



Victorian Equal Opportunity
& Human Rights Commission



Unfinished business

Koori women and the justice system



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Unfinished business: Koori women and the justice system

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Foreword

It has been 20 years since the report of the Royal Commission into Aboriginal Deaths in Custody and, sadly, in that time the proportion of Australian prisoners that are Indigenous has almost doubled.

In Victoria, the over-representation of Koori people in prison, women in particular, has also increased dramatically in the last few years. Research shows once they have had contact with justice system, they are very likely to reoffend and return to prison.

Around 80 per cent of the Koori women in prison are mothers, so their imprisonment not only removes them from the community – it removes their children from them. This increases the likelihood of their children entering out-of-home-care, which is in turn one of the biggest risk factors for them one day coming in contact with the justice system themselves.

The longer term effects of this are profound, on the women, their families and their children. In the shorter term they are compounded by the lack of pre-prison diversionary options and support post-release and in the inability to access employment or education or find safe and affordable housing for themselves and their children. Without these things the risk of re-offending is significantly higher.

The Commission undertook this research as part of our work in ensuring the rights of vulnerable groups are protected. The *Charter of Human Rights and Responsibilities Act 2006* obliges government to provide culturally and gender-appropriate support for these women to break the cycle they find themselves in. Furthermore, the Amendment to the Bail Act made in 2010 specifically require that a decision-maker takes into account any issues that arise due to the Aboriginality of a person when deciding bail.



There are a range of reasons why these women enter prison, and why they may do so many times. There are also some relatively straightforward options that could be made available to break the offending cycle. The Aboriginal Justice Agreement provides a unique framework for government to address the over-representation of Koori people in the justice system. The evaluation of the AJA 2 acknowledges that not enough work had been done to address issues particularly facing Koori Women, which is why the Commission has undertaken this research as a commitment under the AJA3.

We of course acknowledge that the women are in prison because they have committed an offence, but research shows that Koori women are entering prison at escalating rates, often for minor crimes or justice breaches. Options such as cautioning, diversion and mentoring are more likely to be available, accessed and successful for non-Koori women. These women are then far less likely to re-offend and return to prison; yet for some Koori women, we know once they have contact with the justice system, they are more likely to return again and again.

This disproportionate affect on Koori women is a sad cycle, but one that can be broken. We are talking about a relatively small number of women – and the Commission believes there is an opportunity to make significant sustainable improvements to the outcomes for these women with a relatively low but strategic investment of funds and by adjusting and enhancing some key policies and processes. The benefits to the women, their families and our community in halting a cycle of inter-generational tragedy are obvious – but the reality is the future cost-savings associated with keeping people out of prison and their children out of care mean there is no excuse for not acting now.

We want to acknowledge the support of key informants to the research, including staff of the Department of Justice Koori Justice Unit, Victorian Aboriginal Legal Service and Justice Health. Our thanks also to Corrections Victoria, members of the judiciary, and members of the Aboriginal Justice Forum (AJF) and Koori Caucus in developing this report, in particular key advocates Aunty Bess Yarram, Antoinette Braybrook and Linda Bamblett who gave this project momentum.

We would like to thank Commission staff, the report's authors, Taryn Lee, Simone Gristwood and Michelle Burrell for their dedication to this project as well as the staff of the Dame Phyllis Frost Centre, especially Aunty Lynn Killeen.

Most of all we'd like to thank the women themselves for sharing their stories with us. They are all looking for ways to break the cycle and their views and individual stories have helped inform this report and the recommendations.

The Commission congratulates the Victorian government on reaffirming its commitment to addressing Koori disadvantage in the justice system announced in July 2013 by Premier Denis Napthine.

As a member of the AJF, the Commission is very supportive of the series of important measures the government is currently implementing, aimed at ensuring the justice system is more responsive to and inclusive of the needs of the Koori community.

Our Victorian Koori community bears the scars of centuries of displacement, disconnection and discrimination. Some women, due to their own histories of displacement and often abuse, are less likely to have the strength and resilience needed to turn their lives around.

We owe it to these women, and their children and families, to develop innovative and sustainable responses that support their strong desire to be with their families, be strong in their culture and stay out of the justice system.



Karen Toohey
Acting Commissioner
26 July 2013



John Searle
Chairperson

Executive Summary

Koori women make up the fastest growing segment of the Victorian prison population. They are currently being incarcerated at a much higher rate than both non-Koori women and Koori men.

These women are generally young. Many have grown up experiencing family violence, sexual abuse and intergenerational trauma. A significant number were removed from their families as children and placed in out-of-home care. Mental illness – including anxiety, depression and post-traumatic stress disorder – and drug and alcohol dependence are widespread among this group.

While Koori women often come into contact with police for property offences, they are most likely to be imprisoned for robbery, burglary and assault.¹ Multiple and outstanding fines is another frequent issue for Koori women. A failure to pay these fines or to comply with their conditions can eventually lead to imprisonment.

Discrimination is a daily reality for Koori women, across nearly every part of their lives. This is also reflected in their contact with the justice system. Kooris are significantly more likely to come into contact with police than non-Koori men and women. Community members told us that the over-representation is a result of not just higher offending rates but also bias (unintentional or otherwise) in the way our justice system responds to Koori women. This reflects previous findings by the Royal Commission into Aboriginal Deaths in Custody that exposed how discrimination and disadvantage drives over-representation.

While a range of successful initiatives have been established in Victoria for Koori men and other groups, there is a lack of investment in prevention and diversion options for Koori women.

Once a Koori woman enters prison, she is likely to be imprisoned again. As our research found, many women end up “churning” through the system on multiple occasions, often for relatively short periods of time.

¹ State of Victoria, Corrections Victoria, 'Indigenous Offenders and Prisoners Data Report to the July 2013 AJF' (Presentation to Aboriginal Justice Forum, 18-19 July 2013).



This obviously has severe consequences for these women, separating them from their families and culture, jeopardising housing and employment opportunities and compounding experiences of trauma and marginalisation. Furthermore, given many Koori women play a crucial caregiver role, their imprisonment also has an enormous impact on their children, families and communities.

When the mother is removed from the family unit, this often signifies the removal of the only secure point of reference in the child's life. The impact on children is profound.²

The ongoing impact of prison on children and family has largely been absent from the discussion about imprisonment. However, it is one of the most significant costs associated with the increasing incarceration of Koori women.

Repeated imprisonment can fundamentally disrupt the relationship between Koori women and their children, especially as their children grow and their needs change. It also places these children at a much greater likelihood of contact with the child protection system, which in turn is a major risk factor in putting the next generation of Koori young people on a pathway to prison.

The increasing incarceration of Koori women caused by a lack of appropriate diversion options and post-release support, compared to men, offends the right to equality before the law. It may also breach the positive duty to eliminate discrimination contained in section 15 of the *Equal Opportunity Act 2010* (Vic). This requires work on behalf of all relevant agencies to identify and end systemic discrimination on the basis of race and or gender.

Similarly, failing to address the underlying factors that lead to increasing rates of imprisonment undermines the rights of Koori women, and their children, protected in the *Charter of Human Rights and Responsibilities Act 2006* (Vic). It also places significant financial costs on the Victorian public and works against government efforts to promote community safety.

Koori women in prison

- Around one in ten female prisoners in Victoria is Koori.³
- Over one in three Koori women in prison is on remand.⁴
- A very high proportion of Koori women in prison have been victims of physical or sexual abuse.⁵
- A significant proportion of Koori women in prison were clients of child protection services as children. Many now have their own children in informal or out-of-home care.
- A significant proportion of Koori women were homeless or in unsafe housing due to violence prior to entering prison.
- Over 85 per cent of Aboriginal and Torres Strait Islander prisoners have mental health issues or cognitive disabilities.⁶ Nevertheless, there is no dedicated Koori mental health worker in the Victorian prison system, for men or women.⁷
- Over 80 per cent of Koori women in prison are mothers.⁸

3 That is 8.9 per cent. State of Victoria, Corrections Victoria, 'Indigenous Offenders and Prisoners: Data Report to the March 2013 AJF' (Presentation to Aboriginal Justice Forum 14-15 March 2013).

4 As at September 2012, 38 per cent of Victorian female prisoners were on remand. State of Victoria, Corrections Victoria, 'Indigenous Offenders and Prisoners: Data Report to the November 2012 AJF' (Presentation to Aboriginal Justice Forum 9 November 2012).

5 A study of Victorian female prisoners found 87 per cent were victims of sexual, physical or emotional abuse, with most having suffered abuse in multiple forms. Data drawn from a 2004 study. See, Smart Justice, *Factsheet: more prisons are not the answer to reducing crime* (2011) 2. <<http://www.smartjustice.org.au/resources/SJ%20Factsheet%20Prisons%202011.pdf>> at 17 July 2013.

6 See, State of Victoria, Sentencing Advisory Council, *Comparing Sentencing Outcomes for Koori and non-Koori Adult Offenders in the Magistrates' Court of Victoria* (2013) 50; Parliament of Australia, Senate Standing Committee on Legal and Constitutional Affairs References Committee, *Report of the Inquiry into the value of a justice reinvestment approach to criminal justice in Australia* (2013) 35.

7 State of Victoria, Department of Justice, Justice Health, 'Koori Prisoner Mental Health Cognitive Functioning Study' (Presentation by Professor James Ogloff to Aboriginal Justice Forum 14-15 March 2013).

8 State of Victoria, Department of Justice, Koori Justice Unit, 'Koori Women's Diversion Project' (Presentation to Koori Women's Diversion Project Working Group meeting 3 July 2013).

2 Key informant interview, Dr Harry Blagg, 23 November 2012.

Entry points into the prison system

It is critical to find ways to prevent Koori women from entering the prison system wherever possible. This means tackling gaps in services outside the justice system, including health, drug and alcohol and mental health services.

In Victoria, 94 per cent of the matters relating to Koori women are dealt with by the Magistrates' Court.⁹ While the court has developed a number of preventative and therapeutic responses, many Koori women are either not eligible for or accessing these services.

Koori women appear to underuse pre-sentence programs, such as the Court Integrated Services Program (CISP).¹⁰ Our research found that in 2012, 48 Koori women used the CISP program and the CREDIT Bail Support Program across Victoria.¹¹

There is a range of reasons preventing the uptake of these and other programs by Koori women, including geographical inequalities, lengthy waiting lists for external services, a lack of cultural and gender focus and a lack of anonymity, leading to fear of identification by other community members.

Victoria Police officers can play a pivotal role in promoting greater use of diversion for Koori women, as they are the people who effectively recommend offenders to the Criminal Justice Diversion Program (CJDP), however, this option is not pursued as often as it could be. Very few Koori women are put forward for this program, even when they are first-time offenders. Less than one per cent of offenders on this scheme identify as Koori.¹²

Another issue of concern is the escalating number of Koori women who enter prison on remand. In many situations, Koori women are denied bail because of a chronic lack of safe and secure accommodation to which they can be bailed. In addition, section 3A of the *Bail Act 1977* (Vic), which requires decision-makers to consider Aboriginality, is under-utilised. This represents a lost opportunity to reduce the number of Koori women entering prison on remand, especially when less than 15 per cent of these women end up receiving a custodial sentence.¹³

*Prevention is the way to go, but it needs to be community driven.*¹⁴

The need for diversion programs

As the findings of this report and those of other research highlight, there is a compelling need for a more comprehensive and effective approach to reducing the increasing incarceration of Koori women. The evaluation of the Aboriginal Justice Agreement Phase 2 also identified that the development of effective diversionary options for Koori women is a key unfinished task.¹⁵

In developing these options, it is important to recognise that offending and imprisonment patterns for Koori women differ from those of other women and Koori men. Accordingly, preventative and diversionary responses must be tailored to the particular needs and circumstances of these women.

It is also essential to review all aspects of the justice system, including the attitudes, practices and policies of Victoria Police, Corrections Victoria, the courts and prisons.

Prevention strategies need to engage Koori women well before they have contact with the justice system; starting by ensuring the services and supports they need to address the risk factors that can lead to offending – such as drug and alcohol misuse, family violence, family breakdown and homelessness – are available, accessible and ensure their cultural safety.

9 Information provided to the Commission by the Sentencing Advisory Council on 1 February 2013.

10 Magistrates Court of Victoria, *Koori Courts Integrated Services Program Discussion Paper* (unpublished), provided to the Commission on 5 March 2013.

11 That is 25 per cent of the total number of assessed accused who identified as Koori. It is not possible to make a direct comparison of how many Koori women would be eligible for the Court Integrated Support Program using publically available data, however the Commission notes that 1,900 people accessed that program in 2011-12, 212 clients identified as Aboriginal only or Aboriginal/Torres Strait Islander (11 per cent). Magistrates' Court of Victoria, *2011-12 Annual Report* (2012) 97.

12 Fifty-four out of 5,932 offenders in 2011-12. Ibid 98.

13 "In 2012, of 67 Koori women on remand, 60 per cent were released without being sentenced." Koori Justice Unit, above n 8.

14 Key informant interview, Victorian Aboriginal Community Controlled Health Organisation, 7 March 2013.

15 State of Victoria, Department of Justice, *Victorian Aboriginal Justice Agreement Phase 3 (AJA3)* (2013) 30.

However, the high community demand for these services, and the fact that they are often fragmented and hard to navigate, can make it extremely difficult for Koori women to get support in a timely way and for the length of time needed to make a difference.

The implications for Koori women with acute needs are particularly serious. Our research found that many struggle to coordinate and access the services they need, or which they are compelled to attend as conditions on bail, Community Corrections Orders or parole. An inability to benefit from these services can ultimately result in the women reoffending.

These gaps and the pressures on Victoria's service system need to be urgently addressed, potentially through a justice reinvestment framework.

Similarly, diversion programs need to respond to identified shortcomings when Koori women come into contact with the criminal justice system at the:

- **pre-contact stage**, for example, preventative programs to address the risk factors for offending, such as drug and alcohol misuse, exposure to family violence, family breakdown, experiences of out-of-home care and homelessness
- **pre-sentencing stage**, including bail support programs, transitional houses and the Criminal Justice Diversion Program (CJDP)
- **post-sentencing stage**, including Community Corrections Orders and supported residential options
- **post-release stage**, including transition programs and post-release accommodation.

Research participants provided the Commission with numerous examples of diversion options and programs that would best support the needs of Koori women.

Many highlighted the critical importance of residential programs for those on Community Corrections Orders or leaving prison. They told us that secure accommodation, free from the threat of violence, was crucial so that women felt safe to address the issues in their lives that put them at risk of offending.

Healing, they said, was central to turning their lives around and should underpin all interventions and receiving support in their important role as mothers was among their top priorities. They told us that this should include dealing with experiences of trauma and helping them reconnect with their culture, which many had lost through being placed in out-of-home care as children.

Some program components and services that participants identified are already operating in Victoria. However, these programs – such as the Wulgunggo Ngalu Learning Place – are for Koori male offenders only and would need to be adapted to meet the needs of Koori women.

A number of Koori women told us that their experience of prison had taken away their sense of independence and that, when they leave prison, they lack confidence in basic life skills and their ability to navigate day-to-day life when released.

Leaving prison is very overwhelming. I have suffered from panic attacks and have ended up reoffending as I can't cope with the outside world.¹⁶

They said they wanted help in focusing on transition and preparing for release much earlier than is currently the case. They also wanted continued support and coordinated services when they exit prison.

Some suggested the value of a “one-stop shop”, where they could build positive relationships with service providers and be more likely to stay engaged and motivated. To be effective, these services should be developed with the input of Koori women.

Participants told us that ensuring cultural safety is essential in supporting Koori women and that, where mainstream service providers are involved in working with them, it is important that they provide this.

Principles for effective intervention

Koori women who have contact with the criminal justice system often have complex and intersecting issues, so different interventions will be needed at different times and will vary between individuals. A one-size-fits-all approach will not work.

Research participants told us that effective interventions, including prevention, diversion and post-release programs, should:

- be culturally and gender specific
- draw on community knowledge in their design and delivery
- recognise the significant role of Koori women in family and community life
- ensure Koori women have a stable base, especially safe and secure housing
- allow Koori women to be with their children and support families to rebuild

16 Focus group participant, Dame Phyllis Frost Centre, 14 December 2013.

- deal with experiences of violence, trauma and victimisation
- promote and strengthen connection to culture
- support Koori women to navigate the complex and fragmented service system
- use a “wrap-around” approach, providing life skills, parenting skills, mental health services, drug and alcohol support and disability support, as required.

A “hub and spoke” approach

Drawing on the evidence in this and other research, the Commission considers that the most sustainable and comprehensive way to reduce the over-representation of Koori women in prison is to establish a “hub and spoke” model of diversion, where women can step up and step down supports they need at any particular time, without losing continuity.

A residential service, developed with a community-centred methodology, would act as the “hub”. It could be used by women on bail, Community Corrections Orders and post-release. It would be closely linked to a range of “spokes”, including drug and alcohol treatment services, further post-release residential options, as well as case management, trauma, family support and other services.

Such a model would address the fragmentation that causes so many difficulties for Koori women. It would deliver joined-up services, across all the diversionary domains, in a culturally appropriate way.

It would also encourage sharing of expertise between the hub and other agencies, including Victoria Police, Corrections Victoria and the courts, in order to tackle some of the systemic barriers that Koori women encounter with mainstream services and programs.

Most importantly, it would provide a sense of continuity and certainty to one of the most vulnerable groups in our community as they address the causes and consequences of their offending.

This hub and spoke model would be the most cost-effective method of integrating services for Koori women and offers the best prospects for success as it has culture at its heart.

It may take time to fully establish the hub. In the meantime, there are practical things that can and should be done, particularly at the front end of the justice system. This includes extending CISP to more courts and building in a Koori CISP, recalibrating the CJDP so that Koori women are better placed to participate, enhancing the Local Justice Worker and Koori Offender Support and Mentoring Program, and keeping women out of remand by getting

more accommodation and prevention services on the ground, including residential drug and alcohol services. In other words, working on the spokes while the hub comes together.

The benefits of investing in prevention and diversion

The increasing rate of Koori women entering prison comes at an enormous social and economic cost: to the women involved, to their children, to their communities and to the Victorian public.

The institutional, lifetime cost of a Koori woman going through the prison system can be in the order of \$1 million.¹⁷ But there are other costs when Koori women spend time in prison, including the costs involved when children are placed in out-of-home care. Some may then go on to have contact with the juvenile justice system, placing additional costs on the system.

Demographic changes in Victoria mean that, unless action is taken now, the number of Koori women at risk of entering prison is likely to grow markedly in the coming years.

Failing to invest now risks spiralling costs in the future. It also undermines Victoria’s efforts to promote and strengthen community safety.

Programs to address the underlying causes of offending – such as drug and alcohol abuse, mental health, disability, family violence and intergenerational trauma – cost significantly less than what is required to keep a person in prison. Targeted post-release interventions to break the cycle of offending, including housing and casework support, are much cheaper than prison. For example, the Restart Program in Victoria has a daily unit cost of \$70 per participant, compared to \$338 per person per day in prison.¹⁸

17 Based on NSW modelling, the institutional costs of a female Aboriginal offender with a history of homelessness, drug and alcohol misuse, family violence and mental illness is \$1,118,126. Eileen Baldry et al, *Lifecourse Institutional Costs of Homelessness for Vulnerable Groups* (Australian Government, Department of Families, Housing, Community Services and Indigenous Affairs, 2012) 49-53.

18 Under the Restart Program, support commences three months prior to release. With a total case load of 50 women, the program offers long-term, safe and stable housing, with the option of permanent tenancy, guaranteed job and training pathway, a post-release package of wrap-around support, and daily interaction in the initial three to four weeks following release.

Diversions programs can and do work – and positive outcomes are achievable. Culturally appropriate residential options to support the completion of Community Corrections Orders also enjoy strong and sustained success. For example, the proportion of Koori male offenders who have successfully completed the program at Wulgunggo Nglau Learning Place has steadily increased from 68 per cent in 2010-11 to 97 per cent in the 11 months to May 2013.¹⁹

While Koori women are over-represented in prisons, there are only around 30 Koori women in Victorian prisons at any one time. Given these small overall numbers, and following years of research and policy discussion, we know who they are and where they are, which makes it easier to know what is needed. Developing targeted interventions for this cohort makes sense – such a relatively modest investment would create significant community gain, both in financial terms and in contributing to greater community safety.

This provides a cost-effective opportunity to invest in culturally appropriate initiatives that help reduce offending, improve the likelihood that the women can successfully complete orders and, ultimately, begin to turn their lives around. It would also help deliver policy commitments made by Commonwealth and Victorian governments over the past decades to address the over-representation of Aboriginal and Torres Strait Islander women in prison.

More broadly, investing in programs and services that help keep Koori families together, strong and healthy, and which provide children and young people with a viable pathway way to education and employment, is necessary to break the cycle of disadvantage that can lead to imprisonment.

In the absence of a clear policy and financial commitment to tackle these systemic issues, however, the number of Koori women in contact with the criminal justice system will continue to grow.

Recommendations

Victoria Police

1. That Victoria Police, in partnership with the Aboriginal Justice Forum, revise and update the *Victoria Police Aboriginal Strategic Plan 2003-2008*.
2. That Victoria Police, in partnership with the Victorian Aboriginal Legal Service and the Victorian Equal Opportunity and Human Rights Commission, undertake an analysis of cautioning, charging, bail decision and bail conditions relating to Koori women. The results of this analysis should be reported to the Aboriginal Justice Forum and inform a review of Victoria Police members training on working with Koori offenders.
3. Noting the high risk of young Koori offenders becoming entrenched in the criminal justice system, that Victoria Police regularly provide de-identified data to the Aboriginal Justice Forum on contact rates of Koori young people. This data should also be provided to the Commissioner for Aboriginal Children and Young People and include a breakdown by age, gender, region and contact type (including field contacts, cautions and arrests).

Magistrates' Court of Victoria

4. That the Magistrates' Court of Victoria establish a Koori-specific Court Integrated Services Program. This program should include dedicated services for Koori women.
5. That the Magistrates' Court of Victoria consult with the Aboriginal Justice Forum to develop guidance to Magistrates on barriers to the successful completion of diversion for Koori women, with a view to developing more flexible and responsive options for this cohort. Noting the distinct patterns of offending arising from multi-age peer groups among young Koori women, this work should include a review of eligibility for Koori women who are not first-time offenders.

¹⁹ From 66.7 per cent in 2010-11, to 76.6 per cent in 2011-12, and 97.1 per cent from July 2012 to May 2013. State of Victoria, Corrections Victoria, 'Indigenous Offenders and Prisoners Data Report to the July 2013 AJF' above n 1.

Department of Justice

6. Noting the positive benefits of the Local Justice Worker Program and the Koori Offender Support and Mentoring Program in assisting Koories to address fines payments, that these programs be enhanced with a specific focus on Koori women with multiple fines and at risk of imprisonment.
7. Noting the importance of section 3A of the *Bail Act 1977* in realising the right to equality and cultural rights, that:
 - a. further guidance and associated training be developed for Victoria Police, court registrars, Magistrates and bail justices on the implementation of this section
 - b. such training should be developed in partnership with the Victorian Equal Opportunity and Human Rights Commission and specifically address the intersection of the Bail Act and the *Charter of Human Rights and Responsibilities Act 2006*.
8. Noting the low referral rates of Koori offenders to the Criminal Justice Diversion Program, that Victoria Police review its approach to consenting to an offender entering the program and provide further information and training to its prosecutors if required.
9. That a community based, culturally appropriate residential program for Koori women on bail, Community Corrections Orders and post release be established. This Women's Place (the hub) should:
 - a. reflect the geographical diversity of Koori women, recognising the importance of providing reconnection to culture
 - b. involve Elders
 - c. offer culturally appropriate support and programs from Koori and non-Koori service providers
 - d. have a majority of programs developed and run by Koori women
 - e. be holistic and take into account the needs of the family and the family structure, whatever that may be and however large that may be
 - f. accommodate children
 - g. be flexible and tailored to where women are in their life and their specific circumstances
 - h. address causal factors and drivers of their offending and put in place support services to deal with these
 - i. provide aftercare support, including access to mentoring
 - j. include outreach, secondary consultancy and brokerage to agencies working with women prior to, and after their time at the Women's Place
 - k. be the central service within a hub and spoke model of integrated service delivery to Koori women in contact with the criminal justice system.
10. The other elements of the program (the spokes) should include:
 - a. enhanced Local Justice Worker Program and the Koori Offender Support and Mentoring Program (recommendations 6,11)
 - b. nomination rights to residential drug and alcohol services with a Koori focus
 - c. delivery of additional Koori specific interventions within women's prisons (recommendations 16-17)
 - d. enhancements to transition planning and services for Koori women exiting prison, including the Transition Assistance Program, Konnect, mentoring programs and the Women's Integrated Support Program (recommendation 19)
 - e. Koori women's Restart Housing project (recommendation 25).
11. The Koori Offender Support and Mentoring Program be enhanced for Koori women in order to support greater compliance with parole conditions.

Corrections Victoria

12. Noting that there are currently only two Koori independent prison visitors in Victoria, that the Office of Correctional Services Review undertake a review of this program, including eligibility criteria so that more Koori community members may participate.
13. Noting that Koori women are refused bail due to a chronic lack of appropriate accommodation, that in the short term, Corrections Victoria extend its existing transitional (bail) house program by leasing additional Koori women's houses. At least one of these new transitional houses should be located in metropolitan Melbourne. Over time these houses should be replaced by the Women's Place as recommended above.
14. Noting the low numbers of Koori women in Tarrengower prison that Corrections Victoria, in consultation with the Aboriginal Justice Forum:
 - a. establish a sustainable model for delivering Koori-specific programming and supports across Tarrengower and Dame Phyllis Frost Centres in order to address the isolation reported by Koori women when transferred to Tarrengower
 - b. promote earlier access from Dame Phyllis Frost Centre to Tarrengower, by enhancing the cultural appropriateness of security assessment and classification tools, as set out in the Sentence Management Manual (AC3).
15. Noting the complexity of navigating services, that Corrections Victoria publish, in a range of formats, a list of programs available to Koori women on Community Corrections Orders, custodial sentences and remand. This information should be updated regularly, tabled at the Aboriginal Justice Forum and distributed to female Koori prisoners, Community Corrections clients, Corrections staff, including those in regional offices, Magistrates, Regional Aboriginal Justice Advisory Committees and Chief Executive Officers, legal services, community organisations and advocates.
16. Noting barriers to Koori women participating in mainstream programs, that Corrections Victoria establish Koori-specific programming at the Dame Phyllis Frost Centre, including culturally appropriate parenting support programs, cultural connection, trauma and victimisation interventions delivered by Koori practitioners, and that uptake of these programs be regularly reported to the Aboriginal Justice Forum.
17. Noting the high rates of trauma and victimisation among Koori women prisoners, and the need for dedicated healing programs in prison, that programs such as the Marumali Cultural Healing program be delivered on a regular basis.
18. That current restrictions on women who have accessed programs during previous sentences be removed.
19. That the prohibition on Koori remandees accessing transitional programs including Konnect and the Women's Integrated Support Program be removed.

Justice health

20. That the response to the Koori Prisoner Mental Health and Cognitive Function Study include a specific focus on women.
21. That access to criminogenic alcohol and drug programs be extended to Koori women on remand where substance misuse is identified as a contributing factor to the alleged offence. Participation in such a program should not infer guilt. Access to these programs should also be improved for Koori women on short sentences.
22. That working in partnership with the Victorian Aboriginal Controlled Health Organisations that Justice Health further meets its obligations regarding culturally appropriate health programs and build a Koori health workforce. This includes:
 - a. ensuring contracts with health providers contain requirements to recruit, train and deploy prison health workers who are Koori
 - b. contracting Koori organisations to provide inreach services and to participate in transition planning to ensure continuity of health care.

Department of Human Services

23. That Youth Justice consult with Regional Aboriginal Justice Advisory Committees and Local Aboriginal Justice Action Committees to develop rapid response case conferencing/care teams for young Koori women at the cautioning, early offence and pre-court stages. These should link the Victorian Aboriginal Legal Service, Support Link, Victoria Police Aboriginal Liaison Officers Program and Aboriginal Community Liaison Officers, Koori Education Support Officers, Koori Youth Justice Workers, Child First, family violence and health workers (as appropriate) and provide supports through a single care plan.
24. Noting the need for contact with the justice system to trigger provision of intensive family support and other early interventions for young Koories, that the pilot program established by the Victorian Aboriginal Legal Service, Victorian Aboriginal Child Care Association and Jesuit Social Services be put on a sustainable footing, with a view to this initiative being made available in other areas of Victoria so that young Koori women notified to the Victorian Aboriginal Legal Services by the D24 referral system may gain access to appropriate supports.
25. Noting that few Koori women have accessed the Restart Housing project that the Department of Human Services, Mission Australia and Melbourne City Mission work with work with members of the Aboriginal Justice Forum to:
 - a. enhance the cultural safety of the Restart Project so that Koori women are better able to access this comprehensive post-release housing option
 - b. develop a Koori-based Restart model to be delivered in partnership with an Aboriginal controlled organisation and funded as a homelessness initiative
 - c. and that, Corrections Victoria negotiate and resource nomination rights for Koori women exiting prison into these projects, and provide brokerage funds to support these placements.

