

# GENDERED INJUSTICE

The Policing and Criminalisation  
of Victim-Survivors of Domestic  
and Family Violence

REPORT 2022



The authors recognise the sovereignty of the Woi Wurrung (Wurundjeri) and Boon Wurrung peoples of the Kulin Nation as the custodians of the land on which we work. This sovereignty has never been ceded. We pay respect to Woi Wurrung and Boon Wurrung Elders past and present. We also acknowledge that the criminal legal system is a tool of ongoing colonial dispossession and that First Nations communities are leaders in efforts to challenge and resist its harms.

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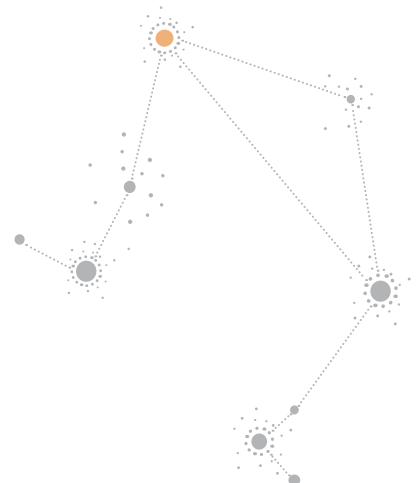
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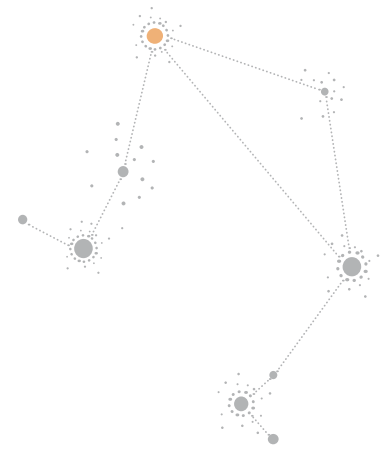
## 0.1 Fitzroy Legal Service and La Trobe University

### Acronyms

ABS	Australian Bureau of Statistics
AFM	Affected family member
AIHW	Australian Institute of Health and Welfare
AOD	Alcohol and/or other drugs
CAT	Crisis assessment and treatment (team)
CLC	Community legal centre
COVID-19	Coronavirus disease of 2019
CSA	Crime Statistics Agency
DFV	Domestic and family violence
FLS	Fitzroy Legal Service
FVIO	Family violence intervention order
ID	Identification
IO	Intervention order
LGBTIQ+	Lesbian, gay, bisexual, transgender, intersex, queer +
NDIS	National Disability Insurance Scheme
UoM	University of Melbourne
VALS	Victorian Aboriginal Legal Service
WLSV	Women's Legal Service Victoria

Fitzroy Legal Service (FLS) has worked with the Victorian community since 1972 to achieve access to justice and more equitable legal outcomes. FLS provides legal information, advice, casework, and representation in the areas of civil law, family violence, family law and criminal law, with a specific focus on working with communities who are disproportionately impacted by law and policy, and those who face systemic barriers to accessing justice due to poverty, race, discrimination, and disability. FLS provides duty services at the Specialist Family Violence Court at Heidelberg, is collocated at Neighbourhood Justice Centre, Collingwood, provides a dedicated phone service for incarcerated peoples, as well as various integrated and multidisciplinary outreach programs reaching communities of colour, LGBTIQ+ communities, and people who use drugs.

La Trobe University has a strong history of undertaking research to address pressing societal needs. Its researchers examine progressive topics and seek to create more just and equitable societies. La Trobe University is embedded in communities in Melbourne's north, and proudly educates more first-in-family and disadvantaged students than any other university in the state. Its partnership with Fitzroy Legal Service sits within the University's strategic research theme of 'Social Justice and Equity' and involves researchers based in the School of Humanities and Social Sciences.



## 0.2 Executive Summary

This report documents how women experiencing domestic and family violence (DFV) are policed and criminalised. It presents findings from a research project conducted by Fitzroy Legal Service (FLS) in partnership with La Trobe University with the support of a Victorian Law Foundation Knowledge Grant (2020-21). The research aimed to identify how women who experience a range of social, economic, health and legal issues – including but not limited to DFV – become caught up in the criminal legal system.<sup>1</sup> Investigating this point of overlap or interchange between social, financial, health or civil matters on the one hand, and criminal legal matters on the other, can help practitioners and policy strategists to explore the opportunities for systemic changes and collaborative support models that would prevent women’s criminalisation. Our use of the term women is inclusive of both cis and trans women. By using the term criminalisation, we hope to draw attention to the processes and mechanisms through which social problems come to be treated as criminal legal problems; and to highlight that there are alternatives.

To investigate the relationships between criminalisation and women’s experiences of social, economic, health and/or civil legal issues, we adopted three methods of data collection and analysis:

- the review and classification of 108 anonymised Fitzroy Legal Service client case files relating to women with criminal legal matters
- the retrieval of publicly available statistical data on women in prison and women respondents on intervention orders
- the thematic analysis of semi-structured interviews with 11 legal and social service practitioners with current experience of working with criminalised women

These methods generated rich quantitative and qualitative data on the policing and criminalisation of women, especially women experiencing DFV and allowed us to identify opportunities for systemic changes that would prevent criminalisation. Much of what we found has already been spoken and written about at length by women and gender diverse people with lived experience of imprisonment.<sup>2</sup> We intend for this research to supplement their expertise and lend further evidence to their campaigns and calls for action.

By triangulating the data gathered and analysed through the methods above, this report explores the following questions and main findings, outlined in Table 1.

1. The study investigated the criminalisation of both cis and trans women, though most of the data collected pertains to cis women. There is a need for further research in this area focusing specifically on trans women and gender diverse people.

2. See for example: Homes Not Prisons (2021), *Stop the expansion of Dame Phyllis Frost Centre: Submission to the Legal and Social Issues Committee’s Inquiry into Victoria’s Criminal Justice System*, <[https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry\\_into\\_Victorias\\_Justice\\_System/\\_Submissions/148.\\_Homes\\_Not\\_Prisons\\_Redacted.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System/_Submissions/148._Homes_Not_Prisons_Redacted.pdf)>; Kilroy, K, Barton, P, Quixley, S, George, A & Russell, EK (2013) ‘Decentering the prison: Abolitionist approaches to working with criminalised women’, in B Carlton and M Segrave (eds.) *Women Exiting Prison: Critical Essays on Gender, Post-Release Support and Survival*, Oxon: Routledge, pp.156-180; Women’s Leadership Group of the Women Transforming Justice Project (2019), *The Women Transforming Justice Women’s Leadership Group Submission to the Royal Commission into Victoria’s Mental Health System*, Melbourne: Fitzroy Legal Service, <<https://fls.org.au/app/>>

**Table 1: Research questions and main findings**

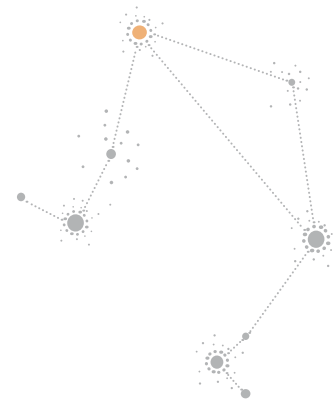
	Research questions	Main findings
1	What are the most common social, economic and health issues that criminalised women experience?	Domestic and family violence; poverty; homelessness and housing insecurity; trauma; mental illness and/or psychological distress; and alcohol and other drug dependency.
2	How do women experiencing domestic and family violence (DFV) become criminalised?	Systems abuse, the cross-application of intervention orders (IOs), and police misidentification of victim-survivors as “predominant aggressors” result in systemic collusion; a lack of housing or other support options lead to breaches of IOs; women accept charges on behalf of an abusive partner and are disadvantaged by gendered norms in the criminal legal system. <sup>3</sup>
3	How do legal systems and institutions impact upon socially and economically disadvantaged women?	Legal systems impact upon women’s safety, mental health, and risk of criminalisation and punishment through and because of: Police racial profiling; transphobia and sexism in policing; lack of transparency and accountability in police decision-making; lack of support for applicants and respondents on IOs; and toughened bail laws.
4	What systemic changes are necessary to prevent women’s criminalisation?	More investment in housing; more holistic support and coordinated service delivery; improved advocacy and legal practice; more accessible mental health support; divestment from the prison system; and increased financial resources/welfare.

3. We adopt the term ‘predominant aggressor’ rather than the more commonly used ‘primary aggressor’, because the latter term can imply it refers to the person who “started” a DFV incident or used violence first. The term predominant aggressor refers to the person who is exerting the greatest amount of harm and control over their partner or family member through any number of abusive behaviours. See: No to Violence (2019), *NTV Discussion Paper: Predominant Aggressor Identification and Victim Misidentification*, Melbourne: No to Violence, p.3 <<https://ntv.org.au/wp-content/uploads/2020/06/20191121-NTV-Discussion-Paper-Predominant-Aggressor-FINAL.pdf>> On systems abuse and systemic collusion, respectively, see: Reeves, E (2020), ‘Family violence, protection orders and systems abuse: Views of legal practitioners’, *Current Issues in Criminal Justice*, vol. 32, no. 1, pp. 91-110. DOI: 10.1080/10345329.2019.1665816; Flat Out (2020), *Organisational submission to the Implementation Monitor’s review of family violence reforms*, Melbourne: Flat Out, <[https://www.fvrim.vic.gov.au/sites/default/files/2020-09/Submission%20%23096%20-%20Organisation%20-%20Flat%20Out%20Inc\\_0.PDF](https://www.fvrim.vic.gov.au/sites/default/files/2020-09/Submission%20%23096%20-%20Organisation%20-%20Flat%20Out%20Inc_0.PDF)>

Based on the findings of this research, we make the following recommendations, many of which have already been articulated by Aboriginal and Torres Strait Islander communities, women and gender diverse people with lived experience of criminalisation, and other social justice and advocacy organisations:

- Expand safe and accessible public housing options for women
- Move away from an over-reliance on policing to respond to the broad range of complex social, economic and health issues that women face
- Build effective independent police oversight and accountability systems
- Develop a research and public policy agenda to explore, fund, and enhance alternatives to police and prisons
- Invest in holistic, collaborative, and multi-disciplinary support services and systems for women that are culturally safe for Aboriginal women
- Urgently fix Victorian bail laws to reduce women's remand rates<sup>4</sup> and halt prison expansion plans
- Decriminalise public drunkenness and illicit drug use
- Develop training for lawyers on how to effectively address or engage with complex needs outside of legal need, including identifying where and how DFV victimisation might be relevant to women's criminal legal matters

4. As outlined in a joint media release on 24 March 2022 by the Victorian Aboriginal Legal Service (VALS), Human Rights Law Centre, Fitzroy Legal Service and Flat Out, fixing the bail laws requires: repealing the reverse-onus provision; creating a presumption in favour of bail for all offences; inserting an explicit requirement that a person must not be remanded for an offence that is unlikely to result in a sentence of imprisonment; and repealing the offences of committing an indictable offence while on bail, breaching bail conditions and failure to answer bail. VALS (2022) 'Media Release: The Andrews government must not kick bail reform down the road', <<https://www.vals.org.au/the-andrews-government-must-not-kick-bail-reform-down-the-road/>>



## 1.0 Introduction

Criminalisation has many negative consequences for women. It can lead to re-traumatisation at the hands of police; stigma and discrimination; loss of housing, employment, or custody of children; and worsening mental health. It can also prevent women from accessing a range of social and health supports and set up a cycle of incarceration. Research on criminalised and imprisoned women in Australia shows that they experience high rates of homelessness, poverty, mental illness and/or psychological distress, trauma, and victimisation.<sup>5</sup> Despite some official recognition of these trends, recent studies and lived experience accounts suggest that the criminal legal system in Victoria continues to be structured around the ethos of control, surveillance, and punishment, with little appreciation of how policing and imprisonment reproduce cycles of social and economic disadvantage.<sup>6</sup>

Over the past decade, the average number of women entering prison each month in Victoria has doubled.<sup>7</sup> One of the biggest drivers for this increase is changes to the Victorian bail laws in

2013 and 2018, which have contributed to massive growth in the numbers of women entering prison un-sentenced (on remand).<sup>8</sup> In 2019, Fitzroy Legal Service led a research project in partnership with academics at La Trobe and Deakin Universities to investigate the reasons why women were being refused bail at unprecedented rates. The results of that study were published in a report titled, *A Constellation of Circumstances: The Drivers for Women's Increasing Rates of Remand in Victoria (2020)*.<sup>9</sup> The *Constellations* report outlined how a range of systemic gender and racial inequalities are contributing to the crisis of women's remand, including the denial of bail to women without housing, even when their lack of housing is a product of domestic and family violence (DFV). It also documented a perception amongst some lawyers that the prison is being used—highly inappropriately—as a mental health provider.<sup>10</sup> These and other findings highlight the need for further research on the ways in which social, economic or health problems are being escalated to criminal legal problems.

