

UN SUBCOMMITTEE ON THE PREVENTION OF
TORTURE (SPT) VISIT TO AUSTRALIA | 2022

HOUSING MEN IN WOMEN'S PRISONS IS A HUMAN RIGHTS VIOLATION



Joint submission by Australian women's advocates

For more information contact: enquiries@womensforumaustralia.org

Submission to the UN Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) regarding trans-identified males in female detention facilities in Australia, 12 October 2022

We welcome the opportunity to make a submission to the United Nations Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), in advance of its OPCAT inspection in Australia from 16 – 27 October 2022.

The submission has been prepared by RMIT University's Dr Caroline Norma, in conjunction with Women's Forum Australia's CEO Rachael Wong, and Coalition for Biological Reality's Founder Stassja Frei. It is also supported by the following individuals and organisations: Lawyer Katherine Deves, Dr Holly Lawford-Smith from the University of Melbourne, Giggle Founder Sall Grover, Writer and Historian Janet Fraser, IWD Brisbane Meanjin, LGB Defence Australasia, Women Speak Tasmania, Fair Go for Queensland Women, and Women's Action Group, (South West Victoria). We are women's advocates from across the ideological and political spectrum who are deeply concerned about the harmful systemic practice of housing males claiming a 'trans' or 'gender identity' ('trans-identified males', TIMs) in women's prisons. This practice and the ways in which it can put female prisoners and female prison workers at risk of torture, and other cruel, inhuman or degrading treatment or punishment, is the focus of this submission. *We highly recommend prioritising Victoria's Dame Phyllis Frost women's prison as part of the SPT's visit, for reasons discussed below.*

A male individual professing a trans or gender identity does not become female, and should not, therefore, be incarcerated in women's detention facilities in Australia. Whether or not TIMs should be incarcerated in facilities separate from those for men not professing trans or gender identities ('non-trans-identified males', NTIMs) is not discussed in detail here.¹ The focus of the discussion is on human rights risks facing women when TIMs are allowed entry to female detention facilities. We would welcome the opportunity to meet with the SPT to discuss this submission further.

Introduction

Two different groups of women face risk if TIMs are incarcerated in female detention facilities like prisons and watch houses. First, incarcerated women, and, second, female corrections-sector workers. Each is impacted in different ways. This submission consults empirical, peer-reviewed research and documented examples to describe a range of harms facing each group of women, specifically in Australia.

Each Australian state has different policies around whether TIMs are sent to a male or female prison facility. NSW, Victoria, the ACT and Tasmania have a 'self-identification policy', meaning that prisoners are meant to be placed in a facility based on how they identify, unless there are safety concerns or doubts around the authenticity of the prisoner's gender identification. However, the chilling effect of opprobrium towards those who criticise self-identification policies would suggest that this mechanism is not relied on to exclude a male for fear of allegations of discrimination. This is despite data starting to emerge from overseas jurisdictions like Scotland which shows that half of transgender inmates only began transitioning after they were convicted, giving rise to concerns that "the system is being abused".² Some of these male offenders adopt a trans identity while incarcerated, and revert

¹ This option is favoured by the UK. See YouGov, '[Transgender prisoners: what do Britons think should determine which prison someone goes to?](https://yougov.co.uk/news/2022/09/28/transgender-prisoners/)', yougov.co.uk.

² Mary Wright and George Mair, '[Male prisoners changing gender under self-ID to 'escape men's jails and get access to women'](https://www.scotsman.com/news/mary-wright-george-mair-male-prisoners-changing-gender-under-self-id-to-escape-men-s-jails-and-get-access-to-women-2022-10-04)', 4 October 2022, *Scottish Daily Express*.

to their male identity upon serving their sentences, giving credence to the argument that opportunistic men will claim a female identity for the purpose of being transferred to a female prison to access women and girls, and benefit from the prison model for women which has less security measures.³ In Queensland, the Northern Territory and South Australia, the policies are not straightforward and placements are considered on a case-by-case basis. Western Australia does not have a policy on where trans prisoners should be placed.

As is well known, the *Kyiv Declaration on Women's Health in Prison* recognises that a "large proportion of women in prison have experienced a lifetime of victimization, including child abuse, neglect and domestic violence", and that there is "a close link to the woman's criminogenic pathway and her mental and physical illness".⁴ Researchers suggest that, "mental health issues are generally worse for female prisoners than male prisoners, with women displaying higher tendencies to self-harm and suicide".⁵

Women in Australian prisons are indescribably disadvantaged.⁶ They are, moreover, disproportionately imprisoned in Australia compared to jurisdictions like the UK,⁷ and their rate of population increase is currently higher than that of men.⁸ They are, furthermore, disproportionately Aboriginal: "The number of Aboriginal women in prison is a major public health issue accounting for 33% of the female prison population, but only 3% of the Australian female population".⁹ Women in Australia also return to prison after release at higher rates than men.¹⁰

Expanding TIMs access to women's detention facilities in this period of significant expansion of the female prison population exacerbates risk at a time of resourcing shortfalls, staffing difficulties, and lingering burdens relating to COVID-19 measures.

1. Incarcerated women

Sexual assault and unintended pregnancy

The harms of housing TIMs in female detention facilities most seriously include the rape of female inmates, an example of which was first recorded in Australia as early as 1999 when a TIM was transferred to a women's prison.¹¹ There have also been multiple other instances

³ David Walker, '[Anger as trans inmates revert to males when they leave Scottish prisons](#)', 3 January 2022, *Scottish Daily Express*. An Australian case of note is that of [Marley Keenan Lavell Fisher](#), a TIM who was convicted of sexually assaulting a woman after breaking into her house while she slept, and who committed further offences of violence and sexual assault against male prisoners and female staff while in custody (he was housed in a male facility). Court documents and media reporting consistently referred to Fisher as a "she", however one psychiatrist who gave evidence before the court said she was "not convinced of [her] claimed transgender status" (the court appears to have censored the psychiatrist's use of the pronoun "he"). Within weeks of his release, Fisher faced court again, accused of stealing from a man who was allegedly murdered. Except this time, [the media coverage](#) referred to Fisher as a "he", suggesting that he reverted back to his male identity after being released.

