

SYSTEMIC DISCRIMINATION AGAINST WOMEN IN THE PRISON SYSTEM IN VICTORIA

Presentation on the complaint to the Equal Opportunity Commission of Victoria by the Federation of Community Legal Centres and Victorian Council of Social Service. The complaint alleges that systemic discrimination against women in the prison system in Victoria occurs.

Presenters:

Greta Jubb (Research Officer at the Victorian Aboriginal Legal Service)

Claire Weigall (Solicitor at the Victorian Aboriginal Family Violence and Prevention Legal Service)

Occasion: Darebin Community Legal Centre Law Week Event: *DOUBLY DAMNED: WOMEN PRISON & SOCIETY*

Date: 16 May 2005

CONTEXT

I acknowledge the traditional owners of the land upon which we are meeting today, the Wurrundjeri people of the Kulin Nations.

My name is Greta Jubb and I am the Research Officer at the Victorian Aboriginal Legal Service.

I am here to tell you about a complaint to the Equal Opportunity Commission of Victoria (EOCV) on behalf of women in the prison system.

On 27 April 2005 a coalition of organizations, operating under the banner of the Corrections Working Group of the Federation of Community Legal Centres and Victorian Council of Social Service, sent a complaint to the EOCV. The complaint calls for the EOCV to initiate a review into systemic discrimination against women in the prison system in Victoria. The complaint alleges that the State of Victoria perpetrates discrimination against women prisoners. The purpose of the complaint is to challenge prison systems and structures and ensure equity for women.

The EOCV has power to initiate an investigation into systemic issues under sections 156 and 157 of the *Equal Opportunity Act (Vic) 1995*. (*refer participants to legislation handout*)

Section 156 concerns how to initiate an investigation and states "If the Anti-discrimination 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 Equal Opportunity Commission of Victoria for investigation. Part 3 concerns discrimination that is prohibited, part 5 concerns prohibition of sexual harassment and part 6 concerns prohibition of other conduct and vicarious liability for discrimination.

Section 157 details matters that may be investigated and these are matters:

(a) of such a serious nature that it warrants the investigation; and

(b) a matter that concerns a possible contravention in relation to a class or group of people; and

(c) the circumstances of the matter are such that the lodging of a complaint by one person only would not be appropriate.

The complaint 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.

Currently we are waiting to see if the EOCV will initiate a review into discrimination against women in the prison system. If the EOCV decides to initiate a review it will call for submissions from the public and conduct an investigation into the allegations raised in the complaint. At the end of the process a Report will be issued.

Some general arguments made in the complaint are as follows:

- There is systemic discrimination in the administration of women's prisons. Some of the means of discrimination are the classifications system; access to conditional and community release; access to programs, such as education, access to services, such as health; access to work and strip searching etc.
- Women are significantly different to men in all areas of relevance to the prison system. However, the prison system remains un-gendered. The prison system is designed for the male offender and then applied with little if any modification to women. Given how different women prisoners are to men, a non-gendered approach operates to greatly disadvantage women, constitutes less favourable treatment and operates against women in a discriminatory manner.
- There is need for special measures to be taken for the purpose of achieving substantive equality between women and men. The aim of special measures is not to discriminate by conferring special treatment, but to achieve equal outcomes for all, including people who have encountered disadvantage.
- Women do not represent a homogenous category and women's experiences are different depending on what other categories of disadvantage are occupied. For instance, Indigenous Australian, women from culturally and linguistically diverse backgrounds, and women with cognitive impairments experience multiple layers of oppression.
- The outcome of a systemic review should not be to expand the scope of imprisonment through increasing the number of prisons or prison beds for women, but rather the State of Victoria should utilise its capacity to create systemic change and provide alternatives for women other than prison.

Claire will provide you with further details about the content of the submission, but before she does that I will describe how the complaint to the Equal Opportunity

Commission came about. The complaint is part of a larger national and international campaign.