Commissioner for Aboriginal Children and Young People


26. Noting the particular vulnerability of young Koori women leaving care who are at risk of entering prison, that the Commissioner for Aboriginal Children and Young People specifically address post care and transition support for those in contact with the justice system, in the *Five year plan for Aboriginal children in out-of-home care*. This should include the targeting of additional resources via the Transitioning from Out-of-home care: Support for Aboriginal young people Initiative.
27. Noting that 80 per cent of Koori women prisoners have children, that the Commissioner for Aboriginal Children and Young People, in overseeing the development of the *Five year plan for Aboriginal children in out-of-home care* specifically identify and address the needs of Koori children with mothers in prison. This should include a focus on targeted supports for mothers and children in these circumstances, including education, health, parenting and life skills supports.

Sentencing Advisory Council

28. That the Sentencing Advisory Council undertake research on patterns of parole conditions and breach rates for Koori women.

Victorian Auditor General

29. That the Victorian Auditor-General's Office undertake an audit of Koori women's programs in Tarrengower and Dame Phyllis Frost Centre, including post release support to complement the planned audit of Transition Support for Prisoners in 2014–15.



Chapter 1:

About the research

The Victorian Equal Opportunity and Human Rights Commission (the Commission) is an independent statutory body that has functions under the *Equal Opportunity Act 2010*, the *Racial and Religious Tolerance Act 2001 (Vic)* and the *Charter of Human Rights and Responsibilities Act 2006* (the Charter). Our functions include resolving disputes, providing education about human rights and equal opportunity, undertaking projects and activities aimed at eliminating discrimination and promoting human rights, conducting research, and providing legal and policy advice. In addition, the Commission reports to the Attorney-General on the operation of the Charter and, at the request of public authorities, conducts compliance reviews.

This project was undertaken using the Commission's statutory research functions under section 157 of the Equal Opportunity Act.

The Commission's interest in the issue

It is well understood that Aboriginal and Torres Strait Islander people are over-represented in the criminal justice system nationally, and in Victoria.²⁰ This over-representation is now extending to Koori women, as the numbers of Koori female prisoners continues to grow.

The increasing trend of Koori women spending time in Victorian prisons, including on remand, has a profound impact on these women, their children, families and communities, as well as on the justice system itself.

The Commission is interested in this issue because whenever a person serves a custodial sentence or is placed on remand their Charter rights, and those protected at international law, are engaged.

20 See, Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991); State of Victoria, Department of Justice, *Victorian Aboriginal Justice Agreement Phase 1* (2000); State of Victoria, Department of Justice, *Victorian Aboriginal Justice Agreement Phase 2 (AJA2)* (2006); Nous Group, *Evaluation of the Victorian Aboriginal Justice Agreement Phase 2* (2012); State of Victoria, Department of Justice, 'AJA3', above n 15.

These include rights to liberty and security of the person, rights in the criminal justice system, and protections to ensure the dignity of the person when in custody.²¹ Rights of other people, including the children of prisoners, are also engaged whenever a mother enters prison.²²

In human rights terms, the persistent over-representation of Koori people, including women who are in contact with the justice system is of significant concern as it raises questions about whether discrimination is contributing to these phenomena.

Equality considerations are of particular concern to the Commission because:

- Koori women are over-represented in the criminal justice system. Koori children and young people are also over-represented in the youth justice system and in out-of-home care in Victoria – both of which act as entry points to the adult criminal justice system.
- Over-representation is driven by multiple factors including poverty and intergenerational trauma. Koori women are among the most disadvantaged groups in Victoria. Research demonstrates that the majority of Koori women in prison have multiple and complex needs, including mental health, drug and alcohol issues and experience of sexual abuse and family violence.
- There is a well-established link between discrimination and disadvantage. For example, unfair treatment in education, employment, health and housing exacerbates disadvantage and contributes to the risk factors driving more Koori women towards the criminal justice system.
- Practices, policies and decisions by Victoria Police, Courts and Corrections Victoria may also lead to individual instances of discrimination, or more endemic problems.

Equal Opportunity Act obligations, including the positive duty to eliminate discrimination as far as possible, are also relevant.²³ In particular, if a lack of access to appropriate support compromises a Koori woman's ability to stay out of prison, or avoid the justice system in the first place, then we need to ask the question – why aren't suitable support and diversionary options, geared to the particular needs of this group, made available?

21 *Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 21, 22, 25.

22 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 17.

23 *Equal Opportunity Act 2010* (Vic) s 15.

How the project came about

The Aboriginal Justice Agreement Phase 2 (AJA2) committed to the implementation of initiatives to divert Koori women from prison.²⁴ In 2012, an independent evaluation of the AJA2 found that the rates of imprisonment of Koori women were increasing and had overtaken those of non-Koori men. It noted that imprisonment had a disproportionate impact on women and their dependent family members.²⁵

It also found that there were limited diversionary options available for Koori women.²⁶ The evaluation described this gap as a “key risk point in the system that could be strengthened to reduce over-representation”.²⁷

Based on these findings, the Commission consulted with Corrections Victoria, the Koori Justice Unit (KJU), the Victorian Aboriginal Legal Service (VALS) and the Aboriginal Family Violence Prevention Legal Service (FVPLS). These consultations confirmed the need for research to document Koori women's experiences of the justice system, particularly their experiences of custody, and to provide evidence to support the implementation of diversionary programs for Koori women.

In November 2012, the Commission presented the proposed project outline to the Aboriginal Justice Forum (AJF). The research project was subsequently included as an initiative in the Victorian Aboriginal Justice Agreement Phase 3 (AJA3).²⁸

At the same time, the KJU convened a workshop to begin the development of culturally secure diversionary pathways into healing for Koori women. The first step was to establish the Koori Women's Diversion Project Working Group which has been meeting concurrently with this project.²⁹

24 State of Victoria, Department of Justice, *Victorian Aboriginal Justice Agreement Phase 2 (AJA2)* (2006) 34.

25 Nous Group, *Evaluation of the Victorian Aboriginal Justice Agreement Phase 2* (2012), 54.

26 *Ibid*

27 *Ibid* 52.

28 See recommendation 2.3.2.b, State of Victoria, Department of Justice, 'AJA3', above n 15, 102.

29 In September 2012, at the Koori Court Conference, Elders, Respected Persons and Judicial officers called on the Victorian Government to establish this working group to “develop a range of initiatives, including residential services, to fill the gap in options for women's diversion”. The Aboriginal Justice Agreement 3 subsequently included this as an action. See recommendation 2.3.2.a, *Ibid*.

Objectives of the project

This research seeks to identify and provide evidence to the Aboriginal Justice Forum to support the implementation of culturally appropriate diversion programs for Koori women.

We did this by documenting the experiences of Koori women within the justice system with an emphasis on women's experience of custody. Our aim was to understand the impact that prison has on Koori women, their children, the family and the community, using equality and human rights as the lens, and to use this to inform the development of diversionary options.

Methodology

With these aims in mind, the Commission sought to speak to Koori women about their experiences of prison and their views about the services and support they need. We also sought the views of services that work with Koori women in the justice system.

The research considered:

- existing available diversionary options and models
- gaps in existing mainstream and specialist supports for women at risk of, or in contact with the criminal justice system
- key elements and principles that are required for a culturally appropriate diversionary model.

Ethics approval for the project was granted by the Justice Human Research Ethics Committee.

Qualitative data

Focus groups

The Commission wanted to hear directly from Koori women who had experienced incarceration. We conducted four focus group interviews with women from the Dame Phyllis Frost Centre. These conversations were conducted in collaboration with the Aboriginal Wellbeing Officer at the Dame Phyllis Frost Centre.

Case studies

The Commission also conducted five case study interviews with female prisoners and with Koori women who had left prison.

The Commission worked with VALS, FVPLS and HomeGround Services to recruit voluntary participants for case study interviews and focus groups.

Participants were asked about their lives before prison, their relationships and the circumstances that led to their imprisonment. They were asked about the impact that prison had on their lives and their family. They were also asked for their views on services they had accessed and on what makes a service feel culturally safe.

All interviewees gave permission to have their stories published and approved the text included in this report.

Key informant interviews

The Commission sought the views of organisations who work with Koori women, in or outside the justice system. We also interviewed key individuals who have researched or worked with Koori women in the justice system. These 15 key informants are listed in Appendix 1.

Key informants were asked about their contact with Koori women before, during, or after prison, their perceptions of Koori women's experiences in prison, their observations of the profile of Koori women in prison and their views on existing services and diversionary programs.

Quantitative data

The Commission was provided with de-identified data and information relating to Koori women's contact with the justice system by agencies including the KJU, the Sentencing Advisory Council, FVPLS and VALS.

Prison data was derived from the Australian Bureau of Statistics' National Prisoner Census and from data presented by Corrections Victoria to the Aboriginal Justice Forum in November 2012, February and July 2013. Two types of information were examined: data representing snapshots in time (stock) as well as those representing change over time (flow). Most of the publically available data were stock data, however where possible, flow data were also used.

Literature review and service mapping

The Commission researched services that are available to Koori women before, during and after prison in order to map available services and identify gaps. This list of services can be found at Appendix 2.

We also conducted a policy and research review in relation Koori women's experiences in the justice system. Key texts identified in this review are listed at Appendix 3.

Limitations of the research

As predominantly qualitative research, based on interviews with a small number of Koori women and key informants, the project has a number of limitations.

Data

There are limitations to the publically available data. Due to the small size of the female prison population, data is not always broken down by Koori status. This makes it difficult to make comparisons with non-Koori prisoners. In other cases gender-based data is not available. However, wherever data was publically available that included a demographic breakdown this was included.

The sample

The sample of Koori women was small and focused on self-reported experiences.

While the results from focus groups cannot necessarily be extrapolated to the wider population of Koori women in prison, the Commission considered it important to document the views and experiences of even a small sample of Koori women. Where possible, the Commission has used other data and content of interviews with key organisations to test the findings.

Recruiting research participants

The Commission recruited research participants with the help of FVPLS, VALS and HomeGround Services, rather than using a random sample. While this might influence the findings, the Commission considered this the most effective way of recruiting voluntary participants in a culturally appropriate way.

Models of culturally appropriate diversionary programs

This project did not set out to devise a new model of culturally appropriate diversionary programs. Rather, the aim of the research is to make the case for these programs from a human rights perspective, by documenting the views of the people most affected – Koori women.

Terminology

The term Koori is used throughout this report. Koori is used by south-eastern Victorian Aboriginal people to define a collective Aboriginality. However, we acknowledge that Aboriginal and Torres Strait Islander women from around Australia are represented in the Victorian prison population.

This approach is consistent with the approach used by the Department of Justice, Victoria. The Department has agreement from the Koori Caucus of the Aboriginal Justice Forum that, for consistency, the term 'Koori' is the preferred term ('Koories' for plural) to be used in Victoria's Aboriginal Justice Agreement and related initiatives.

'Aboriginal and Torres Strait Islander' is used to describe Indigenous peoples nationally and is used in this report. However, when citing publicly available research or data, the Commission uses the terminology used in the original, published report, including the term 'Indigenous'.

Acknowledgement of peoples and language groups

In Victoria, there are 36 traditional language groups.³⁰ According to the 2011 census data, Victoria's Koori population is estimated to make up 0.9 per cent of Victoria's total population (47,327 people).³¹

Most Koori people are centred in and around Melbourne. Large regional groups are also found in Greater Shepparton, Mildura and East Gippsland.³² While many Victorian traditional owners live on country or around the state, the Victorian Koori community also comprises Aboriginal and Torres Strait Islander peoples from all over Australia.

30 Victorian Equal Opportunity and Human Rights Commission, *Cultural Diversity in the Workplace: A Guide for Employers Working with Indigenous Employees* (2012) 2.

31 This estimate is based on an official adjustment to the 2011 census data, which compensates for the significant under-identification of Koori people. State of Victoria, Department of Planning and Community Development, *Victorian Government Aboriginal Affairs Report 2012* (2012) 6.

32 Victorian Equal Opportunity and Human Rights Commission, 'Cultural Diversity', above n 30, 2.



Chapter 2:

The size of the problem

Main findings

- In Victoria, the total number of Koori women in prison is low compared to other states; however, it is increasing, and at a much higher rate than for both non-Koori women and Koori men. Koori women now comprise the fastest growing segment of the Victorian prison population.
- The number of Koori women on remand is also increasing at a rate higher than that for non-Koori women, and significantly faster than that of Koori male prisoners. In September 2012, 32 per cent of Koori women in Victorian prison were on remand.³³
- Overall, rates of imprisonment are increasing even though crime rates are decreasing. Crime rates in Victoria have declined by an average of 18.4 per cent over the last 10 years.³⁴
- For over 10 years, national and Victorian government policies have attempted to respond to the over-representation of Aboriginal and Torres Strait Islander women in prison. However, culturally and gender appropriate diversionary options have yet to be established in Victoria.

33 State of Victoria, Corrections Victoria, 'Indigenous Offenders and Prisoners November 2012', above n 4.

34 Parliament of Australia, Senate Standing Committee on Legal and Constitutional Affairs References Committee, *Report of the Inquiry into the value of a justice reinvestment approach to criminal justice in Australia* (2013) 5-6.

Over-representation of Koori women in contact with the criminal justice system

Imprisonment of Aboriginal and Torres Strait Islander Australians

On 30 June 2012 there were 29,383 prisoners in Australian prisons.³⁵ Of this, 27 per cent were Aboriginal and/or Torres Strait Islander.³⁶

Currently, Aboriginal and Torres Strait Islanders are imprisoned at 15 times the rate of other Australians.³⁷ However, Aboriginal and Torres Strait Islander women are 24.5 times more likely to be in prison.³⁸

- In Australia, the fastest growing cohort of the prison population is women prisoners. Last year, the national female imprisonment rate increased at a rate 21 times higher than the male rate.³⁹
- The rate of Aboriginal and Torres Strait Islander female imprisonment grew by 59 per cent between 2000 and 2010, an increase larger than for any other cultural group.⁴⁰
- Aboriginal and Torres Strait Islander women are also more likely to return to prison, more likely to be in prison on remand and less likely to be granted conditional release or post prison community-based release than other women.⁴¹

Over-representation in Victorian prisons

Of all Australian jurisdictions, Victoria has the second lowest imprisonment rate of all the States and Territories, and is well below the national average.⁴² However, Victoria's prison population has increased by nearly 40 per cent over the last 10 years, a rate greater than the increase in the general population.⁴³ Subsequently, the (per-capita) rate of imprisonment has also risen during the last decade.⁴⁴

- At 31 May 2013, there were 392 Koori people in prison in Victoria. That is 7.4 per cent of the total prison population.⁴⁵
- Of these Koori prisoners, 363 were male and 29 were female.⁴⁶ Three quarters of all Koori prisoners were aged less than 40 years.⁴⁷
- Koori people are around 14 times more likely to go to prison than the general Victorian population.⁴⁸
- Between 2002 and 2012 the Victorian Koori imprisonment rate increased by 105 per cent, compared to an increase of 20 per cent in imprisonment rates for the non-Koori Victorian population.⁴⁹

35 Australian Bureau of Statistics, *Prisoners in Australia, 2012* cat 4517.0 (2013) 8.

36 Ibid 16.

37 When standardised by age, the national imprisonment rate for non-Indigenous Australians is 129 prisoners per 100,000 adults in the general community, compared to 1,914 Indigenous prisoners per 100,000. Ibid

38 Ibid 51, 58.

39 In 2011-12, while the overall prison population increased one per cent, the number of female prisoners increased by eight per cent. Ibid cited in Parliament of Australia, 'Report into Justice Reinvestment', above n 34, 4.

40 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011* (2011) Productivity Commission, 4.133; Ibid 32.

41 Parliament of Australia, 'Report into Justice Reinvestment', above n 34, 32.

42 Rate per 100,000 adult population. Australian Bureau of Statistics, *Corrective Services* cat 4512.0 September Quarter 2012 (2012) 13.

43 The total number of prisoners in Victoria's prisons has increased by 1,344 persons (38 per cent) in the period. State of Victoria, Sentencing Advisory Council, *Victoria's Prison Population 2002 to 2012* (2013) 8.

44 The imprisonment rate increased from 94.2 to 111.7 prisoners per 100,000 persons (18.6 per cent) between 2002 and 2012. Ibid 8.

45 State of Victoria, Corrections Victoria, 'Indigenous Offenders and Prisoners Data Report to the July 2013 AJF' above n 1.

46 Ibid.

47 Seventy-four per cent, compared to 63 per cent of non-Koori prisoners (male and female). Ibid.

48 In September 2012 the Victorian imprisonment rate was 1,557 per 100,000 adult Aboriginal and Torres Strait Islander (male and female) adults compared to 113 per 100,000 per adult population Australian Bureau of Statistics, 'Corrective Services September 2012', above n 42, 24, 13.

49 State of Victoria, Sentencing Advisory Council, *Comparing Sentencing Outcomes for Koori and non-Koori Adult Offenders in the Magistrates' Court of Victoria* (2013), 15.

Compared to other Australian jurisdictions, Victoria had the second highest proportional increase in the average daily Aboriginal and Torres Strait Islander imprisonment rate per head of population in the period September 2011-September 2012. Thus while our state still enjoys a lower per capita incarceration rate than other jurisdictions, Koori people are still significantly over-represented in our prison population.⁵⁰

The number of Koori women in Victorian prisons is increasing

In Victoria, the total number of Koori women in prison is low compared to other states, however it is increasing, and at a much higher rate than that for both non-Koori women and Koori men.

- Between 2007 and 2012, Koori female prisoner numbers doubled in Victoria, from 14 to 28.⁵¹
- On 28 February 2013, there were 30 Koori women in prison in Victoria.⁵²

It should be noted that these are stock data, relating to the prison population on a given date. "It does not provide the more dramatic, volatile picture of how many flow in and out of prison over a year... the flow through number of prisoners is much higher than the census figure suggests..."⁵³

For example, in 2012 a total of 89 Koori women entered prison during the year.⁵⁴

Figure 1 – Indigenous status of prisoners in Victoria 28 February 2013

Indigenous status	Number	Proportion of -
		Male prisoner population
Male Indigenous	359	7.3%
Male non-Indigenous	4529	92.7%
		Female prisoner population
Female Indigenous	30	8.9%
Female non-Indigenous	306	91.1%
		Total population
Total Indigenous	389	7.4%
Total non-Indigenous	4835	92.6%

Source: Data estimates derived from State of Victoria, Corrections Victoria, 'Indigenous Offenders and Prisoners Data Report to the March 2013 AJF' (Presentation to Aboriginal Justice Forum 14-15 March 2013).

50 An increase of 17 per cent on the previous year. Australian Bureau of Statistics, 'Corrective Services September 2012', above n 42, 7.

51 At the same time, the number of non-Koori female prisoners increased by 27 per cent. Koori male prison numbers in Victoria increased by 48 per cent, from 223 to 331, compared to a 15 per cent increase for non-Koori male prisoners. State of Victoria, 'Indigenous Offenders and Prisoners November 2012', above n 3.

52 State of Victoria, Corrections Victoria, 'Indigenous Offenders and Prisoners March 2013', above n 3. On 31 May 2013, the number of female Koori prisoners was 29. The number of non-Koori female prisoners was 322 and 12 female prisoners had an unknown Indigenous status. Information provided to the Commission by Corrections Victoria, 8 August 2013.

53 Eileen Baldry, *The Booming Industry: Australian Prisons* (2008) 3. <http://www.nobars.org.au/downloads/Baldry_Debate.pdf> at 11 July 2013.

54 State of Victoria, Department of Justice, Koori Justice Unit, above n 8.

The number of Koori women on remand in Victoria is also increasing

The number of Koori women prisoners on remand appears to be increasing at a rate higher than that for non-Koori women, and at a significantly faster rate than that of Koori male prisoners.⁵⁵

Overall, a greater proportion of female prisoners than male prisoners are in prison on remand.⁵⁶ In addition, Koori women are more likely to be on remand than non-Koori women. In 2012, 67 out of 89 Koori women entering prison were on remand.⁵⁷

Figure 2 – Prisoners on remand in Victoria, September 2012

Indigenous status	Number sentenced	Number unsentenced	Proportion unsentenced
Male Indigenous	269	62	18.7%
Male non-Indigenous	3464	838	19.5%
Female Indigenous	20	9	32.1%
Female non-Indigenous	224	84	27.4%
Total Indigenous	289	70	19.5%
Total non-Indigenous	3687	922	20%

Source: State of Victoria, Corrections Victoria, 'Indigenous Offenders and Prisoners: Data Report to the November 2012 AJF' (Presentation to Aboriginal Justice Forum 9 November 2012).

55 State of Victoria, 'Indigenous Offenders and Prisoners March 2013', above n 3.

56 As at September 2012, 38 per cent of Victorian female prisoners were on remand, compared to 19 per cent of all male prisoners. Thirty-two per cent of Koori female prisoners compared to 27 per cent of non-Koori female prisoners. State of Victoria, Corrections Victoria, 'Indigenous Offenders and Prisoners November 2012', above n 4.

57 State of Victoria, Department of Justice, Koori Justice Unit, above n 8. Note also, that on 31 May 2013, 22 per cent of all Koori prisoners (male and female) were on remand compared to 18 per cent of non-Koori prisoners. State of Victoria, Corrections Victoria, 'Indigenous Offenders and Prisoners Data Report to the July 2013 AJF' above n 1.

Time spent on remand

While at any one time around 30 Koori women will be in Victorian prisons, many will cycle through the system multiple times, often on short sentences, or on remand and then not sentenced.⁵⁸

- In 2012, of 67 Koori women on remand, 60 per cent were released without being sentenced. The majority were placed on bail.
- Of those that were sentenced to prison, the highest number received short sentences of less than three or six months.⁵⁹

If we consider females prisoners as a whole, what is also clear is that the number released from prison unsentenced following time on remand is increasing. The chart below shows that time spent on remand is also increasing, with a higher proportion of women spending longer than one month on remand prior to release unsentenced.

Figure 3 – Unsentenced discharges – time spent on remand by female prisoners

Females (time spent)	2010-11 Number	2010-11 Proportion	2011-12 Number	2011-12 Proportion
Under 1 month	16	66.7%	24	55.8%
1<3 months	4	16.7%	10	23.3%
3<6 months	3	12.5%	7	16.3%
6<12 months	1	4.2%	2	4.7%
1<2 years	0	0%	0	0%
Total	24	100%	43	100%
Males (time spent)	2010-11 Number	2010-11 Proportion	2011-12 Number	2011-12 Proportion
Under 1 month	55	53.4%	77	55.8%
1<3 months	28	27.2%	46	33.3%
3<6 months	13	12.6%	13	9.4%
6<12 months	4	3.9%	2	1.4%
1<2 years	3	2.9%	0	0%
Total	103	100%	138	100%

Source: State of Victoria, Corrections Victoria, 'Indigenous Offenders and Prisoners: Data Report to the November 2012 AJF' (Presentation to Aboriginal Justice Forum 9 November 2012).

58 This was the number of Koori women prisoners at 28 February 2013, this number can fluctuate greatly.

59 State of Victoria, Department of Justice, Koori Justice Unit, above n 8.

Imprisonment is increasing even though offending is decreasing

Interestingly, there is a trend of increasing rates of imprisonment even though the rate of crime is actually decreasing. As noted by the Senate Standing Committee on Legal and Constitutional Affairs References Committee, crime rates in Victoria have declined by an average of 18.4 per cent over the last 10 years.⁶⁰

So if offending is not increasing, what is driving the escalation in our prison population?

The Senate Committee noted that factors contributing to the increasing rate of imprisonment include changes to justice policies and practices, such as more stringent bail conditions. “There are also underlying economic and social determinants which contribute to criminal behaviour and thus bring people into contact with a more punitive criminal justice system.”⁶¹

Our research confirmed this analysis. We found that the causes of the over-representation of Koori women in Victorian prisons are complex and interrelated. These include complex personal histories that drive offending, including homelessness, mental illness, drug and alcohol dependence experiences of intergenerational trauma, sexual abuse and family violence.⁶²

Policing practices, sentencing patterns, environmental and locational factors, disadvantage and marginalisation also contribute to the over-representation of Koories in the criminal justice system.⁶³

Offending patterns of Koori women

On 31 May 2013, 52 per cent of the Koori female prison population was in prison for offences against the person, the most common of which were robbery and extortion (21 per cent) and assault (17 per cent). Thirty-four per cent were in prison for burglary, fraud, and other property related offences. As Figure 4 below illustrates, although the numbers are small, the proportion of Koori women in prison for offences against the person is higher than that for non-Koori women, and lower for property offences.⁶⁴ It is significant to note that no Koori women were imprisoned for drug offences despite a high proportion of Koori women in prison being identified as substance dependent.⁶⁵ However, there may be links between the property crimes that Koori women commit and the need to support an addiction.⁶⁶

Figure 4 – Proportion of female prisoners at 31 May 2013 – by offence type

Most serious offence type	Proportion of Koori female prisoners charged with this offence	Proportion of non-Koori female prisoners charged with this offence
Robbery and extortion	21%	10%
Assault	17%	6%
Burglary	17%	9%
Other property	14%	14%
Homicide	14%	13%
Breach of order	10%	15%
Drug	3%	19%
Fraud	3%	6%
Driving	0%	3%
Good order offences	0%	1%

Source: State of Victoria, Corrections Victoria, ‘Indigenous Offender and Prisoners Data Report to the July 2013 AJF’ (Presentation to Aboriginal Justice Forum 18-19 July 2013).

60 Parliament of Australia, ‘Report into Justice Reinvestment’, above n 34, 6.

61 Ibid 7.

62 See for example, Eileen Baldry, Jackie Ruddock and Jo Taylor, *Aboriginal Women with Dependent Children Leaving Prison Project: Needs Analysis Report* (2008).

63 See for example, Chris Cunneen and the Aboriginal Justice Advisory Council, *NSW Aboriginal Justice Plan, Discussion Paper* (2002); Human Rights and Equal Opportunity Commission, *Social Justice Report 2002: Report of the Aboriginal and Torres Strait Islander Social Justice Commissioner* (2002); Human Rights and Equal Opportunity Commission, *Social Justice Report 2004: Report of the Aboriginal and Torres Strait Islander Social Justice Commissioner* (2005).

64 State of Victoria, Corrections Victoria, ‘Indigenous Offenders and Prisoners Data Report to the July 2013 AJF’ above n 1.

65 State of Victoria, Department of Justice, Justice Health, ‘Koori Prisoner Mental Health’, above n 7.

66 See, Eileen Baldry, ‘Booming Industry’, above n 53.

Systemic drivers – the link between disadvantage and offending

Since colonisation, the Victorian Koori community has been subjected to laws and policies that have resulted in multifaceted disadvantage across all aspects of their lives. The community has been affected by the dispossession from traditional lands, removal from their family and community and ongoing segregation from society based on racial discrimination. The impact on the Koori community is thus intergenerational, and affects relationships with family, with land, identity, health, education, and employment.⁶⁷

These experiences have a direct impact on the over-representation of Koori people in the criminal justice system. This is not unique to Victoria. Over 20 years ago, the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) found that the over-representation in the criminal justice system was due to deep structural disadvantage faced by Aboriginal Australians and their “disadvantaged and unequal position in ... society – socially, economically and culturally”.⁶⁸

In very simple terms the RCIADIC summed up the problem when it reported that Aboriginal deaths in custody arose “not because Aboriginal people are more likely to die than others in custody... [but that] too many Aboriginal people are in custody too often”.⁶⁹

There are numerous systemic factors driving Koori people’s disadvantage and so contact with the criminal justice system. These are well understood and include poverty, poor education outcomes, substance misuse, unstable housing and mental health disability, homelessness, family violence and trauma.⁷⁰ Each of these issues was consistently

referred to by key informants to this research as factors contributing to Koori women’s pathway to prison. Disability, low levels of literacy, disconnection from family, significant intergenerational family problems centred on removal, family breakdown and being exploited by male partners were also identified as risk factors by key informants.⁷¹

These are discussed further in the next chapter.

Policy responses to over-representation

For over 20 years, national and Victorian government policies have examined and attempted to respond to the over-representation of Aboriginal and Torres Strait Islanders in prison. Over time, there has been an increasing focus on women.

National policies

Royal Commission into Aboriginal Deaths in Custody

Established in 1987, the RCIADIC investigated the deaths of Aboriginal and Torres Strait Islander peoples in juvenile, police and prison custody from 1980 to 1989. Reporting in 1991, the RCIADIC made 339 recommendations and suggested that to reduce over-representation, we must address the underlying issues (disadvantage) and also reform the criminal justice system itself.⁷²

The RCIADIC’s recommendations built hope within the community with the promise that something was going to be done to deal with the high number of deaths in custody and over-representation.⁷³ However, the harsh reality is that at the time of Royal Commission 14 per cent of Australia’s prison population was Aboriginal or Torres Strait Islander.⁷⁴ Twenty-two years later, this has nearly doubled to 27 per cent.⁷⁵

67 “The legacies of colonisation, dispossession and child removal policies, such as psychological distress and social disorganisation, also appear to be risk factors” for offending. Troy Allard, *Understanding and preventing Indigenous offending*. Indigenous Justice Clearinghouse Brief no. 9 (December 2010) 1. < <http://www.indigenousjustice.gov.au/briefs/brief009.pdf> > at 9 July 2013.