5. Bartels, L, Eastal, P & Westgate, R (2020), 'Understanding women's imprisonment in Australia', *Women & Criminal Justice*, vol. 30, no.3, pp. 204–219, DOI: 10.1080/08974454.2019.1657550 ; Carlton, B & Segrave, M (2014), "'They died of a broken heart": Connecting women's experiences of trauma and criminalisation to survival and death post-imprisonment', *The Howard Journal*, vol. 53, no. 3, pp. 270-289. DOI: 10.1111/hojo.12066 ; Kendall, S, Lighton, S, Sherwood, J, Baldry, E & Sullivan, E (2019), 'Holistic conceptualizations of health by incarcerated Aboriginal women in New South Wales, Australia', *Qualitative Health Research*, vol. 29, no. 11, pp.1549–1565. DOI: 10.1177/1049732319846162
6. Homes Not Prisons (2021); Franich, G, Sandy, L & Stone, U (2021), "'It's not designed for women at all": Exploring service providers' perspectives of working in the Victorian criminal justice system', *Current Issues in Criminal Justice*, vol. 33, no. 2, pp. 211-227. DOI: 10345329.2020.1837713; Russell, EK, Carlton, B & Tyson D (2021), "'It's a gendered issue, 100 per cent": How tough bail laws entrench gender and racial inequality and social disadvantage', *International Journal of Crime, Justice & Social Democracy*, vol. 10, no. 3. DOI: 10.5204/ijcsd.1882
7. Average number of women entering prison each month in 2021 was 107, compared to 2011 average of 52. Source: Corrections Victoria (2022a), *Monthly time series prisoner and offender data*, <<https://www.corrections.vic.gov.au/monthly-time-series-prisoner-and-offender-data>>
8. Remand refers to a period of incarceration during which a person is not sentenced. A person can be remanded in custody after being accused and charged with a criminal offence, yet before being convicted and sentenced. A person can be remanded before their bail hearing, or while awaiting trial and sentencing after having their application for bail denied.
9. Russell, EK, Carlton, B, Tyson, D, Zhou, H, Pearce, M & Faulkner, J (2020), *A constellation of circumstances: The drivers for women's increasing remand in Victoria (Report July 2020)*, Melbourne: Fitzroy Legal Service and La Trobe Centre for Health, Law & Society, <<https://www.fitzroy-legal.org.au/community-resources/>>
10. Ibid.; Russell et al. (2021); Russell, EK, Carlton, B & Tyson D (2020), 'Carceral churn: A sensorial ethnography of the bail and remand court', *Punishment & Society*, vol. 0, no. 0, pp. 1-19. DOI: 10.1177/1462474520967566



The present study builds directly from our previous research on women's increasing rates of remand. Rather than focusing on how women end up incarcerated without a custodial sentence, this research examines what happens before that point, investigating how women come into contact with the criminal legal system in the first place. Criminalisation remains a central focus in the present study, although imprisonment is not a specific topic. Many of the themes and issues identified in the *Constellations* research remain consistent in the present study, especially the significance of the nexus between DFV, homelessness, and women's criminalisation.<sup>11</sup>

Increasingly, community legal and other advocacy organisations are reporting that legal responses to DFV are having unintended and negative consequences for women.<sup>12</sup> These reports are supported by a growing body of academic research, which suggests that contrary to their aims of protecting women, police and court processes for responding to DFV are in

some instances increasing women's risk of criminalisation and incarceration, especially if the woman experiences racism, poverty, mental illness and/or psychological distress, or drug or alcohol dependency.<sup>13</sup> Thus, rather than focus solely on the problem of interpersonal violence, advocates and policymakers need to contend with the 'social entrapment' that is produced by the combination of intimate partner violence, a lack of access to supports, and the risk of criminalisation when in contact with police.<sup>14</sup>

The criminalisation of women who are victim-survivors of DFV occurs through harmful policing practices, including but not limited to the misidentification of victim-survivors as predominant aggressors, arresting women on warrants or for unpaid fines when they seek assistance for DFV, or charging women when they use violence in the context of self-defence.<sup>15</sup> Recent research conducted in Victoria has found a troubling relationship between the FVIO system and manipulative techniques employed by abusers,

11. Russell et al. (2021).

12. No to Violence (2019); Russell, EK, George, A & Clarke, B (2015), *Flat Out Inc. and Centre for the Human Rights of Imprisoned People: Submission to the Royal Commission into Family Violence*. Melbourne: Flat Out, <<http://www.flatout.org.au/wp-content/uploads/2012/04/Flat-Out-Submission-RCFV-FINAL.pdf>>; Ulbrick, M & Jago, M (2018), "*Officer she's psychotic and I need protection*": Police misidentification of the 'primary aggressor' in family violence incidents in Victoria, Melbourne: Women's Legal Service Victoria, <https://www.womenslegal.org.au/files/file/WLSV%20Policy%20Brief%201%20MisID%20July%202018.pdf>; Victorian Aboriginal Legal Service (2021), *Addressing Coercive Control Without Criminalisation: Avoiding Blunt Tools that Fail Victim-Survivors*, pp.24-30, <<http://www.vals.org.au/wp-content/uploads/2022/01/Addressing-Coercive-Control-Without-Criminalisation-Avoiding-Blunt-Tools-that-Fail-Victim-Survivors.pdf>>
13. Bevis, M, Atkinson, J, McCarthy, L & Sweet, M (2020), *Kungas' trauma experiences and effects on behaviour in Central Australia* (Research report, 03/2020), Sydney: ANROWS, <<https://www.anrows.org.au/project/kungas-trauma-experiences-and-effects-on-behaviour-in-central-australia/>>; Douglas, H & Fitzgerald, R (2018), 'The domestic violence protection order system as entry to the criminal justice system for Aboriginal and Torres Strait Islander people', *International Journal for Crime, Justice & Social Democracy*, vol. 7, no. 3, pp. 41-57. DOI: 10.5204/ijcsd.v7i3.499; Nancarrow, H (2019), *Unintended consequences of domestic violence law: Gendered aspirations and racialised realities*. Cham, Switzerland: Palgrave Macmillan.
14. Douglas, H, McGlade, H, Tarrant, S & Tolmie, J (2020), 'Facts seen and unseen: Improving justice responses by using a social entrapment lens for cases involving abused women (as offenders or victims)', *Current Issues in Criminal Justice*, vol. 32, no. 4, pp. 488-506. DOI: 10.1080/10345329.2020.1829779; Tolmie, J, Smith, R, Short, J, Wilson, D & Sach, J (2018), 'Social entrapment: A realistic understanding of the criminal offending of primary victims of intimate partner violence', *New Zealand Law Review*, vol. 2, pp. 181-218, <<https://noviolence.org.au/wp-content/uploads/2020/12/Social-Entrapment-Julia-Tolmie-2018.pdf>>
15. Reeves (2020); Reeves, E (2021), "'I'm not at all protected and I think other women should know that, that they're not protected either'": Victim-survivors' experiences of 'misidentification' in Victoria's family violence system', *International Journal for Crime, Justice & Social Democracy*, vol. 10, no. 2, pp. 39-51. DOI: 10.5204/ijcsd.1992; Russell et al. (2021); Wilson, M, Jones, J, Butler, T, Simpson, P, Gilles, M, Baldry, E, Levy, M & Sullivan, E (2017), 'Violence in the lives of incarcerated Aboriginal mothers in Western Australia', *SAGE Open*, vol. 7, no. 1, pp. 1-16. DOI: 10.1177/2158244016686814

which produces the phenomenon of ‘systems abuse’.<sup>16</sup> Our study adds further evidence to these findings. As the Royal Commission into Family Violence vol. 3 p37 noted more than five years ago, misidentification in the FVIO system is a continuing problem.<sup>17</sup> The support and advocacy service Flat Out argues that misidentification should be conceptualised as a form of ‘systemic collusion’ between police and people using coercive and controlling behaviours in intimate relationships. Rather than a lack of police capacity or training, misidentification reflects the inherent biases and systemic discrimination involved in policing.<sup>18</sup> This reorients our focus towards the systemic harms of policing, which requires police accountability and proper independent oversight to address.

The findings of this study affirm the urgency to address the crises of homelessness and poverty for women. Too frequently, there are reports of women effectively being criminalised and

punished for not having secure housing or housing options to escape DFV.<sup>19</sup> Rather than scaling up investments in policing and prisons, there are sustained calls for expanding public housing options in Victoria. As the Homes Not Prisons coalition contends, ‘self-contained accommodation free from punitive surveillance and control provides a base for healing’ (p.13).<sup>21</sup> Holistic, trauma-informed and coordinated models of support for criminalised women in the community are essential, as our study confirms. Unfortunately, service providers report that a lack of resources and sexist cultures within criminal legal institutions hinder this service delivery.<sup>21</sup> Especially once already criminalised or imprisoned, the lack of investment in public housing and coordinated support systems for women makes it exceedingly difficult to escape the criminal legal system. Systemic changes are urgently needed, and this report outlines the rationale for, and directions toward, alternatives to criminalisation.

16. Reeves (2020).

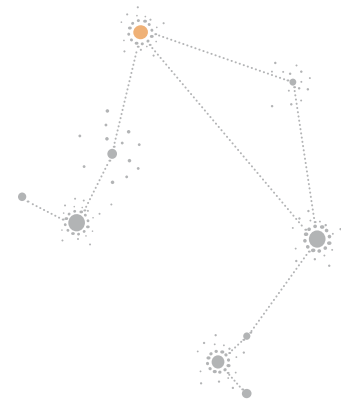
17. Royal Commission into Family Violence (2016), *Royal commission into family violence: Summary and recommendations* (Parliamentary paper no. 132), Melbourne: State of Victoria, <[https://www.parliament.vic.gov.au/file\\_uploads/1a\\_RFV\\_112ppA4\\_SummaryRecommendations.WEB\\_DXQyLhqv.pdf](https://www.parliament.vic.gov.au/file_uploads/1a_RFV_112ppA4_SummaryRecommendations.WEB_DXQyLhqv.pdf)>

18. Flat Out (2020).

19. Homes Not Prisons (2021); Russell et al. (2020); Russell et al. (2021).

20. Homes Not Prisons (2021).

21. Franich et al. (2020).



## 2.0 Methods

Through a collaborative model of research, designed and conducted in partnership between Fitzroy Legal Service (FLS) and La Trobe University, this study utilised three methods of data collection and analysis: a case file review conducted within FLS; the review of publicly available statistical data from government agencies; and interviews with practitioners from legal and social services that are external to FLS. The data derived from these methods were triangulated to address the research questions outlined in Table 1.

### 2.1 Case File Review

A review of relevant FLS case files was conducted by Hui Zhou to identify the spectrum of social, economic, health and legal issues experienced by women who presented to FLS with criminal law matters. The findings of this review were then compared with publicly available data on criminalised and imprisoned women, and women as respondents on FVIOs, in Victoria and Australia.

FLS' criminal law practice provides advice, casework, and representation in summary and indictable matters, including on appeal. It also offers a duty lawyer service at the Neighbourhood Justice Centre, Collingwood. Referrals for criminal law casework are received through integrated partnerships and specialised programs such as the Drug Outreach Program, external referrals from other legal practitioners, self-referrals from clients, and internal referrals through other FLS programs. From March 2021, FLS also commenced a pilot Women's Integrated Legal and Outreach program, which works with criminalised women in relation to their criminal and other legal matters.

