



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

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Introduction:

We are seeking that the Equal Opportunity Commission of Victoria (EOCV) initiate an investigation pursuant to sections 156 and 157 of the *Equal Opportunity Act (Vic)* 1995 into discrimination on the basis of gender/sex; race, ethnicity and religion; and cognitive impairment¹ faced by women throughout the Victorian prison system in contravention of this Act. This request for a systemic review is supported by the findings of the recently released United Nations Report on Women and Prison from the Economic and Social Commission on Human Rights, dated 9 July 2004.²

This complaint names the State of Victoria as the body which perpetrates discrimination against women prisoners. 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. It is ironic that purportedly as a result of the fact that women do not commit as many crimes as men, and consequently pose less of a threat to the community than men, women do not receive equal treatment to men.

While this submission attributes discrimination to the gender of prisoners, it is also important to recognise that women do not represent a homogenous category. Women's experiences are different depending on what other categories of disadvantage are occupied, because the structures and organizational practices of the prison system do not take into account the perspectives and needs of members of other non-dominant groups. We are particularly concerned about the multiplicity of oppressions faced by Indigenous Australian and other women from culturally and linguistically diverse (CALD) backgrounds, as well as discrimination on the basis of cognitive impairment experienced by women with special intellectual and mental needs. This complaint to the EOCV takes into account the intersections of disadvantage as a result of gender, together with race, cognitive impairment etc faced by women in prison in Victoria.

Overview of women's prisons in Victoria:

The Dame Phyllis Frost Centre (DPFC) was opened in 1996 as the privately run Metropolitan Women's Correctional Centre (MWCC). When the Fairlea women's prison was closed prior to the operation of the MWCC, it housed 63 women who were all transferred to the new 125 capacity prison. The beds filled very quickly and continued to grow.

The capacity of the DPFC is currently 210 and muster is 202 + 3 (babies). The State (Bracks) Government took over operation in August 2000 after the prison operators defaulted on their contract on three discrete occasions

¹ Attributes set out in section 7 of the *EO Act*.

² Working paper by Florizelle O'Connor, United Nations Economic and Social Council, *Administration of Justice, Rule of Law and Democracy*, Commission on Human Rights E/CN.4/Sub.2/2004/9 (9 July 2004).

relating to the levels of self harm and violence in the prison. DPFC still carries the legacy of this period of privatisation.

Women prisoners in Victoria are also accommodated in the minimum security prison farm, Her Majesty's Prison Tarrengower (Tarrengower). This prison accommodates 54 women with minimum security rating and in the last third of their sentence.

In 2000/2001 an experimental and temporary medium security prison was opened in Ararat called Aradale, for the purpose of managing the overcrowding in police cells across the state. Despite being pitched as a medium security prison, Aradale accommodated prisoners of all classifications, resulting in a number of segregated levels of placement. In practice, the regime at Aradale was stricter than that at the DPFC.

The final option for women's placement in the criminal justice system is at the Thomas Embling Forensic Hospital, which has just 10 dedicated beds for women out of a total bed capacity of 120. There are also two units that are 'blended'.

In compiling this submission, we have utilised information from a wide variety of sources both outside and inside the Department of Justice. While the government itself has commissioned enquiries into many of the matters we have raised, very little has been done in response to the obvious failings of the system. Either recommendations have not gone far enough or they have not been implemented. A most extraordinary example of this is a recommendation from the most recent 'Discipline Review' which recommends that prisons actually follow the law.

There were also some obstacles in our writing comprehensively on these issues. There is a great deal of information which is not in the public domain and which is available only to government and its instrumentalities. Much of this information is not subject to Freedom of Information request and as a consequence there are no doubt gaps and limitations in the information provided by us. Nonetheless, the commonalities between the anecdotes shared with us by both women inside women's prisons and their support networks outside reveal volumes about the discriminatory machinations of Corrections. This discrimination is so pervasive and insidious that it is frequently accepted as inevitable or not recognized at all.

Ultimately, it is our view that the entire nature of women's imprisonment needs to be reviewed in light of alternative methods of appropriately addressing women's offending behaviours. The outcome of a systemic review should not be to expand the scope of imprisonment through increasing the number of prisons or beds for women, but rather that the State of Victoria should utilise its vast capacity to create systemic change and alternatives for women other than prison.

The claim by government that such change costs money must be rigorously tested against the money spent in the current configuration of the women's

prison system, the harm that prison causes to women and their families and the high numbers of women who could be more appropriately lodged in the community. It is our submission that community options are cheaper than imprisonment in the long term and with regard to the significant detrimental effect imprisonment has on the lives of women and their families. The failure of imprisonment as a method of specific deterrence is clear from the fact that 60% of the prison population have been in prison before.

There is a tendency to measure equality and inequality by comparing services and regimes experienced by women in prison with those experienced by men in prison. This approach may reveal gaps in correctional services where the characteristics, interests and needs of women in prison and men in prison are similar. However, where the two populations differ to such a degree that equal provisions of services would in fact result in unequal opportunities, these comparisons are not useful because they do not promote substantive equality.

This submission highlights the need for special measures to be taken for the purpose of achieving substantive equality between women, and the dominant group in the prison population, 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. Treating everyone the same, regardless of outcomes, can lead to serious inequalities for groups that have been disadvantaged by a system that fails to take their situations and perspectives into account. Substantive equality requires taking into account the differences between individuals and groups in order to ensure that everyone benefits equally from the purposes of the Act.

This submission is divided into issues under broad categories of discrimination as defined by the *Equal Opportunity Act (Vic)* 1995.

Gender and Sex:

Health

Women in prison are a chronically ill population with a greater burden of disease and ill health than their male counterparts. Evidence from the most recent comprehensive assessment of prisoner health, the *Victorian Prisoner Health Survey*,³ reveals that women are 1.7 times more likely to have a mental illness than men and are more likely to have attempted suicide. Women are more likely to have chronic illnesses such as hepatitis and asthma and also experience more ill health symptoms, including poor appetite, dizziness and tremors.

A study conducted on the mental health needs of women prisoners in Victoria found that:⁴

³ Department of Justice – Deloitte Consulting, *Victorian Prisoner Health Survey* (February 2003).

⁴ Tye, *Framework for Working with Women in Prison Draft* (2002).

- 84.5% of women in prison had a mental disorder (including a drug and alcohol related disorder) compared with 19.1% of women in the community;
- 66% of women had a mental disorder (excluding a drug and alcohol disorder) compared with 16.5% of women in the community;
- 63.2% of women in prison had a drug related disorder;
- 51.5% had an anxiety disorder;
- 44.7% had a depressive disorder;
- 42.7% had a personality disorder; and
- 23.7% suffered psychosis.

The *Victorian Prisoner Health Survey* reveals that:

- Over 30% of women prisoners have attempted suicide;
- 60% have hepatitis and 40% have asthma; and
- 65.9% of non-Indigenous Australian women and 53.8% Indigenous Australian women in prison reported having injected illegal drugs and began to inject drugs on average at age 17.

Overall, the population of women prisoners are among the most vulnerable, unwell and disadvantaged cohort in the community. Women prisoners have alarmingly high rates of experiences of physical, sexual and emotional abuse, including abuse and neglect as children.

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.

Recent research demonstrates that intimate partner violence, overwhelmingly perpetrated by men against women, has very significant and far-reaching health impacts beyond the immediate physical harm women experience. Women subject to intimate partner violence are more likely to self harm or be suicidal, to be depressed, experience anxiety, use tobacco, alcohol, illicit and licit drugs in harmful ways, have reproductive health problems, chronic pain disorders, trouble sleeping and digestive disorders than those who are not.⁵

It has been consistently documented that a large majority of women in prison have histories of physical and sexual abuse, including abuse as children. The *Prisoner Health Survey* shows that in the 12 months prior to imprisonment alone, over 30% of all young women and 17% of older women had been physically hurt by their partner; around 10% had been raped by their partner (11% of young non-Indigenous Australian women; 8% of young Indigenous Australian women and 8% of older non-Indigenous Australian women); 42% of non-Indigenous Australian women had been verbally abused by a partner and 17% of young Indigenous Australian women had been verbally abused.

⁵ Victorian Health Promotion Foundation, *The health costs of violence: Measuring the burden of disease caused by intimate partner violence – A Summary of findings* (2004).

More than half of a sample of women at the DPFC reported being physically abused in the childhood or adolescence, with 68% reporting emotional abuse and 44% reporting sexual abuse.

Women's specific health needs also relate to reproductive health. In the four weeks prior to their *Prisoner Health Survey* interview, one in ten young women reported having had a miscarriage. A very high proportion of women prisoners report menstrual irregularity (45% Indigenous Australian women and 36% non-Indigenous Australian women).⁶

Appropriate health care for women prisoners would actively engage with the complex and long-term nature of their ill health and seek to address underlying issues contributing to sickness. Women prisoners commonly have limited understanding of their health issues and of the interplay between behaviours and health outcomes. Health education and programs to enhance mental wellbeing are critical components of the health service response to these women.

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. This represents direct discrimination.

Women require care that actively addresses reproductive health and women's experiences of sexual violence. The fact that women do not receive an increased level of care commensurate to their increased need for health services, and do not receive an adequate level of care to respond to reproductive health issues or the physical and mental health issues arising from women's experiences of sexual violence represents indirect discrimination.

The health services provided in the two women's prison facilities, the DPFC and Tarrengower, fall far short of an appropriate health response. The amount of health services provided is entirely inadequate resulting in women commonly being forced to wait for essential care services, particularly care services delivered by practitioners other than nurses. We understand there has not been an increase in primary health staff since there were only 120 women in the prison.

Within the prisons, dental care is almost non-existent, exacerbating many women's health problems and causing physical pain as well as shame and embarrassment due to the appearance of rotting or missing teeth.

The bandaid approach to women's health is also a form of indirect discrimination, as women's health needs are more complex than men's and require more time and a more comprehensive assessment to be properly and fully identified. To have equal health care women must have more health care services than men in a proportion greater to men as their needs are greater.

⁶ Victoria Prisoner Health Survey, above n 3.

In other words, if women as a group are twice as sick they should have access to twice as much care.

