of Aboriginal and Torres Strait Islander lives and the criminal legal system.

Recommendations/Conclusion

1) Race and colonialism be named explicitly as cross cutting issues. Cultural diversity, disadvantage or trauma should not be used as a surrogate for attending to the racial and colonial violence that Aboriginal and Torres Strait Islander women, girls and non-binary people experience.
2) Given the Taskforce recognizes the inability of the legal system to provide a trauma-informed response, it should broaden its engagement with alternative justice models that include, abolition, defunding police, justice reinvestment, and other methods of decarceration and decriminalisation.
3) The Taskforce should conduct an audit of the criminal code and offences committed by Aboriginal and Torres Strait Islander women, girls and non-binary people and consider repealing low level offences which subject them to state-sanctioned violence.
4) It should engage Indigenous experts to lead the examination into the underlying causes that cause the over-representation of Aboriginal and Torres Strait Islander women, girls and non-binary people in the criminal legal system.
5) It should include an examination of the Royal Commission into Aboriginal Deaths in Custody Report recommendations as they relate to the experiences of Aboriginal and Torres Strait Islander women, girls and non-binary people, as well as considering the recommendations of Women in Prison 2019.
6) Moving forward the Taskforce consider:
    a) Engaging with Aboriginal and Torres Strait Islander women, girls and non-binary peoples beyond the narrow parameters of victim-offender and male-female violence, and in doing so
    b) Address the under-representation of Indigenous women, girls and non-binary peoples on the Taskforce, in its Terms of Reference and throughout all consultation processes, as a means by which to more effectively addressing the issue of over-representation of this population in the criminal legal system.