68 Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) 1.7.1.

69 Ibid 1.3.3.

70 See for example, Parliament of Australia, ‘Report into Justice Reinvestment’, above n 34, 13-15; Harry Blagg et al, *Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Criminal Justice System* (2005) 36. See also, Parliament of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system, Doing Time – Time For Doing: Indigenous youth in the criminal justice system* (2011) 2; Troy Allard, ‘Indigenous Offending’, above n 67.

71 See for example, key informant interview, Dr Harry Blagg, 23 November 2012; key informant interview, Aboriginal Family Violence Prevention Legal Service, 13 December 2012; key informant interview, Dame Phyllis Frost Centre, 7 February 2013.

72 Commonwealth, ‘RCIADIC National Report’, above n 68.

73 Chris Cunneen, ‘Punishment: Two Decades of Penal Expansionism and its Effects on Indigenous Imprisonment’ (2011) 15(1) *Australian Indigenous Law Review* 8.

74 John Walker and David McDonald, ‘No. 47 The Over-representation of Indigenous People in Custody in Australia’ (Australian Institute of Criminology, 1995) 3.

75 Australian Bureau of Statistics, ‘Prisoners in Australia’, above n 35, 49.

Moreover, “there is a concerning trend emerging, as the actual number of Indigenous deaths in prison are rising again, with 14 deaths in 2009-10 which is equal to the highest number on record”.⁷⁶

Reports of the Social Justice Commissioner

The 2002 and 2004 Social Justice Reports examined issues surrounding Aboriginal and Torres Strait Islander women and prison from a national perspective.

The 2002 report observed a steady rise in the over-representation of Aboriginal and Torres Strait Islander women in prison, as well as high recidivism rates and higher rates of incarceration for public order offences.⁷⁷

It noted that previous studies, including the Royal Commission, had failed to analyse the unique experiences of women in prison.⁷⁸ Of the 99 deaths investigated by the Royal Commission, 11 were women. However, none of the Commission’s recommendations addressed the discrimination Aboriginal and Torres Strait women experience because of their race and gender.⁷⁹ Arguably, as a result, there has been less research, policy attention and services developed to meet the unique needs of Aboriginal and Torres Strait Islander women.

These issues include disruption to family life and specific issues around pregnancy, health care, strip-searching, dislocation from services and loss of housing identified in the 2002 Social Justice Report.⁸⁰ The Social Justice Commissioner called for holistic, community-based programs that addressed housing needs, the effects of violence,

the needs of children and families, kinship obligations, financial and employment issues and access to health services, including drug rehabilitation.⁸¹

Again, in 2004 the Social Justice Commissioner examined the needs of Aboriginal and Torres Strait Islander women exiting prison.⁸² His report observed a lack of coordination between different agencies, a lack of pre-release support to prepare women for life after prison and a lack of appropriate services that met the needs of Aboriginal and Torres Strait Islander women.⁸³

For some women, this led to homelessness, returning to abusive relationships or reoffending.⁸⁴ The report identified housing and healing programs as key services that Aboriginal and Torres Strait Islander women needed after leaving prison.⁸⁵ It recommended that healing programs address grief and trauma and incorporate community partnerships, mentoring and cultural practices.⁸⁶

Closing the Gap commitments

In December 2007, the Council of Australian Governments (COAG) agreed to a partnership to reduce Indigenous disadvantage in terms of life expectancy, child mortality, education and employment.⁸⁷

In 2011, COAG released the *National Indigenous Reform Agreement (Closing the Gap)* setting out the objectives, outcomes and outputs and performance indicators for reform. Effective since 2012, this agreement identifies ‘building blocks’ or areas for action towards closing the gap: early childhood, schooling, health, economic participation, healthy homes, safe communities and governance and leadership.⁸⁸ Under the Safe Communities building block, the agreement identifies outputs including addressing alcohol and substance abuse, supporting youth at risk and

76 Mathew Lyneham and Andy Chan, ‘Deaths in Custody in Australia to 30 June 2011: Twenty years of monitoring by the National Deaths in Custody Program since the Royal Commission into Aboriginal Deaths in Custody’ (Australian Institute of Criminology, 2013). <<http://www.aic.gov.au/publications/current%20series/mr/1-20/20.html>> at 10 July 2013.

77 Human Rights and Equal Opportunity Commission, *Social Justice Report 2002: Report of the Aboriginal and Torres Strait Islander Social Justice Commissioner* (2002), 136-7, 140, 146.

78 Ibid 153-4.

79 See for example, Megan Davis, ‘A reflection on the Royal Commission into Aboriginal Deaths in Custody and its consideration of Aboriginal women’ *Australian Indigenous Law Reform* 15(1) 25-33. Nor did the Royal Commission address issues relating to family violence and its interplay with contact with the criminal justice system. See for example, Elena Marchetti, ‘Critical Reflections Upon Australia’s Royal Commission into Aboriginal Deaths in Custody’ (2005) 5 *Macquarie Law Journal* 103, 122. See also, Aboriginal Family Violence Prevention and Legal Service Victoria, *A Force To Be Reckoned With 2002-2012: Still Standing Strong* (2012) 11.

80 Human Rights and Equal Opportunity Commission, ‘Social Justice Report 2002’, above n 77, 157-165.

81 Ibid 171-177.

82 Human Rights and Equal Opportunity Commission, *Social Justice Report 2004: Report of the Aboriginal and Torres Strait Islander Social Justice Commissioner* (2005), 11-65.

83 Ibid 24-5.

84 Ibid 12.

85 Ibid 25.

86 Ibid 59.

87 Australian Government, Department of Families, Housing, Community Services and Indigenous Affairs, *Closing the gap: the Indigenous reform agenda* (8 February 2013) <<http://www.fahcsia.gov.au/our-responsibilities/indigenous-australians/programs-services/closing-the-gap>> at 11 July 2013.

88 Council of Australian Governments, *National Indigenous Reform Agreement (Closing the Gap)* (2011). <http://www.federalfinancialrelations.gov.au/content/national_agreements.aspx>.

programs for mental health promotion.⁸⁹ However, there is no specific mention of addressing over-representation of Aboriginal and Torres Strait Islander women in the criminal justice system.

National Indigenous Law and Justice Framework 2009 – 2015

The COAG Closing the Gap agreement identified three policy documents as the framework for the Safe Communities building block. The *National Indigenous Law and Justice Framework* is one of these policies.⁹⁰

The framework was endorsed by the Standing Committee of Attorneys-General (SCAG) in 2009. It is intended to set out an agreed good practice approach to eliminate Indigenous disadvantage in law and justice.⁹¹ Jurisdictions use the framework as a reference for developing local initiatives.⁹²

The Framework identifies reducing the over-representation of Aboriginal and Torres Strait Islander offenders, defendants and victims as one of five goals.⁹³ Under this goal, the Framework sets out actions including identifying factors driving over-representation of Aboriginal and Torres Strait Islander women, men and youth as discrete groups. It calls for the development of rehabilitative programs for prisoners, programs to maintain family relationships and gender-specific, culturally relevant transition support programs.⁹⁴ Importantly, it calls on jurisdictions to “investigate increased offending and incarceration among Indigenous women and develop culturally competent programs”.⁹⁵

Senate Inquiry into the value of a justice reinvestment approach to criminal justice in Australia

The Legal and Constitutional Affairs Reference Committee of the Australian Senate undertook an inquiry into the value of a justice reinvestment approach to criminal justice in Australia. It reported in June 2013. It examined the nature and causes of Aboriginal and Torres Strait Islander over-representation in prisons across Australia,

and canvassed the economic and social costs of this phenomenon. It concluded that the increase in prisoner numbers is “putting financial strain on the Australian justice system, which is quickly becoming unsustainable”.⁹⁶

The Committee discussed the particular circumstances of Koori women in Victoria, noting the escalating numbers and the impacts of imprisonment on Koori women, their children and communities.⁹⁷

The Committee explored the concept of justice reinvestment and the challenges and benefits of adopting such an approach in Australia. Justice reinvestment is a strategy for reducing incarceration rates that has been successfully adopted by some states in the United States and in other jurisdictions. It is predicated on the assumption that if you divert funds currently spent on imprisonment towards prevention strategies in communities, that are owned and controlled by these communities, then over time offending rates and therefore imprisonment will decline.

Funding is provided for tailored programs in those communities to strengthen the community and address the causes of crime to mitigate against individuals being caught up in the criminal justice system. Those who have committed offences are diverted away from prison using other forms of punishment and those likely to reoffend are prevented from doing so through effective rehabilitation, parole supervision and after-prison support.⁹⁸

The Committee made nine recommendations, including that the Commonwealth provide funding for a trial of justice reinvestment in Australia. They also recommended that the Commonwealth refer to the Council of Australian Government the establishment of justice targets for Aboriginal and Torres Strait Islander peoples as part of the Closing the Gap initiative, directed to reducing the imprisonment rate of Aboriginal and Torres Strait Islander peoples.⁹⁹

89 Ibid A-36, A-39, A-40.

90 The other policies are the ‘National Framework for Protecting Australia’s Children’ and ‘Time for Action: The National Council’s Plan for Australia to Reduce Violence against Women and their Children’.

91 Australian Government, *National Indigenous Law and Justice Framework 2009 – 2015* (2010) 4.

92 Ibid 8.

93 Ibid 7.

94 Ibid 18-19.

95 Ibid 19.

96 Parliament of Australia, ‘Report into Justice Reinvestment’, above n 34, 25.

97 Ibid 16-17, 21-23.

98 Ibid 43.

99 Ibid xi-xii.

Victorian Government policy initiatives

Aboriginal Justice Agreement 2

The first Aboriginal Justice Agreement, launched in 2000, said little about the specific needs of Koori women in the justice system.¹⁰⁰

In 2005, the Victorian Government reviewed the implementation of the RCIADIC recommendations under the original Aboriginal Justice Agreement.¹⁰¹ Among other recommendations, the review called for better understanding of and response to the increase of Koori women in contact with the justice system.¹⁰² This led to initiatives introduced in the Aboriginal Justice Agreement 2 (AJA2), which was launched in 2006.

AJA2 recognised that Koori women possess some attributes and needs distinct from other offenders, including Koori men and other women. In particular Koori women:

- are often primary parents, meaning that imprisonment is likely to affect their children
- experience high rates of victimisation, which can be directly or indirectly linked to their involvement in the criminal justice system
- experience discrimination on the basis of both race and gender
- tend to be disadvantaged compared to male prisoners in the areas of health, housing, employment, income and education.

AJA2 stated that these unique needs and attributes should be taken into account when designing responses to over-representation.¹⁰³

One of the six objectives of AJA2 was to increase rates of diversion of Koori people from the justice system and to strengthen alternatives to imprisonment.¹⁰⁴ To support this objective, AJA2 proposed a number of activities including assisting Koori community organisations to establish a Local Justice Worker program, expanding the Koori Court Network and establishing strategies to improve access to mainstream diversion programs.¹⁰⁵

100 The Aboriginal Justice Agreement 3 did contain a commitment to establish a mentoring program for young Aboriginal women. State of Victoria, Department of Justice, 'AJA3', above n 15, 35.

101 State of Victoria, Department of Justice, *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody Review Report Vol 1* (2005). <http://multimedia.justice.vic.gov.au/comms/Koori/resources/Implementation_Review_of_Royal_Commission_Recommendations/volume1/> at 18 July 2013.

102 Ibid 720.

103 State of Victoria, Department of Justice, 'AJA3', above n 15, 18.

104 Ibid 27.

105 Ibid 33.

In relation to Koori women, AJA2 proposed to explore and implement community-based initiatives that divert Koori women from prison.¹⁰⁶

In 2009, the Aboriginal Justice Forum (AJF) held a workshop and commissioned a literature review to better understand the experiences and effects of prison on Koori women and their families.¹⁰⁷ This work was intended to examine potential options for diversion at various stages of contact with the justice system.¹⁰⁸

Better Pathways Strategy (2005 – 2009)

In 2005, in response to a marked increase in rates of imprisonment of women, the Victorian Government developed the Better Pathways Strategy, administered by Corrections Victoria.¹⁰⁹ This strategy acknowledged that there are significant differences between women and men who come in contact with the criminal justice system, including the types of crimes that women commit, past experiences that influence offending and the way that women respond to imprisonment and treatment.¹¹⁰ As a result, Better Pathways argued that strategies to address women's offending should respond to the specific needs and life experiences of women.¹¹¹

Better Pathways noted that to understand the increase in women's imprisonment in Victoria, it was necessary to understand the impact of Koori status on women's offending.¹¹² However, of the 28 strategy deliverables proposed under Better Pathways, only two initiatives applied specifically to Koori women.

106 Ibid 34.

107 Victorian Aboriginal Justice Forum Workshop, 'Aboriginal Women and Diversion', Friday 13 November 2009, Rydges Hotel, Melbourne; Harry Blagg, *Aboriginal women and justice: the case for diversion into healing* (State of Victoria, Department of Justice, 2009).

108 Harry Blagg, *Aboriginal women and justice: the case for diversion into healing* (State of Victoria, Department of Justice, 2009), 3.

109 State of Victoria, Department of Justice, *Better pathways: an integrated response to women's offending and reoffending, a four-year strategy to address the increase in women's imprisonment in Victoria 2005 – 2009* (2005).

110 These included the frequency and seriousness of offending, the impact of drug use, the relationships through which offending behaviour develops, responses to community supervision, incarceration and treatment, primary carer responsibilities, prevalence of victimisation and mental illness, substance abuse and trauma. Ibid 9.

111 Ibid 9.

112 Ibid 8.

In 2009 PricewaterhouseCoopers completed their evaluation report on the Better Pathways Strategy. Despite “noting significant limitations in relation to the data due to the two year time lag in measuring recidivism, the evaluation report was very positive about the Better Pathways Strategy”, noting “the range of tailored community and transitional support programs provided by Better Pathways have kept women out of prison”.¹¹³

These included establishing two transitional houses for Koori women on bail and the expansion of the Aboriginal Women’s Mentoring Program.¹¹⁴ While important and very welcome initiatives, this indicates a limited response to the unique needs and experiences of Koori women in the face of an escalation in prison population.

Closing the Gap Statement of Intent

In 2011 the Premier signed the Closing the Gap Statement of Intent and so recommitted the Victorian Government to the Closing the Gap agenda. “In the Premier’s outline of the government’s approach to Aboriginal affairs, the commitments to closing the gap in health outcomes connected to the need to close the gap in a range of other areas, including justice”.¹¹⁵

Evaluation of AJA2

In 2011, AJA2 was independently evaluated. Key findings of the evaluation were that:

- Koori over-representation in the criminal justice system was still increasing, but would have increased more without the AJA2
- there had been positive outcomes against all objectives, but more remained to be done
- in monetary terms, the evaluators calculated that the gross benefit to Victoria of the AJA2 was approximately \$22-26 million in 2011, representing a social return on investment of between \$1.66-1.93 for every dollar invested.¹¹⁶

The evaluation found that the rates of imprisonment of Koori women had continued to increase, overtaking rates for non-Koori men.¹¹⁷ Despite this, the evaluation found that limited resources and focus had been directed to the needs of Koori women.¹¹⁸

In particular, the evaluation found that there were limited diversionary options available for Koori women.¹¹⁹ The evaluation described this gap as a “key risk point in the system that could be strengthened to reduce overrepresentation”.¹²⁰ The evaluation put forward increased rates of imprisonment and evidence that women respond better to community-based programs as evidence to support the need for these programs.¹²¹

Whilst we have seen significant improvements through our work on AJA1 and AJA2 across the State, it is clear we need to do a lot more in our response to specific issues for our women and to work with young women in the prison system both pre and post-release. But more importantly their initial diversion.¹²²

Aboriginal Justice Agreement 3

Koori women and their interaction with the criminal justice system, particularly the increase of Koori women in prison, is the unfinished business of the RCIADIC and ongoing work for the AJA and the Koori community. Like AJA2, the AJA3 has identified Koori women as a key focus area.¹²³

This research project completed by the Commission is an initiative of the AJA3.

113 PricewaterhouseCoopers, *Evaluation of the Better Pathways Strategy – Executive Summary and Report Card* (State of Victoria, Department of Justice, 2009). <<http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/evaluation+of+the+better+path+ways+strategy+-+executive+summary+and+report+card>> at 4 July 2013.

114 State of Victoria, Department of Justice, ‘Better Pathways’, above n 109, 19, 26.

115 State of Victoria, Department of Justice, ‘AJA3’, above n 15, 22.

116 Ibid 13-14.

117 Nous Group, above n 25, 54.

118 Ibid 79.

119 Ibid 54.

120 Ibid 52.

121 Ibid 54.

122 State of Victoria, Department of Justice, ‘AJA3’, above n 15, 4.

123 Ibid 102.

Victorian Aboriginal Affairs Framework 2013-18

Building on the objectives identified in COAG's *National Indigenous Reform Agreement*, the Victorian Government adopted the *Victorian Indigenous Affairs Framework 2010-13* (VIAF),¹²⁴ with the goal of creating lasting improvements in the health and quality of life of Indigenous Victorians.¹²⁵

Subsequently the *Victorian Aboriginal Affairs Framework 2013-18* was released. This contains generational targets for improving Aboriginal justice outcomes linked to the AJA3. For example it includes "a commitment to close the gap in the number of Aboriginal people (youth and adult) under justice supervision by 2031".¹²⁶

Other relevant Victorian Government policies

- *Victorian Government Aboriginal Inclusion Framework 2011*¹²⁷
- *Mingu Gadhaba: Beginning Together*: the Department of Justice's Koori Inclusion Action Plan, which aims to improve access, participation and effectiveness of justice programs and services to Koories.
- *Meerta Meerta*: Corrections Victoria Koori Education, Training and Employment Strategy
- *Strong Culture, Strong Peoples, Strong Families: Towards a Safer Future for Indigenous Families and Communities*: a 10-year plan developed by the Victorian Indigenous Family Violence Partnership Forum to address family violence in the Koori community¹²⁸

- *Koori Alcohol Action Plan 2010-20* and the *Koori Suicide Prevention and Response Action Plan 2010-15*¹²⁹
- *Koolin Balit*: Victorian Government Strategic directions for Aboriginal Health 2012-22¹³⁰
- Services Connect – the new integrated human services system and the *Human Services Aboriginal Strategic Framework 2013-15*¹³¹
- *Victoria's Vulnerable Children: our shared responsibility Strategy*.¹³² This includes the establishment of the Commissioner for Aboriginal Children and Young People
- *Wannik* and *Wurreker* Koori education strategies.¹³³

124 State of Victoria, Department of Planning and Community Development, *Victorian Indigenous Affairs Framework 2010 – 2013* (2010) 5.

125 Ibid 1.

126 State of Victoria, Department of Justice, 'AJA3', above n 15, 23.

127 State of Victoria, Department of Planning and Community Development, *Victorian Government Aboriginal Inclusion Framework 2011*. <http://www.dpcd.vic.gov.au/__data/assets/pdf_file/0018/51615/Aboriginal-Inclusion-Framework-_7_Nov_2011.pdf> at 15 July 2012.

128 State of Victoria, Department of Planning and Community Development, *Strong Culture, Strong Peoples, Strong Families: Towards a Safer Future for Indigenous Families and Communities*. <http://www.dpcd.vic.gov.au/__data/assets/pdf_file/0018/35523/Final_10_Year_Plan_Oct08_2nd_Edition.pdf> at 15 July 2013.

129 State of Victoria, Department of Health, *Koori Alcohol Action Plan 2010-20* (2011). <<http://www.health.vic.gov.au/aod/pubs/kaap.htm>> at 15 July 2013; State of Victoria, Department of Health, *Koori Suicide Prevention and Response Action Plan 2010-15* (2010). <[http://docs.health.vic.gov.au/docs/doc/CDB9E9737F728141CA257A530018EAC8/\\$FILE/vasprap-action-plan-2010-15.pdf](http://docs.health.vic.gov.au/docs/doc/CDB9E9737F728141CA257A530018EAC8/$FILE/vasprap-action-plan-2010-15.pdf)> at 15 July 2013.

130 State of Victoria, Department of Health, *Koolin Balit: Victorian Government Strategic directions for Aboriginal Health 2012-22* (2012). <<http://www.health.vic.gov.au/aboriginalhealth/koolinbalit.htm>> at 15 July 2013.

131 State of Victoria, Department of Human Services, *Services Connect: Better Services for Victorians in Need* (2013). <<http://www.dhs.vic.gov.au/about-the-department/plans,-programs-and-projects/projects-and-initiatives/services-connect>> at 15 July 2013; Department of Human Services, *Human Services Aboriginal Strategic Framework 2013-15* (2013) <<http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies,-guidelines-and-legislation/human-services-aboriginal-strategic-framework-2013-2015>> at 15 July 2013.

132 State of Victoria, Department of Human Services, *Victoria's Vulnerable Children: our shared responsibility Strategy 2013-22*. <http://www.dhs.vic.gov.au/__data/assets/pdf_file/0010/764281/Victorias_vulnerable_children_strategy.pdf> at 15 July 2013.

133 State of Victoria, Department of Education and Early Childhood Development, *Wannik: Learning Together – Journey to Our Future* (2008). <<http://www.education.vic.gov.au/about/programs/aboriginal/pages/wannik.aspx>> at 15 July 2013; State of Victoria, Department of Education, Employment and Training, *Wurreker: The Message Carriers* (2000). <http://vaeai.org.au/uploads/_ckpg/files/Wurreker%20Strategy%202000.pdf> at 15 July 2013.



Case study 1: Liza

I am a young woman in my early twenties. This is the fifth time I have been in prison. I have a few months to go on my sentence.

I have a daughter who is cared for by mum.

I started using heroin when I was 13 years old. My dad is Aboriginal and has eight kids. Because my mum is white, I got picked on when I lived with my dad and his family because I was fair skinned. Dad didn't want to have white kids.

I didn't like living with dad so I moved in with mum. Mum's boyfriend used to bash her a lot. This is when I started using drugs and started to live on the streets because I didn't want to go home. I was known to Police at this time because they would be called to mum's for family violence matters.

I started to steal to take drugs. The stealing eventually led me to prison at 20 years old. Before prison, I got bail about 30 times and feel like I was given lots of chances but I couldn't stop taking drugs.

All my times in prison have been because of theft to support my drug habit. But the last time I got out I started using 'Ice'. This drug made me psychotic and violent. I thought everyone was out to get me and I started attacking people in the street. This is why I have been in for such a long time this time. Because I was violent. I am not a violent person. I have never been before but 'Ice' makes you that way.

The last time I was in prison I was released on straight release.

I was not given any services on release. The Women's Integrated Support Program (WISP) said that I was not suitable for their program and they didn't tell me why. I left prison without any services and no accommodation. That's the problem with straight release, you get no support.

I was reviewed for parole in February 2013 but I had a couple of dirty urines before I started using Buprenorphine. I have not had any more 'dirties' since I started using 'bup' to help with my drug problem. I've been clean for six months but the Parole Board didn't care. I will now be released on straight release again.

Hopefully when I get released this time I will be able to get support from WISP or Konnect.

Being in prison for this long has made me realise that other women have it a lot worse than me. This has changed my "f**k the world" attitude but I think it's impossible not to use drugs again. I also have a great partner and we will support each other when released.

Chapter 3:

The pathway to prison

Main findings

- A high proportion of Koori women prisoners were themselves clients of child protection services as children. Many now have their children in informal or formal out-of-home care.
- Ninety-two per cent of Koori women prisoners have experienced mental illness at some stage in their lives.¹³⁴
- Koori prisoners also have higher drug or alcohol treatment needs than non-Koori prisoners.¹³⁵
- A study of Victorian female prisoners found 87 per cent were victims of sexual, physical or emotional abuse, with most having suffered abuse in multiple forms.¹³⁶ Our research found a high rate of victimisation among the Koori women prisoners we spoke to.
- A significant proportion of Koori women prisoners were homeless or in unsafe housing due to violence prior to entering prison. Koori Victorians are six times as likely to be homeless as non-Koori Victorians.¹³⁷

134 Ninety-two per cent of Koori women participating in the study had received a lifetime diagnosis of mental illness. This refers to a mental illness at any point in their lifetime and does not necessarily reflect a current illness. Note however, the small sample size of 15 Koori women prisoners in this study. James Ogloff et al, *Koori Prisoner Mental Health and Cognitive Function Study: Final Report* (2013) 12 – 13.

135 State of Victoria, Sentencing Advisory Council, 'Comparing Sentencing Outcomes', above n 49, 48-49.

136 Data drawn from a 2004 study. See for example, Smart Justice, above n 5, 2. <<http://www.smartjustice.org.au/resources/SJ%20Factsheet%20Prisons%202011.pdf>> at 10 July 2013.

137 Australian Institute of Health and Welfare, *Specialist Homelessness Services – July-December 2012* (2013) 5.



Indigenous Australians fare much worse than non-Indigenous Australians in terms of the four critical factors known to play a significant role in the onset, frequency or seriousness of offending.¹³⁸

Risk factors for offending

Research conducted in 2010 identified four key measures of risk for involvement in crime. These are: child neglect and abuse, drug and alcohol misuse, poor school performance/early school leaving and unemployment.¹³⁹ The research found Victorian Koories to be over-represented on all of these measures.

Child abuse and neglect

Aboriginal children and young people are significantly over-represented in Victoria's child protection and out-of-home care services compared to the broader population. At the same time, Aboriginal children under-participate in the universal services which promote healthy development, learning and wellbeing.¹⁴⁰

- In 2009-10, while Koori children comprised an estimated 1.2 per cent of Victoria's children, they were the subject of 9.4 per cent of the reports of child abuse.¹⁴¹
- In 2011-12, substantiated child protection investigations involving Koori children rose to 963, their highest number in 10 years.
- Furthermore, in 2011-12, Koori children were almost 10 times more likely to be the subject of a substantiated child protection investigation than non-Koori children.¹⁴²

Judge Paul Grant, former President of the Children's Court of Victoria noted that Aboriginal children are 14.9 times more likely to be on a protection order and in out-of-home care, adding "this is particularly concerning as 44 per cent of the Victorian Koori population is under 18."¹⁴³

Many of the young Koori women who have been in out-of-home care, often lack appropriate parenting skills. Young women who come from dysfunctional family circumstances are also at higher risk of being parents at a younger age... The court has seen cases where mums are involved in protection order applications for their own children whilst also being subject to protection orders themselves.¹⁴⁴

This concern is warranted as our focus groups with Koori women in custody identified a high proportion of those currently in prison were themselves clients of child protection services as children.

In DHS out-of-home care, you don't learn life skills. When I was 17 years old, I was told that I was no longer in DHS care. I was not prepared for this. I was dependent on the system and didn't learn how to become independent...¹⁴⁵

I have gone from out-of-home care, to juvenile justice and then to the adult prison system.¹⁴⁶

138 Don Weatherburn and Jessie Holmes, 'Re-thinking Indigenous Over-representation in Prison' (2010) 45(4) *Australian Journal of Social Issues* 559, 569.

139 Ibid.

140 State of Victoria, Department of Human Services, 'Vulnerable Children Strategy', above n 132, 1.

141 State of Victoria, Department of Premier and Cabinet, *Report of the Protecting Victoria's Vulnerable Children Inquiry Vol 2* (2012) 293.

142 State of Victoria, *Victorian Government Aboriginal Affairs Report 2012* (2012) 20. The report found the rate of substantiation in the Aboriginal population as 62.5 per 1,000 Koori children compared to 6.4 per 1000 children in the non-Koori population.

143 Key informant interview, Judge Paul Grant, President, Children's Court of Victoria, 14 January 2013; "Nearly one half of the population is young, with Indigenous children aged 0-17 making up 43.5% of Victoria's Indigenous population." State of Victoria, Department of Planning and Community Development, 'Indigenous Affairs', above n 124, 4.

144 Key informant interview, Judge Paul Grant, President, Children's Court of Victoria, 14 January 2013.

145 Focus group participant, 17 January 2013.

146 Focus group participant, 17 January 2013.

Young Aboriginal women in particular have no sense of a future. There is a disconnection from culture where prison becomes almost a rite of passage. Many young Aboriginal women will 'graduate' from the same juvenile institutions where their mothers, maybe even their grandmothers were incarcerated and will ultimately follow in the footsteps of their extended families, both men and women, through the revolving doors of the adult prison system. We've been conditioned to this, it's what we know and it is our expectation of life.¹⁴⁷

Drug and alcohol dependence

Aboriginal and Torres Strait Islander Australians are less likely to drink than other groups are, however where they do drink, they are more likely to drink at harmful levels. Victorian data from 2007-08 revealed that 26 per cent of Koori people had not consumed alcohol in the past 12 months, compared to 19 per cent of the general population.¹⁴⁸ However, Koori people who did drink were more likely than non-Koori Victorians to drink to medium or high-risk levels, with the potential for longer-term harm.¹⁴⁹

Data drawn from Victorian prisoners indicates that drug and alcohol misuse is higher amongst Koori prisoners than non-Koori prisoners. From July 2010 to June 2011, an assessment of Victoria's prisoner population revealed Koori prisoners were more likely than non-Koori prisoners to have high drug and alcohol treatment needs. These needs were identified via the Victorian Intervention Screening Assessment Tool (VISAT), which is used by Corrections Victoria to assess a prisoner's social, personal, and economic circumstances at the commencement of their sentence, and identify their risk of reoffending and offence-related treatment needs.¹⁵⁰

Via the VISAT, Koori prisoners were identified as significantly more likely than non-Koori prisoners to have moderate to high drug and alcohol treatment needs.