In addition to the level of women's prison health services being too few, women's prison health services are also provided in inappropriate physical spaces, using inappropriate models and health approaches that directly and indirectly discriminate against women.

The majority of health care at both women's prisons occurs in open clinic spaces with curtain dividers, in full hearing and view of other prisoners, guards and health staff. When women do present before the doctor or nurse at the medical unit, their symptoms are often taken too lightly and women report to us that they are often not believed. It would seem that before a woman can properly detail her medical complaint she must first overcome being disbelieved.

The delivery of medical services for women in prison follows the triage system – being seen by a nurse first, who then refers the patient on to the doctor, who then refers the patient on to a specialist if one is deemed to be required - all based on how the former assesses the patient. Women consistently report that nurses turn them away and accuse them of seeking medications to which they are not entitled. This attitude exposes a prejudgement of the 'patient-group' of prisoners and suggests that women may not be receiving adequate health care as a result.

When women are ultimately successful in obtaining an appointment with a doctor, they feel that they are not given considered and personalised care. The delays involved in obtaining an appointment, the obstacles encountered in the triage system, and the lack of personalised care combine to form an extremely frustrating process of accessing medical services. Consequently, often women simply withdraw from the process. This is an issue that raises human rights concerns, the ultimate impact of which is that women, who require more health services than men, are receiving fewer, and so are being indirectly discriminated against.

Both the DPFC and Tarrengower consistently respond punitively to women with mental health issues. For a more thorough discussion on this, please refer to the section on discipline at page 13.

Women who are at risk of suicide or self-harm (SASH) are placed in Muirhead cells, also known as 'wet cells'. Women are strip searched and then issued with a canvas gown, under which women wear nothing.

Muirhead cells contain no furniture except for very rudimentary bedding. There is one entire glass wall for ease of observation, but this also limits privacy. Depending on the observation regime, women's movements will 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. While we understand the requirement to keep a watchful eye on people who are

suicidal or having self-harm tendencies, we feel that this method of managing suicide and self harm risks exacerbates any existing mental health problems. Our clients have expressed to us on many occasions such sentiments as, 'If I wasn't suicidal when I went in, I sure as hell was when I came out.'

In comparison, the Melbourne Assessment Prison 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.

In many cases women are denied treatments that doctors recommend for budgetary reasons. While women should have primary agency in their own health care, it is also a grave concern that prison doctors do not have the capacity to ensure women are given prescribed treatment. In one case, a woman prisoner suffered from a bout of chronic constipation. Once the immediate problem was dealt with, the doctor prescribed Nu-Lax, a non-prescription fibre supplement. The Nu-Lax was denied on the basis that it was non-prescription and excluded from the canteen-list.

Arbitrary allocation of available places, such as in the pharmacotherapy program, or limited availability of beds, such as at Thomas Embling Hospital, also exclude women from treatments necessary to their health.

This provision of health care as described above is directly discriminatory against women prisoners in comparison to male prisoners and warrants investigation.

Classification

As previously discussed, Tarrengower is a minimum-security prison with a capacity of 54 beds, and the DPFC is a maximum-security prison with a capacity of 225 beds. The *Australian Bureau of Statistics* publication *Prisoners in Australia June 2003 Companion Data* shows that of classified women at DPFC, only 14.3% are classified as maximum-security prisoners, yet all women there are incarcerated under a maximum-security regime.

The 17% of women on remand are automatically given a maximum security-rating until they are sentenced. This means that around 70% of 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 live at the DPFC is that the female prisoner population is comparatively small and cost constraints prevent their appropriate accommodation. In a letter dated 21 June 2004 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, these practices are maintained with the knowledge that they are discriminatory.

As far back as 1982 the Fairlea Research Group raised the over-classification of women as an issue in *Prisoner and Female: The Double Negative*. In 1990 the Office of Corrections in their *Agenda for Change* noted the 'economic pragmatism of women's prison construction with male prison populations in mind' and that we 'need to acknowledge that the systems of classification, prison discipline and management have developed in response to the management of men ... and in response to the needs of anglo saxon culture'. The majority of women prisoners are not classified as maximum, yet the majority of beds are in a maximum security setting. This over-classification of women prisoners as a consequence of the male model of prison management is an international phenomenon. The US Department of Justice have recently investigated options for women.⁷

The classification system that currently exists reveals systemic and individual discrimination against women prisoners. The classification system is a system used to categorize prisoners into groups, essentially to determine accommodation placement. 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.

Security classifications also underlie various other decisions such as the granting of leaves, access to visitors and access to programs. A woman's security classification also determines the type of physical restraint applied to her if she attends an outside hospital. A maximum security rating means she is restrained in a body belt. This is humiliating for women and particularly so when they are escorted through public hospitals whilst so restrained.

The 1991 *Classification Manual* and the manual to eventually replace it, the *Sentence Management Policy Manual* (in draft since 1999) is male-centric in design and intention. The new Manual, which is little different from its predecessor, pays such scant attention to women that in some sections it has failed to even make reference to them where it clearly should.⁸

The only oblique references to women in the *Sentence Management Policy Manual* (Draft) are at 4.3.3.11 'Gender', which tells us prisoners must be placed with prisoners of the same sex and that 'a prisoner who has a penis will be regarded as a male'; and 4.3.3.6 'Family ties and support network', which says that 'prisoners should be placed in locations which facilitate their support network and that regard must be had to the recommendations of the *Royal Commission into Aboriginal Deaths in Custody* (RCIADIC 1991) in relation to prisoners being accommodated in the vicinity of their families'. The only other reference to women is in relation to the establishment of separate drug treatment programs for women and men.

⁷ PL Hardiman and P Van Voorhis, *Developing Gender Specific Classification System for Women for Women Offenders* US Department of Justice (February 2004).

⁸ *Draft Sentence Management Policy Manual* (1999) Industry 4.3.3.9.

One of the objectives of sentence management is to ensure each prisoner is assessed in a consistent and objective manner which minimizes public risk.⁹ In determining a prisoner's security rating, and so determining a person's placement in the prison system, the Sentence Management Unit, must have regard to 'the placing of prisoners at the lowest appropriate level of security... and be guided by... a fundamental principle that prisoners are held in the least restrictive environment possible.'¹⁰ In practice, when it comes to women this principle is not applicable. Only minimum security prisoners are placed at Tarrengower so far as beds allow, and everyone else is accommodated at the DPFC.

There are three levels of classification: A, B and C. According to the principles of the classification system, each prisoner should spend on average one third of his or her sentence in each discrete level of classification. Again, this is simply not possible for women because the majority of the beds are at the DPFC, where they will more than likely spend most, if not their entire sentence.

At this point it is worth stressing that we do not advocate the establishment of a third medium security prison. The fact that this situation arises reflects the fact that that entirely different approaches need to be taken to women's classification rather than an insistence that the male model is transferable.

In determining prisoners' classification the following factors are given consideration: security, instability or unsettled, unpredictable behaviour, deportation or extradition, unclear legal status, breach of a community order, nature of offence (namely arson), notoriety, Identified Drug User status, management, physical threats to self or others and protection from others among additional factors listed in the manual. A model of classification based on social inclusion and equality, which focuses on building the capacity of prisoners rather than on risk assessment, would be far more appropriate for women.¹¹

The draft manual also says that consideration will be given to accommodating prisoners where the services that best meet their needs are concentrated. Because the DPFC is bigger than Tarrengower, the majority of programs are concentrated there, predisposing prisoners with any of the above classification factors to a higher classification at DPFC. This essentially predisposes all women to a higher classification as a consequence of classification policy, designed with male prisoners and their spread of prisons and programs in mind.

This means that women are effectively deemed to be more dangerous to the community than men because their classifications are higher by comparison; the reverse of what is in fact the case.

⁹ Ibid 1.1.1.

¹⁰ Ibid 1.2.4 and 4.4.1.

¹¹ Hardiman and Van Voorhis, above n 7.

The gender bias inherent in this classification model is best illustrated with reference to perhaps the most heinous crime, homicide. The classification system requires the length of sentence and type of offence to be taken into account. In considering the crime homicide, which also attracts the longest sentence, 60% of women convicted of this offence have killed either a child or intimate partner, usually in response to partner violence.¹² Research indicates that women convicted of homicide are often first offenders (60% of women compared to 2% of men, have no history of breaches of security, have no perceived management concerns and have minimal likelihood of re-offending).¹³

This profile of maximum-security female prisoners with a homicide conviction is vastly different from that of men, yet the different implications for dangerousness and community safety are not reflected in the classification model. Women who kill make up the same percentage of the prison population as men who kill, yet the reasons for their offending are entirely different and their risk to the community is minimal relative to men. The classification system as it is currently designed cannot recognise this.

Children

Furthermore, children are not considered in relation to any of the areas of risk or need for the purposes of classification. This again demonstrates the gender bias of the classification system. Children do not feature because the image of a prisoner is male and statistically his children are likely to be with their mother living in relative stability.

For women in prison, this could be no further from the truth. Their children have invariably had to move house, separate from siblings, have multiple and frequently changing carers (familial and State), while experiencing the grief of separation from their only parent, who they are rarely if ever able to visit and from whom they may lose permanent contact. This constitutes discriminatory treatment both as a factor of gender and parental status.

The invisibility of children in the draft classification manual is at odds with the well-documented recognition that 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 women survive their sentence day to day and over the long term.

Separation from children is acutely experienced, even more so by women who themselves have been fostered or adopted. According to CORE research 32% of women prisoners have been fostered or adopted.¹⁴

¹² D Kirkwood, 'Women Who Kill: A Study of Female Perpetrated Homicide in Victoria Between 1985-95' *Unpublished PhD Thesis, Monash University* (2000).

¹³ M James, 'Homicides in Australia' 51 *Australian Institute of Criminology* 6.

¹⁴ Annie Thomas and Jacinta Pollard for CORE – The Public Correctional Enterprise *Substance Abuse, Trauma and Coping. A Report on Women Prisoners at the Dame Phyllis Frost Centre for Women* (June 2001).

In fact there are no statistics gathered or published in either State Government publications or in the National Prison Census on the number of prisoners with dependant children. In 1988 when the National Corrections Statistics Committee was asked to collect this information they said 'it was not relevant to prison policy and planning'.¹⁵ 16 years later, children are still not considered relevant to prison policy and planning.