⁴ United Nations Office on Drugs and Crime & World Health Organisation Europe, '[Women's health in prison: Correcting gender inequity in prison health](#)', 2009, p. 2.

⁵ Bartholomaeus, Jonathan, and Peter Strelan. '[The empowering function of the belief in a just world for the self in mental health: a comparison of prisoners and non-prisoners](#)'. *Personality and Individual Differences* 179 (2021): 110900.

⁶ See Bartels, Lorana, and Patricia Easteal. '[Women prisoners' sexual victimisation: ongoing vulnerabilities and possible responses](#)'. *Journal of Criminological Research, Policy and Practice* (Online) 2.3 (2016): 206–216. See also Carlton, Bree, and Marie Segrave. '[Women's survival post-imprisonment: connecting imprisonment with pains past and present](#)'. *Punishment & Society* 13.5 (2011): 551–570.

⁷ Women's Declaration International, '[Clare Dimyon on the importance of sex segregation in prisons](#)', 29 August 2022, *YouTube*.

⁸ Anna Kerr and Dr Rita Shackel, '[Equality with a vengeance: the over incarceration of women](#)', July/August 2018, *Precedent*. See also, Jeffries, Samantha, and Greg Newbold. '[Analysing trends in the imprisonment of women in Australia and New Zealand](#)'. *Psychiatry, Psychology, and Law* 23.2 (2016): 184–206.

⁹ Sullivan, Elizabeth A. et al. '[Aboriginal mothers in prison in Australia: a study of social, emotional and physical wellbeing](#)'. *Australian and New Zealand Journal of Public Health* 43.3 (2019): 241–247.

¹⁰ Sinclair, Renee, and Michelle Batsas. '[Women's experiences of prisons, drug-related offending and homelessness](#)'. *Parity* 23.10 (2010): 47–49.

¹¹ Candace Sutton, '[Male criminals who become women behind bars](#)', 11 April 2013, *The Advertiser*; Janet Fife-Yeomans, '[Sex change](#)

recorded both in Australia and overseas. For example: In September 2022, it was revealed by *The Age* that a female inmate was allegedly sexually assaulted by a TIM prisoner in Victoria's Tarrengower women's prison.¹² In April 2022, a TIM inmate was convicted of raping a female prisoner while housed at the women's facility at the Rikers Island complex in New York¹³. In 2018, TIM prisoner and convicted rapist Karen White sexually assaulted two female inmates in a UK women's prison.¹⁴ As a result of "sex attacks and inappropriate relationships involving transgender inmates in recent years", the UK Justice Secretary has just announced that he will be bringing in a new policy this year which will restrict "transgender prisoners with male genitalia" from being housed in women's prisons.¹⁵ Earlier this year, a TIM prisoner also impregnated two female inmates in a women's only prison in the US state of New Jersey (the sexual relationships were apparently consensual).¹⁶

Rape is a specific form of torture used most frequently against women. To subject female prisoners to the perpetual threat of rape and sexual assault is cruel, inhuman and degrading treatment, and a form of psychological torture. It is well-established that males are much more likely to be the perpetrators of sexual crimes and females are far more likely to be the victims. UK Ministry of Justice prison data,¹⁷ as well as Queensland prison data (**Annex 1**),¹⁸ shows that TIMs are not exempt from this pattern of male criminality, and arguably have even higher rates of sexual offending than NTIMs. Recording the sexual offences of TIMs as female crimes gives rise to further grave concerns regarding false data collection.¹⁹

It is also important to note when TIMs or NTIMs gain entry to women's facilities as correction sector workers, incidents like a 2019 Australian case can occur, in which 40 charges of sexual intercourse without consent, aggravated indecent assault, and misconduct in public office, related to nine female inmates, were brought against a corrections-sector worker.²⁰

To date, Australian authorities have been remarkably supportive of TIMs entry to public spheres reserved for women, including female sports,²¹ female prisons, other single-sex spaces, and public records,²² even though men, whether TIMs or NTIMs, make up more than 90 per cent of the country's sex offenders.²³ In addition to men's much greater tendency to commit sexual offences and females' inherent vulnerability when it comes to their smaller size and strength vis-à-vis males, a further risk factor for female inmates is their increased susceptibility to coerced sexual activity, given their likely weak boundaries due to sexual abuse, or vulnerability to bribes of drugs, or loneliness away from children, or many other factors that make them guaranteed victims in prison.²⁴

killer Madison Hall to be free as a bird', 3 April 2010, *The Daily Telegraph*.

¹² Wendy Tuohy and Cameron Houston, 'Trans people experience intense sexual violence in Victorian prisons, research finds', 4 September 2022, *The Age*.

¹³ Caroline Downey, 'Male inmate convicted of raping female at Riker's Island women's facility', 26 April 2022, *National Review*.

¹⁴ Nazia Parveen, 'Transgender prisoner who sexually assaulted inmates jailed for life', 12 October 2018, *The Guardian*.

¹⁵ Lizzie Deardon, 'Transgender inmates in women's prisons to face new government restrictions', 12 October 2022, *The Independent*.

¹⁶ Tat Bellamy-Walker, 'N.J. trans prisoner who impregnated 2 inmates transferred to men's facility', 20 July 2022, *NBC News*.

¹⁷ Professor Rosa Freedman, Professor Kathleen Stock, and Professor Alice Sullivan, 'Evidence and data on trans women's offending rates', November 2020; Fair Play for Women, 'Transgender women exhibit a male-type pattern of criminality: implications for legislators and policy makers', 12 December 2020, fairplayforwomen.com.

¹⁸ Terf Talk Down Under, 'Steph Hughes, trans in prisons', 28 January 2022, *YouTube*.

¹⁹ *Ibid*.

²⁰ Joanna Panagopoulos, 'Court hears prison officer "traded favours" before sexual assaults', 28 July 2022, *The Australian*.