#### 2.2.1 Criteria and Methodology

FLS's case files are held electronically using secure encrypted case management software called *Actionstep*. A search of the *Actionstep* database was conducted within FLS to extract data related to all clients that met the criteria for inclusion in the study into a single spreadsheet. Clients met the inclusion criteria if:

- They identified as women, including trans women; and
- FLS acted for them in a criminal law matter between 1 October 2019 and 6 August 2021 (a period of approximately 22 months).

A manual scan of the spreadsheet was done within FLS to ensure that the assistance provided by FLS was casework, or a substantive court representation and that there was sufficient information in the client record to generate relevant data.<sup>22</sup>

Through this filtering process, the case files of a total of 108 clients were included in the study. Some clients had multiple criminal cases as well as cases in other legal areas. Each client was assigned a unique identifying number. To maintain anonymity, any identifying features such as name, age, date of birth or address were not accessed and were not recorded in the dataset. The legal files were then reviewed and classified according to the below socioeconomic and legal attributes, the data tabulated into a spreadsheet, disaggregated, and analysed. This was done in accordance with the FLS privacy and case study policies that allow for the use of disaggregated client data for the purposes of research, public education, advocacy, and service improvement.

22. With respect to clients who are serviced by a duty lawyer service, only those clients who have been provided with assistance in a substantive hearing, have been included.

To respond to Research Questions 1, 2 and 3 (see Table 1), the data was classified according to the demographic and legal attributes listed in Table 2.

**Table 2: List of demographic and legal attributes for classifying anonymised FLS client files**

Attribute/s
Aboriginal and/or Torres Strait Islander
Trans or gender-diverse
History of imprisonment (remand or sentence)
In police or corrections custody at any time during engagement with FLS
On remand or bail or summons
Homeless or at risk of homelessness
Experience of DFV relevant to the criminal law matter
Misidentified by police as 'predominant aggressor' in DFV incident
Experience of trauma related to childhood abuse, DFV, other victimisation, or persecution
Experiencing poverty
Any police accountability issues
Any racial profiling by police
Experience of mental illness and/or psychological distress
Any children under 18 and any care arrangements
Alcohol or other drug (AOD) dependence
The nature of offences the person is charged with

Once the data was classified according to these attributes, we conducted a statistical analysis of the sample of 108 FLS clients by each of the attributes listed in Table 2 to determine the prevalence of each.

To compare the attributes of the FLS sample with other surveys and studies that use larger samples, we conducted desktop research to retrieve statistical data from government and non-government agencies. This includes data on women in prison reported by government agencies such as Corrections Victoria, the Victorian Crime Statistics Agency (CSA) and the Australian Institute of Health and Welfare (AIHW). It also considers data from Women’s Legal Service Victoria (WLSV) and University of Melbourne (UoM) on women named as respondents on FVIOs.

**2.2.2 Key terms**

Files were reviewed to determine whether a person is experiencing or at risk of **homelessness**; has **AOD dependence**; or is experiencing **mental illness and/or psychological distress**. These were identified by clients self-disclosing while giving instructions, or through materials provided by the person such as letters of support and medical reports. Homelessness includes where a person is in crisis, temporary or transitional housing or is couch surfing, sleeping rough, sleeping in their car or a combination of these

conditions. When discussing issues of mental health, our focus is on the social consequences of being diagnosed with a mental illness and/or showing signs of psychological distress, including but not limited to social disadvantage, exclusion and discrimination that create physical and social barriers to access and support.<sup>23</sup>

**Poverty** was defined crudely to mean people whose sole income is through Centrelink or people who had no income at all. This does not account for people with partners or with dependents, or any analysis of the true cost of living, and is likely to produce an underrepresentation of the proportion of FLS clients who experience poverty.

The identification of experiences of DFV relevant to the client's criminal law matter relied upon the client's self-disclosure as part of her instructions. To be recorded as '**relevant DFV**' in the FLS case file review process, the client's experience of DFV could be directly related to the criminal law matter (for example, she is being charged with offences that she was coerced by a violent partner to commit) or indirectly related (for example, she is charged with theft related offences committed in the context of homelessness and poverty that are caused by DFV). This method of classifying relevant DFV experiences relies on the capacity and willingness of the client to identify the connections between her experience of DFV and her interaction with the criminal legal system.

It also relies on her willingness to share this with the person acting in her criminal law matter. It is therefore likely to be an underrepresentation of the prevalence of relevant DFV experiences amongst FLS clients.

**Misidentification** is used here to refer to circumstances where 'the person experiencing DFV or most in need of protection is wrongly identified as perpetrating DFV'.<sup>24</sup> In applying this definition, we seek to recognise the wide spectrum of behaviour that can constitute DFV. We also seek to recognise the nature of DFV as a continuum of behaviour that exists within a context and relationship dynamic of power and control,<sup>25</sup> rather than an isolated incident that is typically the subject and focus of a police intervention. Misidentification was determined through an internal process of manually reviewing FLS casefiles, including the client's instructions and her own identification as a primary victim of DFV.<sup>26</sup>

Files were also reviewed to identify whether women had experiences of **trauma** relating to childhood abuse, past DFV, other victimisation or persecution. This broadened the scope of inquiry to consider experiences of violence and interpersonal and systemic harm experienced by women including but not limited to current experiences of DFV that were relevant to her criminal legal matter.

23. The term 'psychosocial disability' can be useful to highlight the social impacts of mental illness. However, we note that not all people experiencing mental illness identify with the disability framework or the associated language. We have therefore sought to use broader person-first terminology. On the genesis of the language of psychosocial disability, see Spandler, H, Anderson, J & Sapey, B (2015), *Madness, distress and the politics of disablement*, Bristol: Policy Press.

24. Nancarrow, H, Thomas, K, Ringland, V & Modini, T (2020), *Accurately identifying the "person most in need of protection" in domestic and family violence law* (Research report, 23/2020). Sydney: ANROWS, <<https://www.anrows.org.au/publication/accurately-identifying-the-person-most-in-need-of-protection-in-domestic-and-family-violence-law/>>

25. Tolmie et al. (2018).

26. This method of manual data extraction and review reflects the methodology of Women's Legal Service Victoria's (WLSV) research on misidentification: WLSV (2018) *Snapshot of Police Family Violence Intervention Order applications: January – May 2018*, <<https://www.womenslegal.org.au/police-accountability>>

## 2.2 Interviews

In 2021, 10 semi-structured interviews were conducted by Emma Russell and Hui Zhou with 11 participants with current experience working with criminalised women in their professional role as a legal or social services practitioner in Victoria. Participants were based in a range of sectors, including community legal, prison and post-release support, DFV and health (see Table 3 below).<sup>27</sup> The amount of time that participants had worked with criminalised women ranged from 2 years to 25 years, with an average of 11.2 years.

Interviews were conducted via Zoom and recorded for the purposes of transcription and qualitative analysis. Interviews ranged from 30 to 60 minutes duration. Interview participation was voluntary, and we have sought to preserve the anonymity and privacy of participants and their employers by assigning a reference code to each interview transcript (included in Table 3).

**Table 3: Interview participants' professional experience**

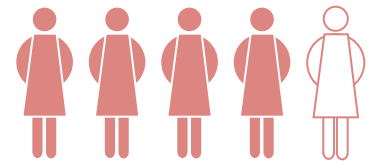
Interview Transcript Reference	Sector	Specialisations or communities of focus	Years of Experience
DFV_1	Domestic & Family Violence	Homelessness Aboriginal & Torres Strait Islander communities	20 years
CLC_1&2	Community Legal	Criminal law	8 years
CLC_1&2	Community Legal	Civil law Criminal law People at risk of homelessness	20 years
CLC_3	Community Legal	Mental health	6 years
CLC_4	Community Legal	Mental health	3 years
CLC_5	Community Legal	Criminal law DFV	17 years
CLC_6	Community Legal	Mental health Youth law	5 years
PPR_1	Prison and Post-Release Support & Advocacy	Social work People at risk of homelessness, AOD, trauma	25 years
CLC_7	Community Legal	Community outreach Youth law Legal advocacy	2 years
PPR_2	Prison and Post-Release Support & Advocacy	Social work	10 years
HLP_1	Health and Legal Partnerships	Women, including young women AOD	7 years

27. Participants were also sought from the AOD, housing and homelessness, and mental health sectors. Unfortunately, we did not receive any interest from participants working strictly in these sectors. However, many of the participants from other sectors, such as the CLC sector, have experience and expertise working with these issues. Therefore, while not all sectors that work with criminalised women are represented in the findings of the study, we have managed to capture a breadth of professional experience and expertise in this small sample of participants.

During interviews, the following questions were used as prompts to explore participants' views on the relationships between women's criminalisation and any social, economic, health and legal issues that women face:

1. What are the social circumstances in which you typically observe women being criminalised or re-criminalised? Can you describe some common scenarios? (e.g., consider her housing, financial, relationship, and/or health status, etc.)
2. In the social conditions described above, what are some of the ways that these women will come into contact with police, or be monitored by police?
3. From your observations in your work, what puts women at greater risk of incarceration?
4. Can you identify any unmet or poorly met civil legal needs that place women at greater risk of criminalisation or incarceration?
5. In your view, what system changes or supports might prevent women from being criminalised, re-criminalised and/or imprisoned?

Interview transcripts were analysed thematically using *NVivo* software, using four 'parent codes' (key themes) and 47 'child codes' (or sub-themes) (see 3.2 below for list of codes). The coding scheme was developed from close readings of the interview transcripts to identify emerging and recurring themes and issues. Once the coding scheme was established, systematic line-by-line coding of the interview data was conducted. During the coding process, the coding hierarchy was reviewed, refined, and consolidated for consistency and accuracy. Sections of text were often assigned to multiple codes to reflect the intersectional nature of the issues under discussion. Key themes were identified according to frequency—both the number of interview transcripts each theme appeared in, and the total number of times a theme appeared across the interview data—as calculated by *NVivo*.



# 80%

identified Centrelink as their only source of income or they had no income at all

## 3.0 Findings

### 3.1 Case File Review Findings

This section outlines the quantitative findings of the review and classification of 108 FLS client files and compares these findings to other publicly available statistical data from Corrections Victoria, CSA, AIHW, UoM and WLSV. Each of these data sets refers to slightly different cohorts of women, although there are significant overlaps. The FLS case file review provides data that is not otherwise available (to the best of our knowledge) by shedding light on the circumstances of women with criminal charges at an early stage of contact/interaction with the criminal legal system. Even though we are not focusing on the 'pointy end' of the system (i.e., imprisonment), we nonetheless find that the social, economic, health and legal issues identified in the FLS case file review are consistent with those in official reporting on women in prison.

The FLS case file review found that a large proportion of women who sought assistance from FLS for criminal law matters had other outstanding social, economic and health factors impacting their lives. In the sample of FLS clients analysed, 2.7% (n=3) were trans women and 9.3% (n=10) were Aboriginal and/or Torres Strait Islander. While Corrections Victoria does not publish data about trans and gender diverse people in prison, the proportion of First Nations clients in the FLS review is consistent with Corrections Victoria

data, which indicates that approximately 10% of women incarcerated in June 2020 were Aboriginal and/or Torres Strait Islander.<sup>28</sup> According to the 2016 census, Aboriginal and Torres Strait Islander people represented only 0.8% of the Victorian population as a whole,<sup>29</sup> which highlights that First Nations women are massively over-represented in criminalised and imprisoned populations in Victoria.