A gesture to the status of women as primary caregivers was made and withdrawn soon after. A 'family unit' near the visitors' centre of the MWCC initially allowed women's children and their carers to come and stay overnight if they were not from the metropolitan area. This was closed very soon after the commissioning of the DPFC and reopened to accommodate the Security and Emergency Services Group – the state prison riot and dog squad.

Discipline

There is incontrovertible evidence from Corrections Victoria itself that women are charged with more internal prison offences than men. Issues around discipline, reporting of incidents and penalties for discipline offences are notoriously difficult to research in prisons. There is very little documentation on the nature of the offence, the charges are very non-specific: 'contrary to good order'; 'fail to obey order'; or 'being in a place not permitted'. None of what transpires in the hearing, other than the plea and the result, is documented. Overwhelmingly women plead guilty. Prisoners have no right to representation at these hearings and decisions can only be appealed by way of originating motion in the Supreme Court. In all likelihood, any reprimands or punishments would have been meted out before such a motion is heard.

In October 2004 the Prison Discipline Regime Review, commissioned by the Correctional Services Commission, was released. This Report provided further evidence of the discrimination women experience in internal discipline matters. Women were shown to be charged with more offences relating to good order than male prisoners and the report indicated support to the view that these differences may partially reflect the need for disciplinary criteria to be more gender responsive by engaging with known gender differences in approaches to conflict, as well as dispute resolution.¹⁶

The Review also documents, the indirect discrimination women experience in relation to the imposition of fines for internal disciplinary purposes. Women prisoners felt that fines were a more onerous sanction for them than male prisoners because women have less access to financial support from their families. The Review also noted that after essential expenditures, the majority of women's money was spent on their children whether as maintenance or as gifts.¹⁷

¹⁵ Minutes of the National Correctional Statistics Meeting, 29th September 1988.

¹⁶ John Darcy Dugan, Vivian Roche, Ian Tucker, *The Prison Discipline Regime Review: Report to the Correctional Services Commissioner into prison discipline provisions sanctions and privileges* (June 2003) 22.

¹⁷ Ibid.

This report shows that overall women are charged at twice the rate as men for prison offences. In relation to specific charges, women are charged at five times the rate as men on assault related incidents, and three times the rate of men on good order offences.¹⁸

The 2002 DPFC Prison Service Reports, (the most current publicly available), reveal that in a prison of 203 women there were over 450 charges proved and 55 not proved. At Barwon Men's Prison, with 302 prisoners and virtually identical classification ratings, there were 343 charged and 60 not proved.

The earliest evidence in Victoria of women being charged with more internal offences than men was documented in the Office of Corrections' 1990 *Agenda for Change* document. It revealed women prisoners were continuously over-represented in recording of 'prison incidents'. Although at the time women were 5.7% of the entire prison population, they made up 15% of all recorded 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.

There are other forms of discipline in prisons to which women are also subject at a greater rate than men. Separation Orders are an administrative action under the *Corrections Act 1986* where a prisoner is locked alone in a cell for up to 21 days, and generally for 23 hours each day. They can be used when a prisoner has an altercation with another prisoner or an officer, which is insufficient to justify a disciplinary charge. The DPFC's Prison Service Reports indicate that there were 271 women separated in 2002 with an overall prison population of 203, whilst at Barwon Prison there were 98 separations in the same year with a population of 302.

On close examination of many of these incidents that have attracted separation orders, it becomes clear that women's expressions of distress, depression or other mental health issues are often responded to punitively.

The ambiguity of offences such as 'fail to obey order' means that women may be isolated on a separation order for not clearing the laundry before making a phone call if that was the preferred order of a particular officer. Rules like 'contrary to good order' could involve behaviours such as swearing at a prisons officer, again often depending on what is acceptable to that particular officer. Expressions of frustration like slamming ones fists down on a table or even kicking a door result in isolation under a separation order. Our argument is that while this is not necessarily appropriate behaviour, 21 days in 23-hour lockdown is an excessive response and only exacerbates the underlying feelings motivating that behaviour.

The other important point is that for the duration of their sentences, prisons are women's homes. For women serving sentences of longer than 12

¹⁸ Bronwyn Naylor, *Prison Disciplinary Process: Doing Justice in Prisons* (ANZSOC Conference October 2003).

months, these punitive responses to frustration or episodes of bad behaviour effectively ask that women suppress their emotions and behave above reproach all of the time. At the very least, those among us outside of prisons are entitled to our isolated episodes of perceived bad behaviour as a result of over-work, stress or grief. These punitive responses ultimately deny women their humanity, the good and the bad.

On the extreme end of the scale, manifestations of mental health issues are responded to with excessive methods of control, force, physical or chemical restraint. The various forms of over-disciplining of women clearly indicate less favourable treatment of women prisoners by officers. We do not have information on chemical restraint of women prisoners but our anecdotal evidence indicates higher rates of chemical restraint relative to men. Looking at the application of physical force highlights the seriousness of the situation. Instruments of restraint such as body belts, handcuffs, and leg shackles were used at the DPFC on 53 occasions (population 203) in 2002 and at Barwon on 3 occasions (population 302) in the same year. The 'use of force' statistics also indicate high levels of physical control of women. There were 73 'use of force' incidents at the DPFC compared with 4 at Barwon.

These statistics are consistent again with regard to the deployment of the SESG at the DPFC: 478 times compared to 450 at Barwon in 2002. The SESG, as previously mentioned is Corrections Victoria's mobile riot squad used throughout all Victorian prisons. In this context it is worth noting that Victorian women's prisons do not have a history of riots or cell clearances. The reliance on the SESG and the impact it has on women's perceived sense of safety is discriminatory.

Strip Searches

The act of strip searching, save for the fact that it is legislated and that particular authorised persons only are to conduct strip searches, is a sexual assault by any lay interpretation.

A strip search involves a prison officer naming every item of clothing, whereupon the prisoner removes it. Once the prisoner is naked, she is required to flip her ears, run her fingers through her hair, open her mouth and remove any dentures if applicable, lift her breasts, bend over and part the cheeks of her buttocks.

Strip-searching in prisons then, is sexual assault by the State and in fact, the women we work with consistently report to us that following a strip search they feel demoralised, humiliated and traumatised.

The Correctional Services Commissioner in a review of strip search procedures at the DPFC and Tarrengower in 2001 acknowledged that 'given the importance to women of maintaining contact with their families and especially their children, most female prisoners would submit to strip searches to maintain contact'.

At DPFC in 2001-2 there were 18,889 strip searches and one item of contraband was found (population 203). At Barwon Prison during this time there were 12,893 strip searches and 21 items of contraband found (population 302). The requirement of a strip search disproportionately impacts on women because of their greater need to maintain family bonds, and is simply not necessary.

Release from Prison Programs

In 2003, drastic restrictions were placed on what was then called the Community Custodial Permit Program. This was 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, after a male prisoner on a permit absconded, the government temporarily suspended all permits and instigated the *Ministerial Review of Community Custodial Permits 2002*. This is also known as the *Comrie Report* and it revealed that from 1997-2001, 16,177 releases were granted of which 2,764 were for women. Over this time there were 11 escapes, none by women.

This total suspension of permits and the introduction of a new extremely restrictive scheme 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 use and need for permits and less risk associated with them.

The Government replaced the old program with two discrete programs - the Corrections Administration Permits and the Rehabilitation and Transition Permit Program, which severely restricted the operation of release permits. This was to the particular detriment of women prisoners resulting in their less favourable treatment.

The Commissioner rejected our allegation that the severe restrictions placed on the program impacted more severely on women. He did, however, go on to say that the 'Family Ties Permit is specifically designed for prisoners who are primary carers, the majority of whom are women.' This is a clear recognition of the fact that women and their children have borne the brunt of the restriction *precisely because* the program was developed for them and has been restricted because of men.

Prior to the revision of the program, for the year 2001-2 there were 46 'family ties permits' given from the maximum-security DPFC. After the restrictions, 'B' classification women could only get these permits in 'exceptional' circumstances and even then they could only get one 8 hour leave every 6 months to maintain their relationship with their children. No figures have been released since 2001 on the number of family ties permits given since the program's restriction.

Under the previous program, reintegration leaves were made available to prisoners serving sentences of longer than three years in the final third of their

sentence. This means that a prisoner serving a sentence of six years would be eligible for reintegration leave in her last two years.

Under the revised program, the criteria for eligibility for reintegration leaves have now changed. Prisoners with sentences over three years in length can only get leave in the final year of their sentence rather than the final third. This means that a prisoner with three years to serve and another with eighteen years to serve are both entitled to the same period of reintegration, twelve months.

Our anecdotal evidence is that women are discouraged from applying for reintegration leaves from the DPFC. The common reason officially given relates to staffing issues, but unofficially we are told that the reason relates to the maximum security standing of the prison from which the prisoner originates rather than that prisoner's classification.

Coupled with the arguments submitted earlier about appropriate accommodation for women with regard to their classification, the inaccessibility of the leaves program is tied to the discrimination inherent in the classification system resulting in less favourable treatment of women prisoners.

The women at Tarrengower who were able to access the reintegration leave program were less favourably treated as a result of the temporary cessation and new restrictions of the program. Many long-term women prisoners at Tarrengower went outside for weekly community work permits. With a prison population of 50, the 160 permits for unpaid community work and 2019 movements out of the prison for community assistance that year were significantly reduced under the new 'last 12 months' criteria.

These changes have an enormous impact on women's rehabilitation and reintegration and are completely antithetical to a commitment to reintegration. 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 and for which women prisoners are disproportionately affected.

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.

The bus service in 2002 was abandoned after the trial because it was not used frequently enough to warrant the expenditure. We submit that this disuse was a result of the fact that after 6 years of operation most families had found alternative routes to the prison, and that the bus service was poorly publicised. When the women's prison was first opened and privately operated, there was no contractual obligation to provide public transport, unlike the

contract for the Port Philip Prison where this was a requirement. The situation has not changed since the government took over operations in 2000.

The closest method of public transport leaves a three-kilometre walk along a road with no footpath, used constantly by large quarry trucks. After 8 years of operation and only with the development of a new men's prison behind the DPFC, there are promises that a bus service will be commissioned to include drop off at the women's prison.