²¹ Victorian Equal Opportunity & Human Rights Commission, 'Guideline: trans a gender diverse inclusion in sport > complying with the Equal Opportunity Act 2010', May 2017, humanrights.vic.gov.au.

²² Births, Deaths and Marriages Victoria, 'Sex descriptors', bdm.vic.gov.au.

²³ Women's Declaration International, 'Clare Dimyon on the importance of sex segregation in prisons', 29 August 2022, *YouTube*.; Sex-Segregated Prisons NOW!, '99% sexual offenders are male', sexsegregatedprisons.info.

²⁴ Easta, Patricia. 'Women in Australian prisons: the cycle of abuse and dysfunctional environments'. *The Prison Journal* (Philadelphia, Pa.) 81.1 (2001): 87–112.

Given that in Australia, “the majority of incarcerated women are mothers”²⁵ and some Australian women’s prisons allow children to live with their mothers in custody in designated accommodation,²⁶ allowing TIMs to be incarcerated in women’s prisons who are also able to access these special living arrangements, further raises serious and substantial safety concerns for such children.

While both TIMs and NTIMs are currently permitted entry to female detention facilities in Australia as correction sector workers, risk is amplified by the extension of this entry to TIMs as detainees. Already this entry is currently permitted for some TIMs in Australia.²⁷ The extreme vulnerability of the female population that occupies detention facilities in Australia makes this risk unacceptable.

Physical privacy and dignity

While the preponderance of sexual abuse, incest, rape, and prostitution in the lives of imprisoned women is relatively well known, less widely understood is their extent of ill-health. Women in Australian prisons are chronically unwell, often suffer withdrawal symptoms from drug or alcohol addiction, and are sometimes disabled.²⁸ Mental ill-health is almost ubiquitous among female prison populations. This vulnerability, even on physical health grounds alone, make the entry of TIMs into female detention facilities risky in terms of infringement upon physical privacy and dignity. These vulnerabilities are compounded by under-resourcing of Australian prisons, especially in respect of inmate healthcare, physical rehabilitation, and disability support.²⁹ Illness and disability often generate further problems relating to physical privacy and dignity for female prisoners, and a 2022 Australian study found that “women imprisoned for any period of time are more likely to develop both bladder and bowel symptoms which persist after release back into the community”.³⁰ The study observed that “[m]ost women in prison have been pregnant (85%) and almost a third have been diagnosed with a chronic condition”.³¹ Compounding these problems was that fact that “[m]ore than half (52%) of female prisoners reported high to very high levels of stress on entry and only 17% reported completing Year 12 or above”.³² Their bladder and bowel problems were both symptoms and causes of these circumstances, but “a sense of shame or embarrassment” meant that detainees were dissuaded “from reporting symptoms to prison staff”, and they assumed nothing could be done to improve their situation.³³

²⁵ Fowler, Cathrine et al. ‘Maternal incarceration: impact on parent–child relationships’. *Journal of Child Health Care* 26.1 (2022): 82–95.

²⁶ Corrections, Prisons & Parole, ‘Pregnancy and childcare’, corrections.vic.gov.au.

²⁷ See for example: Mark Buttler and Kieran Rooney, ‘Women inmates demand removal of trans prisoner guilty of attacking females while a man’, 11 August 2022, *The Herald Sun*; Clarissa Bye, ‘Transwomen in female jails in NSW debate: call to change law’, 24 June 2022, [dailytelegraph.com.au](https://www.dailytelegraph.com.au). The issue of male sex offenders who identify as women is becoming more prevalent in Australia. See for example these recent cases (it is not known what facilities they are currently being held in, or will be held in, if convicted): Elizabeth Byrne, ‘27-year-old pleads not guilty in ACT Magistrates Court to incest, child sex offences against siblings’, 7 September 2022, *ABC News*; Sean Fewster, ‘Tiktoker Rachel Queen Burton faces child sex abuse allegations’, 6 October 2022, *The Advertiser*; Carl Pfeiffer, ‘Josh Dean French, now known as Jayda Dean, sentenced for depraved child sex offences’, 10 October 2022, *The Advertiser*.

²⁸ Elizabeth Wright and Celina Edmonds, ‘Disability royal commission examines poor treatment and “disgusting” conditions in criminal justice system’, 22 September 2022, *ABC News*.

²⁹ Watt, Kelly et al. ‘Imagine If I’m not here, what they’re going to do?—Health-care access and culturally and linguistically diverse women in prison’. *Health Expectations: An International Journal of Public Participation in Health Care and Health Policy* 21.6 (2018): 1159–1170.

³⁰ Rice, Ameer et al. ‘Bladder and bowel symptoms following imprisonment in West Australian female prisons’. *International Journal of Prisoner Health* 18.1 (2022): 15–26.

³¹ Sullivan, Elizabeth A. et al. ‘Aboriginal mothers in prison in Australia: a study of social, emotional and physical wellbeing’. *Australian and New Zealand Journal of Public Health* 43.3 (2019): 241–247.

³² Rice, Ameer et al. ‘Bladder and bowel symptoms following imprisonment in West Australian female prisons’. *International Journal of Prisoner Health* 18.1 (2022): 15–26.

³³ *Ibid.*

The entry of TIMs to women's detention facilities elevates risk relating to the physical privacy and dignity of female inmates who are physically unwell or disabled. This risk arises from the intimate nature of some of the conditions that female prisoners endure, such as bowel and bladder problems. Such conditions in many cases relate specifically to aspects of female physiology, which are not shared by TIMs. This lack of commonality elevates the difficulty of securing privacy and dignity for women detainees.