In 2003 Sisters Inside held a forum. Sister's Inside is a community organisation that advocates for the human rights of women in the Criminal Justice System, established by Debbie Kilroy, an ex-prisoner. Kim Pate, the Executive Director of the Canadian Association of Elizabeth Fry Societies, which is a similar organization to Sister's Inside, presented at the Sister's Inside Forum. Kim exposed forum participants to work that had been done in Canada to challenge the prison system and how this had resulted in systemic reforms to the prison system on paper. After the forum people in Australia who were interested in doing similar work met to discuss the possibility of following the example in Canada.

Members of the Federation of Community Legal Centres Corrections Working Group took on the role of starting a campaign in Victoria. In April 2004 the Corrections Working Group wrote a letter to Kelvin Anderson, Commissioner of Corrections, putting him on notice of concerns about discrimination against women in the prison system. Between April 2004 and April 2005 members of the Corrections Working Group and other interested individuals and organisations came together to draft a complaint.

The process of writing the complaint involved utilizing information from a wide variety of sources both outside and inside the Department of Justice. We talked to women in the prison and showed them a draft of the complaint and sought their feedback. You are going to hear more of the perspective of women who have been through the justice system in the panel session later

In Queensland Sister's Inside lodged a complaint to the Anti-Discrimination Commission in June 2004 and the status of this is that the Anti Discrimination Commission is undertaking an investigation into the content of the submission and plan to hand down a report in May 2005. Those involved in the campaign in New South Wales, Western Australia and South Australia are very close to submitting a complaint and people in Tasmania and the Northern Territory are working on a complaint.

Ultimately the work in Canada, Australia and other parts of the world could lead to a complaint going to the United Nations. In order to access complaint mechanisms at an international level all domestic avenues of redress need to be exhausted. Lodging a complaint to the Equal Opportunity Commission calling for a review into systemic discrimination against women in prison is one way of exhausting domestic avenues. For now we are waiting for word back from the Equal Opportunity Commission as to whether they will initiate a review.

As you can see this is a really worthwhile cause and we encourage you to get involved. You can also write a letter of support for the complaint. We are in the process of drafting a proforma letter and we can send it to you when it becomes available. If the Equal Opportunity Commission conducts a review in response to the allegations in the complaint you can contribute by writing a submission.

Thanks for listening and Claire will now tell you about the content of the complaint.

CONTENT

My name is Claire Weigall and I am a lawyer at the Aboriginal Family Violence Prevention and Legal Service.

As people who work with women imprisoned in this State, the writers of this complaint have been privy to some very shocking examples of the cruel and negligent mistreatment of women, at the hands of the Victorian Prison System.

Today I want to give some colour to the themes that Greta has already mentioned, by sharing some of these examples with you... Examples which go beyond being intolerably cruel and unfair... and are clearly also discriminatory. As Greta has told you, it is on this basis that we passionately hope to see some much needed changes to the appalling status quo.

CLASSIFICATION

Perhaps the most blatant example of the systemic discrimination experienced by the vast majority of imprisoned women every moment of the entire duration of their sentences, is the fact that if you are a prisoner and female, your security classification is practically meaningless and you will almost certainly be accommodated in the maximum security Dame Phyllis Frost Centre in Deer Park.

We discovered that of classified women at DPFC, only about 14% are classified as maximum-security prisoners, yet *all* women there are incarcerated under a maximum-security regime. This means that most women prisoners are held in conditions of confinement at a level much higher than justified by the current classification system.

The government maintains that the reason the majority of women prisoners are incarcerated at the DPFC is that the female prisoner population is comparatively small – only 6% of the overall prison population in Victoria - and cost constraints prevent their appropriate accommodation. In a letter to us last year addressing some of our concerns, the Commissioner said that these ‘constrained choices in terms of placement of women *do not constitute deliberate discrimination*’. Irrespective of the deliberateness of the discrimination, this practice is maintained with the knowledge that it is discriminatory.

The prison system subjects women to a model of planning and management focused on male prisoners’ needs. The current system blatantly treats women less favourably on the basis of gender and operates against them in a discriminatory manner.

