Sisters Inside Inc.
ABN 94 859 410 728

P.O. Box 3407
South Brisbane Qld 4101

Ph: (07) 3844 5066
Fax: (07) 3844 2788

Email: admin@sistersinside.com.au
Web: www.sistersinside.com.au

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The relationship between racism, poverty, mental illness, and imprisonment

As discussed above, Aboriginal and Torres Strait Islander women are over-policed and hyper-incarcerated. We consider that this is State-funded racial violence against these women.[10] Aboriginal people experience significant abuse at the hands of the State, through, for example, racially targeted over-policing and extreme parole conditions, the imposition of the Indue/Basics card and other income quarantining measures, a failure to recognise land rights, police violence and deaths in custody, child removals, and stigmatising political discourse about Aboriginal people, families and communities.[11] The impact of racialised violence by the State on the mental health and safety on these women cannot be understated. Governments are thus not simply or technical neutral problem solvers who act benevolently to protect the interests of all citizens, but also directly implicated in creating the social and political conditions that enable high rates of violence against Aboriginal women and girls and consequent trauma.

It abundantly clear that unsatisfactory income support, housing support, disability support and cultural services will significantly increase the likelihood of mental illness developing or worsening.[12] The Productivity Commission report on mental health in Australia found stable and secure housing is essential for 'promoting long-term recovery for people with mental illness'.[13] Sisters Inside believes that failure to meet practical needs such as stable accommodation and income support can significantly impact mental health, and that this situation is exacerbated by the lack of Aboriginal and Torres Strait Islander controlled organisations delivering services for their people, particularly in remote communities. Without a sufficiently supportive social security net, mental illness will stagnate or deteriorate, which will then push people into behaviours and choices that result in criminalisation.

The Productivity Commission found that factors which lead to the overincarceration of people with mental ill health in prison include 'deinstitutionalisation from mental health facilities, use of illicit substances, limited capacity of mental health services and social determinants'.[14] One of the most significant causes of women's failure to be granted bail, or fail to meet parole conditions, is their untreated mental health issues – with homelessness

[10] See our discussion of this further in Joint Submission from Sisters Inside and the Institute for Collaborative Race Research on Discussion Paper 1 of the Women's Safety and Justice Taskforce, 'The State as Abuser: Coercive Control in the Colony' (Submission, May 2021) https://www.womenstaskforce.qld.gov.au/__data/assets/pdf_file/0005/691340/wsjt-submission-sisters-inside-and-institue-for-collaborative-race-research.pdf
[11] Ibid 9.
[12] Productivity Commission 2020, *Mental Health*, Report no. 95, Canberra, 925-116.
[13] Ibid 968 citing Giuntoli et al. 2018.
[14] Productivity Commission 2021, *Australia's prison dilemma* (Research paper, Canberra) 66.

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and untreated substance abuse issues being the other primary drivers. In other words, women are being penalised for the failure of Commonwealth, state and territory systems to deliver assessment and early intervention, appropriate accommodation, treatment evaluation, training and personnel, and specialist support and programs. Given the incredibly high cost of imprisoning and individual (approximately $304 per day in 2020-21),[15] it is difficult to see how this is a cost-effective approach.

We submit that in addition to increasing funding of mental health services to improve service delivery, particularly, increasing the funding of Aboriginal and Torres Strait Islander controlled services, it is equally important to increase affordable, safe accommodation options for women once they are released from mental health observation or orders. Our staff observe that, typically, the women who are 'bounced' between mental health services and police do not have access to safe and secure housing, which affects their mental health and, consequently, contributes to their criminalisation. [16] Often women are released from observation or involuntary orders in hospital directly into homelessness, short-term accommodation or unaffordable long-term accommodation. Without the stability created by secure accommodation it is extremely difficult for a person to stabilise and engage consistently with support services and mental health care, and they will likely continue to bounce between mental health services, police, and prison.