Female incarceration as an opportunity for healing

The especial vulnerability of female prisoners is well recognised, and experts understand their incarceration to be more appropriately an opportunity for healing than punishment or public safety. This understanding is reflected in the 2010 United Nations' 'Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders' (called the Bangkok Rules), of which Rule 42 recommends that "[p]articular efforts shall be made to provide appropriate services for women prisoners who have psychosocial support needs, especially those who have been subjected to physical, mental or sexual abuse".³⁴ Rule 15 further recommends that "[p]rison health services shall provide or facilitate specialized treatment programmes designed for women substance abusers, taking into account prior victimization".³⁵ Female detention facilities are widely understood as ideally offering severely victimised women opportunities of time-out and recovery. Their amenability to women's recovery does, of course, depend critically on their internal environments, which need to be places of calm, trust, and support.

The ability of women's detention facilities to cultivate such environments is put at risk by the extension of access to these facilities to TIM detainees. Firstly, no research survey has been undertaken to consult female detainees as to their views and feelings about the prospect of detention alongside TIMs.³⁶ The likelihood that TIMs will detract from, rather than contribute to, environments of trust and support for the benefit of these women is indicated by demographic patterns including heterosexuality,³⁷ alcohol and substance use,³⁸ and poor mental health.³⁹ Given existing difficulties that already make it difficult to cultivate supportive environments for the recovery of female inmates,⁴⁰ the entry of TIMs to these facilities puts at further risk their capacity to offer the calm, trustful, and predictable conditions that are necessary for healing.

2. Female employees

Workplace sexual harassment and sexual assault

Female workers in the NSW corrections system can be the subject of requests for bodily searches by TIM inmates: "Transgender and intersex inmates must be asked their preference

³⁴ United Nations General Assembly, 'United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)', Rule 42, March 2011.

³⁵ Ibid, Rule 15. See also Bartels, Lorana, and Patricia Easteal. 'Women prisoners' sexual victimisation: ongoing vulnerabilities and possible responses'. *Journal of Criminological Research, Policy and Practice (Online)* 2.3 (2016): 206–216.

³⁶ Limited consultation has been undertaken in the UK. See Women's Place UK, 'Transgender prison policy: women prisoners speak out', 4 November 2021, womensplaceuk.org.

³⁷ Samons, Sandra L. 'When the opposite sex isn't: sexual orientation in male-to-female transgender people'. Florence: Taylor and Francis, 2012.

³⁸ Santos, Glenn-Milo et al. 'Alcohol and substance use among transgender women in San Francisco: prevalence and association with human immunodeficiency virus infection'. *Drug and Alcohol Review* 33.3 (2014): 287–295.

³⁹ Matthys, Imke et al. 'Positive and negative affect changes during gender-affirming hormonal treatment: results from the European Network for the Investigation of Gender Incongruence (ENIGI)'. *Journal of Clinical Medicine* 10.2 (2021): 1–13.

⁴⁰ Petrillo, Madeline. 'We've all got a big story': experiences of a trauma-informed intervention in prison'. *Howard Journal of Crime and Justice* 60.2 (2021): 232–250.

regarding the gender of the officer conducting strip and pat search procedures. Except in cases of emergency, the strip and pat searching of a transgender or intersex inmate is to be conducted by an officer of the preferred gender”.⁴¹ The conflation of gender and biological sex is exploited in such guidelines and creates confusion, because they use “gender” when they mean “biological sex”. Intimate bodily contact with male-bodied people can violate the career decisions of female corrections officers to work in women-only environments, or environments in which they do not undertake bodily searches (in the case of work within male detention facilities). In the case of TIMs in women’s detention facilities, exposure to male-bodied people can occur in showering and changing room contexts, and this can constitute a form of workplace sexual harassment.

Like female inmates, female prison workers are also at risk of sexual assault from TIMs. A former UK prisons minister has claimed that TIM prisoners have raped female prison staff in women’s prisons in the UK.⁴²

Different offences

There is little difference in the type of offence for which TIMs and NTIMs are imprisoned, but these offences are vastly different from offences committed by female detainees.⁴³ For example, males are the majority perpetrators of serious violent assaults, and sex offences are mostly absent among the crimes for which women are imprisoned. This puts further strain on resource and staffing shortfalls in female detention facilities in Australia, given different and more comprehensive measures taken for the accommodation of inmates posing risk to individuals. The choice of female corrections officers to work in environments mostly free of sex offenders or child pornography users is disrespected by the entry of TIMs into women’s detention facilities because of the statistically higher likelihood of such offenders entering their workplaces.

Burdensome work demands

Expanded responsibilities of protection and care of female inmates can fall on corrections-sector workers when TIMs enter women’s detention facilities. The majority of these workers are women. TIM prisoners can be admitted to these facilities while concurrently assessed as too high-risk for contact with women.⁴⁴ As a result, the burden falls on corrections officers to specially cater to TIM prisoners in isolation rooms or separate facilities within the women’s estate. Officers are already overburdened in their work, according to a 2018 study of non-English speaking female inmates in Australian prisons. According to researchers, in 2014, “20% of the 683 females in full-time custody in New South Wales...spoke a language other than English at home and almost a quarter (23.6%) were born outside Australia, predominantly Vietnam”.⁴⁵ Even the needs of the relatively small group of women within a cohort who did not speak sufficient English were not met by prison staff who were too busy and under-resourced to undertake even minimal tasks of arranging telephone interpreter assistance.

⁴¹ NSW Government Justice Corrective Services, 'Custodial operations policy and procedures: 3.8 Transgender and intersex inmates', correctiveservices.dcj.nsw.gov.au, p. 6.

⁴² Charlie Burton, 'Rory Stewart: “I would say that I am lower upper middle class”', 19 April 2020, *GQ Magazine*.

⁴³ See a description of typical offences at Jeffries, Samantha, and Greg Newbold. 'Analysing trends in the imprisonment of women in Australia and New Zealand'. *Psychiatry, Psychology, and Law* 23.2 (2016): 184–206. See also, Riley, Ben J. et al. 'Problem gambling among female prisoners: lifetime prevalence, help-seeking behaviour and association with incarceration'. *International gambling studies* 17.3 (2017): 401–411.

⁴⁴ Fair Play for Women, 'Prison bosses put transgender sex offenders into female prisons because they need “association with other women”', 16 May 2021, fairplayforwomen.com.