147 Case study 5.

148 State of Victoria, Department of Health, 'Koori Alcohol Action Plan', above n 129, 14.

149 Ibid 14-15.

150 Note: there is no female-specific data, other than a note that says the sample of women, though small, included a higher proportion of Koori women than non-Koori women (24 Koori women or 10.8 per cent of all Koori prisoners compared to 216 non-Koori women or 7.1 per cent of non-Koori prisoners). State of Victoria, Sentencing Advisory Council, 'Comparing Sentencing Outcomes', above n 49, 47.

- Thirty-eight per cent of Koori prisoners assessed were identified as having high alcohol treatment needs, compared to 16 per cent of non-Koori prisoners.
- Fifty-five per cent of Koori prisoners were identified as having high drug treatment needs, compared to 44 per cent of non-Koori prisoners.¹⁵¹

Several key informants mentioned alcohol and other drug dependence as a factor contributing to Koori women offending.¹⁵² Some Koori women also mentioned the impact of drugs on their lives.¹⁵³

School is a protective factor. When young people are not engaged at school, then this also increases the likelihood that they will become involved in criminal activity.¹⁵⁴

Educational disadvantage

In government primary and secondary school, Koori students generally perform better than Aboriginal and Torres Strait Islander students in other states. However, when compared to other students within Victoria, Koori students are more likely to have lower literacy and numeracy skills, lower attendance rates, and complete fewer years of schooling.

Wannik, Victoria's 2008 education strategy for Koori students, identified Koori students as entering Prep with lower literacy skills than non-Koori children¹⁵⁵, with the percentage of Koori students failing to achieve expected levels remaining higher than that of other students through to the end of school.¹⁵⁶

- Overall, Victorian Koori students attended school less than other students and, by Year 9, they were missing, on average, one day of school a week.

151 Ibid 48-49.

152 For example, key informant interview, Victorian Aboriginal Legal Service, 15 November 2012; key informant interview, Aboriginal Family Violence Prevention Legal Service, 13 December 2012; key informant interview, Aboriginal Outcomes Unit, Department of Human Services, 30 November 2012.

153 For example, Case study 1.

154 Key informant interview, Judge Paul Grant, President, Children's Court of Victoria, 14 January 2013. See also, key informant interview, Aboriginal Family Violence Prevention Legal Service, 13 December 2012.

155 Approximately 20 per cent of Koori Prep students, compared to approximately five per cent of non-Koori Prep students. State of Victoria, Department of Education and Early Childhood Development, above n 133, 9.

156 Ibid.

- For Koori students who remained to take post-compulsory study in the Victorian Certificate of Education (VCE), of 127 eligible Koori students, 107 completed VCE in 2006, a completion rate of 84 per cent compared to 97 per cent for other students.¹⁵⁷
- Nationally, Australian Bureau of Statistics census data shows that the proportion of Indigenous people who have completed high school is half that of the non-Indigenous population, at 25 per cent compared to 52 per cent.
- Of those that did not complete high school, Indigenous people were twice as likely to declare Year 9 or below as their highest completed year of school.
- In 2011-12, VISAT identified Koori prisoners as more than twice as likely to have high vocational and educational needs than non-Indigenous prisoners.¹⁵⁸

Disadvantage in employment

Poverty was identified by several key informants as a factor contributing to offending.¹⁵⁹

Poverty is...a key driver of crime. The majority of VALS' clients are living on or below the poverty line, many have substance addictions and are from disadvantaged communities.¹⁶⁰

Aboriginal and Torres Strait Islanders are less likely to be employed and also earn less than other Australians. Census data shows that in 2010:

- Fifty-one per cent of Indigenous Australians over the age of 15 were employed, compared to 64 per cent of non-Indigenous Australians.
- When looking only at those aged 15 to 65, the contrast is even starker, with only 53 per cent of Indigenous people employed, compared to 76 per cent of non-Indigenous people.¹⁶¹
- A little over half (56 per cent) reported a weekly income of between \$200 and \$799. In contrast, half (51 per cent) of the non-Indigenous population reported earning twice that amount per week, between \$400 and \$1,249.¹⁶²

157 Ibid 10.

158 State of Victoria, Sentencing Advisory Council, 'Comparing Sentencing Outcomes', above n 49, 51.

159 For example, key informant interview, Aboriginal Family Violence Prevention Legal Service, 13 December 2012; key informant interview, Flat Out, 5 March 2013.

160 Key informant interview, Victorian Aboriginal Legal Service, 15 November 2012.

161 State of Victoria, Sentencing Advisory Council, 'Comparing Sentencing Outcomes', above n 49, 51.

162 Ibid 49.

The Corrections Victoria Koori Education, Training and Employment Strategy 2011-2013 notes "significant educational and employment disadvantage amongst Victoria's prison population".¹⁶³ The proportion of Koori prisoners who were employed prior to prison has also declined significantly in recent years. On 30 June 2010, only six per cent of Koori prisoners had a job immediately prior to prison.¹⁶⁴

Mental health and other disabilities

- Reported rates of mental health disorders and other disabilities are significantly higher for Indigenous Australians.¹⁶⁵
- In 2008, half of all Indigenous people aged 15 years and over reported having a disability or a long-term health condition, while one in 12 had a profound or severe core activity limitation.¹⁶⁶
- Indigenous people experience a profound or severe core limitation at around twice the rate of non-Indigenous people.¹⁶⁷
- Eight per cent of Indigenous people had a psychological disability and a further eight per cent had an intellectual disability.¹⁶⁸
- Indigenous people in non-remote areas are 50 per cent more likely to have a physical disability and three times more likely to have an intellectual disability than non-Indigenous people.
- Indigenous children are almost four times more likely to be deaf than non-Indigenous people.¹⁶⁹

163 State of Victoria, Corrections Victoria, "*Meerta Meerta*": *Koori Education, Training and Employment Strategy 2011-2013* (2011) 5.

164 Down from 19 per cent in 2004. Ibid 11.

165 The Productivity Commission commented on the difficulty of providing accurate rates of disability among Indigenous peoples. They linked this uncertainty to a number of things, including a lack of historical data, lower rates of survey participation by Indigenous people, differing cultural understandings of disability, and greater barriers facing Indigenous people in accessing disability supports. They warned that rates of disability may still be understated. Productivity Commission, *Disability Care and Support*, Report no 54 (2011) 532-3.

166 Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples* (2010). <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/lookup/4704.0Chapter510Oct+2010>> at 14 July 2013. The ABS defines a profound or core activity limitation as, "A specified condition for which a person requires help or supervision in performing one or more core activities such as self-care, mobility or communication."

167 Productivity Commission, 'Disability Care and Support', above n 165, 533.

168 Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples* (2010). <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/lookup/4704.0Chapter510Oct+2010>> at 14 July 2013.

169 Productivity Commission, 'Disability Care and Support', above n 165, 534.

People with a complex cognitive disability, including acquired brain injury, mental health or intellectual disability “have a much higher rate of early contact with the justice system than those with a single disability or without a disability. Prisoners with an intellectual disability have high rates of deferral of parole due to a lack of post-release accommodation with appropriate support. In addition, prisoners with an intellectual disability have a higher average number of prison incidents recorded against them”.¹⁷⁰

Similarly, within the justice system, “people with hearing loss are disadvantaged. They may face more severe penalties if they cannot communicate effectively with police, if they cannot participate or fully understand court proceedings or cannot understand bail conditions or a parole order because of undetected hearing loss”.¹⁷¹

Mental illness

Indigenous men and women experience disability at similar rates, except for psychological disability, which women are more than twice as likely to experience as men.¹⁷²

In Victoria, VicHealth reports that over a quarter of Koori people have a form of mental illness and Indigenous people experience high or very high levels of psychological distress at twice the rate of non-Koori people.¹⁷³

High rates of mental health disorders and cognitive disabilities among Koori men and women further contribute to Indigenous over-representation in prisons, with people with these forms of disabilities already make up a significant proportion of the prison population.¹⁷⁴

The most recent data indicates that 92 per cent of Koori women prisoners have received a lifetime diagnosis of mental illness.¹⁷⁵ The “most prevalent illnesses included major depressive episodes and post-traumatic stress disorder (PTSD). Almost half (46 per cent) of women, as compared to 14.7 per cent of men, were found to have met the criteria

for PTSD at the time of interview... most people with mental illnesses had a co-occurring substance misuse disorder”.¹⁷⁶

This correlates with findings from other jurisdictions. For example, a study of prisoners in New South Wales, found that 91 per cent of Aboriginal and Torres Strait Islander prisoners examined experienced mental illness or a cognitive disability.¹⁷⁷

A Queensland study found that 86 per cent of Aboriginal and Torres Strait Islander female prisoners had at least one mental health disorder, compared to a prevalence rate in the general community estimated at 20 per cent. The study concluded that “the overrepresentation of Aboriginal and Torres Strait Islander people in prison, the high prevalence of mental disorder, and the frequent transitioning to and from prison, would have flow-on effects in Aboriginal and Torres Strait Islander communities”.¹⁷⁸

Homelessness and unstable housing

Indigenous homelessness is “the inability of an Indigenous person to access appropriate housing that caters for their particular complex social and cultural needs.”¹⁷⁹ For the purposes of the Census, homelessness is separated into three categories: primary, secondary, and tertiary.¹⁸⁰

- The 2006 Census estimated a count of 777 homeless Indigenous people in Victoria. That is a rate of 246 per 10,000, compared to 40 per 10,000 for non-Indigenous people, indicating that Koori Victorians are six times as likely to be homeless as non-Koori Victorians.¹⁸¹
- Nationally, from July to December 2012, around one in four people who presented at government-funded specialist homelessness agencies identified as Aboriginal.

170 Parliament of Australia, ‘Report into Justice Reinvestment’, above n 34, 38.
 171 Ibid 40.
 172 Australian Bureau of Statistics, *The Health and Welfare of Australia’s Aboriginal and Torres Strait Islander Peoples, Oct 2010* cat 4704.0 (2011). <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/lookup/4704.0Chapter5100ct+2010>> at 14 July 2013.
 173 At a rate of 21.4 per cent compared to 10 per cent. State of Victoria, VicHealth, *Aboriginal Health in Victoria – Research Summary* (2009) 3.
 174 State of Victoria, Sentencing Advisory Council, ‘Comparing Sentencing Outcomes’, above n 49, 49.
 175 That is 92.3 per cent. James Ogloff et al, ‘Koori Prisoner Mental Health’, above n 134, 13.

176 Ibid.
 177 Cited in State of Victoria, Sentencing Advisory Council, ‘Comparing Sentencing Outcomes’, above n 49, 50.
 178 Parliament of Australia, ‘Report into Justice Reinvestment’, above n 34, 35.
 179 Australian Housing and Urban Research Institute, *Indigenous Homelessness* (2010) 1.
 180 Primary homeless describes the situation of people without conventional accommodation, whether it is living on the street or in improvised accommodation such as a shed or garage. Secondary homelessness describes the situation of living in temporary accommodation, including emergency or transitional accommodation or a temporary stay in another household. Tertiary homelessness describes the situation of living in a boarding house on a medium to long-term basis. See, Australian Institute of Health and Welfare, *Counting the Homeless 2006: Victoria* (2009) 5. These definitions are similar to those contained in the *Supported Accommodation and Assistance Act 1984 (Cth)* and *Homelessness Bill 2013 (Cth)*
 181 Australian Institute of Health and Welfare, *Counting the Homeless 2006: Victoria* (2009) 65.

- While women represented 58 per cent of all people presenting to specialist agencies, women of Aboriginal and/or Torres Strait Islander origin were over-represented, making up 62 per cent of all self-identified Aboriginal and/or Torres Strait Islander service users.¹⁸²

The Australian Institute of Health and Welfare reports that Indigenous homelessness may be under-reported for a variety of reasons, including a different cultural understanding of 'home', extended kinship networks, and higher mobility between extended family dwellings.¹⁸³

Kinship obligations may result in the sharing of accommodation, reducing somewhat the rate of street homelessness. However, this has the impact of increasing rates of overcrowding. Low income and housing stress may also contribute to overcrowding.

This in turn destabilises housing arrangements, increasing the risk of breaching tenancy conditions requirements and potentially resulting in eviction and further homelessness.¹⁸⁴ Once homeless, Koori Victorians also face discrimination in the private rental market.¹⁸⁵

Koori women in our focus groups told us of the desperation caused by homelessness:

Once released into the community there are waiting lists for emergency housing. Women have reoffended in order to pay the costs of their accommodation or placed themselves in compromising situations for a bed at night (such as prostitution).¹⁸⁶

Not knowing where you are going to sleep is the worst feeling in the world.¹⁸⁷

Many key informants raised housing as a major issue for Koori women.¹⁸⁸ Some linked homelessness to reoffending to ensure a return to prison as a form of accommodation:

Lack of accommodation is the biggest issue. It is the worst thing of all...If the women do not have family to go back to when they are released they go back to the streets and the cycle continues.¹⁸⁹

Figure 5 – Distinct alleged young offenders (10-17 years) processed by police, per 1,000 population, Victoria

	2005-06	2006-7	2007-08	2008-09	2009-10	2010-11	2011-12
Aboriginal	102.6	105.5	111.8	107.5	100.3	91.1	93.6
Non-Aboriginal	19.6	22.2	22.2	22.5	21.4	17.6	14.6
Over-representation rate	5.2	4.8	5.0	4.8	4.7	5.2	6.4

Source: State of Victoria, Department of Planning and Community Development, *Victorian Government Aboriginal Affairs Report 2012* (2012) 55.¹⁹⁰

182 Australian Institute of Health and Welfare, *Specialist Homelessness Services*, above n 136, 5.
 183 Australian Institute of Health and Welfare, 'Counting the Homeless', above n 181, 31.
 184 Australian Housing and Urban Research Institute, above n 179, 2-3.
 185 Previous research by the Commission examining the experiences of people seeking rental accommodation indicates that some property owners and agents refuse properties because of the applicant's race. See, Victorian Equal Opportunity and Human Rights Commission, *Locked out: Discrimination in Victoria's private rental market* (2012) 12.

186 Focus group interview, 17 January 2013.
 187 Focus group participant, 17 January 2013.
 188 For example, key informant interview, Aboriginal Outcomes Unit, Department of Human Services, 30 November 2012; key informant interview, Aboriginal Family Violence Prevention Legal Service, 13 December 2012; key informant interview, Magistrates' Court of Victoria, 3 March 2013.
 189 Key informant interview, Dame Phyllis Frost Centre, 7 February 2013.
 190 "Source: VicPol LEAP database. Extracted 21 November 2012. Note: The data for Aboriginal offenders is based on answers to the Standard Indigenous Question (SIQ) recorded by Victoria Police and is not comparable to data for the same or similar measures contained in previous years' reports which were based on an assessment of racial appearance by attending officers. Figures from 2012-13 onwards are subject to change as Victoria Police implements improvements to the collection and processing of SIQ data. Note: Contact represents distinct alleged offenders who receive a caution, arrest, summons or other". State of Victoria, Department of Planning and Community Development, 'Aboriginal Affairs Report 2012', above n 31, 55.

The rate of Aboriginal young people (10-17) processed by police has fallen in recent years... However, the rate remains unacceptably high and is still over six times the non-Aboriginal rate.¹⁹¹

Previous contact with youth justice

Young Koori people are more likely to come into contact with police at a younger age and more often. They are more likely to be serving a custodial sentence at a younger age than non-Koori children in Victoria. In 2010, 12.6 per cent of those on youth justice orders were Koories despite being only 1.02 per cent of the Victorian population aged 10-19 years.¹⁹²

The Commission understands that first contact with police is more likely to be as a victim, for example, as a child experiencing family violence, and that future contacts will probably be in the form of field contacts with police when young Koori people are in public spaces. Some of this goes to the distinct patterns of offending arising from multi-age peer groups among young Koori people, so that younger children are more likely to come into contact with police earlier than for non-Koori young offenders.¹⁹³

Work from the Australian Criminology Research Council found that, nationally, one-fifth of Aboriginal and Torres Strait Islander females who had contact with the juvenile justice system had six or more contacts. In comparison, one in forty young non-Aboriginal and Torres Strait Islander female offenders had six or more contacts with the juvenile justice system.¹⁹⁴

The correlation between child protection and contact with youth justice is well understood. In Victoria in 2010, “78 per cent of those aged 10-12 with youth justice orders or who had experienced remand at this age were known to child protection services. Of these, 60 per cent were known [to child protection] before their seventh birthday”.¹⁹⁵

*Overall, young people in detention usually are the product of damaged, dysfunctional and unprotected childhoods... The Victorian Children’s Court has seen many cases of young people whose first interaction with the court was in the family division (subject to protection orders) who then go onto offending and subsequently end up in the criminal division of the Children’s Court. Many then go on to offending as adults and into the adult criminal system.*¹⁹⁶

Young Koori women are less likely to be in youth detention than young Koori men¹⁹⁷, however around 10 per cent of Koori cases before the criminal jurisdiction of the Children’s Court involve young Koori women.¹⁹⁸ Again, there is a high correlation between child protection involvement and offending.

191 “From around 100 per 1,000 to close to 90 per 1,000. The percentage-point gap between the rate of Aboriginal and non-Aboriginal young people processed by police has also fallen to 78.9”. State of Victoria, Department of Justice, ‘AJA3’, above n 15, 17.

192 Jesuit Social Services, *Thinking Outside: Alternatives to remand for children – Summary Report* (2013) 18.

193 Research by Jesuit Social Services has also found that there are children unnecessarily held on remand. “The use of remand is heavily weighted toward short stays with the majority of admissions ending with children receiving bail or the order expiring. This is most evident where children are held in custody overnight and throughout weekends... Timely assessment and service coordination, particularly after hours, must be at the centre of reform”. Jesuit Social Services, above n 190, 22.

194 See, Troy Allard et al, *Police Diversion of Young Offenders and Indigenous Over-Representation*, Report no. 390 (Australian Institute of Criminology, 2010) 3. <<http://www.aic.gov.au/publications/current%20series/tandi/381-400/tandi390.html>> at 18 July 2013.

195 Jesuit Social Services, above n 190, 15.

196 Key informant interview, Judge Paul Grant, President, Children’s Court of Victoria, 14 January 2013.

197 State of Victoria, Sentencing Advisory Council, ‘Comparing Sentencing Outcomes’, above n 49, 31.

198 Key informant interview, Judge Paul Grant, President, Children’s Court of Victoria, 14 January 2013.

Some key informants suggested that the current population of Koori female prisoners is highly likely to have had contact with child protection, but were less likely to have served custodial sentences in Youth Justice facilities. In 2010-11, of 23 Koori women sentenced to adult prison by the Magistrates' Court, four had prior youth justice convictions.¹⁹⁹

The link between Koori women as victims of crime and offending

In our consultations with key informants, trauma and victimisation was raised as a significant driver of Koori women's offending.

Something major has happened and left a mark on them but they have not been given the opportunity to heal.²⁰⁰

Recent research has identified that Aboriginal women experience violence at 45 times the rate of non-Aboriginal women.²⁰¹ These high levels of victimisation and trauma result in increased rates of offending, as victims become offenders.²⁰²

Research also indicates that women's offending behaviour develops through their relationships – with family members, friends and significant others (including partners, support networks and colleagues) rather than the concept of 'peer associates' that is commonly cited as a risk factor for men.²⁰³

Experiences of abuse

The cycle of abuse, offending and imprisonment was a problem highlighted by several key informants.²⁰⁴

*Koori women offenders are often victims themselves and present to the court with multiple problems. They are often victims of family violence and sexual assault, have lost their children and have drug and alcohol issues. They need safe housing, supports and they need mentoring.*²⁰⁵

A study of Victorian female prisoners found 87 per cent were victims of sexual, physical or emotional abuse, with most having suffered abuse in multiple forms.²⁰⁶

Research in NSW found that 69 per cent of Indigenous women in prison were abused as children, with three-quarters of those experiencing sexual abuse. Seventy-three per cent were abused as adults, 42 per cent of whom experienced sexual assault. The same study found that 80 per cent of the female prisoners surveyed said their experience of abuse was an indirect cause of their offending.²⁰⁷

Victoria's Better Pathways Strategy recognised the importance of understanding the connection between victimisation and offending, while also acknowledging that the exact nature of the relationship between abuse and offending was poorly understood.²⁰⁸

199 Includes Youth Detention Orders, Youth Supervision Orders and Youth Attendance Orders. This may be an undercount, as available data only captures those sentenced to prison in 2010-11 who had been previously sentenced from 1 July 2004. Older prisoners that may have appeared before July 2004 (and had not appeared since) would not be counted. Information provided to the Commission by Sentencing Advisory Council on 1 February 2013.

200 Key informant interview, Dame Phyllis Frost Centre, 7 February 2013.

201 National Congress of Australia's First Peoples, Submission No 53 to Senate Standing Committee on Legal and Constitutional Affairs, Inquiry into the value of a justice reinvestment approach to criminal justice in Australia, March 2013, 12. <http://www.aph.gov.au/parliamentary_business/committees/senate_committees?url=legcon_ctte/completed_inquiries/2010-13/justice_reinvestment/submissions.htm> at 16 July 2013.

202 State of Victoria, Department of Justice, 'AJA2', above n 24, 18; Harry Blagg, 'Aboriginal women and justice', above n 108, 13-14; Nous Group, above n 25, 48-49.

203 State of Victoria, Department of Justice, 'Better Pathways', above n 109, 9.

204 See, for example, key informant interview, Dame Phyllis Frost Centre, 7 February 2013; key informant interview, Magistrates' Court of Victoria, 3 March 2013.

205 Key informant interview, Magistrates' Court of Victoria, 3 March 2013.

206 Data drawn from a 2004 study. See, Smart Justice, above n 5, 2.

207 Includes child sexual abuse, adult physical and sexual abuse. New South Wales Aboriginal Justice Advisory Council, *Holistic Community Justice: A Proposed Response to Aboriginal Family Violence* (2001) 7. <<http://pandora.nla.gov.au/pan/25329/20020709-0000/www.lawlink.nsw.gov.au/ajac.nsf/pages/family+violence+discussion+paper.pdf>> at 18 July 2013.

208 State of Victoria, Department of Justice, 'Better Pathways', above n 109, 15.

Many Koori women are isolated and have been victims of sexual assault, childhood sexual abuse, or family violence. There is a lot of fear and shame for these women survivors. Often Koori women blame themselves for their partner's violence...²⁰⁹

Family violence

Many of the women we spoke to had experienced family violence, often as children and then again as adults. For some, their first contact with police was as children when police had been called to family violence incidents.²¹⁰

The Victorian Family Violence Taskforce estimates that "one in three Indigenous people are the victim, have a relative who is a victim, or witness an act of violence on a daily basis in our communities".²¹¹ Further, a 2010 study found that 24 per cent of Victorian Aboriginal and Torres Strait Islander people over 25 years, living in households with children, were a victim of threatened physical violence.²¹²

Family violence and other stressors manifest across the life cycle, and across generations. This cycle is typified by periods in prison, which entrenches trauma, family breakdown, contact with child protection and out-of-home care systems, homelessness, family violence, substance misuse and mental health episodes. Our research found that these inform further contact with the criminal justice system, post-release breakdown, reoffending and reimprisonment.

Recommendations

That Youth Justice, Department of Human Services consult with Regional Aboriginal Justice Advisory Committees and Local Aboriginal Justice Action Committees to develop rapid response case conferencing/care teams for young Koori women at the cautioning, early offence and pre-court stages. These should link the Victorian Aboriginal Legal Service, Support Link, Victoria Police Aboriginal Liaison Officers Program and Aboriginal Community Liaison Officers, Koori Education Support Officers, Koori Youth Justice Workers, Child First, family violence and health workers (as appropriate) and provide supports through a single care plan.

Noting the need for contact with the justice system to trigger provision of intensive family support and other early interventions for young Koories, that the pilot program established by the Victorian Aboriginal Legal Service, Victorian Aboriginal Child Care Association and Jesuit Social Services be put on a sustainable footing, with a view to this initiative being made available in other areas of Victoria so that young Koori women notified to the Victorian Aboriginal Legal Services by the D24 referral system may gain access to appropriate supports.

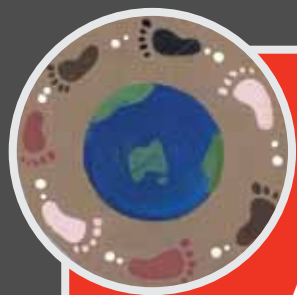
Noting the particular vulnerability of young Koori women leaving care who are at risk of entering prison, that the Commissioner for Aboriginal Children and Young People specifically address post care and transition support for those in contact with the justice system, in the *Five year plan for Aboriginal children in out-of-home care*. This should include the targeting of additional resources via the Transitioning from Out-of-home care Support for Aboriginal Young People Initiative.

209 Key informant interview, Koori Programs and Initiatives Unit, Specialist Courts and Courts Support Services, Department of Justice, 15 February 2013.

210 For example, Case study 1.

211 State of Victoria, Department of Premier and Cabinet, Report of the Protecting Victoria's Vulnerable Children Inquiry Vol 2 (2012), 281.

212 Of these, 87 per cent knew the perpetrator. State of Victoria, Department of Education and Early Childhood Development, *The State of Victoria's Children 2009: Aboriginal children and Young People in Victoria* (2010) 132, cited in *Ibid*.



Case study 2: Annie

Coming into contact with criminal justice system “wrecked my life”.

Annie acknowledges she broke the law however, she says how she was treated and what happened as a result after first coming into contact with the legal system, had ruined her life for years. She said it had the following impact:

- She suffered abuse from the police while in custody, which Annie believes was a result of the negative view the police had towards Koori people.
- She was not treated with respect and dignity.
- She was not listened to and felt that no matter what she said, no one cared or took the time to allow her to speak or tell her story.
- No one explained the legal system or how things worked and what to expect. She was fearful and felt lost and alone.
- She felt humiliated due to the above treatment. She originally came from interstate and had relocated to Victoria and became a part of the community in Victoria. However, the shame she experienced affected her relationships in both communities because, “everyone knows everyone’s business and word go around that Annie was “in trouble””. Once this reputation started she was not able to change anyone’s view of her, especially the Elders, which caused Annie more shame. This was part of the reason why Annie left the new community she was living in and relocated.
- Her first contact with the police and then with the wider legal system started a spiral of breakdowns in Annie’s life, resulting in an increase of alcohol and drug use and eventuating in the loss of her home and her children through Department of Human Services (DHS) involvement.

Annie stated that earning the respect of her community was difficult when she had no support to assist her to get her life together. This reduced her ability to be seen as a role model amongst her peers which was something that was very important to her.

Annie believes that if she had been shown support from the first point of contact with the law (police) and then throughout her journey in the legal system coming into contact with Legal Aid, court system, things may not have spiralled out of control in other areas of her life.

Annie believes if there were support services to address her issues from the beginning she would have taken it.

She believes that support should address the following concerns:

- self-esteem issues, which are a big concern among Koori women, who are entrenched in dysfunctional relationships with partners who are often involved in alcohol and drug use and often these relationships centre around domestic violence
- anger management
- parenting skills
- social skills and learning how to relate with other people
- mental health issues and better education amongst professionals, especially within the police.

Annie also highlighted the need for stricter measures around the issue of confidentiality within Koori services. Annie stated that part of the reason why she was anxious about accessing an Indigenous-focused service is because “people talk and the whole community knows who you’ve seen, what has been said and what your issues are”. Annie’s experience with support workers in the community has been negative due to this reason and she says that confidentiality is not as strict as it is in mainstream services.

Chapter 4:

Interaction with police

Main findings

- Koories are much more likely to come into contact with police than their non-Koori counterparts.
- Over the last seven years, the number of individual Koori female offenders processed by Victoria Police has increased by 21 per cent.²¹³
- Koori women are most likely to be accused of property crimes, the most common of which is theft (shoplifting).²¹⁴
- Outstanding and multiple fines is a common problem in Koori communities. A failure to pay the fine or comply with conditions can eventually result in imprisonment. As such, the infringement system is another 'gateway' for Koori women into the criminal justice system.

The criminal justice system

The Victorian criminal justice system includes Victoria Police, the Courts and Corrections Victoria.²¹⁵ Each agency has its own set of functions, roles and responsibilities. The next two chapters provide an overview of the roles and functions of each agency prior to a woman entering prison, including diversionary options where these are available.