#### **3.1.1 Social, economic and health issues for women with criminal charges**

The FLS case file review confirms that women experiencing criminalisation are financially disadvantaged and often homeless or at risk of homelessness. Most of the women in the FLS sample experienced poverty: 79.6% (n=86) of women identified Centrelink as their only source of income or they had no income at all. More than one in four (28.7%, n=31) women were experiencing homelessness when they were charged with criminal offences and/or during the period of engagement with FLS. A further 10.2% (n=11) of women identified as being at risk of homelessness. These findings align with data collected by government agencies. AIHW reports that 27% of women in prison were in short-term or emergency accommodation and another 7% were sleeping rough or in non-conventional housing prior to incarceration.<sup>30</sup> Corrections Victoria data indicates that 26% of women in prison in 2018 experienced homelessness or housing instability prior to entering custody.<sup>31</sup>

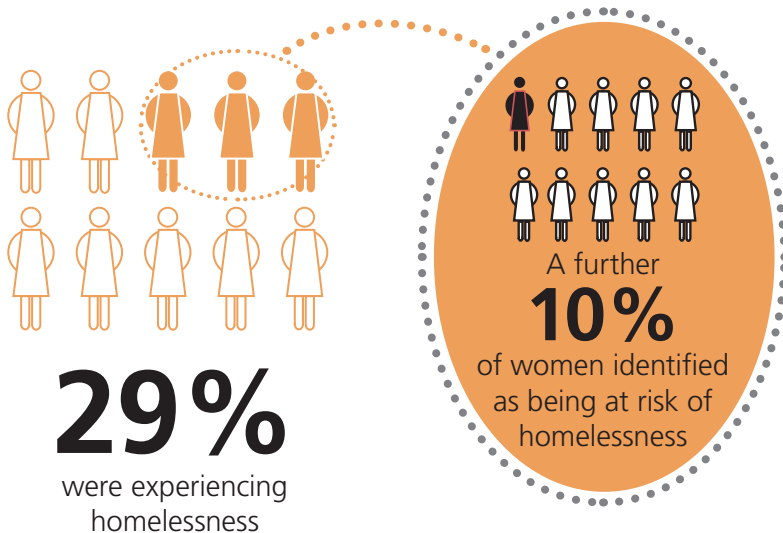
28. Corrections Victoria (2021), *Profile of women in prison*, Melbourne: Department of Justice and Community Safety. <<https://files.corrections.vic.gov.au/2021-11/CV%20Prison%20Women%202021%20Nov%20update.pdf>>

29. ABS (2019), 2011.0 – *Census of Population and Housing: Reflecting Australia – Stories from the Census, 2016*, <<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20Population%20-%20Victoria~10002>>

30. AIHW reports on data collected in all states and territories except NSW: AIHW (2020), *The Health and welfare of women in Australian prisons*, Canberra: Australian Government, <<https://www.aihw.gov.au/getmedia/32d3a8dc-eb84-4a3b-90dc-79a1aba0efc6/aihw-phe-281.pdf.aspx?inline=true>>

31. Corrections Victoria (2019) *Women in the Victorian Prison System*, Melbourne: Department of Justice and Community Safety, <[https://www.ics.act.gov.au/\\_\\_data/assets/pdf\\_file/0011/1311878/women\\_in\\_prison2019.pdf](https://www.ics.act.gov.au/__data/assets/pdf_file/0011/1311878/women_in_prison2019.pdf)>

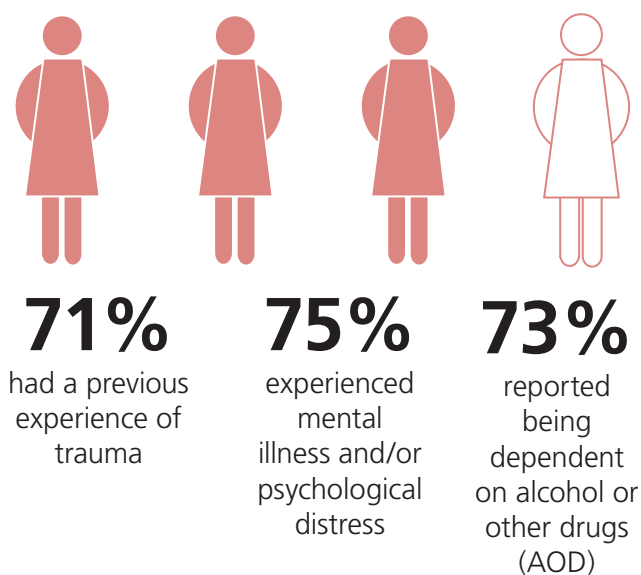




Most women (71.3%, n=77) in the FLS sample had a previous experience of trauma. Three-quarters (75%, n=81) disclosed that they experienced mental illness and/or psychological distress and a similar proportion (73.1%, n=79) reported being dependent on alcohol or other drugs (AOD). The prevalence of these issues is higher in the FLS sample than those reported by government agencies, which may be explained by differing levels of willingness to disclose. Regarding mental health, AIHW found that roughly half (52%) of women entering prison reported high to very high levels of psychological distress and nearly two-thirds (65%) had received a mental health diagnosis.<sup>32</sup> Corrections Victoria surveyed women in prison about drug use and found that 61% reported using drugs daily before entering prison.<sup>33</sup>

### 3.1.2 Children and primary caregiver responsibilities

More than one-third (37.7%, n=40) of women in the sample reported having no children under 18. One-quarter (25.9%, n=28) disclosed that they had children under the age of 18, but almost half (n=12) of these women's children were in state care. Only 2.7% (n=3) of women in the sample reported having children in their care, and all of these had child protection involvement. The very low proportion of women who were primary carers in the sample may be explained by the lack of any information about children in 35.8% (n=38) of the case files analysed. This suggests that the FLS case file review does not capture the full picture of criminalised women's caregiving responsibilities. For example, Corrections Victoria reported that 21% of women in prison had been primary caregivers before they were in custody,<sup>34</sup> and AIHW recorded 54% of women in prison having at least one dependent child.<sup>35</sup>

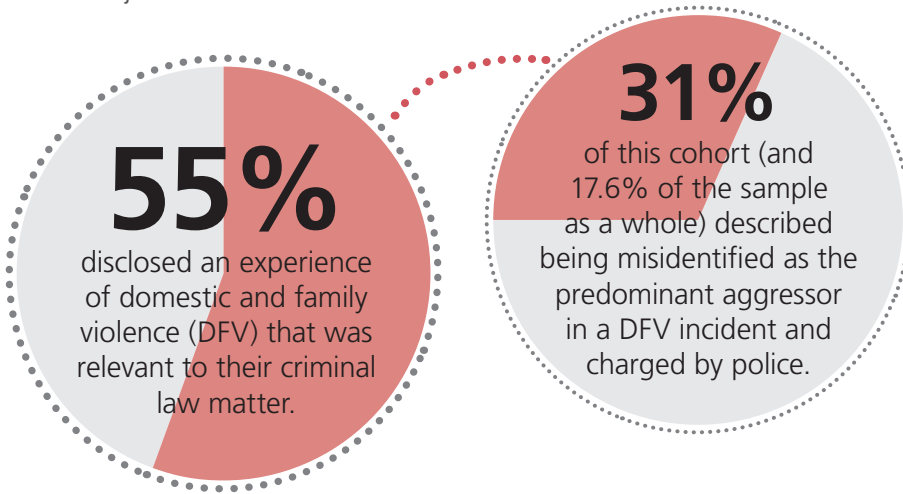


32. AIHW (2020).

33. Corrections Victoria (2019).

34. Ibid

35. AIHW (2020).



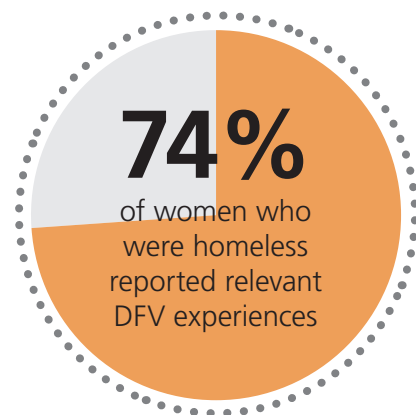
**3.1.3 Domestic and family violence**

Most of the women in the FLS sample (55.6%, n=60) disclosed an experience of domestic and family violence (DFV) that was relevant to their criminal law matter. A close analysis of the case files of these women found that 31.7% (n=19) of this cohort (and 17.6% of the sample as a whole) described being misidentified as the predominant aggressor in a DFV incident and charged by police.

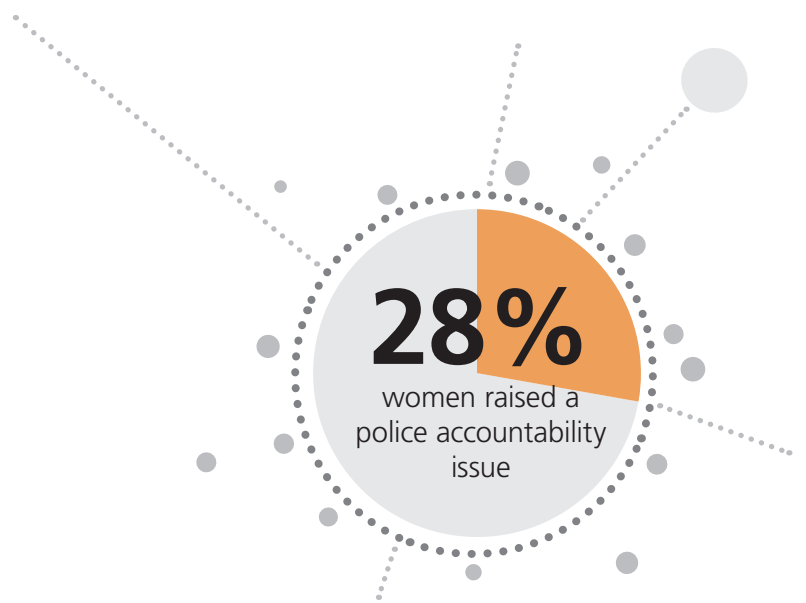
This is consistent with available data on imprisoned women’s high rates of DFV victimisation. According to Corrections Victoria, 65% of women in prison in 2018 reported being a victim of DFV.<sup>36</sup> The CSA reports that in 2018, 43% of women in prison on remand were recorded by police as a victim in at least one DFV incident in the two years prior and 41% were recorded as an alleged perpetrator.<sup>37</sup> However, CSA does not provide data on rates of misidentification.

There is limited publicly available data on the frequency of police misidentification of women as predominant aggressors in DFV incidents in Victoria. One study conducted by WLSV in 2018, which involved manual review of WLSV client intake forms, found that in a sample of 55 women named as respondents to police FVIO applications, 57% (n=32) had been incorrectly identified as predominant aggressors.<sup>38</sup> Another review led by researchers at UoM found that 48% of women who were named as respondents on FVIOs during a 1-month period (June 2017) were not considered by Berry Street Family Violence workers to be respondents at all.<sup>39</sup>

The analysis of FLS case file data highlighted intersections between women’s experiences of DFV and other social, economic and health issues. These issues may have compounded each other, since the proportion of women who had experienced DFV relevant to their criminal law matter was higher amongst the women also experiencing homelessness, AOD dependency, and mental illness and/or psychological distress. Relevant DFV experiences were reported by 74.2% (n=23) of women who were homeless, 65.8% (n=52) of women with AOD dependency, and 64.2% (n=62) of women with mental illness and/or psychological distress. The convergence of these issues amongst women experiencing DFV and criminalisation demonstrates the importance of investing in housing, health, and addiction services rather than over-relying on policing, which exacerbates women’s marginalisation by exposing them to criminalisation and punishment.



36. Corrections Victoria (2019).  
 37. Walker, S, Sutherland, P & Millstead, M (2019), *Characteristics and Offending of Women in Prison in Victoria, 2012-2018*, Melbourne: Crime Statistics Agency, <<https://www.crimestatistics.vic.gov.au/characteristics-and-offending-of-women-in-prison-in-victoria-2012-2018>>  
 38. Women’s Legal Service Victoria (2018), *Snapshot of Police Family Violence Intervention Order applications: January - May 2018*, <<https://www.womenslegal.org.au/police-accountability>>.  
 39. Humphreys, C & Nicholson, C (2017) *Multi-Agency Triage Project: Implementing Stage 3 of the Multi-Agency Triage Model – Final Report*, University of Melbourne, p31.