⁴⁵ Watt, Kelly et al. 'Imagine If I'm not here, what they're going to do?'—Health-care access and culturally and linguistically diverse women in prison'. *Health Expectations: An International Journal of Public Participation in Health Care and Health Policy* 21.6 (2018): 1159–1170.

This structural under-resourcing and under-staffing of detention facilities in Australia puts female officers at risk because they are especially dependent on colleagues, systems, and technology for their personal safety, and for their ability to effectively protect female inmates. The entry of TIMs to women's facilities adds extra burden to these already-stretched resources, and leaves female officers exposed to greater risk of workplace hazards, either from the TIMs themselves, or from female detainees.

3. Case study: Male sex offender in Victoria's Dame Phyllis Frost Correctional Centre for Women

Since at least 2018, Corrections Victoria has been allowing TIMs to be housed in women's prisons. And according to a recent response to a Freedom of Information request (**Annex 2**), what is even more concerning is that they do not appear to be keeping sex-based data or tracking how many TIMs are being kept with female inmates.

In August 2022, it was revealed by the *Herald Sun* that a man convicted of serious sexual offences against women and children, who now identifies as transgender, is being housed in Victoria's Dame Phyllis Frost Correctional Centre for women.⁴⁶ While not yet integrated into the female population at the time the *Herald Sun* article was published, it noted that the intention is to have the male prisoner fully integrated into the women's prison.

Female prisoners have petitioned multiple Victorian government departments for the immediate removal of the man in question. Their petition says that many of the prisoners carry significant trauma associated with having been victims of sexual assault or supporting victims, and that on hearing the news, "the mental wellbeing of many of the women was severely compromised." They understandably "feel threatened, unsafe, distressed and traumatised with this current situation."

As noted above, research shows that female prisoners are particularly vulnerable. They are more likely to have a history of physical and sexual abuse than male prisoners, and are more likely to have mental health problems, with nearly 1 in 3 reporting a history of self-harm.⁴⁷ It is cruel and gravely unjust to imprison these vulnerable women with a convicted male sex offender. It is also an abject failure of the Victorian government to safeguard female prisoners' rights to be treated with humanity and dignity, and to be protected from torture and other cruel, inhuman or degrading treatment,⁴⁸ under *Victoria's Charter of Human Rights and Responsibilities Act 2006* and under international law.

We believe Corrections Victoria has made a significant error in judgment, ignoring its own Commissioner's Requirements which state that, "In the placement of trans, gender diverse and intersex prisoners, the safety and welfare of the prisoner and of other prisoners are of paramount consideration", and require it to consider that TIM prisoners "might pose safety risks to others, particularly if their criminal record indicates a history of sexual and / or physical violence."⁴⁹

Of particular concern regarding the Commissioner's Requirements is Section 6.1.1 which states: "As a guiding principle, a person should be imprisoned in the prison of their gender

⁴⁶ Mark Buttler and Kieran Rooney, 'Women inmates demand removal of trans prisoner guilty of attacking females while a man', 11 August 2022, *The Herald Sun*.

⁴⁷ Australian Institute of Health and Welfare, 'The health and welfare of women in Australia's prisons', November 2020, pp. 6-10.

⁴⁸ Charter of Human Rights and Responsibilities Act 2006 (Victoria), s. 22 and s. 10, aihw.gov.au.

⁴⁹ Corrections Victoria, 'Commissioner's Requirements – Part 2: 2.4.2 Management of prisoners who are Trans, Gender Diverse or Intersex', s. 3.3, March 2021, corrections.vic.gov.au.

rather than their sex assigned or assumed at birth.”⁵⁰ This is wrong and puts women at risk of violence, sexual assault,⁵¹ and unintended pregnancy.⁵² Moreover, "gender" is undefined in Australian federal or state legislation, and "sex" is observed and recorded at birth (and frequently in utero prior to birth), not "assumed" or "assigned". The small exception to this are the 0.17 per 100,000 babies born in Australia with ambiguous sex characteristics (i.e. genitalia, chromosomes, reproductive organs) due to a disorders/differences of sex development.⁵³ Corrections Victoria has implemented factually untrue and ideologically-driven language into its Commissioner's Requirements which should be a factual and impartial document.

Corrections Victoria has also ignored two sets of United Nations Rules regarding the human rights of prisoners that it references on its own website.

The United Nations 'Standard Minimum Rules for the Treatment of Prisoners' (called the Nelson Mandela Rules) require that "different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment" and that "men and women shall so far as possible be detained in separate institutions".⁵⁴

The Bangkok Rules, already noted above, further highlight the "distinctive needs of women prisoners", the commitment "to take positive measures to address structural causes of violence against women...including with regard to...women in institutions or in detention", women's "right to be free of victimization while imprisoned", and the fact that "physical and psychological safety is critical to ensuring human rights and improving outcomes for women offenders".⁵⁵

When it became clear that authorities were ignoring the female inmates' pleas for help, Women's Forum Australia and the Coalition for Biological Reality started our own petition in solidarity with these women, with the support of the aforementioned (and undersigned) women's advocates.⁵⁶ We have written directly to the following public officials voicing our concerns: Victoria's Premier Daniel Andrews, Minister for Corrections Sonya Kilkenny, Minister for Women The Hon Natalie Hutchins, Minister for Equality Harriet Shing, Attorney-General The Hon Jaclyn Symes, Ombudsman Deborah Glass, Victorian Equal Opportunities & Human Rights Commissioner Ro Allen, Australian Human Rights Commission Lorraine Finlay, and Australian Sex Discrimination Commissioner Kate Jenkins. Our petition has now been signed by over 7,000 members of the community.

In solidarity with the female inmates in Victoria, we have been calling on these Victorian leaders to:

1. immediately remove the male sex offender from the Dame Phyllis Frost Correctional Centre, as well as remove all TIMs from women's prisons in Victoria;
2. conduct an inquiry into how this male sex offender was placed in a women's prison;
3. undertake a review of the Commissioner's Requirements for the *Management of Prisoners who are Trans, Gender Diverse or Intersex* in consultation with women's groups including current and former prisoners.

