

## **EXECUTIVE SUMMARY**

# **Request for a Systemic Review of Discrimination Against Women in Victorian Prisons**

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On behalf of  
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### **Introduction**

There is systemic discrimination in the administration of women's prisons in Victoria. Some of the mechanisms of women's discrimination are the classifications system; access to conditional and community release; access to programs, such as education; access to services, such as health services; and strip searching and disciplinary practices.

Women are significantly different to men in all areas of relevance to the criminal justice and prison systems. However, the prison system fails to take measures to take women's special situations and perspectives into account and subjects women to a model of planning and management of prisons focused on male prisoners' needs. Designed for the dominant category of male offenders, the prison system treats women less favourably and operates against them in a discriminatory manner.

The State of Victoria seeks to justify the discriminatory treatment that women experience as the inevitable result of the smaller female prisoner population relative to men (women make up just 6% of the overall prison population in Victoria). Notably, the Dame Phyllis Frost Centre, in which the majority of women prisoners are incarcerated, is a maximum security prison, however only 14.3% of women held there are classified as maximum security prisoners. This submission details many examples of discriminatory treatment of women in Victorian prisons.

The Equal Opportunity Commission of Victoria (EOCV) has power to initiate an investigation into systemic issues under sections 156 and 157 of the Equal Opportunity Act (Vic) 1995. Section 156 concerns the initiation of an investigation and states "*If the Tribunal becomes aware of circumstances where a contravention of Part 3, 5 or 6 may have occurred (other than an alleged contravention that is the subject of proceedings before the Tribunal), the Tribunal*

*may refer the matter to the Commission for investigation.*” Part 3 sets out the treatment constituting prohibited discrimination. Section 157 details matters that may be investigated, namely:

- (a) of such a serious nature that it warrants the investigation; and
- (b) it concerns a possible contravention in relation to a class or group of people; and
- (c) the circumstances are such that the lodging of a complaint by one person only would not be appropriate.

This submission is divided into issues under broad categories of discrimination as defined by the *Equal Opportunity Act (Vic)* 1995 which are gender/sex, race, ethnicity and religion and cognitive impairment.

## **Gender and Sex**

### **Health**

This submission examines the health services available to women in prison. Women in prison are a chronically ill population with a greater burden of disease and ill health than their male counterparts. In addition to requiring far more health care than male prisoners, women prisoners’ health needs are different to men’s, stemming from their different life experiences. Key elements of these differences relate to women’s vulnerability to violence and women’s mothering roles.

Women prisoners have alarmingly high rates of experiences of physical, sexual and emotional abuse, including abuse and neglect as children. 68% report emotional abuse and 44% report sexual abuse as children. 30% of young women and 17% of older women were physically hurt by their partner and 10% had been raped by their partner in the 12 months prior to imprisonment

Women’s specific health needs also relate to reproductive health. In the four weeks prior to a *Prisoner Health Survey* interview, 10% of young women reported having had a miscarriage and 45% of Indigenous and 36% of non-Indigenous women menstrual irregularity.

In spite of their specific health needs, women in prison have less access to specialist services, more barriers to accessing tertiary health care and less availability of intensive mental health care than men in prison. Women require care that actively addresses reproductive health and women’s experiences of sexual violence.

### **Classification**

The classification system that currently exists reveals systemic and individual discrimination against women prisoners. Theoretically, a prisoner’s security

classification determines the type of prison in which she is incarcerated. For 80% of women prisoners though, one's classification makes no difference to the actual prison in which they are accommodated. The answer to the accommodation question is always the maximum-security DPFC.

### **Children**

For women with children (80% of women received some sort of parenting payment before prison), worry about their children has the greatest impact on how they survive their sentence day to day and over the long term.

### **Discipline**

Women experience discrimination in internal discipline matters and in recording of 'prison incidents'. Women are charged at 3 times the rate of men for prison 'good order' offences and 5 times the rate for assault related incidents. A former Equal Opportunity Commissioner in her investigation into allegations of discrimination against women at Barwon Prison in 1992 found higher rates of charges against women than men and for less serious incidents.

Instruments of restraint such as body belts, handcuffs, and leg shackles were used at the Dame Phyllis Frost Centre on 53 occasions (population 203) and at Barwon (men's prison) on 3 occasions (population 302) in 2002. 'Use of force' statistics further indicate higher levels of physical control of women relative to men. There were 73 'use of force' incidents at the DPFC but only 4 at Barwon.

### **Strip Searches**

The act of strip searching, save for the fact that it is legislated and can be carried out by only particular, authorised persons, is a sexual assault. Women we work with consistently report to us that following a strip search they feel demoralised, humiliated and traumatised.

At DPFC in 2001-2 there were 18,889 strip searches and just one item of contraband found (population 203). At Barwon Prison there were 12,893 strip searches and 21 items of contraband found (population 302). Not only is strip searching of women unnecessary, it disproportionately impacts on women, for two reasons: Firstly, because women place great importance on maintaining contact with their families and especially their children, they are effectively forced to submit to strip searches; and secondly, because imprisoned women have alarmingly high rates of experiences of sexual abuse, the traumatic impact of a strip search is severely magnified. Strip searching discriminates against women, failing to serve a purpose or consider women's experience of sexual violence or mothering role.