Programs

The provision of programs at women's prisons is the source of much frustration for women prisoners. On the one hand, women must participate in either education, employment or other programs in order to be paid a wage, and on the other hand, very few programs or education and employment options exist. Women are confined to mundane labour such as assembling furniture or cleaning various parts of the prison, or educational programs that do not in fact address their needs.

In order to discuss the issue of program provision in prison, this section will first look at education, followed by employment and then other programs.

Education: Educational provision to all prisons in Victoria is outsourced to TAFE institutions. While male prisoners do not receive a satisfactory education program, they are offered more quantity, quality, variety and relevant courses than those offered to women prisoners. Women therefore experience less favourable treatment when it comes to accessing education, simply because they are women.

The outsourcing of education means that education is translated into unit-costs rather than viewed as contributing to any individuals overall skill base. 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. Education at the women's prison is still funded as though only 125 women lived at the DPFC.

Women are generally offered the same educational courses as men on the basis that women's exposure to traditionally male professions is a progressive step for prisons to take. It is more likely that because women constitute 6% of the total prison population, the TAFE service has simply been extended to them, rather than the prison taking a progressive stance on women's education. This is supported by the fact that educational programs in traditionally female professions have not been extended to men's prisons.

The overall philosophy of education provision is to enhance prisoners' vocational success upon release. Education programs are supposed to gear prisoners toward employment opportunities in industries that ignore criminal histories, or don't make value judgements based on these. In the context that

traditionally male professions are taught in prisons, like woodwork, horticulture and furniture assembly, the likelihood that women would gain employment in these industries is minimal. We also know anecdotally that many women involved in horticulture or woodwork participated in them simply to overcome boredom, but had no interest or intention of pursuing this work once released into the community.

A factor of the stretched education resources is that education staff at both the DPFC and Tarrengower are being asked to prioritise the most 'needy' prisoners for available spaces in education courses rather than offering education to everyone. It is unclear how 'needy' is being assessed but in practice what it means is that people with a higher level of education are being turned away, and those with limited or no education are able to access literacy and numeracy courses but nothing of greater substance.

Returning to the idea that education in prison is primarily about preparing prisoners for post-release employment, some of the problems encountered by this priority method of education provision is that some people may no longer be employable in their trained profession. Nursing, teaching and finance professions for example require criminal history checks, and so any prisoner trained in these professions won't meet the priority test, but also won't be prepared for post-release employment.

The information below catalogues the education programs offered to people in prison

Prison	Courses Offered
Dame Phyllis Frost Centre	<ul style="list-style-type: none"> • Asset Management (cleaning) • Woodwork • Computers • Horticulture • Indigenous Studies • English as a Second Language • Literacy and Numeracy
Port Philip Prison (private)	<ul style="list-style-type: none"> • English • Maths • ESL • Computers • Ceramics • Art • Food handling and cooking • Koorie education and art (although no actual teacher at the moment) • Occupational Health and Safety • Asset Management (cleaning) • Laundry • Textiles
Bendigo	<ul style="list-style-type: none"> • IT Certificates 1 and 2 • Drug and Alcohol Therapy • Literacy and Numeracy • Automotive Certificate 1

	<ul style="list-style-type: none"> • Asset Management (cleaning) Certificate 2 • Sports Administration • Hospitality Certificate 2 • Art • Music • Welding • Parenting • Responsible Serving of Alcohol • Forklift licence
Barwon	<ul style="list-style-type: none"> • Art • Asset Maintenance • Computers • Creative Writing • Electricity and electrician • Engineering • English • First Aid • Fitness • Forklift licence • Horticulture • Hospitality • Koori studies • Maths • Occupational Health and Safety • Philosophy • Psychology • Small business • Welding • All certificate courses
Beechworth	<ul style="list-style-type: none"> • Horticulture • Furnishings • Small Motors • Welding • Hospitality • Small Business • Information Technology • General Education
Dhurringile	<ul style="list-style-type: none"> • Reading, writing, maths • Learner driver • Spoken and written English • Information Technology, beginners to advanced • Horticulture • Welding • Hospitality Certificate I and II • Cooking for Fun and Health • Woodwork • Forklift • Tractor Operation • Dairyshed hand • Chemicals

	<ul style="list-style-type: none"> • Pruning
Fulham Correctional Centre (private)	<ul style="list-style-type: none"> • Automotive • Bar Attendants/Responsible serving of alcohol • Cleaning-Commercial • Computers • Kitchen Operations • Sport and Recreation/Fitness Instructor • Small Business Management • Food Hygiene • English as a Second Language • Reading/Writing/English • Maths • Engineering/Welding • Forklift Operation (prisoner must pay for actual licence) • Elevated Work Platform (cost of training is not funded by TAFE) • Furniture Making • Horticulture/Outdoor Works • Warehousing and Packaging
Langi Kal Kal	<ul style="list-style-type: none"> • Ceramics • Information Technology • Certificate of general Education • Hospitality • Small engines • Wood craft
Tarregower	<ul style="list-style-type: none"> • Office Admin • General Education • Computers • Carpentry • Horticulture
Won Wron	<ul style="list-style-type: none"> • Computers • English • Maths • Public Speaking • Chainsaw • Horticulture • Hospitality • Responsible Serving of Alcohol • Food Safety Supervisor • Forklift licence • Scaffolding
Ararat	<ul style="list-style-type: none"> • Info Technology – 58 networked computers available • Hospitality Certificate I • Horticulture Certificate IV • Certificate for General Education Adults • Victorian Certificate of Applied Learning • Ceramics Certificate IV

Employment: Like education, women are offered very few employment opportunities in prison and few if any of these are meaningful. Like education, the underlying principle of employment within prison is to equip prisoners with transferable vocational skills. Corrections Victoria policy stipulates that prison employment is not about prison maintenance. In reality, there is very little diversity in the paid work that is available, so women are in fact, employed to clean the prison and do the gardening.

The table below catalogues the employment opportunities available in prisons.

Prison	Employment Description
Dame Phyllis Frost Centre	<ul style="list-style-type: none"> • Wooden products • Horticulture • Kitchen • Laundry • Gardens • Community Work – poppies • Billets (cleaning)
Tarrengower	<ul style="list-style-type: none"> • Community work • Tree Propagation • Farm Maintenance
Ararat	<ul style="list-style-type: none"> • Metal Fabrication • Silk Screen • Billets • Wooden Products • Kitchen • Number Plates • Landmate: Bushgang • Horticulture • Laundry/Maintenance
Beechworth	<ul style="list-style-type: none"> • Wooden products • Agriculture/landmate • Garden/Community • Kitchen • Billet
Bendigo	<ul style="list-style-type: none"> • Kitchen • Maintenance • Bosch • Cleaning • Gardening
Dhurringile	<ul style="list-style-type: none"> • Wooden Products • Agriculture • Dairy • Farm Maintenance • Mansion Maintenance • Landmate • Kitchen • Community Gang
Fulham Correctional Centre	<ul style="list-style-type: none"> • Wooden Products • Textiles

	<ul style="list-style-type: none"> • Engineering • Community Work and Landscaping • Pallets/Crates
Langi Kal Kal	<ul style="list-style-type: none"> • Wooden Products • Textiles • Farm • Maintenance • Kitchen • Landmate: Bush gang • Billets/Laundry • Metal Fabrication
Loddon	<ul style="list-style-type: none"> • Metal Fabrication • Metal Assembly • Bosch • Upholstery • Woodwork • Kitchen/Laundry • Garden • Landmate • Community
Port Philip Prison	<ul style="list-style-type: none"> • Kitchen • Ground Maintenance • Cleaning/Peer Educators/Stabilisers/Barbers • Building Maintenance • Laundry – Institutional • Recreation – Library Clerks • Factory 1 – PPLS AM Shift • Factory 1 – PPLS PM Shift • Factory 2 G4 Textiles AM Shift • Factory 3 G\$ Textiles PM Shift • Factory 3 Assembly and Packaging AM Shift • Charlotte workroom • Marlborough workroom • Sirius West Workroom • Sirius East Workroom
Won Wron	<ul style="list-style-type: none"> • Forestry • Vegetable production • Community gang • Kitchen • Maintenance • Raptor release program • Wooden products

The biggest industry in the women's prison is the production of wooden furniture and by far the greater majority of women are confined to this sort of employment. With regard to the principle that prison work is intended to equip women with vocational skills, it is unlikely that women would be employed in wood-work factories.

Other Programs:

Family Reunification Program

A family re-unification program, which used to provide advocacy, has been de-funded and is no longer operating. The program (which used to be provided by Good Beginnings), has since been closed at the DPFC, while parenting and family reunification programs have been maintained at the men's prisons. This is clearly discriminatory. Women are more often the primary caregivers for their children and are therefore in more need of a specific family program such as this one. Women are more likely to be responsible for the provision of care for their children, or be held responsible for it. It is more often women than men who have to negotiate with extended family, Department of Human Services, child protection and the family courts about their children's wellbeing. It is critical that women are supported specifically in assisted access to their children whilst they are in custody. Women may receive some support from the community sector around returning to their communities after a period of incarceration.

Other programs available to prisoners including housing and post release programs and the drug unit program are provided by Caraniche.

Race and Ethnicity (Indigenous Australian women):

Statistical Overview

- The 2001 census indicates that Indigenous Australian women constitute 0.5% of the Victorian population of women. However, Indigenous Australian women constituted 8.9% of the prison population at the DPFC in the month of September 2004.¹⁹
- In the month of September 2004 Indigenous Australian women were four times more likely to go to a maximum-security prison than female non-Indigenous Australian prisoners.²⁰
- In September 2004, Indigenous Australian women were over-represented at Thomas Embling Hospital, constituting 20% of patients transferred from DPFC to Thomas Embling Hospital.²¹
- Nationally, the rate of imprisonment for Indigenous Australian women nearly doubled between 1991 and 1999 from 104 to 207 per 100,000 people.²²
- Nationally, the number of Indigenous Australian female prisoners increased by 262% between 1991 and 1999 and in contrast the number of non-Indigenous Australian prisoners increased by 185%.²³

¹⁹ Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Social Justice Report 2001' (2001) <http://www.hreoc.gov.au/social_justice/sjreport_01/chapter1.html#ten>.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

- Indigenous Australian women re-offend at a rate of 71%, compared to a rate of 61% for non-Indigenous Australian women.²⁴

Racism

Indigenous Australian women experience discrimination as a result of the intersections of gender and race. Like other women within the prison system, Indigenous Australian women are subjected to a male centric prison model geared towards the needs of men who make up the majority of the prison population. Race is an additional layer of discrimination that Indigenous Australian women experience. Women advise us that some prison officers incite racism towards Indigenous Australian women by claiming that Indigenous Australian women get preferential treatment and (non-existent) advantages.