⁵⁰ Ibid, s. 6.1.1.

⁵¹ Nazia Parveen, '[Transgender prisoner who sexually assaulted inmates jailed for life](#)', 12 October 2018, *The Guardian*.

⁵² Tat Bellamy-Walker, '[N.J. trans prisoner who impregnated 2 inmates transferred to men's facility](#)', 20 July 2022, *NBC News*.

⁵³ Australian Bureau of Statistics, '[Sex and gender diversity in the 2016 census](#)', 2016, abs.gov.au.

⁵⁴ United Nations General Assembly, '[United Nations Standard Minimum Rules for the Treatment of Prisoners \(the Nelson Mandela Rules\)](#)', Rule 11, January 2016.

⁵⁵ United Nations General Assembly, '[United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders \(the Bangkok Rules\)](#)', March 2011.

⁵⁶ Women's Forum Australia, '[Demand the removal of men from women's prisons in Victoria](#)', womensforaustralia.org.

Our concerns have been echoed by Australian female senators Claire Chandler and Jacinta Nampijinpa Price, as well as former Senator Amanda Stoker, and at protests in Melbourne and around the country, as well as receiving national media attention.⁵⁷

The Victorian Ombudsman has informed us that it is investigating the issue (**Annex 3**) and the Victorian Equal Opportunity & Human Rights Commission (VEOHRC) told us it would meet with Corrections Victoria in October to discuss our concerns (**Annex 4**). The Attorney-General declined to intervene (**Annex 5**), passing the issue to the Minister for Corrections, the Minister for Equality refused to address the rights and safety of women in her response (**Annex 6**), and we received no response from either the Premier or the Minister for Women. The Australian Human Rights Commissioner and Sex Discrimination Commissioner informed us that “Decisions about the placement of individual prisoners within the Victorian corrective services system sit outside the powers of the Australian Human Rights Commission, which administers Commonwealth laws. These decisions are also beyond the scope of our powers as federal Commissioners.” (**Annex 7**).

On 12 October 2022, we received a response from VEOHRC Commissioner Ro Allen informing us that the meeting has now taken place (**Annex 8**). The way in which the Commissioner has failed to address our concerns or take any responsibility for protecting the rights of female inmates at Dame Phyllis Frost is deeply disappointing:

“Under the Charter of Human Rights and Responsibilities, all people in prisons and places of detention are entitled to have their rights protected and be treated with respect and dignity. The Charter places a responsibility on the public authorities overseeing prisons and other places of detention to ensure that all people within those environments are safe, protected and treated humanely.

The Commission considers that Corrections Victoria’s policy for the management of prisoners who are trans, gender diverse or intersex provides a framework for prisoner placement decisions that is grounded in human rights principles. Corrections Victoria is responsible for applying the policy and for making decisions about prisoner placement in Victoria. The Commission does not have the legislative power to initiate an inquiry into these decisions or to direct or overturn them. However, we can support public authorities to understand their responsibilities under the Charter and develop knowledge and skills to apply human rights in their decision making and operations.”

We fail to see the point of the VEOHRC meeting with Corrections Victoria if it is not able or willing to promote the human rights of *all* Victorians. The human rights of imprisoned women are clearly not being “protected” or “treated with respect and dignity” when a male sex offender is being housed in their prison. Public authorities overseeing prisons are clearly not ensuring that *all* imprisoned people are “safe, protected and treated humanely”, in this situation. The VEOHRC has clearly not done its job in supporting public authorities to “understand their responsibilities under the Charter” or “to apply human rights in their decision making” when vulnerable women are distressed and being put at risk of sexual assault, among other harms, by a convicted male sex offender. We have not yet heard anything further from Corrections.

We specifically request that the SPT visit the Dame Phyllis Frost Correctional Centre to speak with the female inmates who are being impacted by the housing of a male sex offender in their prison. If time permits, we also request that you visit Victoria’s Tarrengower women’s prison

⁵⁷ Women’s Forum Australia, [‘Campaign to remove male sex offender from women’s prison heats up’](https://www.womensforumaustralia.org), 29 September 2022, [womensforumaustralia.org](https://www.womensforumaustralia.org).

where an alleged sexual assault has already taken place by a TIM prisoner against a female inmate, as well as any other Australian women’s prisons housing TIM prisoners. We request that you call on the Australian Federal Government and Australian state governments to protect the safety and human rights of female inmates by removing all males from women’s prisons and keeping prisons in Australia single-sex.

Conclusion

Single-sex prisons exist to protect the dignity, safety and privacy of female inmates. Placing TIMs in women’s prisons is a complete abnegation of the state’s duty to the women in their care. It exposes female prisoners to increased risks of harm including torture, and other cruel, inhuman or degrading treatment or punishment, is a breach of their human rights, and does not reflect the expectations of the community, both locally and globally.

Males who identify as transgender are not the only males at risk of violence in men’s prisons. We believe solutions for male-on-male violence rests with men’s prisons and that separate units for all vulnerable males is the best option.

Every effort should be made to ensure the safety and welfare of *all* prisoners, but housing males in women’s prisons - particularly dangerous male sex offenders - is not the answer. We call on you to urgently act to protect the human rights and safety of female prisoners in Victoria, and more generally throughout Australia.