### 3.1.4 Policing, punishment, and charges

In the FLS sample, 13.9% (n=15) of women with criminal legal matters had previously served a custodial sentence and 21.3% (n=23) had at least one episode of custody during the period in which they engaged with FLS, either on remand or sentence. The difference between these two figures reflects reporting from Corrections Victoria that the proportion of women in prison who had **not** previously served a prison sentence increased by 28% between 2010-2020. In 2020, this population represented 62% of women in prison (compared to roughly 1 in 2 people in men's prisons).<sup>40</sup> Thus, although repeat incarceration remains a significant problem, the imprisonment of women who have never been sentenced to prison before is of increasing concern, as is the massive increase in women's rates of remand.<sup>41</sup>

The FLS case file review indicates that there are specific institutional practices and legal mechanisms that facilitate women's criminalisation. In 28% (n=30) of the reviewed FLS case files, women raised a police accountability issue, including misidentification and racial profiling. The most common offences that women in the FLS sample were charged with were dishonesty offences, including shop theft and theft of motor

vehicle (34.3%, n=37), followed by assault or cause injury charges (29.6%, n=32), drug offences (23.1%, n=25) and driving offences (21.3%, n=23). According to Corrections Victoria, most women in prison are there for drug offences, with 26.0% of women having drug offences listed as their most serious charge, which is almost the same as the proportion of women charged with drug offences in the FLS sample. However, there are less women in prison than in the FLS sample with property related offences (11.1% in prison), assault (13.1% in prison) or driving offences (1.7% in prison) as their most serious charge.<sup>42</sup> This may reflect the less serious nature of these alleged offences amongst women in the FLS sample or that the sample of FLS clients captured more women who were in an early stage of interaction with the criminal legal system (e.g., less prior charges, no previous imprisonment).

While Corrections Victoria reports that only 4.2% of women are imprisoned for breaching an order,<sup>43</sup> including but not limited to IOs, the FLS case file review found that charges relating to the breach of a FVIO impacted 12% (n=13) of women who sought assistance from FLS for criminal matters. This demonstrates that civil legal tools designed to address DFV can lead to criminalisation for women.

40. Corrections Victoria (2021).

41. Russell et al. (2020).

42. Corrections Victoria (2022b), *Annual Prisoner Statistical Profile 2009-10 to 2019-20*, <<https://www.corrections.vic.gov.au/annual-prisoner-statistical-profile-2009-10-to-2019-20>>

43. Ibid.

### 3.2 Interview Findings: Quantitative Overview of Key Themes

Thematic coding of interview transcripts using NVivo software allowed us to identify the most prevalent themes in participants' responses to the interview questions outlined above in 2.2. The quantitative results of coding showed that the following themes represented participants' perceptions of the social conditions for women's criminalisation, the systems and institutions that criminalise women, and the opportunities for system changes that would prevent criminalisation.

#### ***Social conditions*** **(277 references, 10 audio interviews)**

- i.** Domestic and Family Violence (DFV) (58 references, 9 interviews)
- ii.** Lack of access to support services (54 references, 10 interviews)
- iii.** Homelessness or housing instability (47 references, 10 interviews)
- iv.** AOD (30 references, 9 interviews)
- v.** Mental health (22 references, 8 interviews)
- vi.** Poverty or financial hardship (20 references, 9 interviews)

#### ***Legal systems & institutions*** **(231 references, 10 audio interviews)**

- i.** Policing & profiling (24 references, 9 interviews)
- ii.** Bail & remand (21 references, 9 interviews)
- iii.** Intervention orders (18 references, 8 interviews)
- iv.** Post-release & parole (17 references, 9 interviews)
- v.** Misidentification (15 references, 7 interviews)
- vi.** Fines (12 references, 5 interviews)

#### ***Early interventions & system changes*** (99 references, 10 audio interviews)

- i.** Holistic support & coordinated service delivery (18 references, 6 interviews)
- ii.** Housing (17 references, 9 interviews)
- iii.** Proactive advocacy (13 references, 6 interviews)
- iv.** (Mental) health support (9 references, 7 interviews)
- v.** Decarceration and divestment from prisons (9 references, 4 interviews)
- vi.** Financial or employment resources & services (6 references, 6 interviews)

### 3.3 Interview Findings: Qualitative Overview of Key Themes

The qualitative dimension of this research allows us to better address each of the 4 research questions listed in Table 1. Through thematic content analysis of interview data, we explore the views of the 11 research participants (listed in Table 2) on the social, economic and health issues that criminalised women frequently experience (3.3.1); how DFV contributes to women's criminalisation (3.3.2); the impacts of legal systems on socially and economically disadvantaged women (3.3.3); and the systemic changes that are necessary to prevent women's criminalisation (3.3.4). We triangulate the quantitative findings of the FLS case file review and the review of publicly available statistical data, outlined above in 3.1, with the qualitative findings from the thematic analysis of interviews with legal and social services practitioners.

#### **3.3.1 The social conditions in which women are criminalised**

To address Research Question 1 – *What are the most common social, economic and health issues that criminalised women experience?* – We asked about the social conditions for women's criminalisation. In response, the participants spoke most often about **domestic and family violence (DFV)**. They explained that women experiencing DFV were more likely to be criminalised when they were also experiencing poverty, homelessness, and/or mental illness or psychological distress. For example, one participant reflected that:

Often my clients, who are criminal law clients, disclose a history of being victims of family

violence and it goes to the core of your feelings of safety and security in the world. That and a roof over your head are core business in terms of addressing poverty crime or crime associated with mental health. (CLC\_5)

The emphasis on DFV and how it intersects with other social, economic and health issues to expose women to criminalisation aligns with the findings of the FLS case file review. While more than half (55%) of FLS clients in the sample disclosed an experience of DFV that was relevant to their criminal legal matter, this proportion increased amongst the women who were also experiencing homelessness (74.2%) and mental illness and/or psychological distress (65.2%).

Participants reflected that criminal legal decision-makers (such as police, magistrates and corrections or parole officers) often lack a nuanced understanding of the gendered nature and impacts of DFV, which can lead to poor or harmful outcomes for women. As one participant argued:

Experiences of family violence still aren't given the understanding and weight they should be. Particularly when it comes to, say, if women have perpetrated crimes as a co-offender to their perpetrator and... really, that should be given a lot more consideration, but we still seem to employ that approach of, "well, they did the crime, they do the time." A better understanding by those sitting in higher places in courts, I think, is still a long way to go. (CLC\_6)

One participant expressed incredulity that 'the courts get so concerned about the safety of a particular woman they think it's safer for her to imprison her' (DFV\_1). They described a specific encounter with a decision-maker who, in the

“We’re going to put a woman back in prison to keep her safe! I just find this stuff blows me away. The reason why she is not safe is because she has got nowhere to live so she has gone back to live with the perpetrator of violence.”

absence of housing options in the community, was effectively using the prison as a women’s shelter:

I had a conversation the other week [in which the other person was] saying, “we’re looking at breaching her [community] corrections [order] because we think she will be safer in prison.” We’re going to put a woman back in prison to keep her safe! I just find this stuff blows me away. The reason why she is not safe is because she has got nowhere to live so she has gone back to live with the perpetrator of violence. Let’s not put her back in prison, how much does that cost a day? Let’s look at her housing options. (DFV\_1)

Disturbingly, this attempt to reframe the women’s prison as a place to escape or heal from the trauma of DFV victimisation is not an isolated example.<sup>44</sup> Recent correctional policy frameworks and prison expansion plans targeting women espouse the idea that prisons can be ‘trauma-informed’—<sup>45</sup> a proposition that is strongly challenged by women with lived experience.<sup>46</sup> As the social services practitioner quoted above argues, women’s safety is best achieved in the community through the provision of secure and appropriate housing, not incarceration.

Following DFV, participants consistently spoke about the system failures and **lack of access to support** services – rather than individual deficits

– that contribute to women’s criminalisation and incarceration. Especially for First Nations women, who are grappling with ongoing dispossession and intergenerational trauma, while being forced to navigate institutions that are embedded in settler colonial norms and values. This oppression is reflected in the disproportionately high rates of criminalisation and incarceration for Aboriginal and Torres Strait Islander women, as outlined above in 3.1. One social services practitioner working with Aboriginal and Torres Strait Islander women described how:

These women are existing in a system that is not in their control, influenced by these external factors that they can’t change, and they are doing the best, the best to live by them, but our services are the ones that are marginalising these women. Our services are the ones that don’t have an intersectional lens, who don’t have a trauma-influenced lens, don’t have a culturally appropriate lens, don’t have a family violence lens, don’t understand what it means to grow up in the welfare system ... So, all of our failings of the system mean that we incarcerate more Aboriginal women, [and First Nations peoples in Australia] are incarcerated at higher rates than any other group in the world... Yet here we are, the solution to this is to build another prison. (DFV\_1)

44. Carlen, P & Tombs, J (2006), ‘Reconfigurations of penalty: The ongoing case of the women’s imprisonment and reintegration industries’, *Theoretical Criminology*, vol. 10, no. 3, pp. 337-360. DOI: 10.1177/1362480606065910; Homes Not Prisons (2021); Russell, EK & Gledhill, C (2014), “‘A prison is not a home’: Troubling ‘therapeutic remand’ for criminalized women”, *Parity*, vol. 27, no. 9, pp. 27-28, <<http://www.flatout.org.au/wp-content/uploads/2014/11/Parity-Oct-2014-A-Prison-is-not-a-Home.pdf>>

45. State of Victoria (2017), *Strengthening Connections: Women’s Policy for the Victorian Corrections System*, Melbourne: Victorian Government, <<https://www.corrections.vic.gov.au/strengthening-connections-womens-policy-for-the-victorian-corrections-system>>

46. Homes not Prisons (2021).

“all of our failings of the system mean that we incarcerate more Aboriginal women”

This encapsulates the link that many participants made between a lack of safety, including cultural safety, and the criminalisation of women. From this perspective, responding with punishment is futile, because it fails to address any of the social, economic, health and legal problems that women are experiencing when they receive criminal charges.

Even when services for women exist, participants pointed out that criminalised women can be **excluded from services** if they fail to comply with service expectations or meeting schedules. In place of adjusting models of support to be more flexible and holistic, women can be constructed as disengaged. For example:

Another thing that does hinder the women with their complex problems where they're facing so many things, including crisis, that even to have an appointment that then they've got to attend somewhere else at a certain time and then, if they don't get there, then they wait a few more weeks and then if they don't get there again, they're not welcome back... That's often a hindrance to obtaining the assistance they need. (PPR\_1)

Another common theme was the importance of trauma-informed practice in community-based services to avoid excluding women who are most in need of support. A participant recounted how some of their clients were unable to access crisis accommodation and provided a specific example:

One client who comes into my mind was so severely traumatised by the family violence she had been experiencing that when you broach the topic with her, she would become quite aggressive. Of course, that was very difficult to navigate but a lot of services just saw her as presenting as aggressive and she couldn't complete the intake processes. Because you couldn't do intakes, you couldn't get supports. (CLC\_6)

Complying with various agencies' intake and attendance requirements can be incredibly difficult when experiencing any combination of DFV, health or housing issues. Indeed, participants spoke a lot about how women who are **homeless** become criminalised, which was consistent with the FLS case file review that identified more than one-third (38%) of women in the sample as experiencing or at risk of homelessness.