HEALTH

A perhaps less blatant example of gender discrimination is that which occurs in the area of health care provision to women prisoners.

Women in prison are a chronically ill population with a greater burden of disease and ill health than their male counterparts. Their health needs are different to men’s, stemming

from their different life experiences. Women prisoners have alarmingly high rates of experiences of physical, sexual and emotional abuse, including abuse and neglect as children. They also have specific health needs related to reproductive health.

They requiring far more health care than male prisoners in order to achieve a similar level of health... so if special measures are not employed, in the form of specialised healthcare and *more* of it, substantive equality will not be achieved.

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.

In spite of their increased vulnerability, they have reported to us that in many cases they are only receiving health care from nurses instead of doctors. Further, there is limited privacy for women with medical problems, with the allocated space for medical consultations being only divided with curtains, and this may reduce the accessibility of treatment as they may be embarrassed about discussing reproductive and mental health issues if they feel that other prisoners and prison guards would be privy to such personal information.

Women require care that actively addresses reproductive health and women's experiences of sexual violence.

Another relevant statistic is that women in prison are 1.7 times more likely to suffer from mental health problems than men, and more women than men attempt suicide in prison. They therefore require care that recognises their greater need for mental health treatment.

The response of the DPFC and Tarrengower to women with mental health issues is often perceived as punitive. Women who are at risk of suicide or self-harm are placed in cells known as 'wet cells'. Women are strip searched and then issued with a canvas gown, under which they wear nothing.

Wet cells contain no furniture except for very rudimentary bedding.

There is one entire glass wall for ease of observation, which means the ill woman has absolutely no privacy. Women's movements in the wet cell may be observed and documented anywhere between every 15 to 60 minutes. The observation log contains very intimate details of what women do including masturbating, changing sanitary products, scratching and so on. We feel that this method of managing suicide and self harm risks exacerbates any existing mental health problems.

In comparison, the Melbourne Assessment Prison for men has a 10-bed acute care unit for observation of patients with mental health issues. The lack of an equivalent space in the women's prison in the context of women having higher rates of mental illness directly discriminates against them and must be investigated.

DISCIPLINE

Another excessive response to mental health issues and expressions of frustration is **disciplinary orders** and **separation orders**:

- The fines imposed on women prisoners for breaches of prison discipline often have a more onerous effect than those imposed on men. Men in prison have more financial support from outside whereas women mostly spend any extra money on their children, such as maintenance or gifts.
- Women in prison are more likely to have a ‘separation order’ imposed upon them than men, where they are held in isolation for 23 hours a day for up to 21 days. These are imposed when a prisoner has had an altercation with a fellow prisoner or a guard, but the altercation is insufficient to justify a disciplinary order.
- Women clearly 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. They are charged at higher rates for less serious incidents.
- Indigenous Australian women prisoners are more likely to be disciplined than non-Indigenous Australians. This may well be as a result of prejudice on the part of prison officers.

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.

The culture of excessive discipline in women’s prisons is yet another example of gender discrimination experienced by women in Victorian prisons, which must be investigated.

CONCLUSION

When we began to gather material for a submission and started the dialogue about this issue we opened a Pandora’s box. We found far more case studies and examples than we could use – our submission to the EOCV is 45 pages long and what it covers is unfortunately just the tip of the iceberg. We passionately hope a systemic review is carried out in response to our complaint, but know that unfortunately such a review would reveal many more injustices than the ones we have mentioned.

Finally I would like to remind you that women in Victorian prisons represent one of the most severely disadvantaged cohorts of our society – and leave you with some statistics:

- Women in prisons have usually suffered physical and emotional abuse.
- At DPFC more than half the prisoners reported physical abuse in their childhood -68% reported emotional abuse and 44% reported sexual abuse.
- 66% have a mental disorder
- 30% have attempted suicide;
- 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
- In the four weeks prior to a *Prisoner Health Survey* interview, 10% of young women reported having had a miscarriage

The State needs to realise that not accommodating these special and distinguishing features of women in the Prison System constitutes discrimination, and that this discrimination is doing untold damage to women and their families.