Significantly, prison was recognised by the Productivity Commission as actually developing and worsening mental illness in many instances, with incarceration being linked to the development of subsequent depressive and bipolar disorders.[17] In addition to isolation from friends and family, women in prison have limited access to healthy whole foods, exercise, fresh air and sunshine, all of which all of which obviously have a negative impact on mental health outcomes. Suicide is the leading cause of death in prison, with the rate of suicide attempt history and suicidal ideation 10 times higher than in the general population and the suicide rate 12 times higher amongst imprisoned women as compared to the general population.[18] This is indicative of the mental health disaster that is the Australian prison system. Further, it appears that remand is particularly detrimental on mental health, with a significant portion of suicides being individuals who were on remand.[19]

Mental health treatment in the community

[15] Steering Committee for the Review of Government Service Provision, Report on Government Services 2021 - Part C Justice (2021), Productivity Commission, Canberra, 22 January.
[16] See also Australian Institute of Health and Welfare, The Health of Australia's Prisoners 2018 (Report, 30 May 2019) 22.
[17] Productivity Commission 2021, *Australia's prison dilemma* (Research paper, Canberra) 66 citing (Schnittker, Massoglia and Uggen 2012).
[18] Ibid 67.
[19] Ibid 39 citing Willis et al. 2016.

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Under the emergency examination authority provisions, ambulance and police officers can transport a person they believe is experiencing a mental health issue and at risk of immediate harm or requiring urgent examination, to a health service.[20] Here, the person can be held for examination for six to 12 hours. During this time a doctor will determine the person's care needs and either discharge them back into the community or make a recommendation for assessment. To make a recommendation for assessment, the health practitioner must be satisfied that the treatment criteria apply to the person and there is no less restrictive way for the person to receive treatment.[21] The treatment criteria are that the person has a mental illness, does not have capacity to consent to be treated and because of this illness, and the absence of involuntary treatment, or the absence of continued involuntary treatment, is likely to result in the person suffering serious deterioration or imminent serious harm to the person or others.

We note that, generally, people who are discharged back into the community still have mental health conditions that require treatment, but often lack the ability or supports needed to access treatment in the community themselves. In many cases, the person may not be able to identify their needs and access consistent medical treatment, particularly if they are homeless and/or struggling to survive on Centrelink payments (e.g. unable to get to doctor's appointments because they can't afford public transport). Currently there is not adequate infrastructure in place to support people who would benefit from mental health intervention and support but are not suffering so acutely so as to satisfy the requirements for involuntary treatment. Relevantly, many women who suffer from psychological illness are not eligible for NDIS services. As the statistics discussed above reveal, women with mental health needs too often end up in prison due to the state's failure to provide adequate accessible community-based mental health services.

One example of this dynamic, Sisters Inside supports Libby*, a woman with serious mental health conditions who is frequently placed on forensic orders and then, at review, is taken off the orders and returned to the community. Libby's finances are managed by the Public Trustee and she finds this difficult to navigate, which often results in her committing minor offences like shoplifting food – because she is hungry and has no other options – and public nuisance. For years Libby has been trapped in a cycle where she transitions back and forth between forensic orders, homelessness and prison.

Mental health treatment in prison

Quality of treatment and access

[20] Public Health Act 2005 (Qld) ss 157B(1),(3), 157E(4) ('PHA Act').
[21] Mental Health Act 2016 (Qld) s 39.

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We consider it is a tragedy that, for many women, it is only through criminalisation that they are given the opportunity to have their mental health assessed and, if they are lucky, treated by a medical professional. We believe that this treatment should be available as of right, and not only once a woman has been deprived of her liberty. It is particularly shameful that there is a severe lack of community-based drying-out and rehabilitation services, considering the high rate of drug-related charges amongst criminalised women due to substance addiction. Substance addition is most commonly self-medication to deal with the years of abuse and physical violence suffered by these women and girls. Those services which do exist, generally operate out of a narrow range of models and are not gender-specific, family-friendly or culturally competent. Too often, women are imprisoned due to this systemic failure.