Participants spoke about the inter-related issues that preclude women from safe and secure housing, such as DFV and discrimination in employment. One participant elaborated upon these barriers when speaking specifically about trans women and gender-diverse people:

Obviously without employment it's really hard to get housing. It maintains that life in poverty and then if you're criminalised [and] then you don't have housing, and then if you don't have family support, which is the main way that people usually get out [of prison], right, is it they have some kind of family they can go to. So that for a lot of trans people is not an option. (PPR\_2)

“they’re acting in a protective way, but it’s construed by police as being assaultive”

Another participant described how homelessness can prevent women from complying with FVIOs, which can result in being charged with a breach of order offence that entrenches them in the criminal legal system and compounds their disadvantage. As they stated:

It’s often women who are homeless and transient, and then they will return to reside with the mother or the person who has got the intervention order, and then there will be conflict again, and then they’ll be in breach of the intervention order. But the alternative is that they don’t have anywhere else to stay. So, it’s a vicious cycle and with no appropriate housing or support to actually work through those issues of conflict, then it just becomes a cycle and then the breach of intervention orders then goes against them when they’re looking at getting their children back as well. (HLP\_1)

Participants also reflected on the ways in which women who are struggling with **AOD dependency or mental health issues** are socially marginalised and frequently criminalised. These health issues were highly prevalent in the FLS case file review too. Participants expressed concern about police responses to women with AOD or mental health issues, which can escalate their risk of criminalisation. The criminalisation of illicit drug use, for example, becomes a barrier for women who need to access support for DFV:

I think with the criminalisation of drug use... [women are] afraid to... let the cops see what’s happening in their life, because even if they’re needing help with violence towards them, they’re worried that the cops will then – [that] it will open up punishment rather than assistance. (PPR\_1)

Another participant described how the symptoms of mental illness and/or psychological distress can be interpreted as threatening by police or members of the public:

Sometimes [women] can come under the police radar when they’re acutely unwell in a public space. So, it could be someone calling the police because they see her unwell, maybe vocally being loud in the street or acting in a strange way and that kind of prompts a member of the public, understandably, to contact the police. Then once police attend or a CAT team, they can become defensive, particularly if you have experienced traumas again and from [the woman’s] perspective, they’re acting in a protective way, but it’s construed by police as being assaultive and then that can... [have] flow-on effects. (CLC\_6)

There are also gendered assumptions that inform how mental illness and/or psychological distress are understood within the criminal legal system, which can expose women to additional interventions and punishments:



*judges and magistrates are way more comfortable with seeing women as victims instead of perpetrators. When they do become perpetrators, they are [perceived as] more of a danger because they're more "abhorrent" than the social standard.*

There's huge assumptions about the danger of a mentally unwell woman versus a mentally unwell man. Because, often, those women will be around children, for example, and the criteria of protection of the community and protection of people, there's assumptions [about] women [and] stereotypes about them. I think that violent offences... in terms of the horror that magistrates have... when a woman does it, they're particularly horrified. But when a man does it, it seems more normalised and par for the course... and judges and magistrates are way more comfortable with seeing women as victims instead of perpetrators. When they do become perpetrators, they are [perceived as] more of a danger because they're more "abhorrent" than the social standard. That's what I think. (CLC\_5)

The gendered dimensions of **poverty and financial hardship** also emerged as a key theme in our interviews, which is again consistent with the findings of the FLS case file review that 80% of women relied on Centrelink as their sole income or had no income at all. One participant put it bluntly: 'my clients are permanently poor' (DFV\_1). In interviews, practitioners spoke about the many difficulties of being on Centrelink, including incorrect payments and the punitive effects of Centrelink debts, which 'may or may not actually be theirs' (DFV\_1). These systems entrap women in poverty:

I can think of a recent one where a woman was doing really well and got an \$11,000 debt from Centrelink from something back in 2018, and you know, that is confronting. That is – what do you even do in a situation like that? (HLP\_1)

Another participant spoke about Centrelink fraud as a kind of 'survival crime' and the legal response effectively punishing the poor:

I saw a few Centrelink matters come up ... where women were being charged for fraudulent things and that's what entered them into the criminal justice system. Often these women were just trying to survive as well. We all know that Centrelink doesn't give you fortunes of money, and they were trying to escape whatever situation it was. (CLC\_6)

Without financial resources or secure housing, and at risk of further criminalisation if they contact police, criminalised women often have no recourse or support options when experiencing DFV. As noted above, all but one of our participants emphasised the significant role that DFV plays in women's criminalisation, which is explored in greater depth below.

“behind every woman I’ve worked with, and their incarceration, are stories of violence towards them”

### 3.3.2 Policing domestic and family violence

Domestic and family violence (DFV) was the strongest theme to emerge from the analysis of the interview data. Drawing on the significant findings on DFV to emerge from our interviews, in this section we address Research Question 2: *How does domestic and family violence (DFV) contribute to women’s criminalisation?*

Participants spoke about DFV in the context of the social circumstances that shape women’s interactions with police and the criminal legal system more broadly. They outlined how criminalised women are frequently caught in the interstices of both state and interpersonal violence. As one participant reflected, ‘behind every woman I’ve worked with, and their incarceration, are stories of violence towards them’ (email correspondence with PPR\_1). Navigating the risks of both state and interpersonal violence often leaves criminalised women reluctant to ‘seek police ‘assistance’ when incidents occur to them (e.g., assault, rape, breach of IO, break-ins)’, but then ‘pretty much all services... require/ demand that women have gone to the police about [the] issue that we/the woman is asking them for help with’ (email correspondence with PPR\_1). This lack of understanding of the specific situations of criminalised victim-survivors further marginalises these women and reinforces their social entrapment.

As another participant succinctly summed it up:

I do think that family violence does play a critical role [in women’s criminalisation], particularly in the women that we see who are already in prison. [DFV is] a factor either that has led to the criminalisation, or... that is something that they’ve experienced and that co-relates to why they’re criminalised, and [DFV] certainly makes it more challenging for them in terms of opportunities to get out of that criminalisation cycle. (CLC\_1&2)

It is well recognised that there is a strong relationship between women’s trauma experiences and their criminalisation, but that the relationship is complex, varied and layered.<sup>47</sup> Nonetheless, the participants we interviewed had many anecdotal examples of the specific legal mechanisms, systems and practices that can initiate or accelerate a process of criminalisation for women experiencing DFV.

Police misidentification of women as predominant aggressors was a prominent theme in interviews, but not the only one. For example, **the cross-application of IOs**, whereby both parties in a relationship are subject to an IO intended to protect the other party, can put women at risk of punishment when seeking help for DFV. One participant described working with women who ‘[report] family violence when there are cross-orders and then are charged because they are associating with a partner when they’ve been assaulted’ (CLC\_5). Another participant reflected:

47. RCFV; Russell et al. (2021); Wilson, M. Jones, J., Butler, T., Simpson, P., Gilles, M., Baldry, E., Levy, M. and Sullivan, E. (2017) ‘Violence in the lives of incarcerated Aboriginal mothers in Western Australia’, *SAGE Open* 7(1), <https://doi.org/10.1177/2158244016686814>

*“he uses that then as a power play ... when he doesn't like something that she has done or she won't do something, then he actually calls the breach on her”*

Whether it's misidentification or just that approach of we're just going to slap [an IO] on everyone, especially since the Royal Commission down here [in Victoria] and their approach now, as well, [of 'we] will just cover [our] arse and literally put [an IO] on everyone'. Obviously, the issues that come with that... [like] more involvement with police and the increasing surveillance by the State and not actually seeing the power dynamics and the violence that is at play in those scenarios. (PPR\_2)

Participants recounted how **perpetrators of DFV can use the FVIO system to further their abuse**. This 'systems abuse' can play out in different ways,<sup>48</sup> such as convincing police that the victim-survivor is the predominant aggressor and/or coercing a partner or ex-partner to breach an IO and then threatening to report them. As one participant explained in regards to FVIOs:

The other situation that we see is that... it's quite obvious that the applicant probably should have been the respondent. He's very coercive, manipulative, and will, I suppose, encourage that kind of behaviour when it suits him to breach. So, [he] will make contact with her or through third parties saying, I want to see you, I miss you, et cetera. She will [make contact], so she's obviously breaching and then he uses that then as a power play ... when he doesn't like something that she has done or she won't do something, then he actually calls the breach on her. So yeah, we do see that. (CLC\_3)

Another participant gave an example of police believing an abusive partner while a woman was unconscious, which catalysed a series of institutional failures and social entrapments that lead to a victim-survivor becoming multiply criminalised:

The partner had... said that she had had a psychotic break and that's why she wasn't really conscious at that moment. Then the police in turn took her to the psych ward, she was in there for five days. They issued an intervention order against her and then the hospital would not release her unless it was into the perpetrator's care. The next day police came because they were raiding the house for his drug related matters, and she breached the intervention order and also got embroiled in his drug issues. So yeah, there's some of these things that leave you kind of pulling your hair out going, "ah, how did this happen?" (CLC\_6)

Participants spoke about **victim-survivors accepting criminal charges for an abusive partner** as another avenue to criminalisation for women:

At any one time we have at least one or two or three or more clients who through their association with partners are either charged with associated offences, taking responsibility for offending that's not theirs. (CLC\_5)

This participant gave an illustrative account of the ways in which DFV, trauma, self-medication, and **a lack of housing options can coalesce with police biases** and lead to women becoming criminalised:

48.Reeves (2020).

“the effects of family violence... impair a woman’s capacity to have credibility with the police, because of their addiction or mental health issues”

I have a client ... who left a family violence relationship and was ... sleeping in the ex-partner’s car, and she got really drunk and mistook the ex-partner’s car for someone else’s car, but it was of a similar nature, and she was charged with car theft. So, I think there’s a trend where ... the effects of family violence... impair a woman’s capacity to have credibility with the police, because of their addiction or mental health issues. (CLC\_5)

Interview findings clearly point to an intersection between DFV and criminal charges for women, in which **police misidentification** plays a significant part. The FLS case file review identified that 17.6% of the sample of women with criminal legal matters had been misidentified by police as the predominant aggressor in a DFV incident, and more than half of the interview participants spoke about the ongoing harms of this phenomenon. A participant explained that misidentification can occur when a victim-survivor is experiencing significant psychological distress:

We’ve also had a significant number of cases where there has been a misidentification of the primary aggressor because of the calm with which some men are able to interact with police and even if they’re the ones that call the police,

they themselves appear really, really calm but it’s after a very significant incident of family violence where a client - where one of our clients is particularly distressed and potentially aren’t a good advocate for themselves... So, women may have intervention orders taken out against them by police because of their “hysterical behaviour” and then [they] are way less likely to apply to contest those orders... women just don’t seem to contest intervention orders to the same degree as men... [and] it’s often the case that when women have an intervention order there will be a cross-application by the man. (CLC\_5)

This is consistent with findings from WLSV that women that experience mental illness or are at risk of homelessness are more likely to be misidentified,<sup>49</sup> as well as suggestions by researchers that women with histories of trauma or AOD dependency are not treated as ‘genuine and credible victim[s]’.<sup>50</sup>

There is also research evidence to suggest that Aboriginal and Torres Strait Islander women are disproportionately misidentified by police as predominant aggressors in DFV.<sup>51</sup> One of our participants spoke about the violence and risk of police contact for the Aboriginal women they work with:

49. Ulbrick and Jago (2018).

50. Ibid.; Miller, S & Meloy, M (2006) ‘Women’s use of force: Voices of women arrested for domestic violence’, *Violence Against Women*, vol. 12, no. 1, pp.89-115. DOI: 10.1177/1077801205277356

51. Nancarrow (2019); Douglas & Fitzgerald (2018); Ulbrick and Jago (2018).

“A lot of my clients don’t want to call the police because they don’t trust the response that they’re going to get”

The pattern that I see with my clients is the non-Aboriginal bloke calls the police, professes that they’re the victim. My clients tend to not engage very well when police come and also refuse to make a statement, because they don’t want to be a dog. Then after that, they then figure out that they’ve been put down as the respondent and are heartbroken but still won’t make a statement because they don’t want to engage with the police. A lot of my clients don’t want to call the police because they don’t trust the response that they’re going to get, especially if they have previous encounters with the police or if they’ve got warrants out for them. (DFV\_1)

Police misidentification punishes women, even in cases where they have sought assistance from police for DFV. It also dissuades women from contacting police, which can exclude them from accessing other support services or put them at risk of eviction. As one participant explained, women can be:

Misidentified as perpetrators of family violence when they’re actually ringing or trying to get assistance [from police]. But a lot of women are actually reluctant and won’t. So, there’s family violence incidences or violence from people they know that they’re not in a relationship with, but acquaintances, violence like home invasions, but they’re too scared to call the police. Then that, actually, often makes them either not get their

properties fixed or become homeless because they’re seen as damaging their property when it’s been home invaders damaging their property. (PPR\_1)

A participant gave an example of **police misidentifying** the victim-survivor and **colluding** with the perpetrator of DFV:

This woman has been misidentified by police as the perpetrator and is being excluded from the premises that she was living with her partner... she had nowhere else to go. Then went through crisis accommodation and I’m sure there was probably some existing minor drug use there for pain management, but that’s escalated because of the stress and transiency of crisis accommodation. Obviously being a victim of violence and misidentified by the police as the perpetrator, that’s stressful enough. From that we then have criminalisation coming from a breach, which is also in my view completely baseless, it actually doesn’t have any evidence attached to the brief, there’s a lot of perpetrator collusion. So, this case is misidentification of the actual perpetrator and then collusion by police with the perpetrator because there are comments in the body-worn camera footage like, “well, we’ve got nothing, mate, we’ve got no physical abuse, you’ve got no this, you’ve got no that. You’re saying there’s a bit of verbal abuse, but we have no evidence so we’re going to need you to make a statement”... and then it’s his statement against hers. (CLC\_7)

*“there’s patterns of discrimination based on the nature of the legal system”*

In addition to the day-to-day policing practices that reproduce gendered inequalities, participants pointed to **foundational problems in the criminal legal system that disadvantage and marginalise women experiencing DFV**. This includes an expectation of linear accounts and ‘rational’ recounting of traumatic events to access justice. This occurs at various stages in the IO and criminal legal systems, as one participant outlines:

It’s often when neighbours contact the police, and they have a certain impression of the lady versus the man. Often the police will speak with neighbours about the woman or the man and how they present and it’s often about the man’s capacity to be able to present... I think there’s another trend about who represents a good witness ... Many women potentially wouldn’t [be a reliable witness] because the criminal justice system presumes a rational agent who has a clear, linear recollection of events. So, there’s patterns of discrimination based on the nature of the legal system. (CLC\_5)

Another participant spoke about the implicit assumptions that structure access to the FVIO system for victim-survivors, in which **police play a gatekeeper role**:

In my understanding, there is a lack of access to support for either applicants [or] respondents [on intervention orders]. For example, if you want to apply for an intervention order and if you’re not particularly sophisticated or can’t communicate that to police in a way that’s easy for them to deal with, they will just put you in the too-hard basket and won’t support

that. So, then often you’ll be left to your own resources and if you can’t communicate it to the police, you mightn’t be in a position to actually make that application yourself. So, people really struggle to get orders put in place just because there’s almost a language barrier, for lack of a better word. That someone wants and needs something, but they can’t communicate to police, they can’t communicate it to the court, and they need some support to do that. It then doesn’t get put in place, they can be mischaracterised, then, as a perpetrator in a family violence or personal safety sense, because these equally pop up for me as well, personal safety ones. You then end up stuck with the raw end of the stick dealing with police, certainly charged, absolutely, but also not getting the safety and security that you need, which then of course impacts mental health and all sorts of other things. (CLC\_1&2)

This reflects how unmet civil legal needs, including the need for protection from DFV, can lead to criminalisation for women, especially when support or advocacy are lacking. The next section considers how legal systems can entrap and punish women.

*“You then end up stuck with the raw end of the stick dealing with police, certainly charged, absolutely, but also not getting the safety and security that you need”*

“Police will search them, if there’s an institutional mistrust, which there very much should be and often is, those interactions just disintegrate quite quickly.”

### 3.3.3 The legal systems and institutional practices that criminalise women

Following detailed discussions of criminalised women’s social and economic conditions, we asked participants about the ways in which women will come under the radar of police, who are the entry point to the criminal legal system. We also posed questions about how civil and criminal legal systems overlap in women’s lives. Analysis of participants’ responses allows us to address Research Questions 3: *How do legal systems and institutions impact upon socially and economically disadvantaged women?*

On this topic, participants spoke most frequently about problems with **policing practices** such as surveillance, profiling, and police searches. Participants pointed to the visibility of homelessness and mental health crises in public spaces, which can be policed in highly problematic and sometimes violent ways. One participant recounted how:

A lot of my clients have mental health problems. So, one of my clients has reported to us on Friday that she was assaulted by the police. She has very significant mental health problems and I think instead of the police looking at her as somebody who has mental health problems and needs to go to the hospital, she got a very different response from them. (DFV\_1)

Another participant described how sleeping on the streets will expose women to over-policing. They expressed their perception that ‘some people choose rough sleeping because it’s better than the alternatives’, such as DFV, but that homelessness:

Increases their risk of criminalisation because there’s just nowhere to hide – they are exposed, they’re on the street, everybody wants them moved on from wherever they are and who do they call to move them on? Police. Police will search them, if there’s an institutional mistrust, which there very much should be and often is, those interactions just disintegrate quite quickly. (CLC\_7)

One participant spoke about **transphobia in policing** that negatively impacts trans women and non-binary people:

Particularly if you constantly experience street-based harassment... and then eventually you snap and then the police aren’t obviously going to give a shit that you’re being harassed, they’re just going to look at what’s happening in that immediate [moment] and also the transphobia of policing in and of itself. So, ... that’s definitely a really common way that people end up criminalised, trans women in particular. That comes into self-defence kind of responses and reactions, but of course, the system doesn’t see it like that or want to see it like that. (PPR\_2)

*“I do feel that police tend to contribute to the problem, not only in profiling but in their engagement with my clients. My clients tell me they find police to be quite inciting of a negative exchange.”*

Participants highlighted **police racial profiling** and stop and search practices, and the normalisation of the over-policing of First Nations communities:

The Indigenous women seem to just have police in their lives all the time, all the time... this is just me observing, and even though I'm outreach I don't spend a heap of time with people, but they'll almost be interacting so often with cops that they'll know the particular cops and they'll talk about which ones are worse, which ones aren't too bad. They might wave to one of them as we're passing or whatever or that sort of thing. (PPR\_1)

I've never, ever had a cop stop me and ask me to empty my pockets, but that seems to be quite a common occurrence for my clients [who are Aboriginal women]. I went to pick up a client the other day to take her to an appointment and ... I had to sit there and wait while the police finished taking her details and going through her bag. She was there waiting for me to pick her up, six months pregnant ... That's never happened to me in my life and I'm a frequent visitor [to this neighbourhood], so I think that there does seem to be some profiling. Whether there's something about the way my clients are presenting, the cars they're driving. I do feel that police tend to contribute to the problem, not only in profiling but in their engagement with my clients. My clients tell me they find police to be quite inciting of a negative exchange. So, there will be name calling, very inappropriate exchanges that my clients then respond to. (DFV\_1)

These accounts highlight how women's interactions with police can escalate rather than resolve conflict, and how police practices can generate mistrust and hostility as self-protective mechanisms. Indeed, the FLS case file review found that 28% of women raised a police accountability issue, including profiling and misidentification.

Other participants drew attention to the problems associated with the lack of **police accountability** in their dealings with women experiencing homelessness and DFV:

Particularly with women where there's complexity and family violence, there's lots of work to be done in that space around policing, particularly of women experiencing homelessness. I think there's some good will among some police that we speak to, but there's a lack of structural and systemic supports around the use of discretion in things like access to diversion, I think, [that] means that a lot of women miss out on opportunities for support or diversion out of the justice system because of the role of police and the fact that they have a huge amount of discretion that has no kind of accountability or transparency attached to it. (CLC\_1&2)

*“a lot of women miss out on opportunities for support or diversion out of the justice system because of the role of police and the fact that they have a huge amount of discretion that has no kind of accountability or transparency attached to it.”*



“some people have more or less capacity to comply with intervention orders. So, people with autism, people with impulse control disorders have less capacity to comply with intervention orders”

One participant commented on the negative impacts of Victoria’s **bail laws** on women, especially following reforms implemented in 2018 that made it tougher to obtain bail and the significant delays in court processes caused by COVID-19. As one of the legal practitioners we interviewed stated:

The impact of the change in bail laws was noticeable and particularly noticeable in COVID times because of the huge delays in the system. I ended up with a lot of clients who have been on bail for a long time, and... being on bail puts you at risk of remand in short. Since probably September last year I’ve had six clients remanded. Now, three of them have been male and three of them female and that doesn’t necessarily mean a great deal, but I guess that was startling to me because historically working in criminal law the reality is that male clients have been more likely to be remanded. (CLC\_1&2)

This participant’s observations of the gendered impacts of tough bail laws are consistent with our previous *Constellations* research, which found that lawyers representing people in bail applications perceive that the recent bail reforms are having disproportionate and discriminatory impacts on women and Aboriginal and Torres Strait Islander people<sup>52</sup>. While official statistics show that men continue to represent most people entering prison in Victoria, including on remand (88% of un-sentenced prisoner entrants were reported as male in January 2022), women are now more likely to be in prison on remand rather than under sentence:

56% of women in prison in Victoria are un-sentenced, compared to 43% of men in prison.<sup>53</sup>

We often asked participants specifically about civil **intervention orders** (IOs), including both Family Violence IOs and Personal Safety IOs, and any relationship they might have to women’s criminalisation, since breaching an IO is a criminal offence. As one participant explained:

As soon as you have an intervention order in place, you’re at risk of criminalisation because of allegations [of breaches, and because] some people have more or less capacity to comply with intervention orders. So, people with autism, people with impulse control disorders have less capacity to comply with intervention orders. (CLC\_5)

Another participant confirmed that, in some cases, women who are respondents on IOs ‘actually don’t understand what the conditions are and that they are breaching’ (CLC\_3).

The FLS case file review found that 12% of women received charges relating to the breach of a FVIO. However, interview participants had varying perspectives on whether IOs represented a common legal pathway to criminalisation and incarceration for women. More consistently, there were broader concerns about the fundamental value and impacts of the IO system for achieving personal safety and security. For example, participants described how ‘a lot of clients are really confused by them, confused by their rights, or need some support in decision-making’, or that orders ‘don’t reflect what people actually

52. Russell et al. (2020)

53. Corrections Victoria (2022a)

*It feels like there's just a real – for women particularly – lack of options in terms of post-release supports*

want for themselves' (CLC\_1&2). One participant described commonly encountering women who are victim-survivors that 'literally can't afford rent if that person is not here too' or 'can't run the home without them' (CLC\_7). Another participant argued that IOs are not 'useful anyway at the best of times' and did not believe that they provided 'an effective strategy for dealing with violence and harm in our society' (PPR\_2).

Participants frequently remarked upon the **limitations of most post-release support options**, which can set women up to return to prison:

It feels like there's just a real – for women particularly – lack of options in terms of post-release supports that can work really effectively to address the non-legal needs, but also legal needs that might arise in that post-release space that could contribute to someone going back in [to prison]. (CLC\_1&2)

I definitely don't think that the post-release support is for long enough. I mean, ...for the shorter sentences or for the women who have been released on bail, I think it's... three months [of] support, which is just nothing. Even the ... women who have been.... on a longer sentence. Like, recently I had clients who had been in for nearly 20 years... and they only had six months' support, which I just find amazing that you would provide someone only six months when they've been pretty much in there 20 years. It is re-entering a whole new world for them. (CLC\_3)

Effective post-release support is essential to ensure that women are not re-criminalised and re-incarcerated. Participants raised the need for properly accounting for the longer-term impacts of incarceration on people, and the lack of accountability and support for these impacts.

Participants described how **finances** often arise for women in contexts of DFV and housing instability. For instance, we heard about women being fined for sleeping in their cars when they have nowhere else to go, or women taking on fines for offences that were committed by an abusive partner. As one participant framed it:

The fines, definitely, that extra level of complexity and stress for the women and often we see a lot where the fines were – the driving [offences] – they're not necessarily done by them, [but] they've taken them. They might have been in family violence relationships and yet that can bring everything undone when they're trying to move on with their lives. (HLP\_1)

The accumulation of fines, like Centrelink debts, contributes to increasing mental distress for women, which compounds their risk of criminalisation.