To date, we have been unable to obtain information relating to prison staff training despite attempts under Freedom of Information avenues. Consequently, we don't have official information as to the level of training provided to staff regarding awareness of Indigenous Australian cultural specificities. Indigenous Australian prisoners consistently report to us instances of racism (in the form of verbal abuse or arbitrary write-ups for breaches of conduct rules) by prison officers.

An anonymous staff member at the DPFC reported to us that an Indigenous Australian prisoner from the Northern Territory was discriminated against by a prison officer because her skin was a different colour to other Indigenous Australian prisoners. The incident went through the General Manager of the prison and mediation occurred.

If staff do not receive training around cultural awareness, the logical conclusion is that Indigenous Australian women experience less-favourable treatment as a result of systemic operational factors of the prison system.

Health

Indigenous Australian women's experience of dispossession and history of racism and disadvantage is not the same as Indigenous Australian men's experience and so the status of their health, and their consequent health needs are different. Indigenous Australian women are sicker than non-Indigenous Australian women with higher rates of mental illness, drug and alcohol use, hepatitis and asthma. These differences necessitate distinctly gendered as well as culturally appropriate health responses, none of which are adequately provided. For example, there is only a Koorie nurse (Indigenous Australian person) and counsellor (non-Indigenous Australian person), who are not available full time. There is need for more Indigenous Australian medical staff and specific medical responses to Indigenous Australian prisoners.

²⁴ Ibid.

The Victorian Prisoner Health Study in 2003 found that non-Indigenous Australian women were more likely to have been told they have a mental illness than Indigenous Australian women.²⁵ We submit that the figures in the Health Study are not representative of the prevalence of mental illness among Indigenous Australians in the prison system because not all mental illness is diagnosed. The under-diagnosis of mental health issues for Indigenous Australians plays a big part in difficulties that Indigenous Australian prisoners face.

Our involvement with Indigenous Australian women in prison would indicate that often mental health issues are responded to punitively. Lashing out at prison officers, aggressive behaviour, verbal abuse and non-compliance with prison rules or direct orders, often result in breaches of prison rules. A 'smart' approach to prisoner behaviour is better than a 'tough' or punitive approach. Where the prisoner involved has a known mental health issue, it would be worth discovering whether this status bears on the presented behaviour. We submit that it does and so warrants a culturally specific response, the absence of which leads to the over-representation of Indigenous Australian women in the management unit.

The failure to diagnose mental health issues according to the findings of the RCIADIC 1991 leads to the control of Indigenous Australians with mental health issues by chemically subduing them or isolating them in Muirhead cells. These issues will be discussed further under discipline in this section.

Classification

In addition to the points raised under gender discrimination in relation to the classification system, the following points impact on the lives of Indigenous Australian women in the prison system.

All prisoners on remand are automatically given maximum security status according to the current method of classifying prisoners. Indigenous Australian women are more likely to be on remand than non-Indigenous Australian women. In September 2003 Indigenous Australian prisoners (men and women) were more likely to be on remand (22%) than non-Indigenous Australian prisoners (19%).²⁶ A reason for this is arguably because Indigenous Australian women appearing before the Magistrates Courts are often homeless and the granting of bail is less likely to be considered appropriate. The mere fact that Indigenous Australian women are more likely to be on remand means that they, as a group, experience less-favourable treatment because of the structure of the classification system.

The very system of classifying all remand prisoners as maximum security, irrespective of any individual features of that prisoner means that Indigenous Australian women experience less favourable treatment because they are more likely to be homeless, a feature of systemic racism.

²⁵ *Victorian Prisoner Health Survey*, above n 3.

²⁶ Pollard and Thomas, above n 14.

As described in the gender-classification section, in order to access as many services catered to the needs of Indigenous Australian women as possible, Indigenous Australian women are more likely to be accommodated at the Dame Phyllis Frost Centre where those services are concentrated.

Indigenous Australian women are then either more likely to receive a higher classification than they would if services were provided at Tarrengower, or, are more likely to be accommodated in a prison inappropriate to their classification.

While we are prepared to consider that it is not the intention of the classification rating system, in practice, what it does is convert 'Aboriginality' into a 'risk factor', and hence attributes a higher classification for Indigenous Australian women.

Discipline

Women are sent to the management unit for a host of reasons ranging from serious violent offences, to minor breaches of conduct, such as not complying with a prison officer's order. Our experience is that prison officers respond differently to offensive language resulting in inconsistent punishment – that is, one prisoner may be segregated for telling a prison officer to 'fuck off', while another may not, depending on who that prison officer is.

It could be that prejudices harboured by individual officers mean that Indigenous Australian women are disproportionately sent to the management unit. Again, culturally specific training for prison officers may go a long way in reducing this less favourable treatment experienced by Indigenous Australian women, but we do not know one way or another whether such training is provided, nor of its quality if it is.

This issue of arbitrary discipline also bears upon the classification system discussed above. The Classification Manual has provisions and guidance on how a prisoner may reduce her classification. More often than not, this reduction in classification is determined in part by members of the Sentence Management Unit of Corrections Victoria, and the management of the prison at which the woman resides. What is needed is compliance with the sentence management plan and obedience within the prison. The cumulative effect of disobedience as perceived by individual prison officers ultimately hinders prisoners progress through the classification scale to the appropriate classification.

Strip Searches

As discussed previously, strip searches are often traumatic for women because they are in essence, an act of sexual violence. For Indigenous Australian women, who report a higher rate of previous experience of sexual assault, this trauma is compounded. Not only do Indigenous Australian women experience sexual violence within their communities, but also their

collective memory of rape as a tool of cultural dispossession means that sexual violence is also a practice of racism.

At this stage, there are no identifying Indigenous Australian prison officers at either the DPFC or Tarrengower. The greater majority of prison officers at the women's prisons are white skinned (irrespective of cultural or linguistic background). A strip search by the State, where the officers are white, is experienced in more complex ways by Indigenous Australian women than can be articulated here. For this reason, strip searches have a disproportionately negative impact on Indigenous Australian women.

Release from Prison Programs

The CCP program is currently only available to prisoners serving a sentence of 3 years or more. The majority of Indigenous Australian women are serving sentences below 12 months and are consequently, almost by definition, ineligible for the CCP program.

Of the Indigenous Australian women who may be eligible, we have heard anecdotally that very few even know about the program.

Recidivism rates are higher for people on shorter sentences because the crimes committed are usually poverty or drug related. These two factors combined lead to unstable and transient lifestyles making crime, imprisonment and homelessness a continuous cycle.

Indigenous Australian women in these positions then require much more support and preparation for release and their ineligibility for the CCP program on the basis of short sentences would be less favourable treatment as a product of systemic poverty and homelessness.

Programs

There are very few Koorie-specific programs for Indigenous Australian women in prison. A pilot cultural immersion program has recently started. Women believe the pilot was started because there is currently a Review of the Implementation of RCIADIC recommendations in Victoria. At the DPFC there is a very limited Koorie specific education program, provided through Kangan Batman Tafe Koorie Program Unit – Learning Pathways Program, involving a Koorie Liaison Officer, but this limits Indigenous Australian women to the curriculum of this specific institution.

As discussed under CCP program in this section, because of the nature of Indigenous Australian women's offending, cultural specific post release programs need to be developed for Indigenous Australian women.

To date, all of the post release programs such as housing, employment and education, are assumed to be appropriate for Indigenous Australian women, including those outsourced to community groups. We have found that in our

own service delivery while working with Indigenous Australian women at post release stage that cultural factors need to be considered. More often than not, we have had little success in providing support because women simply disengage with us. It is unfortunate that in many of these instances, our clients end up back in prison.

Because the predominant model of post release programs caters to the needs of non-Indigenous Australian women, Indigenous Australian women are ultimately treated less favourably, with less favourable outcomes.

Race and Ethnicity (CALD women):

Statistical Overview

The most recent Statistical Profile of the Victorian Prison System as produced by the Office of the Commissioner of Correctional Services provides statistics for the period between 1995 and 2001. At June 2001 female prisoners of non-English speaking background comprised 12.1% of the female prison population. Female prisoners born outside Australia comprised 17.8% of the female prison population at that time.

The proportion of CALD women prisoners has increased since these figures were released. While precise figures are not available, prison management at the DPFC have indicated that at present there are between 30 and 35 Vietnamese prisoners. We have also been advised that there are approximately 5-6 Vietnamese prisoners at Tarrengower. We have not been able to obtain figures relating to women prisoners of other CALD backgrounds, however the current number of Vietnamese prisoners alone represents an increase in the percentage of CALD women in prison.

Racism

Corrections Victoria have been unwilling to release information relating to the training received by prison staff, even where requested under Freedom of Information legislation. We therefore have no official information on whether prison staff receives specific training around issues of cultural, racial and religious diversity. Prior to conducting their health education workshops at the women's prisons, Working Women's Health conducted cross-cultural training with prison staff.²⁷ Working Women's Health appeared to meet resistance to participation in this training from staff and management at the DPFC. This was reinforced by 'comments made by trainees during the [training] session that indicated there existed among some of the custodial staff, a lack of respect for cultural diversity, along with a general feeling that cross-cultural training was a waste of time.'

In the course of this training, staff made it known that there was no express prison policy addressing these issues in terms of the conduct of prison staff members. Prison culture does not support or encourage awareness of the issues facing CALD women among prison staff. Furthermore, the prison does nothing to ensure that CALD women do not suffer racism from prison staff. Consequently, CALD women report that prison staff members often make explicitly racist comments and exhibit racist attitudes. Working Women's Health reports, 'We encountered pervasive and intractable racism among some of the prison staff that we were certain would adversely impact on immigrant women during their stay in prison.'²⁸

²⁷ Adele Murdolo, *Project Report – Multilingual Health Education with Immigrant Women in Victorian Women's Prisons 2002-2004* (October 2004).