It is clear from research that prison is not the best environment for an individual to receive mental health treatment, these services being more effectively delivered in the community, and that treatment services within prison are difficult to come by or not accessed by prisoners for other reasons.[22] The Australian Institute of Health and Welfare found in 2018 that, despite more than half of prisoners reporting consuming alcohol at high-risk levels before prison, only 8 per cent reported upon their release accessing an alcohol treatment program in prison.[23] Additionally, despite the high prevalence of mental illness amongst imprisoned people, mental health professionals and substance abuse treatment accounted for only 16 per cent of all clinic visits over a two-week period in Australian prisons.[24] The Anti-Discrimination Commission Queensland (ADCQ) report found women experience significant delays in getting access to the health clinic. Karen*, a woman supported by Sisters Inside, was deterred from seeking help due to these delays, stating: 'I didn't bother with seeing anyone for Mental Health in prison as I was told it would take too long".

The ADCQ, as well as the Ombudsman, opined that mental health services in Queensland prisons generally do not meet the needs of imprisoned women, and are largely focused on medicating symptoms, even in the absence of bothering to provide a formal diagnosis, rather than dealing with underlying mental health problems.[25] Women routinely inform us they don't know what they are being medicated for or why. Sisters Inside considers the treatment of women in prison in Queensland does not meet the requirements of the Nelson Mandela

[22] Productivity Commission 2021, Australia's prison dilemma (Research paper, Canberra) 66 citing AIHW 2019a; National Research Council 2014.
[23] AIHW (Australian Institute of Health and Welfare) 2019*, The Health of Australia's Prisoners 2018*, Cat. no. PHE 246, Canberra, 105.
[24] Ibid 132.
[25] Anti-Discrimination Commission Queensland, Women In Prison 2019: A Human Rights Consultation Report (Report, 2019) 168, 171; Queensland Ombudsman, Overcrowding at Brisbane Women's Correctional Centre (the Ombudsman, 2016) 40.

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Rules and the Bangkok Rules, particularly Rule 12, which requires prisons to provide individualized, gender-sensitive, trauma-informed, and comprehensive mental health care and rehabilitation programmes.

Forensic orders or treatment orders in prison

As in the community, we observe that there are far too many women in prison who require high levels of mental healthcare, but do not meet the threshold for forensic orders or treatment orders under the *Mental Health Act 2016* (Qld). As a result of individuals not receiving adequate mental health support in the community, prisons are populated with high needs people that QCS and Queensland Health are not capable of treating effectively. As a result, these women are routinely kept in long-term separate confinement to manage their mental health conditions. These practices are further discussed below.

For example, Sisters Inside supports a Jess*, a woman in prison who has severe mental health conditions but is does not meet the threshold for forensic orders. To manage her mental health conditions, prison staff make Jess spend the majority of her time in separate confinement. She is routinely tackled to the ground and wrestled by multiple prison staff who then cut her clothes off her body, restrain her and place a spit hood over her head. This degrading and violent treatment illustrates that prison staff are not trained to work with people who suffer from serious mental illness.

Trauma-informed and culturally appropriate support

Sisters Inside proposes that alternate approaches to mental health treatment should play a much more significant role in the pathway forward. In the context of the exceptionally high rates of trauma amongst imprisoned women, we consider that mental health services should be trauma-informed, culturally-driven and gender-specific. The ADCQ reports that, 'When prison staff adopt trauma-informed practices, this can lead to a notable decrease in behaviours such as prisoner-onstaff and prisoner-on-prisoner assaults, the use of segregation, suicide attempts, and the need for mental health watches.[26]

In our experience, conventional Western approaches to mental illness are often ill-suited and inappropriate for addressing the health needs of Aboriginal and Torres Strait Islander people. Sisters Inside believes that the number of Aboriginal health practitioners and workers who provide mental health support and Aboriginal cultural healing to imprisoned women in Queensland needs to be dramatically increased, particularly, to address the impact of colonial trauma and the ongoing colonisation of Aboriginal land. Programs must be

[26] Anti-Discrimination Commission Queensland, Women In Prison 2019: A Human Rights Consultation Report (Report, 2019) 63.

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not only delivered by Aboriginal and Torres Strait Islander community-controlled services, but directly designed and developed by them. It is of extreme importance that these services be available post-release to support women.