### **3.3.4 Early interventions and system changes to prevent criminalisation**

When asked about the 'early interventions' or 'system changes' that would be most effective in reducing the criminalisation of women, all but one participant singled out the need for **housing**. As one participant emphasised:

“it’s still very siloed, [and yet] women aren’t siloed, their needs are all cooccurring, they influence each other”

The housing issues ... are really key and fundamental. Providing easier transfer of public housing I think is massive. Allowing people to actually have a perception of a fresh start I think is really huge for anybody trying to change things for themselves. So, I think some more supports around housing, and as well, even if they’re in a private market, support to try and find a new place and get all those things up and going can be exhausting when you’re already dealing with A, B, C, D, E. (CLC\_6)

As noted above, participants repeatedly pointed out the interconnections between **DFV and housing insecurity**. Significant changes to housing policy and advocacy are needed to ensure that victim-survivors are not punished for their abuse:

We see, for example, in social housing that sometimes family violence will put a woman at risk of homelessness because she will get a breach notice and a compliance order. Anyway, that’s a whole other thing, but [she] is likely to get evicted sometimes because of behaviour that was done by a perpetrator, but that’s attributed to her, that puts her at risk of eviction. So, there’s a range of opportunities there I think around improving the policies and practices in relation to people in both social housing but also rentals to understand their rights and be able to enforce them. (CLC\_1&2)

In recognition of the overlapping and mutually reinforcing issues in women’s lives, participants frequently remarked upon the limitations and problems with siloed service delivery and outdated funding models that cannot account for multiple, intersecting support needs. Most participants identified **holistic support and coordinated**

**service delivery** as an important change, and it was the strongest theme to emerge in the interview data in response to this question. For example:

I just think that there’s not enough out there to deal with that multifaceted support where you’ve got maybe previous or even intergenerational trauma [and] substance abuse ... It’s kind of like you need this really intense support and coordinated support, and I suppose one of the criticisms has been... that mental health services seem to be very separate from substance abuse services. Yet all the experts say they’re really intertwined, it really should be a combined, cohesive approach. (CLC\_3)

The government can’t seem to get their head around funding cross-sectoral work yet, it’s still very siloed, [and yet] women aren’t siloed, their needs are all cooccurring, they influence each other... I was lucky enough to speak to a woman that has been through the system and she’s like, I have to tell my story to multiple people every time and they don’t do anything with it, it’s just telling their story. (HLP\_1)

Several participants highlighted **the role that lawyers can play in supporting and advocating** for women and reducing their risk of becoming further entrenched in the criminal legal system:

I think the legal sector have a big role in supporting women. I have seen legal reps [sic] that have done phenomenal pleas and they’ve been able to talk about the complex trauma and the role that it has in offending, but do it in that legal manner that magistrates will sort of tick the box with. That has an amazing difference in the outcome for the women. (HLP\_1)

“Abolition of prisons would really help. You’d still have a lot of people with a lot of issues, because... it’s often intergenerational... but responding to them through punishing and further abuse from the system; that just causes further damage.”

I think therapeutically focused lawyers that are better educated about the way that family violence affects women and their potential choices and instructions, and potential time to create rapport with a client before you’re forced into a situation of taking instructions. So, a lot of the best work I’ve been able to do with women, a lot of women potentially would have defences of excessive self-defence but potentially would never think to raise them in the course of a very quick interaction with a lawyer that’s taking instructions, and don’t necessarily feel the trust and confidence in the lawyer or the legal systems. So, a longer amount of time with a lawyer to create rapport with a client that feels safe to talk about particular issues. (CLC\_5)

Another participant reflected that for clients in crisis, ‘we have to acknowledge in their pyramid of priority, figuring out court in two months is not the priority for today. That will be the priority the day before the hearing’ (DFV\_1).

Improving health provision, especially **mental health support**, was identified by most participants as a key area for change:

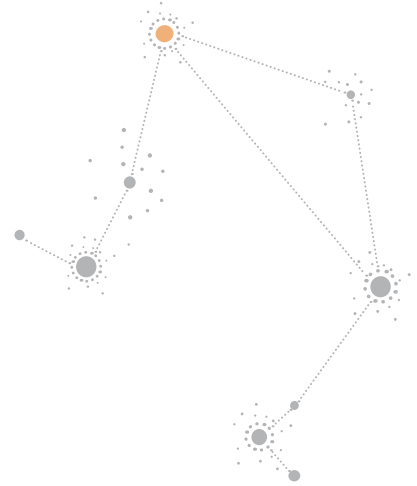
Mental health, so ensuring the continuation of medications and supports for women if they’re going into prison and, also, going out of prison and ensuring that financially they’re able to keep sustaining those medications. I think mental health is ... really such a massive thing that needs to be invested in - ensuring that people are able to achieve a good level of mental health to facilitate change and break those cycles is very important. (CLC\_6)

The need for mental health services to be gender affirming for trans women was also highlighted. Four participants spoke about the need for divestment from prisons. For example, one participant suggested that ‘if we did invest less into prisons [then] perhaps there would be less of the focus on it as well, we wouldn’t see that as being ... the place where people go’ (CLC\_6). Instead, the government could be investing in alternatives that address the underlying issues that contribute to women’s likelihood of becoming criminalised. As another participant explained:

Abolition of prisons would really help. You’d still have a lot of people with a lot of issues because, as I say, it’s often intergenerational, it’s usually from childhood, and there is certainly long-term, even if it’s not from childhood, it’s maybe drug use that started... sort of 14, 15. So it’s long-term suffering and trauma. So, the issues would certainly still be there but responding to them through punishing and further abuse from the system; that just causes further damage. I will say there are some women who talk about their time being incarcerated as beneficial to them, it’s women particularly who are addicted to substances because ... I’ve heard that you can still do that inside but [it’s] certainly less common and less chaotic. (PPR\_1)

**Financial support and access to employment resources and services** was also a strong theme in the interviews. As one participant put it:

Money would keep people out of prison, access to the resources that people need to live safely and comfortably in the world. Obviously... Centrelink doesn’t cut it and even more so in these COVID times where people are even more isolated. (PPR\_2)



## 4.0 Discussion and Conclusion

This study investigated the social, economic, health, and legal issues that underpin women's criminalisation. It examined some of the specific legal mechanisms through which women's behaviours are characterised as 'criminal' and the systems and practices that produce criminalisation. Many of the underlying social and health issues identified by the FLS case file review and analysis of interviews with legal and social services practitioners—namely, poverty, homelessness, mental illness, psychological distress and AOD dependency—are not 'crimes' in and of themselves. Rather, they are transformed into criminal issues that siphon women into the criminal legal system through a combination of problematic policing practices, punitive laws and legal cultures, and lack of investment in accessible social support systems.

The focus on victim-survivors of DFV in the title and content of this report reflects the findings of our research. While we set out to investigate the overlaps between civil and criminal legal issues for women, and the social contexts for these, we found that DFV was the most frequently discussed topic in interviews and more than half of the clients in the case file review identified DFV as

relevant to their criminal charges. In particular, the problem of misidentification of women as the predominant aggressor in DFV incidents was consistent across our data sets.

Despite DFV and misidentification emerging as significant foci, not one participant identified a need for more criminalisation or punishment for DFV offences. It is notable in the context of increasingly vocal calls for the criminalisation of coercive control in Australia that none of the legal or social services practitioners we interviewed suggested this move would help women that experience both DFV *and* criminalisation. Despite speaking at length about how DFV victimisation and misidentification are key drivers for women's criminalisation, escalating the policing and punishment of DFV or changing the gender ratio of police officers were not mentioned as possible system changes that should be pursued. Considering this, we reiterate support for calls issued by the Victorian Aboriginal Legal Service (VALS) and other leading First Nations advocates to *not* criminalise coercive control.<sup>54</sup> As VALS state, the criminal law is a 'blunt instrument' that is ill-equipped to deal with the complexities of women's lives or provide coordinated support to those who need it.

54. VALS (2021); Watego, C, Macoun, A, Singh, D and Strakosch, E (2021) 'Carceral feminism and coercive control: When Indigenous women aren't seen as ideal victims, witnesses or women', *The Conversation*, <<https://theconversation.com/carceral-feminism-and-coercive-control-when-indigenous-women-arent-seen-as-ideal-victims-witnesses-or-women-161091>>

The findings of this study indicate the presence of several concerning trends, which highlight the need for systemic changes and accountability:

- Aboriginal and Torres Strait Islander women are especially impacted by over-policing and police racial profiling
- Women experiencing DFV can experience punishment rather than protection when seeking assistance from police
- Police misidentifying women who are victim-survivors as predominant aggressors is a persistent problem that has a range of flow-on effects, including systemic collusion, revictimisation and criminalisation
- Poor or harmful police practices escalate conflict and dissuade women from contacting police when they have been victimised, which can prevent them from accessing support services or put them at risk of eviction
- Homelessness, poverty, mental illness and/or psychological distress put women experiencing DFV at greater risk of criminalisation, which leads to cycles of exclusion and entrapment
- AOD dependency is often treated as a criminal legal problem, rather than a health concern
- Intervention orders are often ineffective, unwanted, or otherwise inaccessible to marginalised women, and poorly understood by those subject to them
- Women with multiple support needs are not well recognised or supported within existing institutional and funding constraints, especially Aboriginal and Torres Strait Islander women, women with complex trauma, trans women and women leaving prison

Rather than finding that criminalised women possess deficits that require more correctional interventions, we have identified numerous ways in which policing practices and legal systems exclude, silence, and punish women experiencing varying combinations of DFV, socio-economic disadvantage, mental illness and/or psychological distress. Rigid and siloed models of support service delivery also fail to counter or prevent cycles of criminalisation for women and can inadvertently construct women as 'disengaged'. We also learned that criminal legal responses to women

experiencing mental illness and/or psychological distress are frequently gendered and punitive. This is in part because of gendered expectations (such as, women as selfless caregivers and passive victims of violence).<sup>55</sup> When women fail to embody this mould of ideal victimhood – because of their race, gender, financial or health status – their involvement with police can, as one participant put it, ‘open up punishment rather than assistance’.

With these findings in mind, we reiterate the following recommendations:

- Expand safe and accessible public housing options for women
- Move away from an over-reliance on policing to respond to the broad range of complex social, economic and health issues that women face
- Build effective independent police oversight and accountability systems
- Develop a research and public policy agenda to explore, fund, and enhance alternatives to police and prisons

- Invest in holistic, collaborative, and multi-disciplinary support services and systems for women that are culturally safe for Aboriginal and Torres Strait Islander women
- Urgently fix Victorian bail laws to reduce women’s remand rates and halt prison expansion plans
- Decriminalise public drunkenness and illicit drug use and halt prison expansion plans
- Develop training for lawyers on how to effectively address or engage with complex needs outside of legal need, including identifying where and how DFV victimisation might be relevant to women’s criminal legal matters

Social, economic and health issues should not be dealt with through the criminal legal system, which compounds and reproduces these issues, and fuels cycles of trauma and marginalisation for women experiencing DFV. Strategies for decarceration are clearly needed and viable, especially when examining patterns in women’s criminalisation.<sup>56</sup> These include diverting funds away from policing and prisons and towards public housing and holistic support systems to improve gender and racial equality and community safety.

55. Easteal, P (2001), *Less than equal: Women and the Australian legal system*. Sydney: Butterworths.

56. Federation of Community Legal Centres and Law Institute of Victoria (2020), *Pathway to decarceration: A justice system response to COVID-19*, Melbourne: FCLC, <[https://d3n8a8pro7vhmx.cloudfront.net/fclc/pages/715/attachments/original/1598396294/FCLC\\_DecarcerationStrategy\\_WebSinglePgs%2824aug2020%29.pdf?1598396294](https://d3n8a8pro7vhmx.cloudfront.net/fclc/pages/715/attachments/original/1598396294/FCLC_DecarcerationStrategy_WebSinglePgs%2824aug2020%29.pdf?1598396294)>

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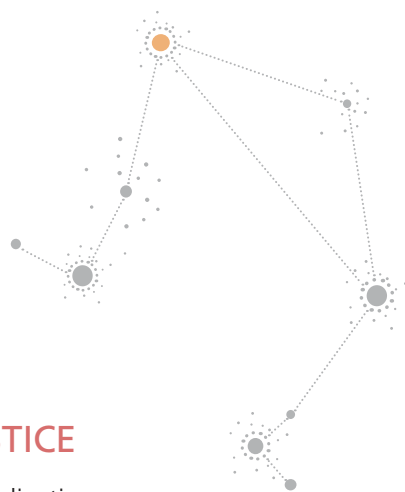
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## **GENDERED INJUSTICE**

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REPORT 2022