It explores how barriers and limitations of the justice system pre-prison entrench the pathway to prison for Koori women. Barriers and failures in non-justice systems also contribute to this pathway.

213 Information provided to the Commission by Victoria Police, 26 July 2013.

214 Victoria Police, *Crime Statistics 2011/12* (2012) 55.

215 The system also includes organisations and individual legal practitioners for the defence, including the Victorian Aboriginal Legal Service and Victoria Legal Aid.



Victoria Police

Victoria Police are vital in improving Koori rates of contact with the justice system.²¹⁶

In 2006-07 Koori people were:

- 9.5 per cent of all police custody episodes across the state despite making up only 0.7 per cent of the Victorian population
- 10.7 times more likely to be processed for public order offences, than the general population.²¹⁷

Since 2006-07 the number of individual Koori female offenders processed by Victoria Police has risen from 478 to 581 women.²¹⁸

Victoria Police crime statistics for 2011-12 indicate that of 1,759 alleged offences by Koori females, including juveniles:²¹⁹

- Forty-four per cent of alleged offences were property crimes, the most common of which was theft (shoplifting). This accounted for over a third of all property offences and 16 per cent of all alleged offences.²²⁰
- Around a quarter were crimes against the person (27 per cent). Within this category, assault was by far the most common.²²¹

- Other crimes accounted for 25 per cent of alleged offences. Within this category, the most common alleged offence was 'justice procedures'. This includes breaches of Community Corrections Orders, outstanding warrants and non-payment of fines.
- Alleged drug offences made up four per cent of alleged offences. The majority of which were for possession/use.²²²
- Behaviour in public offences accounted for only five per cent of all alleged offences by Koori females.²²³

This data conflicts with the perspectives of some key informants, who suggested that Koori women come to police attention under the guise of public order offences, particularly if they are homeless and so vulnerable to increased scrutiny by police.²²⁴

What is consistent however is that alleged offences tend to be property crimes rather than crimes against the person. While this offence type may be categorised as serious, the most common alleged property offence is shoplifting, which may itself be driven by disadvantage.

216 Nous Group, above n 25, 24.

217 State of Victoria, Office of Police Integrity, *Talking Together – Relations between Police and Aboriginal and Torres Strait Islanders in Victoria: A Review of the Victoria Police Aboriginal Strategic Plan 2003-2008* (2011) 20.

218 That is 21.5 per cent. Information provided to the Commission by Victoria Police, 26 July 2013.

219 Refers to persons who have allegedly committed a criminal offence and have been processed for that offence by arrest, summons, caution, penalty notice, official warning or warrant of apprehension between 1 July 2011 and 30 June 2012 regardless of when the offence occurred. Those persons who were apprehended but were not charged are also included. "Racial Appearance" is based on the subjective assessment of the attending police. Therefore, care should be exercised in the interpretation of these statistics.

220 285 alleged offences of theft (shopsteal) out of 781 alleged crimes against property; that is, 36 per cent. In addition, 123 alleged property damage offences were committed by Koori females (16 per cent of property crimes) and 120 alleged theft (other) offences (15 per cent) during the period. Victoria Police, 'Crime Statistics', above n 214, 55.

221 421 alleged assaults out of 474 alleged crimes against the person. Ibid

222 Fifty-eight out of 73 alleged drug offences. Ibid

223 Ibid.

224 Key informant interview, Aboriginal Family Violence Prevention Legal Service, 13 December 2012.

Figure 6 – Victoria Police data on alleged offences by Koori men and women 2011-12

	Aboriginal Male	Aboriginal Female	Total
Crimes Against The Person			
Homicide	6	1	7
Rape	27	0	27
Sex (non-Rape)	16	1	17
Robbery	80	49	129
Assault	859	421	1280
Abduction / Kidnap	13	2	15
Sub-Total	1001	474	1475
Crime Against Property			
Arson	26	8	34
Property Damage	472	123	595
Burglary (Aggravated)	139	23	162
Burglary (Residential)	291	41	332
Burglary (Other)	209	32	241
Deception	99	54	153
Handle Stolen Goods	106	40	146
Theft from Motor Vehicle	306	28	334
Theft (Shopsteal)	243	285	528
Theft of Motor Vehicle	202	26	228
Theft of Bicycle	16	1	17
Theft (Other)	192	120	312
Sub-Total	2301	781	3082
Drugs			
Drug (Cultivate, Manufacture, Traffic)	23	15	38
Drug (Possess, Use)	170	58	228
Sub-Total	193	73	266
Other Crime			
Going Equipped to Steal	9	0	9
Justice Procedures	642	268	910
Regulated Public Order	7	2	9
Weapons / Explosives	138	34	172
Harassment	13	5	18
Behaviour in Public	135	85	220
Other	70	37	107
Sub-Total	1014	431	1445
TOTAL	4509	1759	6268

Source: Victoria Police, Table 4.4, 'Alleged Offenders Processed By Offence Category & Racial Appearance, 2011/12', *Crime Statistics 2011/12* (2012) 55.



Are Koori people 'over-policed'?

Previous research by the Commission has noted significant concerns among stakeholders that there is both 'under-policing' and 'over-policing' of Koori communities. For example, VALS described significant problems with the conduct of police. Some of the issues they raised included police not responding to a family violence incident involving a Koori family, police maintaining a presence around a family's home after a family made a complaint about a police failure to respond and 'over-policing' in areas with large Aboriginal communities".

*It is clear that Koories are much more likely to come into contact with police than their non-Koori counterparts. There is evidence that this is, at least in part, caused by racism and/or unintentional systemic bias rather than merely higher rates of offending.*²²⁵

The Senate Standing Committee on Legal and Constitutional Affairs References Committee in their Inquiry into the value of a justice reinvestment approach to criminal justice in Australia also raised these issues, noting submissions indicated that:

*Over-policing does not reduce crime in these communities or make them safer to live in, rather it creates a net-widening effect. There are many low level crimes that are often undetected and untargeted in non-Indigenous communities, however net-widening often results in these crimes being detected and charged within Indigenous communities. In addition, increased interaction with the police increases the risk that charges will become escalated with an individual also being charged with offences such as resisting arrest and assaulting police.*²²⁶

Over-policing has cost implications throughout the system. Not only is police time spent on processing alleged Koori offenders, other agencies such as the Victorian Aboriginal Legal Service also face increased demand pressures when they are already over-stretched.

Police and community relations

"Until relatively recently, relationships between Victoria Police and Koori communities were often confrontational and characterised by mutual mistrust".²²⁷

Since the RCIADIC, Victoria Police has implemented strategies to address the 136 police-specific recommendations made by the Royal Commission. In particular, over the last decade, there has been positive change in police attitudes and action. Nevertheless, the Victorian Implementation Review of the Recommendations from the RCIADIC²²⁸ (VIR) and the evaluation of AJA2 both recorded that while relationships had improved, police violence, harassment and mistreatment of Koories continues.²²⁹

Many of the improvements that have been achieved align with the Victoria Police *Aboriginal Strategic Plan* developed in 2003 as a response to the AJA1.²³⁰ Initiatives such as the Aboriginal Community Liaison Officer (ACLO) program, the increasing number of Police Aboriginal Liaison Officers (PALO) in police stations and the Aboriginal Community Justice Panels (ACJP) have also led to improved Koori-police relations. Through these very welcome initiatives, relationships between police and the local Koori community have been strengthened through mutual understanding.²³¹

225 Nous Group, above n 25, 22; Harry Blagg et al, *Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Criminal Justice System* (2005).
226 Sisters Inside, Submission 69, cited in Parliament of Australia, 'Report into Justice Reinvestment', above n 34, 12.

227 State of Victoria, Office of Police Integrity, 'Talking Together', above n 217, 52.
228 State of Victoria, Department of Justice, 'Victorian Implementation Review', above n 101.
229 Nous Group, above n 25, 25; State of Victoria, Department of Justice, 'Victorian Implementation Review', above n 101, 354-456.
230 Nous Group, above n 25, 25.
231 Ibid 14.

Discretion in decision-making by police

While discretion occurs at every stage of the criminal justice process, Victoria Police officers have significant discretionary powers and play an important role as the entry point to the justice system.²³² Every decision made (such as whether to investigate, question, search, arrest, caution, charge and prosecute) involves an element of discretion on the part of the officer.²³³

Given the scope and significance of police powers, and the harm that can be caused if decision-making is not undertaken with people's rights being fully considered, discretion should be exercised appropriately.

In exercising their discretion the police may decide to choose several courses of action. These include:

- they might issue a caution or warning, rather than charge
- upon arresting and charging, an officer could decide to use court summons rather than detaining the offender in police cells until the preliminary hearing or the officer could refer the offender to community-based services, for example drug and alcohol rehabilitation services, housing, mental health, sobering up centre
- Police also have decision-making regarding granting police bail. If they refuse bail the offender must be brought before a Magistrate or Bail Justice.

In some jurisdictions, the causal link between police discretion and the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system is formally acknowledged in policy. For example, the *NSW Police Aboriginal Strategic Direction 2012-2017*, includes as an objective to “reduce offending and over-representation of Aboriginal people in the criminal justice system”. One of the strategies identified for doing this is to “encourage the appropriate use of discretionary Police power”.²³⁴

In Victoria, the *Victoria Police Aboriginal Strategic Plan 2003-2008* acknowledged that improving justice outcomes for Aboriginal Victorians is core business for Victoria Police.²³⁵ However, since the review of the 2003-2008 Plan there has not been another plan developed by Victoria Police.

Currently the Victoria Police Aboriginal Policy and Research Unit assists relationships that exist between Victoria Police and the Koori community through the ACLO and PALO programs.²³⁶ These roles are managed from their respective regional centres.

Cautioning

Despite improved relations between police and Koories and attempts to use alternatives to custody such as increasing the use of cautions, summonses, official warning and penalty notices for Koori people, police cautioning rates for Koories remained relatively flat between 2002 and 2011.²³⁷ This suggests that opportunities to divert Koori offenders by way of caution have not been embraced as much as they could, even allowing for the positive work of the VALS/ Victoria Police youth cautioning project supported by the AJA2 and AJA3.

232 Anna Corbo Crehan, “‘Appropriate’ Police Discretion and Indigenous Over-Representation in the Criminal Justice System” (2010) 11(1-2) *Australian Journal of Professional and Applied Ethics* 1, 3. <http://researchoutput.csu.edu.au/R/?func=dbin-jump-full&object_id=13963&local_base=GEN01-CSU01> at 18 July 2013; State of Victoria, Office of Police Integrity, ‘Talking Together’, above n 217, 10.

233 Simon Bronitt and Philip Stenning, ‘Understanding Discretion in Modern Policing’ (2011) 35 *Criminal Law Journal* 319, 320.

234 New South Wales Police Force, *Aboriginal Strategic Direction 2007-2010* (2007), cited in Anna Corbo Crehan, “‘Appropriate’ Police Discretion and Indigenous Over-Representation in the Criminal Justice System” (2010) 11(1-2) *Australian Journal of Professional and Applied Ethics* 1, 3. <http://researchoutput.csu.edu.au/R/?func=dbin-jump-full&object_id=13963&local_base=GEN01-CSU01> at 18 July 2013. 1. See also, New South Wales Police Force, *Aboriginal Strategic Direction 2012-2017* (2012). <http://www.police.nsw.gov.au/about_us/policies_and_procedures/policies/aboriginal_strategic_direction> at 18 July 2013.

235 State of Victoria, Office of Police Integrity, ‘Talking Together’, above n 217, 16.

236 See, Victoria Police, *Aboriginal Policy and Research Unit* (2013). <http://www.police.vic.gov.au/content.asp?Document_ID=287> at 4 July 2013.

237 Nous Group, above n 25, 44.

Figure 7 – Proportion of alleged young (10-17 years) Aboriginal offenders cautioned by police, Victoria

2005–06	2006–07	2007–08	2008–09	2009–10	2010–11	2011–12
11.5%	13.4%	13.9%	13.5%	13%	14.7%	10.9%

Source: State of Victoria, Department of Planning and Community Development, *Victorian Government Aboriginal Affairs Report 2012* (2012) 55.²³⁸

Charging

Victoria Police decide the offence(s) for which a person will be charged. The level of charge is of significance as it will be a factor in determining bail, and ultimately will determine the sentence applied if found guilty. The Commission is aware that the Supreme Court has noted the inappropriate charging of a young, pregnant Koori woman who after her arrest spent over six weeks on remand. In that judgement it was noted that:

*...over-policing of Aboriginal communities and their over-representation amongst the prison population are matters of public notoriety. In this case, I regard the use of s 82(1) of the Act (obtaining financial advantage by deception) to charge an adult for travelling on a child's ticket as singularly inappropriate.*²³⁹

Police bail

Bail is the “release from custody of a person charged with an offence, on that person’s signed undertaking that they will appear in court to answer the charge”.²⁴⁰ The Bail Act is the principal Act governing bail in Victoria.

Bail can be administered by either Victoria Police, a bail justice or judge/magistrate of the courts.²⁴¹ In fact, Victoria Police make the majority of bail decisions. Therefore, bail is not always determined by a court or a person with legal training.

Between 2000 and 2005, Victoria Police considered 93 per cent of bail applications in Victoria, with the courts dealing with five per cent of applications and bail justices dealing with two per cent of applications.²⁴²

Bail is discussed in the next chapter.

The infringements system

The *Infringements Act 2006* (Vic) regulates the way fines are issued and managed in Victoria. Most infringement notices are for minor summary offences, such as parking and traffic offences, public order offences and additional offences including shop theft, careless driving and certain offences relating to the carrying of knives.²⁴³ In Victoria, over 120 different enforcement agencies are authorised to issue infringement notices under the Infringements Act.²⁴⁴

A person issued with an infringement notice has a number of options to deal with their notice, including: the chance to pay the fine; negotiate a payment plan; undertake community work or dispute the fine and take the matter to court.

International and local research raises serious questions about the persuasive power of infringement notices to change behaviour and act as a deterrent.²⁴⁵ For those suffering from the combined effect of physical or mental illness and social or economic disadvantage, infringements are often an ineffective deterrent because they do not deal with the underlying causes of the offending behaviour.²⁴⁶

238 “Data sourced from VicPol LEAP database. Extracted 21 November 2012. Note: The data for Aboriginal offenders is based on answers to the Standard Indigenous Question (SIQ) recorded by Victoria Police and is not comparable to data for the same or similar measures contained in previous years reports which were based on an assessment of racial appearance by attending officers. Figures from 2012-13 onwards are subject to change as Victoria Police implements improvements to the collection and processing of SIQ data”. State of Victoria, Department of Planning and Community Development, ‘Aboriginal Affairs Report 2012’, above n 31, 55.

239 *Re Mitchell* [2013] VSC 59 [13].

240 Fitzroy Legal Service, *The Law Handbook* (2013) 109.

241 *Bail Act 1977* (Vic) s 10.

242 Victorian Law Reform Commission, *Review of the Bail Act: Consultation Paper* (2005) 8.

243 Fitzroy Legal Service, above n 240, 185.

244 Bernadette Saunders et al, *An Examination of the Impact of Unpaid Infringement Notices on Disadvantaged Groups and the Criminal Justice System – Towards a Best Practice Model* (Monash University, 2013) 74.

245 *Ibid* 69.

246 New South Wales Law Reform Commission, *People with Cognitive and Mental Health Impairments in the Criminal Justice System*, Report No 135 (2012) 92, cited in Bernadette Saunders et al, ‘Unpaid Infringement Notices’, above n 244, 69.

Complexity of the infringements system

If you have the resources and are able to navigate the system/options available to you, then an infringement matter can be dealt with. However, the infringements system is complex, confusing and convoluted, especially for disadvantaged groups.²⁴⁷ This has implications for legal services and other community support agencies.

The Victorian Aboriginal Legal Service described the lack of understanding that Koori women have about the infringements system and its processes²⁴⁸:

*Many of VALS clients would make the 'special circumstance list', in fine-related matters. However, quite often they do not apply early enough in the process so they are unable to get an exemption.*²⁴⁹

The Commission notes the successful work being undertaken by Local Justice Workers in liaising between the Sheriff's Office and Koories to resolve outstanding fines. We further note the success of the Koori Offender Support and Mentoring Program, in assisting Koories to address fines payments. These programs should be enhanced with a specific focus on Koori women with multiple fines and at risk of imprisonment.

Special circumstances and Koori women

A person may be eligible to have an infringement notice withdrawn or an enforcement order cancelled if there are 'special circumstances'. These include where the person has a mental or intellectual disability or disorder, disease or illness, or a serious addiction to drugs, or alcohol or a volatile substance that resulted in being unable to understand or control the behaviour that resulted in an offence.²⁵⁰

Special circumstances also include homelessness resulting in an inability to control the behaviour constituting the offence.²⁵¹

The Commission is concerned that 'special circumstances' is narrowly defined and excludes other vulnerable groups, including people with other disabilities, victims of family violence and people experiencing long-term financial hardship.

Currently, family violence victims may only challenge infringements on the grounds of 'exceptional circumstances', which is not defined.²⁵² To prove exceptional circumstances exist, a person must appear before a Magistrate and produce documentation to support their claim, thereby compounding the trauma of the victim of family violence. Even if a Koori woman is able to meet the narrow special circumstances criteria, she may experience difficulty obtaining documentation to substantiate her claim due to costs.²⁵³

Imprisonment for non-payment of fines

Outstanding and multiple fines is a common problem in Aboriginal and Torres Strait Islander communities. The NSW Ombudsman, in a review of criminal infringement notices (CINs), found:

- Aboriginal and Torres Strait Islanders received 7.4 per cent of CINs issued in 2008, despite comprising 2.2 per cent of the population²⁵⁴
- Only 11 per cent paid the fine on time²⁵⁵
- Sixty per cent had another fine-related debt²⁵⁶
- Forty per cent of the Aboriginal and Torres Strait Islander community owed money to the State Debt Recovery Office.²⁵⁷

Additionally, research from NSW suggested that many people are unaware of the procedures required to contest a fine or seek legal advice. Over a six-year period in NSW, only seven Indigenous people had contested a fine in court.²⁵⁸

247 Bernadette Saunders et al, 'Unpaid Infringement Notices', above n 244, 6.

248 Ibid

249 Key informant interview, Victorian Aboriginal Legal Service, 15 November 2012.

250 *Infringements Act 2006* (Vic) s 3.

251 Homelessness as defined by Regulation 7 of the *Infringement (General) Regulations 2006* (Vic).

252 *Infringements Act 2006* (Vic) s 22.

253 Those with a mental illness, intellectual disability or substance addiction report difficulty obtaining medical reports because doctors, specialists and psychologists usually require a significant fee. Bernadette Saunders et al, 'Unpaid Infringement Notices', above n 244, 91.

254 New South Wales Ombudsman, *Review of the Impact of Criminal Infringement Notices on Aboriginal communities* (2009) 93.

255 Ibid 100.

256 Ibid

257 Ibid 76.

258 Bernadette Saunders et al, 'Unpaid Infringement Notices', above n 244, 72.

In Victoria, data relating to Koori and non-Koori infringement rates is not readily available, nor is data distinguishing infringement rates by sex.²⁵⁹ However, there is a concern that infringement notices have a disproportionate impact on Koori people as they may face greater difficulty paying fines or navigating the fines enforcement system, risking further involvement in the criminal justice system.²⁶⁰ This may include imprisonment as a sanction of last resort.²⁶¹

Fixed penalty infringement notices are not calculated according to income and therefore disproportionately affect those experiencing financial hardship, such as Koori women.²⁶² They also have limited options for challenging their infringement debts. While some may be able to convert their fines into community work, this option is not always available or appropriate, for example, Koori women who are single parents with small children who may not be able to attend community work.²⁶³ An additional barrier may be where community work options are not gender or culturally appropriate, or not available locally.

One client had \$52,000 in fines, and needed assistance to manage the fines as she was running out of options. Another client defaulted on the fines that she was paying pursuant to a payment plan, if she was picked up by the police she would have served 27 days in custody. She was just waiting to be picked up.²⁶⁴

A failure to pay the fine or comply with conditions attached to the infringement notice can result in imprisonment.²⁶⁵ As such, the infringement system is another 'gateway' for Koori women into the criminal justice system.

Recommendations

That Victoria Police, in partnership with the Aboriginal Justice Forum, revise and update the *Victoria Police Aboriginal Strategic Plan 2003-2008*.

That Victoria Police, in partnership with the Victorian Aboriginal Legal Service and the Victorian Equal Opportunity and Human Rights Commission, undertake an analysis of cautioning, charging, bail decision and bail conditions relating to Koori women. The results of this analysis should be reported to the Aboriginal Justice Forum and inform a review of Victoria Police members training on working with Koori offenders.

Noting the high risk of young Koori offenders becoming entrenched in the criminal justice system, that Victoria Police regularly provide de-identified data to the Aboriginal Justice Forum on contact rates of Koori young people. This data should also be provided to the Commissioner for Aboriginal Children and Young People and include a breakdown by age, gender, region and contact type (including field contacts, cautions and arrests).

Noting the positive benefits of the Local Justice Worker Program and the Koori Offender Support and Mentoring Program in assisting Kooris to address fines payments, that these programs be enhanced with a specific focus on Koori women with multiple fines and at risk of imprisonment.

259 See for example, State of Victoria, Department of Justice, *Attorney-General's Annual Report on the Infringements System 2011-12* (2012); and Magistrates' Court of Victoria, 'Annual Report', above n 11.

260 Williams and Gilbert (2011) *Reducing the Unintended Impacts of Fines*, Indigenous Justice Clearinghouse, Current Initiatives Paper 2, 1.

261 Ibid.

262 Bernadette Saunders et al, 'Unpaid Infringement Notices', above n 244, 17.

263 *Infringements Act 2006* (Vic) s 147.

264 Key informant interview, Victorian Aboriginal Legal Service, 15 November 2012.

265 Fitzroy Legal Service, above n 240, 187-202.

Chapter 5:

Courts and diversion

Main findings

- In Victoria 94 per cent of the matters relating to Koori women are dealt with by the Magistrates' Court.²⁶⁶ While the court has developed several preventative and therapeutic responses, Koori women are either not accessing or not eligible for all services.
- Koori women are denied bail because there is a chronic under-supply of accommodation that they can be bailed to.
- Residential facilities for Koori women with appropriate supervision, wrap-around services, mentoring programs and access to their children are critical to successful completion of bail conditions.
- Section 3A of the Bail Act, which requires decision-makers to consider Aboriginality, is under-utilised. This means that the specific vulnerabilities of Koori women may not be taken into account when determining bail. This is a significant lost opportunity to address the escalating numbers of Koori women on remand in Victorian prisons.
- Koori women appear to underuse mainstream pre-sentence programs such as the Court Integrated Services Program (CISP).²⁶⁷
- As the people who effectively recommend offenders to the Court for diversion schemes, Victoria Police members have the capacity to contribute to a greater use of diversion for Koori women. This option is currently under-utilised.

266 Information provided to the Commission by Sentencing Advisory Council on 1 February 2013.

267 Magistrates Court of Victoria, 'Integrated Services Program Discussion Paper, above n 10.



- The number of Koori women on Community Corrections Orders has increased by 73 per cent over the last seven years.²⁶⁸ Around one in ten women sentenced to Community Corrections Orders are Koori.²⁶⁹
- There is no residential-based diversionary option available to women completing Community Corrections Orders in Victoria. There is limited provision for Koori men.
- When provided, culturally appropriate residential diversion enjoys strong success rates, with over 90 per cent of Koori men successfully completing the program.²⁷⁰

Victorian Courts

The Victorian court system is organised into three tiers.

- The Supreme Court is the superior court in Victoria; it hears and determines substantial criminal and civil matters.
- The County Court hears both middle tier criminal matters and civil disputes.
- The Magistrates' Court which deals with civil, minor criminal, industrial and some family matters.

There are also specialist courts such as the Drug Court, Family Violence Court Division, the Children's Court, and the Coroners Court.

Current efforts to improve how Victorian courts work

There are a number of specific initiatives to assist Koories going through courts and tribunals in Victoria including:

Koori Courts at the Magistrates, County and Children's Courts.

Koori Liaison Officer Program (Magistrates' Court): "This aims to address the over- representation of Indigenous people in the Victorian Justice System, and to assist Aboriginal people to maximise their chances of rehabilitation through culturally appropriate and sensitive intervention".²⁷¹

Koori Victims of Crime Assistance Tribunal:

This is a specialist list at the Victims of Crime Assistance Tribunal (VOCAT). It was established in 2006 in response to the under-utilisation of VOCAT by Koori victims of crime.²⁷²

Koori Family Violence Court Support Program:

employs a Koori Men and Women's Family Violence Support Worker, who provide support and information about the Court process and the family violence services. This free service has operated since July 2011 at the Melbourne Magistrates' Court only.²⁷³

Koori Courts

The Koori Courts are a division of the Magistrates' Court of Victoria, the County Court of Victoria and the Children's Court of Victoria. The Koori Court provides an informal setting and allows greater participation by the Koori community in the court process.²⁷⁴ They are an important initiative of the AJA1, representing a significant reform to the Victorian criminal justice system.

Koori Courts are available to those who:

- plead guilty to an offence and show an intention to take responsibility for their actions
- live within or have been charged within the boundary area of a Koori Court
- elect to have their matter heard in the Koori Court.

All offences that can be heard in the Magistrates' Court can be heard in the Koori Court except for family violence and sexual offences.²⁷⁵

268 From 79 to 138 between February 2008 and February 2013. State of Victoria, Department of Justice, Justice Health, 'Koori Prisoner Mental Health', above n 7.

269 From the period of 16 January to 30 September 2012, 457 CCOs were registered for Koori offenders, Koori women were subject to 105 of those CCOs, representing 9.5 per cent of the total of female offenders. State of Victoria, Corrections Victoria, 'Indigenous Offenders and Prisoners November 2012', above n 4.

270 That is 97.1 per cent. Figure represents the success percentage for the period July 2012 to May 2012. State of Victoria, Corrections Victoria, 'Indigenous Offenders and Prisoners Data Report to the July 2013 AJF' above n 1.

271 Courts and Tribunals Victoria, *Koori Court and Koori Program*. <<http://www.courts.vic.gov.au/courts-tribunals/specialist-courts-and-initiatives/koori-court>> at 5 June 2013.

272 State of Victoria, Victims of Crime Assistance Tribunal, *Koori Victims of Crime* <<http://www.vocat.vic.gov.au/koori-victims-crime>> 5 June 2013.

273 Magistrates' Court of Victoria, *Koori Family Violence Court Support Program Brochure* (2012). <<http://www.magistratescourt.vic.gov.au/publication/koori-family-violence-court-support-program-brochure>> at 18 July 2013.

274 Koori Elders or Respected Persons, the Koori Court Officer, Koori defendants and their families can contribute during the Court hearing.

275 See, Magistrates' Court of Victoria, *Koori Court FAQ*. <<http://www.magistratescourt.vic.gov.au/faqs/frequently-asked-questions/koori-court-faq>> at 18 July 2013.

Figure 8 – Koori Court (Magistrates' Court) accused by gender

	2008/2009		2009/2010		2010/2011		2011/2012		2012/2013	
	Females	Males	Females	Males	Females	Males	Females	Males	Females	Males
Bairnsdale	4	15	7	39	5	23	13	21	3	26
Broadmeadows	28	86	44	98	32	75	13	69	29	70
LaTrobe Valley	4	20	6	32	4	30	9	23	16	25
Mildura	28	51	30	45	29	61	27	57	15	46
Shepparton	25	70	31	77	28	59	18	57	21	83
Swan Hill	13	38	12	23	14	25	9	15	9	22
Warrnambool Circuit	6	15	7	19	12	16	6	13	8	18
Totals	108	295	137	333	124	289	95	255	101	290

Source: Specialist Courts and Court Support Services, Magistrates' Court of Victoria (supplied to the Commission on 31 July 2013)

The Magistrates' Court

In Victoria, the vast majority of matters relating to Koori women are dealt with by the Magistrates' Court.²⁷⁶

The role of the court is to determine guilt and sentence the offender as appropriate. In addition, the Magistrates' Court has specific functions relating to bail. The Magistrates' Court has also developed preventative and therapeutic responses to achieve better justice outcomes.

Bail

In 2010, amendments to the Bail Act included Aboriginality as a factor that must be considered when making a determination for bail.²⁷⁷ That is, the decision-maker must take into account any issues arising from the accused's Aboriginality, including cultural background, ties to family place and any other relevant cultural issues or obligations relating to that person.²⁷⁸ For example, a decision-maker would be required to take into account matters such as an obligation to attend a community funeral or participate in community cultural activities when imposing conditions of bail.²⁷⁹

While the provision requires decision-makers take Aboriginality into account, it does not require the decision-maker to reach a particular decision. The test for granting bail remains unchanged, that is unacceptable risk.