Dr Caroline Norma
Senior Lecturer
RMIT University



Rachael Wong
Chief Executive Officer
Women’s Forum Australia



Stassja Frei
Founder
Coalition for Biological Reality



Dr Caroline Norma
Senior Lecturer, RMIT University



Supported by:



Katherine Deves
Lawyer



Sall Grover
Founder & CEO of Giggle



Holly Lawford-Smith
Associate Professor, University of Melbourne



Janet Fraser
Author & Historian



Annex 1 – Queensland prison data

Specific offence – Aggravated sexual assault

Year (as at 30 June)	Male (Total male prisoners)	Males who identify as transgender (total prisoners in this cohort)	Females (Total female prisoners)	Females who identify as transgender (Total prisoners for this cohort)
2013	642 (5523)	3 (17)	6 (536)	0 (0)
2014	657 (6364)	3 (16)	7 (669)	0 (0)
2015	711 (6590)	4 (22)	8 (707)	0 (0)
2016	724 (7073)	5 (25)	10 (681)	0 (1)
2017	783 (7750)	8 (31)	9 (698)	0 (0)
2018	929 (7976)	3 (24)	6 (837)	1 (1)
2019	958 (7890)	5 (27)	10 (855)	1 (1)

Annex 2 – Response to Freedom of Information Request



Department of Justice and Community Safety

Information Integrity & Access

Freedom of Information
Level 24
121 Exhibition Street
Melbourne Victoria 3000
GPO Box 4356
Melbourne Victoria 3001
Telephone: (03) 8684 0063
Facsimile: (03) 8684 0099
justice.vic.gov.au
DX210077

27 July 2022

Our ref: CD/22/488118

Ms

By email:

Dear Ms

Freedom of Information (FOI reference 104047) – Notice of Decision

The following is my decision on your request under the *Freedom of Information Act 1982* (FOI Act).

Request

You have requested access to the following information on transgender women for the financial years 2019/2020, 2020/2021, 2021/2022:

1. How many transgender women were housed in Victorian women's prisons?
2. What were the nature of the crimes committed by transgender women housed in Victorian women's prisons?
3. How many transgender women requested transfer from Victorian men's prisons to women's prisons?
4. How many transgender women were denied a transfer from Victorian men's prisons to women's prisons?
5. How transgender women were transferred from Victorian women's prisons to men's prisons?
6. The total cost to the Department for medical transition (including hormones and surgeries) for transgender women.

Decision

The department undertook a thorough and diligent search for documents relevant to your request, however, the documents you seek do not exist in a discrete form and cannot be created in accordance with section 19 of the FOI Act.

Section 19 of the FOI Act provides that if the requested information is not available in a discrete form, but a written document containing the information can be produced by use of a computer or other equipment (e.g., by conducting a search of a computer database), then the agency must deal with the request as if it were a request for a written document.



Section 19 does not require an agency to create a document or documents through the manual search for and collation or assembling of information or data.

Corrections Victoria was consulted and advised that transgender status is not information that is collected and reported on by the department. A prisoner's transgender status is self-reported. The Corrections Victoria prison database, the Prisoner Information Management System (PIMS), does not allow this information to be collected in a way that can be extracted. While there may be notes about a prisoner's transgender status within the Sentence Management case notes in PIMS, it is not recorded in a way that can be retrieved by the use of a computer.

Justice Health was consulted in relation to point 6. Justice Health advised that the transgender status of a person is not currently routinely entered in the Justice Health electronic medical record in an easily extractable way. While a prisoner's transgender status may be noted within the JCare encounter notes (and will only be done with the person's consent), there is no way to extract this information without undergoing significant manual interrogation of each individual electronic medical file to determine whether someone may be transgender, or transitioning, and what medication or services are being provided. In addition, we note that hormonal treatment medications are used for clinical reasons other than supporting transition for a transgender person. Therefore, providing information about hormone medications provided in the prison system would not be an accurate reflection of the cost of supporting people in prison through gender transition.

Given the above, it is not possible to create a document satisfying your request terms in accordance with section 19, namely, through 'the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information'.

Therefore, I have determined that a document or documents falling within the terms of your request does not exist in a discrete form and cannot be created in accordance with section 19.

Right to Complain to Victorian Information Commissioner

Where no documents have been discovered relevant to your request, under section 61A(1) of the FOI Act you have the right to lodge a complaint in writing with the Victorian Information Commissioner. A complaint must be made within 60 days of the date of this letter. The address for lodgement is:

Freedom of Information - Complaints
Office of the Victorian Information Commissioner
PO Box 24274
MELBOURNE VIC 3001

Telephone: 1300 00 6842
Email: enquiries@ovic.vic.gov.au
Website: www.ovic.vic.gov.au

If you have any queries, please contact this office by email at foi@justice.vic.gov.au.

Yours sincerely



Natasha Haslem
Senior Adviser, Freedom of Information

Annex 3 – Email from Victorian Ombudsman

21 September 2022

File No: C/22/17398

Rachael Wong & Stassja Frei

Email:

Dear Rachael Wong & Stassja Frei

Your correspondence to the Victorian Ombudsman

I refer to your correspondence to this office dated 22 August 2022 where you raised concerns about the housing within the Dame Phyllis Frost Centre and other women's prisons, of inmates who identify as transgender.

By way of update, our office is making enquiries into these or similar issues with Corrections Victoria using our 'own motion' powers. As this is occurring under a separate complaint reference, we won't be dealing with your individual complaint further and have closed it.

I am happy to write to you in due course to explain the outcome of our enquiries and what further action our office may take. If you don't want to be contacted regarding the outcome of our enquiries, please let us know by return email. I will be on extended leave from 22 September 2022 but one of my colleagues will be taking carriage of this matter whilst I am away. If you have any questions in the interim, please contact my manager Andrew Gloster on (03) 9613 6221 or email complaints@ombudsman.vic.gov.au.

Yours sincerely

Kaami Shah

Investigation Officer

VICTORIANombudsman

RE: URGENT Re: Male sex offender in the Dame Phyllis Frost Correctional Centre for women

Dear Rachael

I acknowledge receipt of your email today.

Commissioner Allen has asked me to contact you to advise that they will be meeting with Corrections Victoria in October to discuss the issues raised in your correspondence of 25 August 2022.

The Commissioner will respond to your correspondence in due course following that meeting.

Kind regards

██████████



**Victorian Equal Opportunity
& Human Rights Commission**

Annex 5 – Email from Victorian Attorney-General



attorney general (DJCS) <attorney-general@justice.vic.gov.au>

13 Sept 2022, 10:28



to me ▾

Good morning Rachael,

Your matter has been referred to the Minister for Corrections as it falls within their portfolio.
They accepted our referral on the 23/08/2022.