Post-release support

As the return to prison rate of 65% suggests, women are targeted and recriminalized by the State at every opportunity one they have been released. Additionally, the post-release support that is available for these women is sorely underfunded, compounding the stress and trauma the State imposes on their lives. Most women transitioning between prison and the community have complex, interrelated needs, which is exacerbated by the prison environment. Reintegrating into the community and resuming responsibility for one's life is challenging and made more so by mental ill health. It is unrealistic to expect that a person will be equipped to assume full responsibility for their health care immediately following their release from prison, particularly when most women are completely dependent on extremely low Centrelink payments. After paying rent, these payments are usually not enough to even enable a woman to catch public transport to appointments, let alone pay for medications or other treatment. Most women will need substantial support in the first few months post-release, including having all of their medicated provided to them. We believe that an investment of resources upfront is the most effective way to help formerly incarcerated women stabilise, reintegrate into the community, and reduce the likelihood of them being recriminalized and returned to prison.

The provision of mental health and substance abuse counselling, as well as housing support, for 12-months post-release from prison was found in one ACT government pilot program to significantly reduce reoffending rates.[27] The Sisters Inside Health Support Program (HSP) provides physical and mental health support to women following their release from prison, including support in making and attending appointments and accessing the benefits of subsidised mental health support. Our 2018 evaluation of this program found that 54% of the women had complex needs and 66% of the women experienced homelessness during their involvement in the HSP.[28] This targeted program was demonstrably successful in helping women reintegrate into the community, with only 6 of the 109 participants over a two-year reporting period being known to have returned to prison. Furthermore, the rates of self-harm, suicidal ideation and attempts were significantly lower than is typical for women released from prison. Community-based transition from prison programmes such as HSP need additional funding to be able to continue doing this work.

[27] Productivity Commission 2021, Australia's prison dilemma (Research paper, Canberra) 89.
[28] Suzi Quixley, 'Evaluation of the Health Support Program Pilot, for Queensland Health', Sisters Inside – Service & Program Evaluations (Report, 2018) ('Health Support Program Pilot').

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Impact of prison standards and practices on mental health

Overcrowding

Prison overcrowding combined with under-resourcing is severely reducing prison medical care providers' capacity to facilitate comprehensive, consistent mental health care. The ADCQ reports that 'Over the past decade, the total number of women in prison in Australia has increased by 66% and the increase in Aboriginal and Torres Strait Islander prisoner numbers accounts for most of that growth'.[29] As at 2019, Queensland prisons are still overcrowded, with capacity at 130 per cent. This puts immense strain on the ability for medical staff to provide prisoners with the high-quality support needed.

In an overcrowded prison, long wait times for appointments, test results and medications are typical, and the quality of care received is often diminished by the clinician's time constraints. Additionally, constraints imposed by prison authorities, such as not dispensing medications during lock-down. Prison authorities often impose strategies which are contrary to all medical advice, such as placing women at risk of self harm or suicide in solitary confinement, and strip searching women with a history of sexual abuse. We consider the latter practice to be sexual assault by the State. Such practices are re-traumatising and, as a result, too many women leave prison in poorer mental health than they entered.

Solitary confinement

It is highly problematic that solitary confinement is used by prison staff to 'manage' women with acute mental health challenges. Solitary or 'separate' confinement is used as explicit punishment (i.e. for actual or alleged disciplinary breaches) in prisons and is also routinely used to 'manage' women prisoners who are unwell or otherwise deemed 'uncontrollable' or 'difficult' by prison officers through the use of 'safety orders'.[30] It is common for prison staff to respond to actual or threatened self-harm, by placing women in isolation, whether this is in a Detention Unit, or her cell. This occurs because of a lack of appropriate mental health services and facilities within the prison and/or due to the authority of prison staff over health staff, even in matters related to women prisoners' health. As the ADCQ writes, 'It is clear that QCS has no capacity or expertise to satisfactorily deal with [acutely mentally unwell] individuals in the prison environment, and other solutions need to be found'.[31]

[29] Anti-Discrimination Commission Queensland, Women In Prison 2019: A Human Rights Consultation Report (Report, 2019) 51.
[30] Corrective Services Act 2006 (Qld) s 53.
[31] Anti-Discrimination Commission Queensland, Women In Prison 2019: A Human Rights Consultation Report (Report, 2019) 143.