In making this change to the Bail Act, the Victorian Parliament was responding to the fact that Koori offenders are over-represented on remand and face unique disadvantages in their contact with the criminal justice system.²⁸⁰ Section 3A recognises that

Substantive equality is not necessarily achieved by treating everyone equally, and that affirmative action or positive discrimination may be necessary to achieve equality for some groups in the community. As the purpose of section 3A is to recognise historical disadvantage, which has led to the overrepresentation of Aboriginal people on remand, in accordance with section 8(4) of the Charter, it constitutes permissible discrimination.²⁸¹

Section 3A also promotes the cultural rights of Aboriginal persons protected by the section 19(2) of the Charter because it requires a decision-maker to take into account any issues that arise due to the Aboriginality of an accused, which may, include participation in cultural events or ceremonies.

Despite these good intentions, the Commission understands that section 3A is under-utilised. We further understand that while information about the amendments was circulated to Bail Justices and the Magistrates' Court, until very recently no specific guidance had been made available, which has inhibited the capacity of the section to do its work.

276 In 2010-11, 95 Koori females were sentenced by the Magistrates' Court, while six were sentenced by the higher courts. Information provided to the Commission by Sentencing Advisory Council on 1 February 2013.

277 *Bail Act 1977* (Vic) s 3A.

278 Paper prepared by Deputy Chief Magistrate Jelena Popovic for the purposes of the JCV Bail Act Twilight on 2 December 2010.

279 Statement of Compatibility, *Bail Amendment Bill 2010* (Vic) [3495].

280 Explanatory Memorandum, *Bail Amendment Bill 2010* (Vic).

281 Statement of Compatibility, *Bail Amendment Bill 2010* (Vic) [3495].

This is of concern to the Commission because, in order to meet Charter obligations to equality before the law, section 3A must be considered by police, bail justices and Magistrates making bail decisions.

This under-utilisation means that cultural rights and vulnerabilities may not be taken into account when determining bail, which has a profound impact on Koori women. This is another lost opportunity to use available means to reduce the over-representation of Koori people in Victorian prisons, and in particular to address the escalating numbers of Koori women on remand.

*Housing is a real issue for Aboriginal women. At times, even when housing stock is available, the complex needs of women can mean that they need supported accommodation rather than just access to a house.*²⁸²

Barriers to the court ordering bail

The chronic under-supply of safe, stable and suitable accommodation options for Koori women is placing limitations on the granting of bail.²⁸³ In simple terms, the Magistrate could grant bail, but is unable to because there is nowhere safe or suitable for the Koori women to be bailed to. That is, Koori women who should not be on remand are. One key informant argued that.

*The practice of remanding women as they don't have housing or medical support is a breach of their human rights. They are being deprived of their freedom as they have social and health issues*²⁸⁴

While our research indicates that this is a problem throughout Victoria, particular problems arise for Koori women refused bail in regional locations, including when Victoria Police or a Bail Justice refuses bail. This may lead to the woman spending time in police cells, and/or being transported to the Melbourne Custody Centre or Dame Phyllis Frost Centre (DPFC) for a few days while they await their full bail application before the Magistrate or by video link.

When remanded by the Magistrate they may also be away from country at DPFC while on remand. This is particularly problematic for women with children, but can be traumatic for any Koori woman removed from her connections and country simply because there is no viable accommodation option to which they can be bailed.

Lack of transitional houses for Koori women on bail

One of the key initiatives of Better Pathways to address the increase in women's imprisonment in Victoria was to establish supported transitional housing for Indigenous women on bail.²⁸⁵ Ten transitional houses for women were established. Two of these are specifically for Koori women and their children.

While a great initiative, there are severe limitations associated with this program.

For example, the houses can only accommodate two Koori women and their families for a period of up to twelve months. In addition, in order to access to these houses, women and their families have to relocate to either Shepparton or Mildura.

However, recent data shows that most Koori women offenders reside in and around metropolitan Melbourne.²⁸⁶ Therefore, if a vacancy arises, Koori women need to relocate themselves and their family to regional areas where they are unlikely to have family and community connections, employment and would have to move their children from their school.

Further, the bail houses do not provide long-term accommodation, which is pivotal to reducing further contact with the criminal justice system.

While two specific houses were established for Koori women, they also have priority access to the other houses. However, the Commission understands that in practice the properties are usually full because of lack of move-on accommodation and sheer demand among all females on bail. This means that priority access cannot be realised for Koori women.

It is also relatively static model as it relies on a vacancy being available at the same time that a bail order is being made. This limitation is exacerbated by the small numbers of properties available.

282 Key informant interview, Aboriginal Outcomes Unit, Department of Human Services, 30 November 2012.

283 Key informant interview, Magistrates' Court of Victoria, 3 March 2013.

284 Key informant Interview, North West Regional Aboriginal Justice Advisory Committee and Victoria Aboriginal Community Services Association, 16 January 2013.

285 State of Victoria, Department of Justice, 'Better Pathways', above n 109,

286 With other clusters in Mildura, Swan Hill, Shepparton and East Gippsland, reflecting population concentrations in those areas. State of Victoria, Department of Justice, Koori Justice Unit, above n 8.

Family violence

Another factor limiting the use of bail is the high proportion of Koori women experiencing family violence, which often means the family home is unsuitable for bail because of the risk that she may be subject to further violence.²⁸⁷

Even with recent additional investment under the Family Violence Community Initiatives Fund, there remain limited community-based services to assist Koori women who are dealing with the effects of trauma and family violence when in contact with the justice system. Turn-away rates from refuges are high, and even if a place is available, accommodation is temporary. Nationally, data from 2010-11 reveal that more than half of all people turned away from homeless accommodation were female²⁸⁸ and that Aboriginal and Torres Strait Islanders were significantly over-represented.

In that period, 21 per cent of all people using specialist homelessness services were Aboriginal and/or Torres Strait Islander. However, 29 per cent of those turned away were from this group.²⁸⁹

As there is a lack of move-on accommodation, such services quickly fill up and there are no spaces available for others in urgent need. Overall, 85 per cent of people with a valid unmet need for immediate accommodation were turned away because there was no available accommodation to provide them.²⁹⁰

Lack of residential options with therapeutic focus

Koori women in contact with the justice system have a high prevalence of drug and alcohol misuse and mental health issues, yet there are limited community-based residential therapeutic facilities to address their needs.

Winja Ulupna was identified as the only service of its kind for Koori women in Victoria, that is, a culturally appropriate residential treatment facility. Winja Ulupna is a 24-hour residential rehabilitation centre for adult Koori women who suffer from alcoholism or drug

dependence, delivered by Ngwala Willumbong Co-operative Ltd.²⁹¹ Admission to the centre is voluntary or by court referral. The facility accommodates up to eight Koori women at a time. The length of stay varies for each woman; however, clients are encouraged to stay a minimum of three months to allow them time develop the skills and strategies needed to stay drug-free once they leave the centre.²⁹²

The women are required to participate in a range of culturally relevant self-help and self-development programs and daily activities including: parenting skills; women's health and nutrition; abuse and group therapy; self-esteem and anger management; family violence; Alcoholics and Narcotics Anonymous meetings; individual and group counselling; relapse prevention; computer skills and art.²⁹³

While it provides a vital service, Winja Ulupna has major limitations as it can only accommodate a small number of clients and so has a long waitlist. It also does not have the facilities to cater for children, although family members, friends and partners are encouraged to keep in contact with clients while they are recovering in the centre.

Remand as therapy

Given the lack of appropriate bail options for those with drug and alcohol dependence, key informants identified that for Koori women remand is being used for therapeutic purposes.²⁹⁴

Women are placed in custody with the intention of stabilising them, removing them from unsafe environments and providing them with the opportunity to 'dry out'. However, this risks further criminalising women because of unmet needs for non-justice supports including mental health, drug and alcohol and accommodation services.

287 Aboriginal women are 40 times more likely to be a victim of family violence than non-Aboriginal women. See, Aboriginal Family Violence Prevention and Legal Service Victoria, *A Force To Be Reckoned With 2002-2012: Still Standing Strong* (2012) 7.

288 Sixty per cent female, 40 per cent male. Australian Institute of Health and Welfare, *People turned away from government-funded specialist homelessness accommodation 2010-11* (2011) 7. Note: Due to inconsistencies in the delivery of homelessness services, Victorian data has been excluded from the AIHW 2010-11 report.

289 Ibid 7.

290 Ibid 8.

291 Ngwala also offers residential alcohol and drug facilities for Koori men and outreach support services to meet the needs of the Aboriginal community in Victoria. Galiamble in St Kilda houses 16 men, while Yitjawudik in Mooroopna houses eight men. They also run the Koori Community Alcohol and Drug Recovery Centre which provides "an alternative to prison and police lock-up situations for Koori men and women who are under the influence of alcohol or drugs when they are picked up by police". Ngwala Willumbong Co-operative Ltd, *Winja Ulupna Women's Recovery Centre*. <<http://www.ngwala.org.au/winjaulupna.html>> at 18 July 2013.

292 Ibid.

293 Ibid.

294 Case study 5. See also, Key informant interview, Aboriginal Outcomes Unit, Department of Human Services, 30 November 2012; key informant interview, Magistrates' Court of Victoria, 3 March 2013.

*Police and the courts use prison as an ad hoc substance detox, emergency accommodation or refuge from family violence and, in the absence of any mental health facilities, as a warehouse for people with mental health issues.*²⁹⁵

It seems that while remanding women so that they might access treatment not available on the outside may be seen as making the best of a bad set of options. However, it comes as significant cost to these women – losing their liberty.

Koori women on remand are in prison for short periods of time, which causes significant disruptions to the women, their family and the community. Not only is it an ineffective way to address Koori women's drug and alcohol issues but women on remand also have limited access to drug and alcohol and mental health programs in prison as those on remand are not eligible.²⁹⁶

It has been identified throughout this research that residential facilities for Koori women with appropriate supervision, wrap-around services, mentoring programs and access to their children are critical to successful completion of bail conditions. The Commission supports this view.

Unreasonable bail conditions

The Commission is concerned that proposed changes contained in the Bail Amendment Bill 2013 entrench the emerging practice of bail conditions being set that exclude the accused from geographical locations.²⁹⁷

Koori women may struggle to meet these, for example if they are not allowed to return to their local community/home, transport hubs or the area in which they are employed, use child-care or where their child attends school.²⁹⁸

The Commission considers that if a person's bail conditions include a wide geographical exclusion zone which restricts their ability to work, attend school or training, care for their children, practice their religion or culture, attend support counselling or medical services, their Charter rights to freedom of movement and association could be unreasonably limited.²⁹⁹

The provisions of the Bill are also likely to contribute to increasing rates of incarceration for Koori women as it introduces a new offence into the Act. Under new section 30A, an accused person on bail must not, without reasonable excuse, contravene any conduct condition imposed on them. This offence is punishable by a fine of 30 penalty units or three months' imprisonment.³⁰⁰

The Bill will also introduce a new section into the Act, providing that a member of the police force may serve an infringement notice on a person the member has reason to believe has committed an offence against either of these sections.

The Commission notes that after conducting a comprehensive review of the Bail Act in 2008, the Victorian Law Reform Commission recommended that a new offence of breaching a bail condition should not be created. The Victorian Law Reform Commission came to the view that:

*The addition of an offence would have a disproportionate impact on accused people with drug addiction, mental illness, and disabilities such as acquired brain injury, whose lives are chaotic. It would also have a disproportionate impact on young people who may not at first appreciate the seriousness of adhering to conditions. This charge would result in conviction for a breach offence, making it harder to get bail in the future.*³⁰¹

The Commission agrees with the Victorian Law Reform Commission's view and is disappointed that these new offences are being introduced.

295 Case study 5.

296 Those on remand can enter the Marmak Acute Mental Health Ward at the Dame Phyllis Frost Centre.

297 At the time of writing this Bill was before the Parliament.

298 One of the proposed conditions of the Bail Amendment Bill 2013 (Vic) is subsection 5(2A)(f), which provides that a person granting bail may place a condition on the bail undertaking relating to geographical exclusion zones, being "places or areas the accused must not visit or may only visit at specified times".

299 Victorian Equal Opportunity and Human Rights Commission, *Submission to the Scrutiny of Acts and Regulations Committee – Bail Amendment Bill 2013* (May 2013) 3[15]. <<http://www.humanrightscommission.vic.gov.au/index.php/submissions>> at 9 May 2013.

300 The second reading speech states that unless the court directs otherwise, a sentence of imprisonment will be served cumulatively with any sentence of imprisonment. Victoria, *Parliamentary Debates*, Legislative Assembly, 17 April 2013, 1266-8 (Robert Clark, Attorney-General)

301 Victorian Law Reform Commission *Review of the Bail Act: Final Report* (2007) 128.

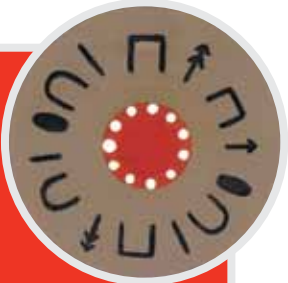
Therapeutic and diversionary options at court

While bail is of significant concern, it is also clear that Koori incarceration rates could be reduced through the increased use of diversion.³⁰² However, existing schemes are not being used to their full potential.³⁰³

There are several therapeutic and diversionary schemes available in Victoria, including:

- Criminal Justice Diversion Program at the Magistrates' Court of Victoria
- Court Integrated Services Program (CISP) at the Magistrates' Court of Victoria
- Court referral for Evaluation of Drug Intervention and Treatment (CREDIT/Bail Support): Upon being referred by a Magistrate, police officer, legal representative, court nominee, family or the client themselves, clients are required to commit to treatment and attend regular support meetings with their case manager³⁰⁴
- Koori Community Engagement Officers (KCEO): who aim to "assist in the management of Koori direct contacts that come before the courts by assisting them with advice and access to culturally appropriate and sensitive services. The KCEO liaises with members of the local Koori communities to inform them of the court process whilst also raising regional awareness of Indigenous and cross-cultural issues."³⁰⁵

Criminal Justice Diversion Program (CJDP)



In 1997, the Magistrates' Court of Victoria, in co-operation with Victoria Police, piloted a diversionary scheme at Broadmeadows Magistrates' Court. It is now available to all Magistrates' Courts throughout Victoria. The Program provides mainly first-time offenders with the opportunity to avoid a criminal record by undertaking conditions that benefit the offender, victim and the community as a whole.³⁰⁶

Under the *Criminal Procedure Act 2009* (Vic), if at any time before taking a plea from an accused for a summary offence, or an indictable offence that may be heard and determined summarily, the Magistrates' Court may adjourn the proceeding for 12 months to enable the accused to participate in and complete a diversion program.³⁰⁷

In order for this to occur:

- the accused must acknowledge responsibility for the offence;³⁰⁸ and
- the Magistrates' Court must consider it appropriate that the accused participate in a diversion program; and
- both the prosecution and the accused must consent to the proceedings being adjourned for this purpose.³⁰⁹

Diversion programs may include attending counselling or treatment, performing community work, abiding by a curfew, not associating with certain persons, or apologising or compensating the victim.³¹⁰

302 See, Troy Allard et al, 'Diversion of Young Offenders', above n 194, 1; Chris Cunneen, Neva Collings, and Nina Ralph, *Evaluation of the Queensland Aboriginal and Torres Strait Islander justice agreement* (University of Sydney, 2005); Garth Luke and Chris Cunneen, *Aboriginal over-representation and discretionary decisions in the NSW juvenile justice system* (Juvenile Justice Advisory Council of New South Wales, 1995).

303 Troy Allard et al, 'Diversion of Young Offenders', above n 194, 2.

304 See Magistrates' Court of Victoria, *CREDIT Bail Support Program*. <<http://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/court-support-services/credit-bail-support-program>> at 20 June 2013.

305 See, Magistrates' Court of Victoria, *Koori Community Engagement Officer (KCEO)*. <<http://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/court-support-services/koori-community-engagement-officer-kceo>> at 20 June 2013.

306 Magistrates' Court of Victoria, *Criminal Justice Diversion Program*. <<http://www.magistratescourt.vic.gov.au/jurisdictions/criminal-and-traffic/criminal-justice-diversion-program>> at 5 June 2013.

307 This is not available for offences punishable by a minimum or fixed sentence, including cancellation or suspension of a driving licence. *Criminal Procedure Act 2009* (Vic) s 59(1).

308 This acknowledgement is inadmissible as evidence in a proceeding for that offence and does not constitute a plea. *Criminal Procedure Act 2009* (Vic) s 59(3).

309 *Criminal Procedure Act 2009* (Vic) s 59(2).

310 Fitzroy Legal Service, above n 240, 124.

After the tasks are completed to the satisfaction of the Court, no plea is to be taken and the Court must discharge the accused without any finding of guilt.³¹¹ The participation in the diversion program and the discharge of the accused is also defence to a later charge for the same offence or a similar offence arising out of the same circumstances.³¹²

Research confirms that people who are placed on diversion are “least likely to reoffend and refrain from reoffending the longest, while those sentenced to a term of imprisonment are most likely to offend and will return to offending most quickly”.³¹³ While this may in part reflect the nature of the Criminal Justice Diversion Program being targeted towards first-time offenders for relatively low-level offences, it also shows that diversion does meet the policy aim of orientating people away from the criminal justice system. Unfortunately, however, Koori women are unlikely to be referred to the Court for diversion.³¹⁴ This represents a significant lost opportunity to break the cycle of offending before it even starts.

During 2011/12, the CJDP received 5,932 referrals from various prosecuting agencies. The highest number of referrals were male. During this time, 54 accused identified as Koori during the diversion interview process. That is less than one per cent of all referrals.³¹⁵

Barriers to the Criminal Justice Diversion Program for Koori women

Key informants noted that the role Victoria Police play as the ‘gatekeepers’ of those eligible for diversion may be problematic.³¹⁶ Further, existing diversion schemes are predominantly directed at low-risk, first-time offenders.³¹⁷ However, Koori women are more likely to be repeat offenders and due to their complex needs may be considered to be high-risk.

Key informant interviews and focus groups with prisoners at Dame Phyllis Frost Centre indicate that when Koori women come into contact with the police they are at their most vulnerable and may well be in a state of chaos. Many are quite young.³¹⁸

Due to Koori women’s complex and competing issues at this point, police may struggle to deal with Koori women adequately, reducing the likelihood of being considered for diversion.

The nature of CJDP and its focus on community work may also create a barrier for Koori women if available placements are not gender and culturally appropriate, or locally available. They may also struggle to complete work placements when they have caring responsibilities.

The complexity of these issues may lead prosecutors to refuse consent for diversion even if the court considers diversion a viable option. Although one solution would be to remove the requirement for the prosecution’s consent to a diversion order by repealing section 59(2)(c) of the Criminal Procedure Act, the Commission at this stage recommends that Victoria Police review its approach to consenting to an offender entering the program and provide further information and training to its prosecutors if required.

Court Integrated Services Program (CISP)

The CISP provides an integrated model of support and services at the pre-sentence stage. The program aims to:

- provide short-term assistance before sentencing for accused with health and social needs
- work on the causes of offending through individualised case management
- provide priority access to treatment and community support services
- reduce the likelihood of reoffending.³¹⁹

CISP operates at three metropolitan locations: Melbourne, Sunshine and Latrobe Valley Magistrates’ Courts. The only Koori Court that has a CISP is the Latrobe Valley Koori Court.³²⁰ CISP comprises multi-disciplinary teams who can provide assistance in the following areas:

311 *Criminal Procedure Act 2009* (Vic) s 59 (4)(a)-(b). The fact of participation in the diversion program is not to be treated as a finding of guilt except for the purposes of certain offences under the *Confiscation Act 1997* (Vic), *Control of Weapons Act 1990* (Vic), *Firearms Act 1996* (Vic), and Part 4 of the *Sentencing Act 1991* (Vic), *Criminal Procedure Act 2009* (Vic) s 59(4)(c).

312 *Criminal Procedure Act 2009* (Vic) s 59(4)(d).

313 State of Victoria, Sentencing Advisory Council, *Reoffending Following Sentencing in the Magistrates Court of Victoria* (2013) 29.

314 Key informant interview, Magistrates’ Court of Victoria, 3 March 2013.

315 Magistrates’ Court of Victoria, ‘Annual Report’, above n 11, 98.

316 Key informant interview, Magistrates’ Court of Victoria, 3 March 2013.

317 See, Troy Allard et al, ‘Diversion of Young Offenders’, above n 194, 1.

318 This is supported by data from the Sentencing Advisory Council, which shows almost 70 per cent of female adult Koori offenders are between the ages of 18 and 34. State of Victoria, Sentencing Advisory Council, ‘Comparing Sentencing Outcomes’, above n 49, 32.

319 Magistrates’ Court of Victoria, *Court Integrated Services Program (CISP)*. <<http://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/court-support-services/court-integrated-services-program-cisp>> at 5 June 2013.

320 Magistrates Court of Victoria, ‘Integrated Services Program Discussion Paper’, above n 10, 2.

- case management for up to four months for medium and high risk clients
- referrals and linkages to support services including drug and alcohol treatment, acquired brain injury services, accommodation services, disability support and mental health care³²¹
- Aboriginal community liaison³²²
- A referral pathway for police through SupportLink.³²³

Referrals to the CISP can be made by the police, legal representatives, Magistrates, court staff, support services, family, friends, or the person themselves.

Whilst CISP is a mainstream service, Koori offenders have access to the Koori Liaison Officer Program. In 2012, 48 Koori women used the CISP program and the CREDIT Bail Support Program across Victoria.³²⁴

This suggests that for Koori women, the primary support program at the Magistrates' Court may be under-utilised. Reasons for this reported by Koori women included:

- the program was not specifically designed for the needs of Koori women and their family
- there may be a lack of access to Koori workers. Of the three women the Commission interviewed who had accessed CISP in the past, all reported negative experiences. Some told us they had no contact with a Koori worker despite this being a stated feature of the program.³²⁵
- it is not available in all locations, including regional locations with high Koori populations including Mildura and Swan Hill

321 "CISP and the CREDIT/Bail Support Program also have access to a limited number of transitional housing properties. Housing support services are currently provided by Home Ground Services". Magistrates' Court of Victoria, 'Annual Report', above n 11, 59.

322 Magistrates' Court of Victoria, 'CISP', above n 319.

323 "In June 2011, the CISP signed a Memorandum of Understanding with SupportLink for the SupportLink Early Intervention and Diversion Program. This initiative provides a single referral gateway for Victoria Police, diverting non-police matters to specialist agencies. It allows operational police to refer accused to CISP as soon as charges have been laid. Magistrates' Court of Victoria, 'Annual Report', above n 11, 59.

324 That is 25 per cent of the total number of assessed accused who identified as Koori. It is not possible to make a direct comparison of how many Koori women who would be eligible for the Court Integrated Support Program using publically available data, however the Commission notes that 1,900 people accessed CISP in the 2011-12 year, 212 clients identified as Aboriginal only or Aboriginal/Torres Strait Islander (11 per cent). Ibid.

325 Focus group interview, 6 March 2013.

- CISP primarily provides case management and referrals to external services. Waiting lists for these are common. In addition, if there are access barriers to services including cultural barriers or fear of identification by other community members, Koori women may not get the support they need.

As key informants identified, if there were Koori-specific CISP services, Koori women's utilisation rates would be far greater.³²⁶ Similarly, if CISP was available at more courts, access would also improve.

Sentencing of Koori women

In Victoria, the sentencing of adult offenders is governed by the *Sentencing Act 1991 (Vic)*. The purposes for which a court may impose a sentence in Victoria are to:

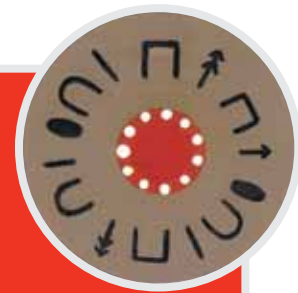
- punish the offender to an extent and in a manner which is just in all of the circumstances; or
- deter the offender or other persons from committing offences of the same or a similar character; or
- establish conditions within which it is considered by the court that the rehabilitation of the offender may be facilitated; or
- manifest the denunciation by the court of the type of conduct in which the offender engaged; or
- protect the community from the offender; or
- a combination of two or more of those purposes.³²⁷

The sentences the court can impose are:

- a term of imprisonment
- a suspended sentence
- order the offender to complete a Community Corrections Order.

326 See for example, key informant interview, Magistrates' Court of Victoria, 3 March 2013; key informant interview, Victorian Aboriginal Legal Service, 15 November 2012.

327 *Sentencing Act 1991 (Vic)* s 5(1).



Sentencing patterns – Koori women and the revolving door of prison

In 2010-11 Magistrates' Courts sentenced 95 Koori women. Of these:

- Sixty-four received community based orders (67 per cent) of Koori women sentenced)
- Twenty-three Koori women received custodial sentences (24 per cent)
- Four Koori women received intensive correction orders. The same number received partially suspended sentences.³²⁸

Impact of having a prior sentence

Of those 23 Koori women sentenced to imprisonment that year, all but one had prior convictions.³²⁹

Previous terms of imprisonment increases the likelihood of imprisonment when new offences are committed.³³⁰ In 2012, more than half the Koori women in custody had a history of prior offending and imprisonment.³³¹

For both Koori and non-Koori offenders, the strongest predictor of the sentence type and length of the imprisonment term is whether the person has a prior sentencing episode: people with prior episodes are more likely to receive a custodial sentence but be sentenced to a shorter term of imprisonment. The impact of prior sentencing is thus greater on the decision to incarcerate.³³²

328 Information provided to the Commission by Sentencing Advisory Council on 1 February 2013. Note that intensive correction orders are no longer a sentencing option since the introduction of Community Correction Orders.

329 This may be undercount as available data only captures those sentenced to prison in 2010-11 who had been previously been sentenced from 1 July 2004. Older prisoners may have appeared before July 2004 and had not appeared since will not be counted. Information provided to the Commission by Sentencing Advisory Council on 1 February 2013.

330 State of Victoria, Sentencing Advisory Council, 'Comparing Sentencing Outcomes', above n 49, 59.

331 State of Victoria, Corrections Victoria, *Transition of Koori women to Tarrengower Prison* (2012) 11.

332 "Not only are Koori offenders more likely to have prior sentences, but they also have a greater number of prior sentences, with Koori offenders more likely to have been sentenced three or more times within the re-offending database." Koori offenders are also more likely to have more than one charge before the Magistrates' Court when sentencing is considered. State of Victoria, Sentencing Advisory Council, 'Comparing Sentencing Outcomes', above n 49, 38-39, 59.

Koori offenders are more likely to receive a custodial sentence

Koori people are statistically significantly more likely to receive a custodial sentence in the Magistrates' Court than non-Koori people.³³³

However, there is no significant difference in the length of the sentence they receive.³³⁴

- Data from 2011-12 shows that Koori women are less likely to be sentenced to imprisonment than Koori men.³³⁵
- In contrast, a higher proportion of Koori women were sentenced to imprisonment than their non-Koori counterparts.³³⁶
- Meanwhile the use of Community Corrections Orders (CCO) is comparable.³³⁷

333 In 2010-11 36.7 per cent of Koori offenders were sentenced to imprisonment by the Magistrates' Court of Victoria, compared to 28.5 per cent of non-Koori offenders. The reference group for the study 'observed differences in imprisonment as likely due to the higher proportion of Koori people being sentenced for injury offences as their most serious (principal proven) offence, which is more likely to attract a period of imprisonment. This may be different for Koori men and women. Ibid 40.

334 Corrections Victoria data indicates that as at 28 February 2013 "Indigenous prisoners were serving shorter sentences with almost 60 per cent serving a sentence of less than two years compared with 49 per cent on non-Indigenous prisoners". State of Victoria, 'Indigenous Offenders and Prisoners March 2013', above n 2. However, when the Sentencing Advisory Council analysed prisoner data in more detail, allowing for all circumstances, they found "no meaningful differences in sentence length between Koori and non-Koori offenders". Ibid 44.

335 Ninety-six per cent of Koori males sentenced by the Magistrates' Court in 2010-11 were given a custodial sentence, even though both men and women were equally likely to have prior convictions. Information provided to the Commission by Sentencing Advisory Council on 1 February 2013.

336 Twenty-four per cent compared to 16 per cent for non-Koori women. Information provided to the Commission by Sentencing Advisory Council on 1 February 2013.

337 Sixty-seven per cent compared to 70 per cent for non-Koori women. Information provided to the Commission by Sentencing Advisory Council on 1 February 2013.