### **Release from Prison Programs**

In 2003, drastic restrictions were placed on what was then called the Community Custodial Permit Program (a program of community release for prisoners generally at the end of their sentence, but also used for the maintenance of family ties during a sentence). In 2002 the permits were totally suspended after a male prisoner on a permit absconded. A new, extremely restrictive scheme was then introduced. This was without reference to or consideration of the fact that women have never escaped on a permit. There was also no reference to the fact that for women there is a greater need for permits (i.e. women are disproportionately affected by the changes) and less risk associated with them. A program that was of enormous individual and social benefit was severely restricted for reasons in no way related to women's individual or collective behaviour.

### **Visitors to Women's Prisons**

There has been no public transport to the DPFC for the more than 7000 visitors annually since it opened in 1996, save for a 3 month trial of a bus service originally for the visitors to Port Philip Prison. By comparison, every Metropolitan men's prison is accessible by public transport.

### **Programs**

The men's prison education program is simply extended to women, rather than a separate program tailored to women's needs. Further, male prisoners are offered more quantity, quality, variety and relevant courses than those offered to women prisoners. The less favourable treatment women experience when it comes to accessing education is consistent with the inadequate funding allocated to education programs. The contract originally developed for the private operators of the women's prison based the unit cost of education on the fact that there were 125 prisoners at that locality. The DPFC's capacity has since increased to 220, yet the formula for costing on education has not been altered.

### **Race and Ethnicity (Indigenous Australian women)**

This submission examines the experience of Indigenous Australian women in the prison system. It focuses on issues of racism, health, classification, discipline, strip searches, release from prison programs and other programs. It highlights that:

- Indigenous Australian women experience less-favourable treatment as a result of systemic operational factors of the prison system.
- There is a lack of transparency surrounding the provision of and quality of cultural awareness training for prison officials.
- Indigenous Australian women experience direct and indirect discrimination as a result of the intersections of gender and race.

- Indigenous Australian women require distinctly gendered and culturally appropriate health responses, none of which are currently provided.
- Indigenous Australian women as a group experience less-favourable treatment because of the structure of the classification system.
- Inconsistent disciplining by prison officers could be a result of prejudice against Indigenous Australians and could explain the over-representation of Indigenous Australians in the management unit.
- The trauma associated with strip searches is compounded for Indigenous Australian women.
- Indigenous Australian women's ineligibility for the CCP program on the basis that their sentence is too short constitutes less favourable treatment.
- Predominantly programs cater to the needs of non-Indigenous Australian women which means Indigenous Australian women are treated less favourably, and the programs have less favourable outcomes.

### **Race and Ethnicity (CALD women)**

This submission examines the experience of Culturally and Linguistically Diverse (CALD) women in the prison system. It focuses on issues of racism, religion, interpreters and translations, health, release from prison programs, other programs and food. It highlights that:

- The population of CALD women prisoners is growing.
- Racist treatment experienced by CALD women in prison is a form of direct discrimination and in contravention of the *Racial and Religious Tolerance Act (Vic) 2001*.
- There is a lack of transparency surrounding the provision of training around issues of cultural, racial and religious diversity.
- CALD women experience less favourable treatment as they face difficulty in accessing culturally specific foods or religious activities that differ from that of mainstream Australia. By providing more religious services to women of certain religions, the prison directly discriminates against women who are of other religions.
- The systemic operational practices of the prison are based on the presumption that prisoners speak English. The prison's failure to provide interpreters and translations constitutes indirect discrimination.
- By failing to provide culturally and linguistically appropriate medical and health services for CALD women the prison indirectly discriminates against them.
- The prison treats women who do not speak English less favourably than it treats women without that attribute in relation to education and programs. CALD women are not able to participate in many of the subjects offered because of the prison's failure to use interpreters.

### **Cognitive Impairment**

This submission examines the experience of women with a cognitive impairment in the prison system. It focuses on issues of intellectual disabilities in custodial settings, vulnerability to sexual abuse, health, classification, discipline, programs and post release planning. It highlights that:

- People with an intellectual disability make up 12-13% of the prison population in NSW and their needs are under-resourced.
- As far as we are aware there is no training provided to prison officers around crucial issues in working with people with an intellectual disability.
- Women with an intellectual disability are vulnerable to less favourable treatment in the form of sexual abuse. Women prisoners with an intellectual disability suffer from an unaddressed and potential intolerable risk of abuse in a cross-gender guarding situation.
- Women with an intellectual disability in prison have more medical issues than other women prisoners or their male counterparts, however, there are no specific services available to them which constitutes less favourable treatment.
- Women with an intellectual disability experience less-favourable treatment as a result of systemic operational factors of the prison classification system. Women with an intellectual disability are predisposed to higher classifications and over-management as a result of the perception that more services are available at the Dame Phyllis Frost Centre.
- Women with an intellectual disability are dealt with punitively and targeted for disciplinary hearings. Such hearings discriminate against women with an intellectual disability because the hearings are not modified for such women, which works to their disadvantage.
- There are no gender specific education programs or programs generally for women with an intellectual disability. This means women with an intellectual disability receive less favourable treatment than other female prisoners or male prisoners with an intellectual disability who enjoy better access of programs.

## **Conclusion**

Ultimately, it is our view that the entire nature of women's imprisonment needs to be reviewed. The claim by government that the necessary improvements cost money must be rigorously tested against the money spent in the current configuration of the women's prison system, and the harm that prison causes to women and their families, many of whom could be more appropriately lodged in the community.

The numerous examples of discrimination on the basis of gender/sex; race, ethnicity and religion; and cognitive impairment outlined above contravene the Equal Opportunity Act 1995. We urge the EOCV to initiate an investigation into the systemic discrimination against women prisoners in Victoria's correctional facilities pursuant to sections 156 and 157 of the Equal Opportunity Act 1995.