²⁸ Victorian Prisoner Health Study, above n 3.

It is a common Islamic custom for women to remove all of their body hair. One Islamic woman being strip searched was displayed to a number of prison officers by the officers conducting the search to show that her pubic region was clean shaven. This is not only an act of diminishment, it is also in contravention of the strip searching procedures and guidelines across all prisons.

In this regard, the prison's failure to take reasonable precautions to prevent racism by prison staff may also be in contravention of the prohibition against racial and religious vilification contained in the *Racial and Religious Tolerance Act (Vic) 2001*.²⁹

Via the education programs (as discussed above) and in a more general sense, the prison itself exhibits racist treatment of CALD women.

One African woman was immediately admitted to the Protection Unit upon reception. She was not told why she was in Protection and her Muslim support worker was also unable to find out why the woman required protection. The woman was ultimately told that she was in the Protection Unit because prison management had been unsure how the general prison population would respond to an African prisoner and they were not sure where to house her.

Anecdotal evidence suggests that racism is common in prison and that fellow prisoners themselves are often the perpetrators.

Workers involved in the health education sessions with women prisoners reported that when they had sessions specifically targeted at CALD women, women did not want to attend because they did not wish to identify as being from a CALD background. CALD women who did attend spoke about being isolated and about not having anyone to talk to about troubling issues. Women described being told to 'shut up' on the occasions that they did choose to speak about their problems. This raises serious issues relating to the capacity of the prison to monitor the psychological well being of CALD prisoners. Racism between prisoners exacerbates the isolation felt by CALD prisoners. One Vietnamese prisoner described how she was not really getting along very well with the other Vietnamese prisoners and because of racism she was also ostracised by most of the other prisoners. As a result this prisoner felt completely isolated and alone.

A worker from the Muslim Women's Group who regularly attends the DPFC reported that she knew of approximately 10 women who are Islamic but the majority of them do not identify as Muslim within the prison for fear of being discriminated against. Many say they are vegetarian so as to maintain a halal diet without arousing suspicion. This worker described her work with a young prisoner who wanted to return to the Islamic faith. This woman was regularly harassed by other prisoners and even beaten when she tried to pray and it is reported that prison officers turned a blind eye to this harassment. It is

²⁹ Ss 7, 8 and 17, *Racial and Religious Tolerance Act 2001*.

reported that CALD women do not report racial and religious vilification to prison officers because officers regularly ignore such reports. Frequently officers witness such incidents and do nothing in response.

One young woman was told by prison officers and other prisoners that when released she should go back to 'her country'.

A culture of racism is clearly allowed to perpetuate in prison and the prison itself does nothing to remedy the situation. Racist treatment experienced by CALD women in prison is a form of direct discrimination. Due to racism perpetrated, condoned or tolerated by prison staff and management, CALD women are treated less favourably than other prisoners because of attributes of race and/or religious belief.

Religion

The religious life of prisoners is monitored through the Chaplaincy Coordinator. The prison chaplain currently provides religious guidance in the Anglican, Catholic, Salvation Army and Uniting Church denominations. Representatives from each of these denominations attend the DPFC approximately twice a week. We have been told that prisoners of other religions could arrange for someone to come in to provide spiritual guidance but this would have to be specially organised through the Chaplaincy Coordinator. Recently, because of the increased number of Vietnamese prisoners, a Buddhist monk has commenced visits to both women's prisons. These visits are relatively infrequent, as compared with the religious services offered to followers of Christian religions and fewer visits are conducted at Tarrengower as compared to the metropolitan prison. Women of other religions are still not provided with regular religious visitors except where the prisoners arrange for this to take place themselves, through their caseworkers for example. By providing more religious services to women of certain religions, the prison directly discriminates against women who are of other religions. This is a case of direct discrimination on the basis of religious belief and activity.

We have been working with a woman of Anglo-Australian background who converted to Buddhism. She requested to see a Buddhist Chaplain and was referred to the Vietnamese-speaking Buddhist monk who predominantly works with Vietnamese Buddhists. The prison was reluctant to provide or seek the services of an English-speaking Buddhist monk because they felt that that need had been met. This highlights the lack of cultural and religious awareness of the prison.

The Christian feast days of Christmas and Easter are routinely celebrated at the prisons. The Chaplaincy Coordinator's office tries to facilitate the celebration of CALD women's religious festivals and special occasions. This is impeded by restrictions prison authorities place on what may be brought into the prison. For festivals such as the Tet Festival or the Moon Festival, Vietnamese women, in collaboration with the Chaplaincy team compile a list of what is required for their celebrations. This list must then be taken to prison

management for approval. It is reported that prison management routinely only allow a handful of items from any list and that which items are permitted is determined relatively arbitrarily.

Security concerns were raised in relation to a Turkish prisoner who, for religious reasons, wore a head scarf. These concerns were only allayed after the prisoner consented to being searched under the scarf after visits.

Interpreters and Translations

The prison's failure to provide interpreters and translations in all situations where they are required by CALD prisoners is a clear case of indirect discrimination. The operational practices of the prison require that prisoners speak English or are based on the presumption that prisoners speak English. This is a condition which CALD women, because of the attribute of race, often do not and cannot comply with. As a result, they experience prison life in a substantially different way to women prisoners who are able to speak English, and consistently this is to their detriment.

Prison management has advised us that the prison orientation materials have recently been translated into Vietnamese. While this is obviously a small step in the right direction, translations into other languages are still unavailable. Furthermore, there is still a whole range of other documents and sources of information which are not translated at all.

Prison management has advised that communications with the reception unit during orientation may occur in a number of ways. While telephone interpreters are used at times, on many occasions peer workers are relied upon to act as interpreters. In the case of Vietnamese prisoners, they may have to wait for orientation until the fortnightly visit by the Vietnamese interpreter for Review and Assessment Meetings (see below).

After orientation the majority of CALD women's communications and activities are conducted in English. This leads to their isolation and segregation from the prison community in a way that has been described as a 'state of de facto solitary confinement'.³⁰ The isolation of CALD women is exacerbated by the fact that they are often placed in a unit with women who speak English only. In this regard CALD women are deprived of information and socially cut off during their time in prison. This adversely impacts on CALD women's mental health in that they potentially exist in a permanent state of fear, misapprehension and powerlessness.³¹

One CALD woman was accustomed to having dinner quite late. When they received food at 6pm, this woman thought it was a snack and would not eat a large amount of food. Each night she would then wait in vain for dinner. She eventually came to believe that she was being punished or that food denial

³⁰ Kilroy, Debbie, 'The Silenced Few: Non English Speaking Women in Prison', 3 *Women in Action* (2003) 1.

³¹ Murdolo, Adele, 'We are prisoners but we are human: Health Issues for Victorian Immigrant Women after Prison', presented by Adele Murdolo at the *Beyond the Barriers Forum* (16 July 2004) 4.

was just one aspect of imprisonment. This continued for approximately three weeks before she was finally told about meal times. This situation would have been avoided were information provided in a relevant language at the outset or had this woman been able to make enquiries after the commencement of her imprisonment.

Signage around the prison is in English only. The prison is only just procuring a Vietnamese translation of the fire orders but this is the only translation they will be obtaining. All other CALD women do not have written copies of emergency procedures in relevant languages.

The prison operating procedures are only printed in English and the prison does not provide translations for CALD prisoners. We have been told that on occasion a peer worker (a fellow prisoner) may approach prison management regarding a CALD woman who is interested in a particular section of the operating procedures. In such cases, management would make a copy of the procedures available to the peer worker, who would then be relied upon to translate the document for the interested prisoner. In such cases the CALD woman would only be provided with an unofficial, oral translation. No official translation is provided in such cases. Furthermore, women are not provided with a written document that they can refer to for information at a later stage.

The prison operating procedures manual is a key document for all prisoners. It outlines all of the rules and regulations relevant to prison life. Without access to this document in a language that they understand, CALD prisoners are more likely to unwittingly break prison rules and thereby find themselves liable to prison disciplinary measures. CALD women are generally unaware of their rights and obligations.

At the DPFC, prison management advises that a Vietnamese interpreter attends the prison fortnightly for Review and Assessment Committee meetings. Other CALD women do not have interpreters attending the prison on a regular basis for these meetings. On site interpreters are not available for other interactions with prison authorities.

Frequently prisons rely on other prisoners to act as interpreters and translators. For example, at Tarrengower there have been attempts to translate prison documents. This was done, however, by using peer group workers as translators rather than professional translating services. This is by no means a satisfactory method of communication with prisoners and does not meet the standards set out in the Victorian Government Policy and Procedures Manual on the use of translating and interpreter services. This policy recognises that '[u]naccrued friends or family members may not be competent, may be emotionally involved, may lack impartiality and are not bound by the same standards of conduct as qualified interpreters and translators'.³²

³² Victorian Office of Multicultural Affairs, *Improving the Use of Translating and Interpreting Service: A Guide to Victorian Government Policy and Procedures*.

The Victorian Government policy further states that ‘the Government is committed to providing accessible services to all Victorians’ and that as part of this ‘clients not able to communicate through written or spoken English should have access to professional interpreting and translating services when required to make significant decisions concerning their lives or where essential information needs to be communicated to inform decision making.’³³ In clear breach of this policy, on one occasion a CALD woman was not provided with an interpreter for a meeting regarding her release plan. As a result, the woman did not understand the release phases and they were not carried out properly.