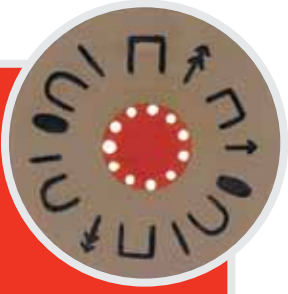
Community Corrections Orders

Within Corrections Victoria, Community Correctional Services (CCS) supervises adult offenders sentenced to a Community Corrections Order³³⁸ (CCO). This is a flexible order that has conditions attached to it. These conditions are based on the circumstances of the offence, the offender's needs and situation, and the direction of the court.³³⁹

- At May 2013 there were 577 Koori offenders being managed by CCS. That is 6.4 per cent of all offenders on that date.
- Of the 577 Koori offenders, 152 were female.³⁴⁰
- The number of Koori women on these orders increased by 73 per cent over the last five years. Over the same period, the number of non-Koori females on community orders did not change. This means that Koori women accounted for the entire increase in female offender numbers on orders.³⁴¹
- Around one in ten women sentenced to Community Corrections Orders are Koori.³⁴²

In terms of completion rates, in 2011-12, 54.2 per cent of supervised CCOs registered to Koori people were successfully completed, a decline from 62.8 per cent successfully completed CCOs the previous year. For unsupervised orders the successful completion rate fell to 46.3 per cent in 2011-12, down from 67.2 per cent in 2010-11.³⁴³

Sentencing Advisory Council research indicates that where placed on Community Corrections Orders, Koori offenders are more likely report having breached an order. Although drawn from a period prior to the introduction of the new CCO, in 2010-11 only 32.4 per cent of Koori people on a Community Corrections Order reported having never breached an order, compared to 43.7 per cent of non-Koories. 10.8 per cent of Koori offenders reported breaching a community corrections order five or more times, compared to just 6.8 per cent of non-Koori offenders.³⁴⁴



There are 10 Indigenous Leading Community Corrections Officers in Victoria. They undertake a restricted caseload of general Community Corrections Services work, and specialist functions to ensure the specific needs of Aboriginal offenders are met. They provide a case consultancy role to other CCS Officers regarding responsive service provision to Aboriginal offenders and assist to develop and maintain relationships between prisons, CCS locations and the Aboriginal community and organisations.

Magistrates have few options for Koori offenders who have long criminal histories, often with unsuccessful community orders or breaches of parole. Analysis of offenders receiving terms of imprisonment of less than three months showed that short-term Koori prisoners were more likely to have had multiple prior community-based orders.³⁴⁵

Therefore, putting appropriate supports in place to maximise successful completion of CCOs is a vital contributor to driving down imprisonment rates for Koori women. Unfortunately, there are few dedicated programs for Koori women currently in operation.

338 The new CCO commenced 16 January 2012. This single order has replaced Community Based Orders, Intensive Correction Orders and Combined Custody and Treatment Orders.

339 State of Victoria, Department of Justice, Orders. <<http://www.justice.vic.gov.au/home/sentencing/community+orders/>> at 18 July 2013.

340 State of Victoria, Corrections Victoria, 'Indigenous Offenders and Prisoners Data Report to the July 2013 AJF' above n 1.

341 From 79 to 138 between February 2008 and February 2013. State of Victoria, Department of Justice, Koori Justice Unit, above n 8.

342 From the period of 16 January to 30 September 2012, 457 CCOs were registered for Koori offenders. Koori women were subject to 105 of those CCOs, representing 9.5 per cent of the total of female offenders. State of Victoria, 'Indigenous Offenders and Prisoners November 2012', above n 4.

343 Ibid.

344 State of Victoria, Sentencing Advisory Council, 'Comparing Sentencing Outcomes', above n 49, 55.

345 Ibid 45.

Existing Community Corrections Order support programs

Koori Offender Support and Mentoring Program: a community-based initiative operating in Bairnsdale, the Latrobe Valley, Mildura, Shepparton and North West Metropolitan regions.

*Under the program, Koori Elders and Respected Persons play a mentoring role to Koori men and women who are completing community-based orders, intensive corrections orders, community corrections treatment orders or parole. To support program participants to successfully complete their orders, mentors provide advice and cultural connection.*³⁴⁶

Local Justice Worker Program: supports male and female Koories to meet the conditions of their community based orders and assist them to link to relevant programs and services.³⁴⁷

Residential options while on Community Corrections Orders

While there are some residential options available for men completing Community Corrections Orders, there are none for women.

There is only one residential program available in Victoria that encompasses cultural needs – the Wulgunggo Ngalu Learning Place, however it is only available to Koori men.

Wulgunggo Ngalu Learning Place, is an initiative of the AJA2. It provides Koori men over 18 years, who have been sentenced by the court to a Community Correction Order (CCO) an opportunity to learn new skills, reconnect with, or further strengthen, their culture and participate in programs and activities to help them address their offending behaviour.

Corrections Victoria may refer Koori men to the Wulgunggo Ngalu Learning Place at any time during the course of their Order. A court may also request both an assessment for a Community Correction Order and placement at Wulgunggo Ngalu Learning Place.³⁴⁸

Participation in the program is voluntary and involves living at Wulgunggo Ngalu, in Gippsland, for three to six months. Up to 20 men may live at Wulgunggo Ngalu at one time.³⁴⁹

It provides an environment that is relevant and responsive to the needs of Koori men. As a result, the proportion of Koori male offenders who have successfully completed the program at Wulgunggo Ngalu Learning Place has steadily increased from 68 per cent in 2010-11 to 97 per cent in the 11 months to May 2013.³⁵⁰

It also won the prestigious community corrections category of the 2010 International Corrections and Prisons Association Awards in November 2010, where it was acknowledged as a leader in its field.

Barriers to the effective use of diversion by the Courts

The Commission found that there are numerous barriers to the effective use of diversion for Koori women in contact with the justice system. These include: the under-utilisation of existing diversion schemes; lack of capacity in existing diversionary schemes; gender inequality; geographical inequity; lack of stable housing and homelessness and system fragmentation.

Lack of capacity – demand exceeds supply

In the current fiscal environment funding is not keeping pace with the increasing demand for services. Short-term funding cycles are a systemic issue, hampering services that are trying to address complex, multiple issues that require a long-term approach.³⁵¹

The impact of this is that there are insufficient services to address the unique and complex needs of Koori women, often driven by intergenerational trauma and disadvantage.

346 Health InfoNet, *Koori Offender Support And Mentoring Program*. <<http://www.healthinfonet.edu.au/key-resources/programs-projects?pid=991>> 5 June 2013.

347 State of Victoria, Department of Justice, 'AJA3', above n 15, 12.

348 In which case, an adjournment is sought while the assessment is undertaken by a Community Corrections Officer and Wulgunggo Ngalu Learning Place.

349 State of Victoria, Department of Justice, *Wulgunggo Ngalu Learning Place* (2012). https://assets.justice.vic.gov.au/corrections/resources/1e6a7fae-74be-46ce-be03-d4ca23a4cc5d/wulgunggo_june2012.rtf at 5 June 2013.

350 From 66.7 per cent in 2010-11, to 76.6 per cent in 2011-12, and 97.1 per cent from July 2012 to May 2013. State of Victoria, Corrections Victoria, 'Indigenous Offenders and Prisoners Data Report to the July 2013 AJF' above n 1.

351 Key informant interview, Magistrates' Court of Victoria, 3 March 2013.

Lack of holistic diversionary programs to prevent both victimisation and offending behaviour.

The over-representation of Koories in the justice system as both victims and offenders has intergenerational causes and effects.³⁵² In Victoria, while the number of services for survivors of trauma and family violence had increased under AJA2³⁵³, there are limited community-based services to assist Koori women who are dealing with the effects of trauma and family violence prior to involvement with the justice system.

Cultural inequities

While there are some mainstream supports, such as CISP, Koori women told us these are under-utilised.³⁵⁴ One factor informing this under-utilisation may be that without a specific Koori CISP the program does not have the level of cultural relevance that many Koori women need in order to engage.

At the same time, given the gaps in diversionary options, other parts of the system, such as the Koori Court may not have ready access to services that could support women to successfully complete orders and stay out of prison.

*A downfall of the Koori Courts (which is a fantastic concept) is the lack of cultural diversion programs. They could be doing more if they had cultural diversion programs. I think diversion should be at Koori Courts as the Elders are there; it is embedded in the system and Koories are accessing it. We have nowhere to send people, we're hamstrung there's Ngwala [Winja Ulupna Women's Recovery Centre drug and alcohol detox] but they can't cope.*³⁵⁵

Geographic inequities

Our research shows that there are limited services available in restricted areas. As noted above, CISP is only available in Melbourne, Sunshine and the Latrobe Valley. In addition, the two transitional houses for Koori women are located in Mildura and Shepparton. These geographical limitations further contribute to fragmentation of the service system.

Gender inequality – options for men but not for women

*Men have a range of diversionary programs – Wulgunggo Ngalu, Baroona, and Judy Lazarus [Transition Centre]. There is nothing for us. With the support of these programs for men, they are able to change their ways, women don't have that support. There are often greater challenges for women than for men.*³⁵⁶

The key informants and focus group participants identified three residential diversion facilities for Koori males at different stages of contact with the justice system. Baroona is community-owned residential facility for Koori young men aged between 14-25 years of age at risk of or in contact with the justice system.³⁵⁷ Wulgunggo Ngalu, described above, and Judy Lazarus Transition Centre provide services for men exiting prison. Yet participants could not identify one dedicated residential facility for Koori women. Koori women also identified a lack of drug and alcohol services:

*[We need] more drug and alcohol places like Ngwala. There are heaps for men but none for women.*³⁵⁸

In addition to the lack of services, Koori women identified that diversionary services failed to meet women's needs.

*Besides the fact that there are a lot of services around for men that are not available for women, women also have children to support. If women aren't able to access financial support then they end up reoffending to support their kids.*³⁵⁹

Clearly, there is gender inequality in diversion options for Koori women resulting in the increasing use of imprisonment as the only option available to the Court.

*In particular there are no residential-based diversion options for women completing Community Corrections Orders.*³⁶⁰

*There is nothing in Australia that is culturally appropriate for women.*³⁶¹

352 National Congress of Australia's First Peoples, 'Justice Reinvestment Approach', above n 201, 19.

353 Nous Group, above n 25, 50-51.

354 Focus group interview, 6 March 2013.

355 Key informant interview, Victorian Aboriginal Community Controlled Health Organisation, 7 March 2013

356 Focus group interview, 17 January 2013.

357 Njernda Aboriginal Corporation, *Baroona Healing Centre*. <<http://njernda.designexperts.com.au/baroona-healing-centre>> at 18 July 2013.

358 Focus group participant, 6 March 2013.

359 Focus group participant, 17 January 2013.

360 There are limited options for Koori men.

361 Key informant interview, Aboriginal Family Violence Prevention Legal Service, 13 December 2012.

System fragmentation

Diversion can take place at any stage of the justice system however, it is usually associated with the 'front end' of the justice system that is with the police and courts. A significant barrier to the effective use of diversion is that police and the courts are ill-equipped to divert Koori women into existing services.

In particular, the complexity of the service system and the needs of Koori women make it difficult to divert and refer Koori women into existing services. It is difficult for individual Magistrates to keep abreast of which services are available and appropriate to the Koori woman appearing before them. Koori women are equally unaware of what services are available or how to navigate the service system. In some cases, decision-making has been affected:

There appears to be a lack clear communication across the justice system...One example of a case is where a Magistrate was considering the placement of a 12-month old child with her mother. The Magistrate was unable to obtain information on the Corrections policy for child placement.³⁶²

The consequence of a fragmented system is that individual Magistrates or police officers may not know of their existence, eligibility criteria or if vacancies exist in programs.³⁶³ The short-term nature of many programs due to funding limitations also means that support services may open/close or vary eligibility criteria, leading to further unmet need.

Lack of stable housing and homelessness

Limited access to stable housing and homelessness undermines the ability of Koori women to successfully engage with support programs and to complete orders made by the Court.

Housing is a massive problem. [For example]...a young Koori woman... who was bailed on three occasions, each time went into emergency housing and was back on remand within a week.³⁶⁴

Obtaining stable accommodation can be difficult and at times complex.³⁶⁵

It is well established that a lack of stable housing and homelessness is also a key indicator that drives Koori women's reoffending.³⁶⁶ However, housing alone does not meet all of their needs. Key informants also identified that Koori women need coordinated support services to assist them to reintegrate back into the community.³⁶⁷

Key informant and focus group participants in this research identified the lack of pre- (and post-) sentence residential options as a fundamental barrier to Koori women successfully diverting from the criminal justice system.³⁶⁸ For many, the value of having a safe place, cognisant of Koori women's cultural needs, was primary. This requires a fundamental re-think of diversion approaches.

There needs to be a diversionary option for women that assists them with building a connection to culture, addressing social issues (such as drug and alcohol, family dysfunction, therapy), parenting skills and an emphasis on reconnecting with children.³⁶⁹

362 Key informant interview, Magistrates' Court of Victoria, 3 March 2013.

363 Key informant interview, Magistrates' Court of Victoria, 3 March 2013.

364 Key informant interview, Magistrates' Court of Victoria, 3 March 2013.

365 Magistrates' Court of Victoria, 'Annual Report', above n 11, 59.

366 Eileen Baldry et al, 'Needs Analysis Report', above n 62, 71

367 Key informant interview, Victorian Aboriginal Community Controlled Health Organisation, 7 March 2013; Key informant interview, Victorian Aboriginal Legal Service, 15 November 2012.

368 See for example, Key informant interview, Magistrates' Court of Victoria, 3 March 2013. 69.5 per cent of female Koori offenders are aged between 18 and 34, compared to 56.1 per cent of female non-Koori offenders. See also, State of Victoria, Sentencing Advisory Council, 'Comparing Sentencing Outcomes', above n 49, 16.

369 Key informant interview, Judge Paul Grant, President, Children's Court of Victoria, 14 January 2013.

Recommendations

That the Magistrates Court of Victoria establish a Koori-specific Court Integrated Services Program. This program should include dedicated services for Koori women.

That the Magistrates Court of Victoria consult with the Aboriginal Justice Forum to develop guidance to Magistrates on barriers to the successful completion of diversion for Koori women, with a view to developing more flexible and responsive options for this cohort. Noting the distinct patterns of offending arising from multi-age peer groups among young Koori women, this work should include a review of eligibility for Koori women who are not first time offenders.

Noting the importance of section 3A of the *Bail Act 1977* in realising the right to equality and cultural rights, that:

- further guidance and associated training be developed for Victoria Police, court registrars, Magistrates and bail justices on the implementation of this section
- such training should be developed in partnership with the Victorian Equal Opportunity and Human Rights Commission and specifically address the intersection of the *Bail Act* and the *Charter of Human Rights and Responsibilities Act 2006*.

Noting that there are currently only two Koori independent prison visitors in Victoria, that the Office of Correctional Services Review undertake a review of this program, including eligibility criteria so that more Koori community members may participate.

That a community based, culturally appropriate residential program for Koori women on bail, Community Corrections Orders and post release be established. This Women's Place (the hub) should:

- reflect the geographical diversity of Koori women, recognising the importance of providing reconnection to culture
- involve Elders
- offer culturally appropriate support and programs from Koori and non-Koori service providers
- have a majority of programs developed and run by Koori women
- be holistic and take into account the needs of the family and the family structure, whatever that may be and however large that may be

- accommodate children
- be flexible and tailored to where women are in their life and their specific circumstances
- address causal factors and drivers of their offending and put in place support services to deal with these
- provide aftercare support, including access to mentoring
- include outreach, secondary consultancy and brokerage to agencies working with women prior to, and after their time at the Women's Place
- be the central service within a hub and spoke model of integrated service delivery to Koori women in contact with the criminal justice system.

The other elements of the program (the spokes) should include:

- enhanced Local Justice Worker Program and the Koori Offender Support and Mentoring Program
- nomination rights to residential drug and alcohol services with a Koori focus
- delivery of additional Koori specific interventions within women's prisons enhancements to transition planning and services for Koori women exiting prison, including the Transition Assistance Program, Konnect, mentoring programs and the Women's Integrated Support Program
- Koori women's Restart housing project.

Noting that Koori women are refused bail due to a chronic lack of appropriate accommodation, that in the short term, Corrections Victoria extend its existing transitional (bail) house program by leasing additional Koori women's houses. At least one of these new transitional houses should be located in metropolitan Melbourne. Over time these houses should be replaced by the Women's Place as recommended above.

Noting the positive benefits of the Local Justice Worker Program and the Koori Offender Support and Mentoring Program in assisting Kooris to address fines payments, that these programs be enhanced with a specific focus on Koori women with multiple fines and at risk of imprisonment.



Case study 3: Joanne

I have been in prison six times. I have four children in DHS care and I'm currently eight months pregnant. I am in prison on remand. I returned to prison for theft and breach of parole.

Parole is too hard to deal with. Next time, I want straight release. Parole places too many conditions on you and I can't manage. I have to go to drug and alcohol counselling, meet with my parole officer twice a week and provide urine tests. This is all on top of my conditions that I have to meet with DHS to see my kids once a month. I need support services to help me, like pick me up and take me to appointments.

I never want to go on parole again, I'd rather do my sentence. A lot of girls are in here because of breach of parole. We have no stable housing and no family. A lot of girls have no family because they are either not from Victoria or their families have disowned them because of what they do.

I have my mum but since I lost my kids things have got a lot worse. I feel like there is no use without them and I keep on using drugs.

I was released earlier in the year. Konnect were the service who I was told would help me, but they didn't call me once I was out.

I really needed help with getting housing. I can't get my kids back without a house. If you don't have a house you're stuffed. 2008 was the last time I had a house. I've had nothing but prison. I don't want to leave here (prison) until I get a house. When I get out I reconnect with the wrong girls and start stealing again to support my habit. This is what brings me back to prison. I need supported housing to get my life back.

With this baby, I have put in an application to 'Mother and Baby' to keep this baby with me. Because I am on remand I don't get access to any other services, only the Aboriginal Wellbeing Officer here at the prison.

I need to be sentenced to get Konnect or WISP on release. This time I want straight release. I never want parole again.

Chapter 6:

Koori women's experiences in prison and post-release

Main findings

- Once Koori women enter the prison system they are more likely to be re-imprisoned.
- A higher proportion of Koori women are classified with maximum-security ratings compared to non-Koori women. This contributes to under-utilisation of the minimum security Tarrengower prison.³⁷⁰
- Generalist services tend not to be used by Koori women, and there is a lack of culturally appropriate services in prison for this cohort. While examples of such services do exist, these are infrequently run, have eligibility restrictions and waiting lists.
- Access requirements for prison services include remand status, sentence length, and previous completion of prison programs. These restrictions have a disproportionate affect on Koori women who are more likely to be in remand or serving shorter sentences, or have been in prison before.
- There are some transitional (pre-release) services that begin in prison and continue to support people on the outside. However, these are limited in the support they can offer Koori women due to restrictions on eligibility for those on remand.
- There are no culturally and gender appropriate support services, specifically for Koori women upon release from prison. This impacts on their prospects for rehabilitation.
- Upon release from prison, services are fragmented, under-resourced and hard to navigate.
- Lack of appropriate housing after prison drives reoffending. Post-release accommodation is an urgent priority.

370 State of Victoria, Corrections Victoria, 'Transition to Tarrengower', above n 331, 11.



The Victorian correctional system

The Victorian correctional system includes prisons, Community Correctional Services (CCS) and the Adult Parole Board of Victoria (APB). Corrections Victoria is responsible for managing prisoners completing custodial sentences, offenders sentenced by the courts to serve a Community Corrections Order (through CCS) and overseeing prisoners released from prison on parole by the APB. Corrections Victoria includes an Aboriginal Programs Unit, as part of the Offending Behaviour Programs Branch.

Prisons

Corrections Victoria oversees the administration, management, and security of prisons, including the welfare of prisoners under the *Corrections Act 1986 (Vic)* and the associated *Corrections Regulations 2009 (Vic)*.

There are 14 prisons in Victoria. There are twelve prisons for men (including one transitional facility) and two prisons for women.

Twelve prisons are publically operated by Corrections Victoria, including the two women's prisons – Dame Phyllis Frost Centre (DPFC) and Tarrengower Prison. Two male prisons are privately owned and operated.³⁷¹

Corrections Victoria places the majority of Koori women at DPFC – a 300-bed maximum-security facility accommodating women of all security levels.³⁷² DPFC provides a wide range of programs and services, encompassing offending behavioural programs, drug and alcohol treatment, health and wellbeing, and education and training.³⁷³

Tarrengower Prison is a 72-bed minimum-security prison located in Maldon (136km north of Melbourne). Tarrengower provides programs and services that focus primarily on preparation for release and community reintegration.³⁷⁴

The Charter along with internationally based human rights standards and the *Standard Guidelines for Corrections in Australia* regulates both publicly and privately operated prisons.³⁷⁵



Independent Prison

Visitors (IPVs) provide important oversight. These volunteers speak with prisoners and provide the Minister for Corrections with independent and objective advice on the operation of Victoria's prisons. There are currently 39 volunteers visiting Victorian prisons. During 2011-12 visitors conducted over 342 prison visits.³⁷⁶ However, the Commission understands that there are currently only two Koori IPV's servicing the whole state. This creates significant challenges for the program.

Koori women's experiences in prison

Security classification and placement

When women enter prison on remand or sentence, they undergo a variety of assessments to determine their security/classification ratings, location (placement) and treatment needs as part of their Sentence Plan.³⁷⁷

371 Port Phillip Prison and Fulham Correctional Centre.

372 This includes reception, remand, sentenced, management and protection. State of Victoria, Corrections Victoria, 'Transition to Tarrengower', above n 331, 3.

373 Ibid

374 Ibid 4.

375 Private prisons are public authorities under s 4 of the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*; See also, *United Nations Standard Minimum Rules for the Treatment of Prisoners*, ESC Res 663C, UN ESCOR, Supp No 1, at 11, UN Doc E/3048 (31 July 1957); *United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, GA Res 3452 (XXX), annex, 30 UN GAOR Supp No. 34, UN Doc A/10034 (1975); *Standard Guidelines for Corrections in Australia (Revised 2004)*. <http://www.aic.gov.au/criminal_justice_system/corrections/reform/standards.html> at 18 July 2013. These standards also apply Community Correctional Services.

376 State Victoria, Department of Justice, Annual Report 2011-12 Appendix (2012) 213. <https://assets.justice.vic.gov.au/justice/resources/c9291426-b7b7-4b2e-a59c-6ddc7589adff/annual_report_appendix2012.pdf> at 25 July 2013.

377 State of Victoria, Corrections Victoria, *Sentence Management Manual* (2012) Part 2, ch AC3, AC4, AC5. <<http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/sentence+management+manual+-+part+2>> at 11 June 2013.

According to Corrections Victoria, “the central aim of classification and placement is the safety of prisoners, staff and community, while ensuring prisoners are accommodated at the lowest level of security appropriate for their circumstances”.³⁷⁸ The assessment tool used to determine the security rating assesses factors including:

- nature and severity of the offence and risk of further offending
- severity of prior criminal convictions
- risk and history of escape
- history of institutional violence and the risk of welfare of the prisoner herself
- prior major offence convictions
- outstanding court matters
- drug/alcohol history
- stability factors at the time of arrest (housing, education, employment)
- history of instability during current or recent terms of imprisonment
- prior good institutional conduct
- having children or being pregnant
- age.³⁷⁹

The Corrections Regulations require Sentence Management Panels to make decisions regarding placement as part of the classification process.³⁸⁰ The panels consider individual security ratings, management and needs of the prisoner, community protection, and the efficient and effective operation of the prison.³⁸¹ Assessment is ongoing throughout the prisoner’s sentence.

Koori women are more likely to have a higher security rating

A comparison of security classification ratings indicates that a lower proportion of Koori women are classified as minimum or medium security, and a higher proportion are classified as maximum security, compared to non-Koori female prisoners. As the table below shows, in 2011-12, while 29 per cent of all female prisoners were classified maximum security, 48 per cent of Koori female prisoners received this classification.³⁸²

The Security Rating Tool used to assess female prisoners predominantly assesses static (unchangeable) factors such as prior criminal convictions, previous history of offending and imprisonment. The disparity in security classification most likely reflects and reinforces the pattern of Koori women cycling in and out of prison. Over half the cohort of Koori women in custody during 2012 had a history of prior offending and imprisonment.³⁸³

While there are specific male and female assessment tools, cultural responsiveness appears to play less of a role in the determination of a prisoner’s security rating.³⁸⁴ However, the Sentence Management Branch is required to consult with the Aboriginal Wellbeing Officer at DPFC about placements. Sentence Management Panels must also offer all Koori prisoners the “opportunity of being assisted by such officers during Sentence Management Panels, particularly in the classification process”.³⁸⁵

Figure 9 – Comparison of security classification between Koori and non-Koori female prisoners 2011-12

Security classification	All female prisoners N=319	Proportion %	Koori female prisoners N= 40	Proportion %
Maximum	94	29.46%	19	47.5%
Medium	105	32.9%	9	22.5%
Minimum	120	37.6%	12	30%

Source: State of Victoria, Corrections Victoria, *Transition of Koori women to Tarrengower Prison* (2012) 11.

378 Ibid ch AC4.

379 Ibid ch AC3.

380 *Corrections Regulations 2009* (Vic) reg 23(1).

381 State of Victoria, Corrections Victoria, ‘Transition to Tarrengower’, above n 331, 4.

382 This may reflect patterns of offending however, Victoria Police data suggests that most alleged offences are at the lower end of the scale. See Figure 5 ‘Victoria Police data on alleged offences by Koori men and women 2011-12’ on page 34.

383 State of Victoria, Corrections Victoria, ‘Transition to Tarrengower’, above n 331, 11.

384 In relation to scoring for having lived at the same address for the last 12 months, this includes living in the “same tribal area”. State of Victoria, ‘Sentence Management Manual’, above n 377, ch AC3, 7.

385 State of Victoria, Corrections Victoria, ‘Sentence Management Manual’, above n 377, ch AC4, 8.

Corrections Victoria policy states, “[w]here possible, attempts should be made to locate Aboriginal prisoners at locations in which they will have maximum access to Koori-specific programs, consistent with their other needs and security rating”.³⁸⁶

However, this is subject to the security classification of the prisoner. Koori women being assessed at the higher end of the scale has implications for these women during and after prison. The Victorian Aboriginal Legal Service (VALS) reported:

*It is our experience that Corrections Victoria are slow to reduce people to lower risk categories. Not having access to Corrections Victoria’s assessment processes, it is difficult to understand why this is so....If Aboriginal people are assessed as lower risk then they are likely to have better chances of transitioning out of prison.*³⁸⁷

Case study interviewee Shelley told us:

*Being held in a maximum-security facility subjects every woman in that facility, even if you have a low-risk classification, to extraordinarily high levels of surveillance, control, restriction and restraint. Loss of dignity is a given. There is no dignity in being forced to strip on command, or in providing a urine sample in front of two uniformed prison officers – or in being stripped before and after every visit from children, family or friends. For the 89 per cent of women who have been victims of sexual abuse and or domestic violence, learning to drop their clothes, or to drop their clothes and urinate on command can be an excruciating journey. For Aboriginal women in particular, the shame is intolerable.*³⁸⁸

386 Ibid

387 Key informant interview, Victorian Aboriginal Legal Service, 15 November 2012.

388 Case study 5.



Access to Tarrengower

Tarrengower is a minimum security, 'open' prison located in Maldon.

Tarrengower features an "absence of secure walls and [a] focus on community integration".³⁸⁹ To be considered for placement at Tarrengower women need to have a minimum (C1 or C2) security rating and demonstrate good behaviour in prison.

Relocation to Tarrengower is not recommended for women who have demonstrated a pattern of non-compliant behaviour, violence and drug/alcohol related incidents within the prison environment.³⁹⁰

On 30 June 2011, there were 198 women at DPFC and 52 women in Tarrengower. Of these 52 women, two were Koori.³⁹¹

Factors contributing to the underutilisation of Tarrengower include its location, including high travel costs and long journeys for family visits, a lack of Koori specific cultural programs and services, and classification ratings.³⁹² As a result, if a Koori woman is eligible and transferred to Tarrengower, it is common for her to be the only Koori person there – leading to isolation. This is the most significant hinderance to Koori women utilising Tarrengower.

Given the small number of women at Tarrengower, service provision appears limited. Transition Assistance Program (TAP) and Women's Integrated Support Program (WISP) are the main transitional services and no Koori specific services are delivered.³⁹³ Bendigo and District Aboriginal Co-operative provides limited services to Koori women at Tarrengower on an ad hoc basis.³⁹⁴

To facilitate family contact, the Aboriginal Family Visits Program operates.³⁹⁵ In addition, the Loddon Prison Aboriginal Wellbeing Officer now covers Tarrengower for one day per week.³⁹⁶

While recognising the locational difficulties of Tarrengower, its underuse is a significant lost opportunity to improve transition planning and support to assist Koori women to reintegrate into the community upon release. It is also a missed opportunity to house Koori women in a more humane environment commensurate with their offence type.

Strategies to address the locational and cultural challenges of Tarrengower need to be developed to allow greater participation by Koori women.

389 State of Victoria, Corrections Victoria, 'Transition to Tarrengower', above n 331, 6.

390 Ibid 5.

391 Ibid 7.

392 State of Victoria, Corrections Victoria, 'Transition to Tarrengower', above n 331, 11-13.

393 Ibid 12.

394 Ibid.

395 Ibid.

396 Information provided by Corrections Victoria to the Commission, 18 July 2013.

A prison, any prison, when you're a woman, and when you're inside, is like an abusive partner. It judges you, constantly, on every aspect of your life, from your character and personality, to your values and beliefs – and relentlessly reminds you what a 'scumbag' you are. You are stripped of your power to make decisions, including those over your own body, (mind and body must of course remain exposed and vulnerable at all times), and then you are systematically disempowered, de-skilled and de-valued – deconstructed you might say, and then, you are re-constructed into someone who is wholly dependent on the system...which then fails to meet your needs – again, no different to an abusive partner.³⁹⁷

Services for Koori women in prison

While prison has been compared to 'an abusive partner', for many Koori women it offers and provides services that are unobtainable elsewhere. Prison may act as a circuit breaker as it provides Koori women with accommodation, regular meals, and reduced opportunities to obtain drugs and alcohol.