You can contact their office either via email: sonya.kilkenny@parliament.vic.gov.au or phone: 03 9773 2727

Kind regards,

Office of Jaclyn Symes MP
Attorney General
Minister for Emergency Services
Department of Justice and Community Safety
121 Exhibition Street, Melbourne VIC 3000
Phone: 03 8684 1111
Email: attorney-general@justice.vic.gov.au



Annex 6 – Letter from Victorian Minister for Equality



Hon Harriet Shing MP

Minister for Water
Minister for Regional Development
Minister for Equality

8 Nicholson Street
East Melbourne, Victoria 3002
DX210098

Rachael Wong

Stassja Frei

Dear Rachael and Stassja,

Thank you for your email about trans women in prisons. The Victorian Government is committed to the safety of all Victorians, regardless of their sex or gender identity.

I want to acknowledge the distress and fatigue the trans and gender diverse community is feeling, particularly as a result of ongoing debates about their rights. There is much work to be done to address misinformation and stigma, and to support trans and gender diverse Victorians.

While this is a matter that sits within the Corrections portfolio, all prisoner placement decisions are made with the best interests of each individual prisoner in mind, whilst balancing the safety and security needs of the prison system as a whole, including inmates, and staff.

Individual decisions about the placement of trans and gender diverse people in custody are made in line with Corrections Victoria's Commissioner's Requirement 2.4 *Management of Prisoners who are Trans Gender Diverse or Intersex*.

Please contact corrections@justice.vic.gov.au if you have any further questions regarding the placement of people in Victorian prisons.

Yours sincerely,

Hon Harriet Shing
Minister for Water
Minister for Regional Development
Minister for Equality

25/9/22

cc: The Hon Sonya Kilkenny MP, Minister for Corrections



Annex 7 – Letter from Australian Human Rights Commissioner and Sex Discrimination Commissioner



23 September 2022

Ms Rachael Wong
Chief Executive Officer
Women's Forum Australia

By email:

Dear Ms Wong,

Re: Your letter regarding the placement of a transgender prisoner in the Dame Phyllis Frost Correctional Centre.

We refer to your letter of 29 August 2022 which raises concerns that a transgender woman with a history of convictions of sexual offences against women and children is being housed in the Dame Phyllis Frost Correctional Centre for women in Victoria.

Thank you for bringing this matter to our attention. Human rights are essential to all Australians including those in detention, and we acknowledge the complexity of the issues surrounding the placement of transgender people in custodial contexts. The safety and welfare of all people in detention is a matter of considerable importance.

Your letter calls for:

- 1. the immediate removal of the male sex offender from the Dame Phyllis Frost Correctional Centre, as well as the removal of all trans identifying males from women's prisons in Victoria;*
- 2. an inquiry into how this convicted male sex offender was placed in a women's prison;*
- 3. a review of the Commissioner's Requirements for the Management of Prisoners who are Trans, Gender Diverse or Intersex in consultation with women's groups including current and former prisoners.*

Decisions about the placement of individual prisoners within the Victorian corrective services system sit outside the powers of the Australian Human Rights Commission, which administers Commonwealth laws. These decisions are also beyond the scope of our powers as federal Commissioners.

Australia is a party to the *International Covenant on Civil and Political Rights* (ICCPR) and Australia has obligations under articles 9(1) and 10(1) of the ICCPR to uphold the right to security of person and ensure that people in detention have their safety and security protected. However, the Australian Human Rights Commission can only accept complaints involving ICCPR rights when the allegations are made against the Commonwealth or one of its agencies, and not State government agencies.

Given that your concerns involve decisions made under Victorian law and policy, we encourage you to raise these issues with our counterparts at the Victorian Equal Opportunity & Human Rights Commission and Victorian lawmakers.

Yours sincerely



Kate Jenkins
Sex Discrimination Commissioner

T: +61 2 9284 9836

F: +61 2 9284 9611

E: sexdiscriminationcommissioner@humanrights.gov.au



Lorraine Finlay
Human Rights Commissioner

T: +61 2 9284 9814

F: +61 2 9284 9611

E: lorraine.finlay@humanrights.gov.au

Annex 8 – Response from VEOHRC Commissioner Ro Allen



12 October 2022

Rachael Wong
Chief Executive Officer, Women's Forum Australia

Stassja Frei
Founder, Coalition for Biological Reality

Dear Rachael and Stassja

Thank you for your correspondence dated 25 August 2022.

As you would be aware, the Victorian Equal Opportunity and Human Rights Commission is unable to comment directly on individual cases. However, I can confirm that I have now met with the Commissioner for Corrections Victoria to discuss the relevant human rights considerations in prisoner placement decisions broadly.

These are important and complex matters. Like you, I share a deep concern for the safety and wellbeing of all people detained in prison, and recognise that the majority of women who are incarcerated have experienced significant trauma across their lives.

Under the Charter of Human Rights and Responsibilities, all people in prisons and places of detention are entitled to have their rights protected and be treated with respect and dignity. The Charter places a responsibility on the public authorities overseeing prisons and other places of detention to ensure that all people within those environments are safe, protected and treated humanely.

The Commission considers that Corrections Victoria's policy for the management of prisoners who are trans, gender diverse or intersex provides a framework for prisoner placement decisions that is grounded in human rights principles. Corrections Victoria is responsible for applying the policy and for making decisions about prisoner placement in Victoria. The Commission does not have the legislative power to initiate an inquiry into these decisions or to direct or overturn them. However, we can support public authorities to understand their responsibilities under the Charter and develop knowledge and skills to apply human rights in their decision making and operations.

Thank you again for writing to me regarding your concerns.

Yours sincerely

A handwritten signature in black ink, appearing to read "Ro Allen". The signature is written in a cursive, flowing style.

Ro Allen
Victorian Equal Opportunity and Human Rights Commissioner

Level 3, 204 Lygon Street, Carlton VIC 3053
Email: Ro.Allen@veohrc.vic.gov.au
humanrights.vic.gov.au