The practice of using other prisoners as interpreters may also put a strain on the relationships between CALD prisoners. One prisoner commented, ‘[s]ome women from my group are upset with me because I ask them to translate for me when I want to talk to the prison supervisor. Their English is much better than mine.’³⁴

Health

Over the last two years Working Women’s Health has conducted a series of health education sessions at the DPFC and Tarrengower prison. A total of 124 sessions were conducted with women from 14 cultural backgrounds in 7 languages other than English.³⁵ Working Women’s Health report that the women they worked with were ‘acutely affected by the lack of culturally and linguistically appropriate services within the prison’.³⁶

CALD women reported a number of problems they had experienced in accessing health and medical services. CALD women routinely have no access to interpreters for medical appointments. One woman noted in health education sessions, ‘I know I have to see a doctor, but I don’t know English – How do I tell a doctor about all the symptoms.’³⁷ Prison management report that it is generally at the discretion of the medical worker to determine if an interpreter is required, however, in theory CALD women are permitted to request an on site interpreter for medical appointments. In practice, given that prisoners generally find it difficult to get medical appointments when they are required (refer to section on Health and Medical), CALD women generally accept any medical appointment they manage to get, with or without an interpreter. This is a discriminatory practice and it also poses a grave medical risk for CALD women. For example, this may result in misdiagnosis of medical problems or failure to diagnose health problems in a timely manner, if they are detected at all. More specifically, there have been incidents, reported anecdotally of CALD women not receiving fasting instructions in a language they understand prior to going into surgery.

Other problems identified by CALD women included:

³³ Ibid.

³⁴ Murdolo, above n 31, 5.

³⁵ Ibid, 7.

³⁶ Ibid, 4.

³⁷ Ibid, 4.

- A lack of women's health information in languages other than English;
- Discomfort with male gynaecologists and medical students;
- Racial discrimination;
- Inability to access a female doctor and so often they do not attend seek medical appointments even where required.³⁸

Women made comments such as:

- 'I know I have to see a doctor, but I don't know English. How do I tell a doctor about all the symptoms?';
- 'I was not asked if I minded medical students being there...I was afraid that if I objected to the students being there I would have to wait weeks for another appointment.'³⁹

We note that the prison did not provide interpreters for these Health Education Sessions, although fortunately Working Women's Health was able to offer bilingual workers to run the training sessions.

As with all prisoners, the mental health and psychological wellbeing of a prisoner is largely monitored by general prison staff. Prison management has told us that they rely on a series of safety nets for this purpose. That is, they are hopeful that any health issues will be picked up by custodial officers, nurses, doctors, or someone else along the way. For CALD women this is a particularly risky practice, given difficulties in communication with prison staff and other prisoners and given that they do not often have access to interpreters. Furthermore, as discussed below, many CALD women do not feel comfortable raising or discussing problems because of racism and unsympathetic attitudes of prison staff and other prisoners towards them. This means that mental health issues are far less likely to be detected among CALD women.

By failing to provide culturally and linguistically appropriate medical and health services for CALD women the prison indirectly discriminates against them. With respect to CALD women, the prison's current practices around health and medical services are in all relevant circumstances unreasonable and ineffective in meeting their health and medical needs. CALD women are often unable to access adequate medical and health services because of racial attributes, for example, an inability to speak English. This has the very serious consequence of placing the health and well-being of CALD women at an unacceptable risk.

³⁸ Ibid, 5.

³⁹ Ibid, 5.

Release from Prison Programs

The general difficulties CALD women have in accessing information in prison specifically impede their ability to access CCP programs. Frequently CALD women are not aware that day release is available or if they are aware of the program, they do not know how to obtain a CCP. The prison's practice of providing information on CCP programs in English only indirectly discriminates against women who do not speak English.

Programs

As described in the section on education, Kangan Batman TAFE are contracted to provide education services to women at the DPFC.

At the DPFC the TAFE is funded to deliver approximately 44,000 education contact hours. This is based on figures of 110 women at 8 hours a week over 50 weeks. There are now over 200 women in that prison and yet the funding for education has not increased. As a result of this lack of funds, one of the key recommendations of the Education Implementation Group was that enrolment be assessed on a needs rather than wants basis. This particularly disadvantages CALD women because ultimately their needs are assessed in a racist fashion. A Muslim Women's Worker reports that one young woman with poor English was not permitted to participate in education programs and was only given the option of doing the assets maintenance (cleaning) course. Vietnamese women have been denied participation in Information Technology programs but were permitted to participate in horticulture where they worked on an Asian garden.

As part of the contract for delivery of education services in the prison, the TAFE must comply with mandated service delivery outcomes. These outcomes are based on a comparison of enrolments versus completions. As a result, a prisoner will not be enrolled in a program if they are unlikely to complete it in the recommended period. CALD women will therefore not be enrolled in courses such as Maths and Literacy or Information Technology. We have been told that CALD women will only be allowed to undertake courses involving 'work with the hands' such as Woodwork, Horticulture and, most commonly, Assets Maintenance (Cleaning). We were specifically told that Vietnamese women in the prison were not permitted to enrol in the Information Technology program. They would only be able to use the computers in their own time and only providing no one else was using them.

In these ways, CALD women are directly discriminated against. In terms of education and programs, the prison treats women who do not speak English less favourably than it treats women without that attribute.

CALD women are not able to participate in many of the subjects offered because of the prison's failure to use interpreters in education. Lack of interpreters has also lead to deterioration in literacy programs. Vietnamese women at Tarrengower have had difficulty getting interpreters to attend the prison for study sessions. This is reportedly because of a lack of available

funds in the education budget. As a result these study groups have stopped altogether.

The prison's failure to provide interpreters for the purposes of education is a form of indirect discrimination. The prison effectively makes an ability to speak English a condition of effective participation in educational programs. This is a condition many CALD women cannot comply with because of the attribute of race.

Food

CALD women participating in the Women's Health West education sessions reported that the poor provision for their specific dietary customs was impacting adversely on their health.⁴⁰ While meats, commonly available vegetables and other foods that typically make up an Anglo-Australian diet are freely available, CALD women have to specially purchase culturally relevant food. While the average prison income is around \$4-5 a day, CALD women are generally not in a position to afford food that they are accustomed to. Where women refuse or are unable to eat foods that are outside of their culture, they are less likely to maintain nutritious diets as compared with other prisoners. This may in turn have medical and health consequences.

Given the significant number of Vietnamese women imprisoned at the DPFC, prison management tell us that they have met with Vietnamese prisoners to discuss dietary matters. Nonetheless, Vietnamese foods and ingredients are still only available for purchase from the prison canteen.

As noted above, CALD women are often in units with women who are not from the same background as them. With regards to cottage units there is a communal allocation of money which the unit then collectively spends on cooking ingredients and other foods. CALD women in this kind of accommodation may have difficulties controlling the food that they eat, obtaining culturally relevant foods and maintaining nutritious diets.

For many CALD women in prison, a variety of culturally relevant foods are simply not available. By its practice of freely providing only those foods typical of an Anglo-Australian diet, the prison indirectly discriminates against CALD women who for reasons of race and religion are not able or willing to eat those foods.

Cognitive Impairment:

Statistical Overview

An understanding of intellectual disability within the criminal justice system has been largely confined to the issue of over-representation, with the exception of NSW's *Report 80 (1996) - People with an Intellectual Disability and the Criminal Justice System*. The Australian Bureau of Statistics'

⁴⁰ Ibid, 5.

publications on prisons, like the *Annual Prisoners in Australia* and the quarterly *Corrective Services Australia*, do not include statistics on prisoners with disabilities.⁴¹ Corrections Victoria and Disability Services within the Department of Human Services also do not formally document the incidence and management of disability in Victorian prisons.

As a result of this dearth of statistical information directly relating to women with disabilities in prison, this section attempts to use general data pertaining to people with disabilities to extrapolate that to its manifestation in the prison environment.

Some information on women with disabilities, generally:

- Women with disabilities are more likely to need some form of assistance than men with disabilities. This is true across most impairment groups;⁴²
- Women with disabilities are more likely to be institutionalised than their male counterparts;
- Women with disabilities are more likely than their male counterparts to be forced to live in situations in which they are vulnerable to violence.

Women in prison who have intellectual disability, even more so than the mainstream prison population⁴³ experience:

- Very poor employment opportunities;
- Very poor educational outcomes;
- Childhood institutionalisation;
- Disrupted or disturbed family backgrounds;
- Frequent contact with psychiatric services;
- Alcoholism and/or drug addiction;
- Poor social skills;
- Will have been convicted of either a relatively minor crime or a major violent crime (with few in the middle range such as fraud and drug dealing that require planning ability);
- Increased susceptibility to sexual opportunism;
- Increased susceptibility to outside influences including criminal relationships.

Intellectual Disabilities in Custodial Settings

In the absence of Victorian data NSW research may reveal some relevant information. NSW studies show that more than one third (36%) of the people appearing before the lower courts in NSW were intellectually disabled on the

⁴¹ It appears that work is currently under way in the ABS to research, develop and test the feasibility of including a disability question(s) in the 2006 Census. The ABS attempted, without success, to include a disability question on the previous census.

⁴² ABS 4433.0 Disability and Disabling Conditions, Australian Bureau of Statistics Welfare and Social Services Publication.

⁴³ Jim Simpson, Meredith Martin, Jenny Green for New South Wales Council on Intellectual Disability, *The Framework Report: Appropriate Community Services in New South Wales for Offenders with Intellectual Disabilities and Those at Risk of Offending* (2001).

basis of a brief intelligence test. A further 20% were of borderline intellectual ability. The conclusion reached was that more than half the people interviewed would have had serious difficulties in understanding court procedures. People with an intellectual disability make up 12-13% of the prison population in NSW.⁴⁴

Intellectual disability (ID) in Victorian prisons is recognised in two ways; the person is already registered with the Department of Human Services (DHS) as having an intellectual disability or being developmentally delayed; or at some point in the person's engagement with the system they are suspected of having an intellectual disability whereupon DHS is contacted and interviews the person to prepare a 'justice plan'.

Each person who has been identified as having an intellectual disability will be assigned a DHS Disability Services caseworker. DHS Disability Services also has a dedicated worker who attends prisons and has an overall responsibility for people with disabilities in prison. The worker is at Port Phillip Prison for three days per week and the other prisons for the rest of the time.

As of July 2004, there are three women at the DPFC with Intellectual Disabilities. There are none at Tarrengower. One of the women is housed in the special needs long term placement section of the Management Unit. The other two are in protection because of the nature of their offences.

As far as we are aware, there is no training provided to prison officers around crucial issues in working with people with intellectual disabilities. On one occasion we attempted to obtain access to prison officer training material but found that these documents were exempt under Freedom of Information legislation.