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Solitary confinement is known to have severe and harmful effects on people, especially in cases where isolation is prolonged and/or the person has a mental illness, disability or other personal vulnerabilities.[32] For these reasons, the Australian Medical Association argues that, 'Solitary confinement is medically harmful as it may lead to a number of physical and/or mental disorders' and the Standard Guidelines for Corrections in Australia state that 'prolonged solitary confinement… and all cruel, inhumane or degrading punishments should not be used.'[33] Unfortunately, in practice, Sisters Inside staff frequently support women who spend extended periods of time in solitary confinement and consequently suffer a deterioration of their mental health. We consider that the use of solitary confinement must be abolished to put a stop to the immense psychological harm it causes.

Strip searching

Sisters Inside considers strip searching to be sexual assault by the state. It is violence perpetuated by the State against imprisoned women. Like solitary confinement, it is a routine practice which has significantly detrimental effects on women's mental health and wellbeing. Women are routinely strip searched after visits with their children, family members and friends. Mandatory strip searching is deeply traumatising for criminalised women, who as discussed are usually survivors of sexual assault, including a majority who have experienced child sexual abuse.[34] Strip searching is not justified or necessary to ensure the safety or security of women in the prison. QCS data confirms that it does not stop contraband from entering the prison – it is completely ineffective – and yet this violence continues. We consider that the use of strip searches in prisons must be abolished.

Mental health screenings on entry and release

We have learned from the women we support that intake health screenings are on occasion conducted by prison staff or police. This is inappropriate and unacceptable. All health screenings should be performed by qualified doctors and nurses. Every woman should have access to a confidential, thorough health screening by health professionals upon arrival at a prison or watch house. Clear and detailed guidelines should set out what health and history information must be collected and appropriate staff, time and privacy should be allocated to the assessment. The most up to date screening methods should be used. Entry to prison or

[32] Ibid 142.
[33] Section 7.1, Australian Medical Association (2013) *AMA Position Statement: Medical Ethics in Custodial Settings* at https://ama.com.au/sites/default/files/documents/position_statmenet_on_medical_ethics_in_custodial_settings_2013.pdf; Standard Guidelines for Corrections in Australia (Revised 2012) 1.80-1.85.
[34] v Debbie Kilroy, 'Women in Prison in Australia', Presentation to National Judicial College of Australia and ANU College of Law, Current Issues in Sentencing Conference, 6-7 February 2016, Canberra.

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a watch house is often a highly stressful experience and may reduce a woman's ability to be forthcoming about her mental, physical and family health history. This inhibits a clinician's ability to conduct an adequate medical assessment; therefore, if a woman is highly stressed on intake, another mental and physical health screening should be conducted in the coming weeks to ensure comprehensive medical screening.

It is essential that while a person is in prison, consistent and reliable health records are maintained. These records are necessary to establish a benchmark against which to measure future health outcomes. Further, it is essential that women are provided with medical records that detail their physical and mental health history, referrals, and medications upon their release from prison. In the absence of this, trying to take responsibility for their health and connect with health services is near impossible. In Sisters Inside's experience, women are rarely provided with comprehensive medical records, referrals, their medication, or even a list of their medications on release. Without these basic provisions, it is difficult for them to receive timely and appropriate medical care and to access a mental health plan.

Comprehensive medical assessments and recordkeeping not only benefits the woman, but allows for macro data to be created and analysed. The AIHW reports on the health of people in prison, yet their data is largely informed by respondents' self-assessments. Self-assessments from people about their mental and physical health can be useful, but it should be possible to complement this information data compiled from accurate medical records. Systematic record keeping is necessary to create reliable data that can be used to identify trends and influence policy and resourcing.

Intervention and diversion

Prevention and early intervention

Based on an understanding of how early trauma affects mental health, it is widely recognised by experts that childhood is extremely important in determining future mental health outcomes.[35] In view of this, Sisters Inside operates a program called Crucial Connections, which is a Specialist Reconnect service that supports 12-18 year old young people whose mother is in prison or who are themselves criminalised, are outside the school system and at risk of homelessness. Our report, *Early Intervention in Specialist Reconnect Services* (2017), details how the program is delivered, how it reduces multigenerational criminalisation and how it benefits the community. We consider that, if the Government is committed to prevention and early intervention in mental illness, this program, and other like it, need to receive increased and long-term funding to continue doing this work.

[35] Productivity Commission 2020, *Mental Health*, Report no. 95, Canberra, 195-437.

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Criminal legal system intervention and diversion

Issues often start at the policing level, with police too often criminalising women (e.g. by charging them with minor, public nuisance-related charges) rather than exploring alternate pathways directed towards getting them support. Police are not trained social workers or mental health professionals, in view of this, we recommend that women with lived experience of criminalisation and the mental health system be funded to connect women experiencing a mental health crisis with the support services they need to stabilise and they are better placed to do this role.

Court diversion programs, such as the former Special Circumstances Court, provide a more appropriate mechanism for responding to simple offences committed as a by-product of mental ill health and provide the opportunity for an individual to be assessed and provided with treatment. Sisters Inside supported women engaged with the SCC and the operation of this program is contained in our report the report How We Do It: Diverting Women from Prison (Evaluation of the Sisters Inside Special Circumstances Court Diversion Program) 2011.[36] We consider that this program was highly valuable and successful in diverting people with cognitive and psychiatric disabilities from the criminal legal system, with only 4% of the 240 women who chose to have their cases heard before the SCC and engaged with the Sisters Inside program returning to prison.

Despite the overwhelming success of the SCC program, it was defunded in 2012 due to a change of government. We consider that women suffering from mental illness and homelessness have been punished through further criminalisation because of this cost-saving decision (we note that any cost-savings would have been only short-term, if at all). Similar court programs exist and continue to receive long-term funding in other jurisdictions, such as Victoria's Assessment and Referral Court, which defers sentencing in order to explore tailored treatment and support options for individuals with mental illness and achieve similar results to that of the SCC.[37]

Additionally, we commend to the Committee the work of Heffernan et al (2014) and Baldry et al (2015) who produced papers focused on the prevalence and impact of imprisonment of Indigenous people with mental health issues and cognitive disabilities.[38] We strongly support service-delivery that is underpinned by abolitionist, decarceral, and decolonial practices.

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[36] Suzi Quixley, 'How We Do It: Diverting Women from Prison (Evaluation of the Sisters Inside Special Circumstances Court Diversion Program) 2011', Sisters Inside – Service & Program Evaluations (Report,2011) ('Evaluation of the Special Circumstances Court Diversion Program').
[37] Productivity Commission 2021, Australia's prison dilemma (Research paper, Canberra) 77
[38] Heffernan et al, 'Mental Disorder and Cognitive Disability in the Criminal Justice System' in Dudgeon, Pat; Milroy, Helen; & Walker, Roz (eds) *Working Together Aboriginal and Torres Strait*

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Conclusion

Mental health services in Australian women's prisons are far below the level provided in the community. The prison environment itself only serves to worsen mental health. Further, even community-based systems routinely fail criminalised women, which often leads to their criminalisation and imprisonment in the first place. Mental illness could be significantly alleviated, and subsequent criminalisation avoided, if the government simply funded social housing, welfare, and support services to an adequate level. Moreover, the impact of structural, systemic, and individual acts of racial and gendered violence by the State must be addressed in any discussion about the mental health of criminalised and incarcerated Aboriginal and Torres Strait Islander women.

We must not ignore the voices of silenced women in prison when we consider the state of mental health in Queensland. We feel the overall message of our submission is captured by this quote from Kayla*, a woman supported by Sisters Inside, 'So many bad things have happened to me, right from when I was a child, and going to prison made it worse. I just needed someone to listen to me'.

Thank you for considering this letter. If you would like to discuss this letter further, please do not hesitate to contact me on (07) 3844 5066.

Yours sincerely

Debbie Kilroy

Chief Executive Officer

Sisters Inside Inc

* Names of clients have been changed to protect privacy.

Islander Mental Health and Wellbeing Principles and Practice (2014); Baldry et al, 'Reducing Vulnerability to Harm in Adults With Cognitive Disabilities' (2013) 10(3) *Australian Criminal Justice System in Journal of Policy and Practice in Intellectual Disabilities* 222.