Definitions of Disability

The definition of disability includes impairment, disability and handicap. Impairment involves damage to, or poor functioning in, any part of the body or mind, such as loss of sight or a limb. Impairment may result from genetic or birth circumstances, disease or injury. Impairments may be categorised as physical, sensory, psychological (or psychiatric) or intellectual. These categories are specifically identified in the *Commonwealth/State Disability Agreement 1991*.

Having an impairment can, but does not necessarily, lead to a disability. A disability occurs when the impairment restricts people from performing their usual activities. For example, incomplete use of arms may make it difficult to get dressed.

A classification of broad impairment types has been developed from the *ABS 1993 Survey of Disability, Ageing and Carers*. These are:

⁴⁴ Ibid.

- physical impairment (involving loss of, or damage to, internal or external parts of the body). This includes incomplete use of limbs, difficulty walking, bending, carrying/gripping or holding things;
- sensory impairment (loss of sight which is not corrected by glasses, or loss of hearing);
- psychological impairment including nervous and emotional conditions (for which people are receiving treatment), blackouts, fits, or mental illnesses which require supervision; and
- intellectual impairments including slowness at learning or understanding things.

The *International Classification of Impairments, Disabilities and Handicaps* (ICIDH) adds the following:

- speech difficulties in one's own language(s);
- disfigurement or deformity;
- head injury, stroke or any other brain damage, producing a long-term effect;
- treatment or medication for a long-term condition or ailment, which is still restricting; and/or any other long-term condition that leads to restrictions.

Vulnerability to Sexual Abuse

Women with disabilities are at a higher risk of sexual assault and abuse than are men with disabilities and women without disabilities.⁴⁵

Regardless of age, race, ethnicity, sexual orientation or class, women with disabilities are assaulted, raped and abused at a rate of at least two times greater than non-disabled women. Statistics indicate that 90% of women with intellectual disabilities have been sexually abused. 68% of women with an intellectual disability will be subjected to sexual abuse before they reach 18.

Prisons offer no extra protection in relation to the risk of sexual opportunism in a cross-gender guarding situation. There is also no additional attention paid to communicating with Women with intellectual disability in relation to complaining if they are sexually assaulted. The system relies upon the ability of women with IDs to disclose sexual assault to friends or family who would then follow through with a complaint. This reliance on external supports is a predisposition to secrecy and shame and no proactive steps are taken to protect Women with intellectual disability given their vulnerability.

⁴⁵ Primarily from New South Wales Law Reform Commission Report 80 *People with an Intellectual Disability and the Criminal Justice System* (1996) -; D Sobsey and T Doe, 'Patterns of Sexual Abuse and Assault, 9(3) *Sexuality and Disability* (1991) 243-259; D Sobsey, 'Sexual Offences and Disabled Victims: Research and Practical Implications' 6(4) *Sexuality and Disability* (1991); D Sobsey, *Violence and Abuse in the Lives of People with Disabilities: The End of Silent Acceptance* (1994); Disabled Women's Network (DAWN), *Strengthening the Links, Stopping the Violence* (1994); F Strahan, *More than Just a Ramp: A Guide to Women's Refuges to Develop Disability Discrimination Act Action Plans* (1997); Helen Meekosha, In/*Different Health: Rethinking Gender, Disability and Health*, a Keynote Address presented by Helen Meekosha for Women With Disabilities Australia (WWDA) to the 4th Australian Women's Health Conference (2001).

This vulnerability is exemplified by ID women's deference to authority and desire to please those in positions of power. Many women with intellectual disabilities miss out on sex education so when abuse occurs they know something is wrong but are not sure what it is.⁴⁶ Many women with disabilities also have a learned passivity which is especially reinforced in institutional and residential settings.⁴⁷ These factors combined mean that Women with intellectual disability are in a far more vulnerable position if sexual advances are made by prison officers. Often lack of knowledge about sex, and desire to please authority figures are regarded as consent.

Motivated by a need for power and control, offenders choose victims who are unlikely to resist or report. Many women with disabilities fulfil these criteria. Women prisoners with disabilities suffer from an unaddressed potential for abuse in a cross-gender guarding situation⁴⁸.

We know that some officers engage in various forms of sexual contact with prisoners, sometimes to the extent of sexual assault and rape. We know of at least one complaint of rape and sexual assault of a female prisoner by a male prison officer. Men comprise the majority of corrections officers in women's prisons, including the evening and night shifts in the housing units. In light of the issues outlined above, the situation exceeds less favourable treatment for women prisoners with Intellectual Disabilities and becomes an intolerable risk.

Health

Women with disabilities in prison have more medical issues than other women prisoners or their male counterparts, however, there are no specific services available to them. In 2002 the establishment of the Special Needs Unit (A6) tried to overcome this, but was not successful. Anecdotally we are told that the only special thing about the Special Needs Unit is that it has a ramp for wheel chair access and a buzzer in each cell which is rarely responded to by medical staff.

Women with disabilities are less likely than women without disabilities to access healthcare services⁴⁹ and are at an increased risk of chronic urinary tract infections, major depression, osteoporosis, kidney disease, restricted lung disorders, lung disease and heart disease.

In Australia, 41% of older women with disabilities with core activity restriction have never had a mammogram. Almost 30% of older women with disabilities with core activity restriction have never had a pap smear. These figures are likely to be much higher for women with different disability types across all age groups.

⁴⁶ Lesley Chenoweth, *Invisible Acts: Violence Against Women with Disabilities* (1993); Berkman 1984-86; McPherson 1991

⁴⁷ McPherson 1991

⁴⁸ <<http://www.hrw.org/about/projects/womrep/General-95.htm>>

⁴⁹ Keran Howe, *Violence Against Women with Disabilities – An Overview of the Literature* <<http://www.wvda.org.au/keran.htm>> (2000).

Because of this greater level of poor health, compounded by the general health issues experienced by all women prisoners, and by the general deference to authority by people with disabilities, the lack of provision for women with disabilities constitutes less favourable treatment.

Classification

As discussed previously in classifying sentenced prisoners, consideration is given to the availability of services provided at any given location.

Because of the higher needs of women prisoners with intellectual disability, the perception is that more services are provided at the bigger DPFC and so predisposing women with intellectual disability to higher classifications. In actuality, all of the women with intellectual disabilities live at the DPFC and neither prison caters to their needs, they are grossly under-resourced and over managed.

Discipline

In addition to the points raised previously, people with an intellectual disability are more likely to admit to offences, including offences they did not commit.

Women with intellectual disability are also targeted for disciplinary hearings. When Women with intellectual disability don't understand orders or don't know what rules exist, these issues are dealt with punitively rather than as a factor of that woman's intellectual disability. Training in this area would go a long way to minimise incidents of women with intellectual disability being targeted by disciplinary hearings.

This means that the present system of Governor's hearings, which are not modified for people with an ID, operate discriminatorily because women prisoners with intellectual disability cannot comply with the procedures that operate to offer women without intellectual disability due process.

Programs

Women prisoners with intellectual disability have less access to prison services like education and programs, than ID men prisoners.⁵⁰ A representative of DHS Disability Services is at PPP for three days a week and attends the remaining prisons for the rest of the week.

There are no ID-specific education programs or programs generally for Women with intellectual disability. For men however, DHS Disability Services offers education and programs on problem solving, anger management and a range of others that are relevant to their ID.

⁵⁰ Chenoweth, above n 46.

When the women's prison was privately operated, the DHS Disability Services was contracted to provide education to Women with intellectual disability. The programs were not made available during ordinary work hours – the time that all prisoners either work, participate in education or other programs. The reason given for this was that mainstream prisoners accessed education at this time, and for one reason or another, women prisoners with intellectual disability are often in protection.

This meant that Women with intellectual disability had to access education in their own time in addition to working during the ordinary work hours. For obvious reasons, very few women took up this specific education program and it was discontinued.

Since the Government take over in 2000, this program has not been reintroduced.

Women with disabilities are less likely than men with disabilities to receive vocational rehabilitation or entry to labour market programs. Commonwealth Rehabilitation Services statistics for 1994/5 indicate only 35% of referred clients were female with women more likely to be rehabilitated to independent living (45%) than vocational goals (36%).

The lack of vocational programs to assist Women with intellectual disability join the workforce is compounded by employers' general discrimination against people with a criminal history, and is consequently experienced as less favourable treatment.

Post Release Planning

Victoria does in fact have some pre- and post-release programs for prisoners with a disability but these are limited to specialist supported accommodation facilities. Women with disabilities, are however, less likely to be prepared for employment opportunities than are men with disabilities. They are less likely to access generic employment and training services as well as those specific to the needs of people with disabilities than are men with disabilities. In addition, the outcomes for those women who do use these services are less satisfactory than those of men, because these services are not designed to cope with the gender-specific needs of their female clients.

Conclusion:

Outlined above are numerous examples of discrimination on the basis of gender/sex; race, ethnicity and religion; and cognitive impairment⁵¹ that is faced by women throughout the Victorian prison system in contravention of the *EO Act*.

We hereby put the Equal Opportunity Commission of Victoria on notice of the breadth and extent of discrimination against women in Victorian prisons,

⁵¹ Attributes set out in section 7 of the *EO Act*.

which is perpetrated by the State of Victoria. As well as causing immeasurable harm to women and their families, such discrimination represents a gross breach of the law, and on this basis 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 *EO Act*.

Abbreviations:

CALD:	Culturally and linguistically diverse;
CORE:	The Public Correctional Enterprise;
CRN:	Criminal record number;
CCP Program:	Community Custodial Permit Program;
DHS:	Department of Human Services;
DPFC:	Dame Phyllis Frost Centre;
EOCV:	Equal Opportunity Commission of Victoria;
EO Act	Equal Opportunity Act (Vic) 1995;
Tarrengower:	Her Majesty's Prison Tarrengower;
ID:	Intellectual disability;
MWCC:	Metropolitan Women's Correctional Centre;
PPP:	Port Philip Prison;
RCIADIC:	Royal Commission into Aboriginal Deaths in Custody;
SASH:	Suicide and Self Harm
SESG:	Security and Emergency Services Group;
TAFE:	Technical and Further Education.