Koori women at DPFC informed the Commission that prison provides them with a support network (a result of increased numbers of Koori women in prison), as well as access to cultural programs and services.

*When things get bad on the outside, prison is a better option. Prison provides security.*³⁹⁸

The Commission has also observed the trust and connection that the Koori women at DPFC have with the Aboriginal Wellbeing Officer. This role provides women with cultural support and a link to outside community organisations. For many Koori women in our focus groups, this was the first time they have had a cultural maternal role model. Again, this demonstrates that Koori women have experienced community, social and emotional disconnection and that their needs are unmet prior to imprisonment.

While these services are valuable and may offer women a chance to learn new skills and start again, for most prison compounds Koori women's needs, removes them from their family and the community and further entrenches their disadvantage and institutionalisation.

397 Case study 5.

398 Focus group participant, 17 January 2013.

Current services available

A range of programs are offered at DPFC. These include:

- psychological and drug and alcohol counselling³⁹⁹
- Offending Behaviour Programs
- legal services
- family/parenting programs
- educational programs
- vocational programs
- recreational programs
- transitional programs.

In addition, there are some programs that are solely for Koori women including:

- **Marumali** is a culturally appropriate 'model of healing' offered to all Koori prisoners. It provides Koori prisoners the opportunity to deal with issues associated with removal from their families and community in culturally appropriate and supportive environment.
- **Aboriginal Cultural Immersion Program** aims to provide Koori prisoners with an increased understanding of their cultural identity to reduce the risk of reoffending.⁴⁰⁰
- **Koori FACES** is a family strengthening program developed by the Victorian Aboriginal Child Care Agency (VACCA) in partnership with the Victorian Aboriginal Community Controlled Health Organisation (VACCHO). The program aims to build confidence in parents and families of Aboriginal children, with an emphasis on an increased understanding and knowledge of self, Aboriginal culture and parenting practices and styles to build resilience.⁴⁰¹

399 Also offered at Tarrengower. Provided by Caraniche. See, Caraniche, *Prison based Services*. <<http://www.caraniche.com.au/index.php/forensic-services/prison-based-services>> at 11 June 2013

400 Carmel Barry, 'The Aboriginal Cultural Immersion Program' (Paper presented at the Best Practice in Corrections for Indigenous People Conference, Adelaide, 13-15 October 1999) 4.

401 State of Victoria, Department of Justice, 'AJA3', above n 15, 115. See also, Sue-Anne Hunter and Peter Lewis, 'Embedding Culture for a Positive Future for Koorie Kids' (Paper presented at Association of Children's Welfare Agencies' Positive Futures conference, Sydney, 14-16 August 2006) <http://www.acwa.asn.au/Conf2006/HunterPaper_ACWA2006.doc> at 4 July 2013.

- **Aboriginal Family Visits Program** is designed to assist the families of Aboriginal and Torres Strait Islander prisoners to visit their family members in custody. It recognises the importance of maintaining the prisoner's family relationships and links with their community.⁴⁰²
- **Koori Art Program (Kangan Batman TAFE)** provides a Koori art program to all Koori women at DPFC.
- **Koori Education (Kangan Batman TAFE)** delivers vocational training and education programs to Koori women at DPFC.⁴⁰³
- **Konnect** is a transitional support program for Koori women and men exiting the prison system. The program is designed to prepare Koori women and men for release.

The Commission is aware that some community organisations also provide support to Koori women. For example, the Bendigo and District Aboriginal Co-operative provides some support to Koori women in Tarrengower prison and VALS and FVPLS provide legal services to Koori women in prison.

Despite these services there remain significant barriers for Koori women accessing prison-based services and programs.

Barriers reported by Koori women in accessing effective support programs in prison

As previously discussed, barriers to services and diversion options before prison contribute to higher rates of Koori women being remanded in custody and sentenced to imprisonment.

In prison, there are similar barriers to accessing prison-based programs and services. These have been previously identified in the evaluation of the AJA 2, which noted

*...some shortcomings with these programs and [that they] could be improved by dealing with important underlying issues, such as drug and alcohol dependence in a culturally sensitive way. Programs have also not run consistently over time, and transition support has been highlighted as a gap.*⁴⁰⁴

Our discussions with prisoners revealed that gender and race inequality, a lack of culturally appropriate programs, limited capacity of existing programs, waiting lists and eligibility requirements all create barriers to access. Because of these barriers, Koori women miss out on the therapeutic and rehabilitative benefits of these programs.

Gender inequality

A major concern raised throughout this research was that the prison programs, services and the system itself are designed for male prisoners. Thus, these are not effective for women in general and Koori women specifically.

*The prison system has not been set up with women in mind, women have different needs to men, they have a different role in families that is not recognised by prison. They need holistic supports to be able to continue their role in families. More work needs to be done by Corrections Victoria on these issues.*⁴⁰⁵

*[Programs] have simply transposed from the men's system, which makes them totally irrelevant to women's lives.*⁴⁰⁶

Koori women identified services that were lacking for women or that failed to take into account women's needs.

Men have a range of diversionary programs – Wulgunggo Ngalu, Booroona, Judy Lazarus [Transition Centre]...with the support of these programs..., they are able to change their ways. Women don't have that support...

*Besides the fact that there are a lot of services around for men that are not available for women, women also have children to support. If women aren't able to access financial support then they end up reoffending to support their kids.*⁴⁰⁷

Women told us this gender equity extended post release.

*We need more drug and alcohol places... There are heaps for men but not for women.*⁴⁰⁸

402 The Aboriginal Family Visits program is delivered by the Victorian Association for the Care and Resettlement of Offenders (VACRO). <<http://www.vacro.org.au/SERVICES/FAMILIES.aspx>> 13 June 2013.

403 This forms part of the Meerta Meerta strategy. State of Victoria, Corrections Victoria, 'Meerta Meerta', above n 163.

404 Nous Group, above n 25, 28.

405 Key informant interview, Victorian Aboriginal and Legal Service, 15 November 2013.

406 Case study 5.

407 Focus group participant, 17 January 2013.

408 Focus group participant, 6 March 2013.

Prison services designed for men are likely to be insufficient to meet the needs of Koori women. In particular, they are unlikely to reflect the intersection of race and gender which informs these prisoners' offending and their experience of prison. Duplicating or tweaking male services for women prisoners further disadvantages Koori women, whose prospects for rehabilitation remain poor as their needs remain unmet.

Culture is what brings them in. Culture is what is going to strengthen them to keep them out.

Lack of culturally appropriate programs

Our research confirms previous findings that there are not enough culturally appropriate prison programs and services for Koori women.⁴⁰⁹ For example, while Aboriginal Wellbeing Officers are over-burdened, there is no dedicated Koori mental health worker in the Victorian prison system, for men or women.⁴¹⁰

Key informants and focus group participants told us that many Koori women feel uncomfortable when accessing mainstream services because these services are not designed from a cultural standpoint and do not reflect their cultural needs.⁴¹¹ As a result, Koori women feel distrust and shame, which leads them to avoid mainstream group-based programs.

This confirms recent findings in relation to mental health needs in prison. That study made a number of practice recommendations, including:

- Mental health assessments and the delivery of mental health services to Koori prisoners must be done in a culturally informed and culturally safe manner.
- Health and mental health staff should receive training to assist them to develop cultural competence in working with Koori people... those responsible for service delivery should take into account the historical, cultural and environmental experiences and contemporary circumstances of Koori people.

- Services should be provided to address elements of social and emotional wellbeing that impinge on mental health including the importance of connection to culture, ancestry, spirituality, land, family and community...⁴¹²

Given the high rates of mental disorder and social and emotional damage among female prisoners, all Koori women should undergo a culturally appropriate mental health assessment upon incarceration. The assessment should be used to develop appropriate care plans for female prisoners.⁴¹³

In addition to managing symptoms, services are required that address the underlying distress experienced by Koori men and women in custody.⁴¹⁴

Ad hoc delivery

We also found that some programs are not sustained due to lack of funding or may stop and start due to variations in the number of Koori women in a particular location. Key informants and Koori women prisoners reiterated that services are inconsistent.

*Marumali ran last November [2012]. Prior to that it was last delivered at DPFC four years ago.*⁴¹⁵

*Often there are great programs that just get discontinued, they need to be consistent.*⁴¹⁶

*[We] desperately need a Koori Counsellor to promote a culturally appropriate one-on-one service. Elizabeth Hoffman House used to provide this four-and-a-half years ago... we would like to see this return.*⁴¹⁷

409 See, Nous Group, above n 25; Harry Blagg, 'Aboriginal women and justice', above n 108; Elena Marchetti, 'Indigenous Women and the RCAIDIC – Part 1' (2007) 7(1) *Indigenous Law Bulletin* 6.

410 State of Victoria, Department of Justice, Justice Health, 'Koori Prisoner Mental Health', above n 7. The Commission notes that the Marrmak mental health unit is available at Dame Phyllis Frost Centre. This acute service is available to Koori and non-Koories.

411 See for example, Case study 5; key informant interview, Victorian Aboriginal Legal Service, 15 November 2012; focus group participant, 6 March 2013.

412 James Ogloff et al, 'Koori Prisoner Mental Health', above n 134' 19. The Commission notes that standard 2.1 of the Justice Health Quality Framework provides that "Health services promote the employment of culturally appropriate healthcare staff and the choice of an Aboriginal and Torres Strait Islander Health Worker where available". Information provided to the Commission by Justice Health on 24 July 2013.

413 State of Victoria, Department of Justice, Justice Health, 'Koori Prisoner Mental Health', above n 7.

414 Ibid.

415 Focus group participant, 6 March 2013.

416 Focus group participant, 14 December 2013..

417 Focus group participant, 6 March 2013.

Some programs delivered by FVPLS is another example of services that were available to Koori women in prison that no longer exists due a lack of ongoing funding from State initiatives, such as the Community Investment Fund and Community Investment Programs.⁴¹⁸

This suggests culturally appropriate services are delivered in an ad hoc and sporadic way, despite the clear benefits of a long-term, sustained approach. Cultural programs have the potential to address Koori women's needs in a holistic framework. Many Koori women prisoners have experienced trauma. Without access to culturally appropriate services, the healing needs of these women remain unmet.

Lack of capacity in existing programs

As noted by the Senate Standing Committee on Legal and Constitutional Affairs References Committee “[w]ith the growth in the Australian imprisonment rate, the overcrowding of prisons has made it difficult for prisoners to access programs that are aimed at addressing the underlying causes of offending behaviours. This is because the programs are unavailable due to funding issues or are oversubscribed.”⁴¹⁹

In Victoria, the increasing number of women in prison, coupled with budget limitations, means that demand for prison programs often exceeds supply. This leads to diminished opportunities for rehabilitation. It also leads to long delays through waiting periods for services.

Koori prisoners informed the Commission that programs sometimes become available to women towards the end of their sentences, in order to meet eligibility requirements for parole.⁴²⁰ However, this comes too late for many women who are trying to address the deep-seated mental health, substance, trauma and other issues that are driving their offending.

Limited service provision creates long wait lists, including in services where a timely response is crucial, such as drug and alcohol counselling. Koori women in prison told us that they wanted access to drug and alcohol treatment programs, but they were not available when they needed them.

As noted in a recent study of Koori prisoner mental health and cognitive functioning:

Rates of substance misuse are high among Koori prisoners; therefore, culturally relevant interventions programs for substance use disorders, and co-occurring mental illnesses and substance use disorders are required.⁴²¹

Justice Health informed the Commission that all prisoners, including those on remand have access to an Opioid Substitution Therapy Program as clinically indicated. They identified two streams of programs in prison – health and criminogenic.

As part of the health stream, all remandees and prisoners have access to harm reduction programs which provide information on harm minimisation, health education and information related to the risks associated with substance abuse in prison upon entry and release. They will also have access to release-related harm reduction programs. Criminogenic programs are available to prisoners whose drug use is one of the main contributing factors to their offending. Remandees are not eligible for criminogenic stream programs as they have not been convicted of an offence. The length of the program may also be a factor in determining eligibility for prisoners.⁴²²

Prisoners informed the Commission that very few Koori women have taken part in the drug treatment program at DPFC in recent years. This is despite 90 per cent of Koori women in that prison participating in a survey being classified as having a substance misuse.⁴²³

I can't get into the drug program because they say I've got the wrong attitude.⁴²⁴

418 Key informant interview, Aboriginal Family Violence Prevention Legal Service, 13 December 2012. See also, Aboriginal Family Violence Prevention and Legal Service Victoria, *A Force to be Reckoned With*, above n 78, 34-5.

419 Parliament of Australia, 'Report into Justice Reinvestment', above n 34.16.

420 Focus group interview, 6 March 2013.

421 State of Victoria, Department of Justice, Justice Health, 'Koori Prisoner Mental Health', above n 7.

422 Information provided to the Commission by Justice Health, 24 July 2013.

423 James Ogloff et al, 'Koori Prisoner Mental Health', above n 134, 13.

424 Focus group interview, 16 April 2013.

Eligibility requirements

There are eligibility requirements for prison services. These include remand status, sentence length, and previous completion of prison programs. However, these and other restrictions have a disproportionate affect on Koori women who are more likely to be on remand, have been in prison before or are serving shorter sentences.

Remand

As noted in Chapter 2, the number of Koori women on remand in Victoria is increasing and remand prisoners make up a large proportion of the Koori female prisoner population. However, because remand prisoners are not sentenced, they have limited access to the majority of prison-based programs.

The Commission understands that due to the length of offending behaviour programs, these are generally for sentenced women rather than those on remand. However, behaviour/mood management programs are available to remand prisoners.⁴²⁵

Length of sentence

There was conflicting information regarding length of sentence and program eligibility. Some key informants reported that to be eligible for programs prisoners need to be sentenced for more than four months. For example, VALS told us:

*Corrections Victoria have some mental health and rehabilitation programs for longer term prisoners, but don't have access to anything for shorter term prisoners.*⁴²⁶

However, Corrections Victoria advised the Commission "there is no timeframe for access. From reception into prison programs and services are offered based on identified need and demand within the appropriate resourcing parameters."⁴²⁷ Justice Health also advised that "all prisoners, regardless of remand status or sentence length have access to the same mental health services as longer term prisoners".⁴²⁸

The women themselves told us that many Koori women who have been remanded or have served short sentences exit prison without adequate treatment or preparation for release.⁴²⁹ This reduces their prospects for successful rehabilitation and reintegration and contributes to recidivism.

One Koori woman told us about her experience of remand. She had limited access to services and was ineligible for offending behaviour and treatment programs because of her remand status. In her experience, 'remand = boredom'.⁴³⁰

Previous completion of prison programs

The Commission is aware that, due to limited capacity, Koori women are ineligible for programs they have accessed or completed in their previous sentence or recent past.⁴³¹ Given high reimprisonment rates, many Koori women are therefore excluded from prison programs, exacerbating the impact of unmet needs that may have contributed to their reoffending. The drivers of the cycle of imprisonment remain unaddressed due to capacity issues within the prison system.

Services that do work

Marumali

Marumali is a culturally appropriate program delivered to Koori female and male prisoners who are survivors of removal and assimilation policies. The program runs over five days and provides prisoners with a culturally appropriate model of healing, referred to as the Marumali model of healing.

Marumali is only available to Koori women at DPFC (except those in Marrmak mental health unit and management units⁴³²). The program works on the shared experience of forced removal. Women get to talk about their experiences in a culturally safe environment.

The program allows participants to:

- learn skills to deal with the trauma associated with removal and assimilation
- control the pace and direction of their healing journey
- discuss sensitive issues such as grief and identity in a culturally appropriate and safe forum
- affirm and strengthen identity within a culturally appropriate and supportive environment.⁴³³

425 Focus group interview, 6 March 2013.

426 Key informant interview, Victorian Aboriginal Legal Service, 15 November 2012.

427 Information provided to the Commission by Corrections Victoria, 15 April 2013.

428 Information provided to the Commission by Justice Health, 24 July 2015.

429 Focus group interview, 17 January 2013. See also, Harry Blagg, 'Aboriginal women and justice', above n 108.

430 Focus group participant, 6 March 2013.

431 Focus group interview, 16 April 2013.

432 Marrmak unit provides specialist mental health services to women prisoners at the Dame Phyllis Frost Centre. The management unit includes solitary confinement.

433 Winangali-Marumali, *Workshop Formats*. <<http://www.marumali.com.au/workshop-formats>> at 18 July 2013.

Intergenerational trauma and grief associated with stolen generations and removal is acknowledged as contributing to the over-representation of Koori people in prison. It also drives mental health problems among prisoners. Hence, "increased availability of cultural and spiritual practices and supports are required to assist Koories while incarcerated."⁴³⁴ Marumali is intended to provide these supports, however this program has not been delivered on a sustainable basis.

Why this program works for Koori women

Koori women in prison who had taken part in the Marumali program identified these benefits:

- delivered by an Elder – a lot of respect for the facilitator
- we felt comfortable and not judged
- it brought the group closer together
- support built with the Koori women
- spoke about what we wanted too
- it was culturally appropriate and safe, we felt understood.⁴³⁵

This program is a rare example of a program that works well in prison for Koori women. However, it is delivered sporadically and deals with only one component (the cultural component) that is needed to address Koori women's offending and reoffending. On its own, participation in Marumali will not reduce Koori women's high rates of recidivism. Other supports inside and outside prison are needed to address the complexity of Koori women prisoner's lives and to undo the damage done to them on their pathway to prison.

Preparing for release

Women can exit prison on bail, a parole order after the non-parole period of a sentence and meeting conditions for release, or on straight release at the expiration of their sentence.

Regardless of their mode of exit, transition planning is vital in minimising the risk of re-offending.

In my opinion, discharge/exit planning is lacking and services need to communicate to each other. Aboriginal women need access to appropriate services to have any chance of staying out. Unless governments get real about it, nothing will change.⁴³⁶

In preparing Koori women for release, the Aboriginal Wellbeing Officer plays a significant role in supporting women and connecting them with local Aboriginal co-operatives and appropriate service providers.

Transitional services

To assist with the transition from prison to the community there are a range of services offered to Koori women in prison, with some continuing post-release.

The following transitional services are available at DPFC.⁴³⁷

The Transition Assistance Program (TAP) is a Corrections Victoria program offered to all sentenced prisoners within the final six months of their sentence. It provides prisoners with information about community-based services and supports available to assist their transition.

Konnect (page 74)

Women's Integrated Support Program (WISP) (page 74)

VACRO Women's Mentoring is offered to all women at DPFC. The program is designed to provide women with emotional support upon release to ease their transition back into the community.

Restart Project (Mission Australia and Melbourne City Mission) a housing project that provides support, training and long-term accommodation options for women with complex needs and their children.⁴³⁸

Centrelink provides information to all prisoners regarding Centrelink enquiries and payments within two weeks of release.

434 State of Victoria, Department of Justice, Justice Health, 'Koori Prisoner Mental Health', above n 7.

435 Focus group interview, 6 March 2013.

436 Key informant interview, Victorian Aboriginal Community Controlled Health Organisation, 7 March 2013.

437 Dame Phyllis Frost Centre, *Dame Phyllis Frost Centre Programs Directory* (2011).

438 Restart is a program established by Mission Australia and Melbourne City Mission. It is funded as a Homelessness Innovation Action Project under the Victorian Homelessness Action Plan 2011-15. See, State of Victoria, Department of Human Services, *Homelessness Innovation Action Projects*. <<http://www.dhs.vic.gov.au/about-the-department/funding,-grants-and-tenders/homelessness-innovation-action-projects>> at 2 July 2013.

Limitations of existing transitional services

While generic services are available to Koori women, our consultations revealed that Koori women exiting prison generally only use two transitional programs – Konnect and WISP.

Women on remand are not eligible for either of these services.

Konnect is a culturally specific service, while **WISP** is a gender specific service.

Konnect provides “a case management, welfare based approach to addressing the diverse needs of Koories exiting prison” to prepare them for release and reintegration into the community.⁴³⁹

Koori women told us that Konnect could only address immediate needs upon release from prison, such as transport from prison and provision of food and telephone vouchers. While Konnect does not provide housing, Koori women stated that they have had very short-term motel accommodation (generally a few days) on release through Konnect.⁴⁴⁰ Once these short-term options are no longer available, many have limited accommodation options.

WISP is offered to all sentenced women at DPFC. It provides pre and post-release case management support to prepare prisoners for their release and transition back into the community.

WISP is a case management model that links people into services. However, Koori women indicated that WISP had too few workers. This resulted in long delays and waiting lists before they were linked into service providers. Again, there is a lack of focus on housing.

One limitation of these two transitional services is that the same service provider Brosnan (Jesuit Social Services) delivers them.⁴⁴¹ As such, Koori women cannot access both services.⁴⁴² Koori women are forced to choose between a culturally appropriate or a gender appropriate transitional service.

439 Nous Group, above n 25, 14.

440 Focus group interview, 6 March 2013.

441 In 2010 Jesuit Social Services were awarded statewide delivery of support services to Aboriginal men and women, women exiting Tarrengower and Dame Phyllis Frost Centre, and men exiting Dhurringile and Beechworth prisons. Jesuit Social Services are now the only statewide provider of support services to men and women exiting prisons. See, Jesuit Social Services, *Women's Integrated Support Program*. <<http://www.jss.org.au/programs/justice-and-crime-prevention/wisp>> at 18 July 2013.

442 Focus group interview, 6 March 2013

Leaving prison

Straight release

Many Koori women exit the prison system on straight release once they have completed their entire prison sentence or from remand. When released on straight release the women explained that they have a ‘clean slate’, as they do not have to adhere to parole conditions. On straight release, there are no formal supports for ex-prisoners who are ineligible for transitional services.

*Last time I was released on straight release in 2011. I was not given any services on release. WISP said that I was not suitable for their program. That's the problem with straight release, you get no support.*⁴⁴³

Research has also found that Aboriginal and Torres Strait Islander women are the least likely, of all offender groups, to engage with appropriate housing and support services post-release, particularly if they have dependent children. Therefore, they return to prison faster and at a higher rate than others do.⁴⁴⁴

Parole

Parole is a way of supervising and assisting prisoners to reintegrate successfully into the community and reduce the likelihood of reoffending. Established under the Corrections Act⁴⁴⁵ the Adult Parole Board (APB) is responsible for overseeing the preparation of prisoners for parole, making decisions relating to the granting, revocation and cancellation of parole and overseeing prisoners' supervised release into the community.⁴⁴⁶ The Adult Parole Board and Corrections Victoria are separate entities.

When prisoners are sentenced to longer than 12 months imprisonment, Victorian courts ordinarily fix a non-parole period as part of the sentence. This means, when the non-parole period of an offender's sentence has been served, the APB has discretion to release the offender to the community to serve the remainder of their sentence on parole in the community under the supervision of Community Correctional Services.⁴⁴⁷

There are limited avenues of appeal against a decision of the APB and prisoners do not have legal representation at an APB hearing.⁴⁴⁸

443 Case study 1.

444 Eileen Baldry et al, 'Needs Analysis Report', above n 62, 9.

445 *Corrections Act 1986* (Vic) Div 5.

446 State of Victoria, Sentencing Advisory Council, *Review of the Victorian Adult Parole System Report* (2012) 14.

447 *Ibid* ix.

448 *Ibid* 73; Fitzroy Legal Service, above n 240, 209.

Nor is it bound by the Charter. The *Charter of Human Rights and Responsibilities (Public Authorities) Regulations 2009* declared that the APB is not a public authority for the purposes of the Charter.⁴⁴⁹

Factors affecting the granting of parole

Numerous factors affect whether Koori women are granted parole. These include unchangeable factors such as the nature of the offence, history of criminal offending, and completion/breach of previous parole orders.⁴⁵⁰ Others are less static and include willingness to participate and complete prison-based and further programs once released.

The inability to access rehabilitation and treatment programs in prison may diminish Koori women's chances of being eligible for and granted parole. In addition, lack of culturally appropriate supports after prison minimises prospects for successful completion of parole orders. Other key issues of concern for the APB when considering parole include mental illness and substance abuse. If services are not available and the woman is at risk of returning to patterns of behaviour exhibited prior to her imprisonment, the prospects for parole are likely to be poor. Similarly, if a woman does not have a stable place to live upon release, her parole is at risk.

Barriers to successfully completing parole conditions

As the APB does not record Koori status, no statistics are available on Koori women's completion and breach rates for parole. Recent research has found that Koories are more likely to have a previous breach of parole, generally for noncompliance rather than reoffending.⁴⁵¹ In our focus groups, Koori women revealed that they breach parole at high rates because they require greater levels of support which is not always compatible with the compliance regime.

*Currently, the approach of parole officers is around enforcement and compliance rather than a supportive therapeutic approach... We need parole officers working with you, rather than telling you what to do.*⁴⁵²

Koori women also stated that they were afraid to confide in their parole officers when they are struggling. They feel if they ask for help they will be 'breached' and end up back in prison.⁴⁵³

These experiences of Koori women were reinforced by comments made by the Magistrates' Court:

*There is quite a strict compliance approach to parole, rather than a therapeutic model. This approach has made it more difficult for women to comply with orders. There is no flexibility in the approach and there is no consideration of cultural factors.*⁴⁵⁴

Parole conditions may also place unrealistic demands on Koori women. For example, one Koori woman was living in the Western suburbs while her parole officer was located on the other side of Melbourne (despite other offices being closer to her residence). The women had to commute on public transport (a three-hour round trip) twice a week to meet with her parole officer. The woman experienced problems with travel and costs. When she was unable to attend meetings, she was placed in breach of parole and was later reimprisoned.⁴⁵⁵

Some Koori women would rather complete their entire prison sentence than apply for and be released on a parole order.

*This time I want straight release not parole. I never want parole again.*⁴⁵⁶

The Commission is aware that Koori women experience significant frustration when attempting to complete parole orders, navigate support services and get their lives on track after leaving prison. When women are struggling on the outside with limited support many are tempted to go back to their 'old ways'. Often women have conflicting needs that must be met at the same time (as parole conditions). This is exacerbated when children are involved.

*Once out... it can get real hard.*⁴⁵⁷

449 The current *Charter of Human Rights and Responsibilities (Public Authorities) Regulations 2009* (Vic) apply until 27 December 2013.

450 Recent research found that Koories have a higher risk of re-offending compared to the non-Koori offender population. State of Victoria, Sentencing Advisory Council, 'Comparing Sentencing Outcomes', above n 49, 57.

451 Ibid 54.

452 Focus group participant, 17 January 2013.

453 Focus group interview, 16 April 2013.

454 Key informant interview, Magistrates' Court of Victoria, 3 March 2013.

455 Focus group interview, 17 January 2013.

456 Case study 2.

457 Focus group interview, 17 January 2013.

Women's experiences of leaving prison

The Commission understands that for many Koori women, prison is a stable and predictable environment. Upon release from prison, the instability created by their competing needs⁴⁵⁸ and chaotic lifestyle returns.

*This place [prison] is like a home. When released you get frustrated and go back to your old ways.*⁴⁵⁹

*The thing is in our community institutionalisation is rife. We need a mechanism to help people transition.*⁴⁶⁰

Regardless of how Koori women exit the prison system, the issues remain the same. Adequate housing, access to children and access to appropriate treatment and support services to assist with successful reintegration are key. However, these services are in short supply.

Throughout our focus groups, Koori women described the frustration, stress and difficulties they experienced once released from prison, which stems from the lack of culturally appropriate supports and the practical help that is needed for basic life needs, such as accommodation.⁴⁶¹

In addition, many Koori women do not know how to navigate the service system or how to get housing, a job or prepare a resume.

*There is nothing out there to help them in the system.*⁴⁶²

Women need to be advised how to utilise support. Often there are issues of trusting services and service providers. Some women know where services are some do not. Most women do not understand how best to use the services provided, what they can and can't offer.⁴⁶³

In prison, Koori women have the Aboriginal Wellbeing Officer, however, upon release they no longer have that level of support. Community members reiterate this point.

*In my opinion, discharge/exit planning is lacking and services need to communicate to each other. Service delivery and discharge/exit planning are crucial. Aboriginal women need access to appropriate services to have any chance of staying out.*⁴⁶⁴

The systemic issues that drive offending (for example, homelessness, drug and alcohol misuse and mental health issues) are not being addressed either in prison or upon release and continue to drive reimprisonment.⁴⁶⁵ As a result, Koori women are inadequately prepared for release, their needs remain unmet and many end up relapsing and/or returning to what they know. They are in effect set up to fail.

Post-release and children

Koori women's stories are complicated further because of their role as the primary care giver of their children. Research on imprisoned Koori mothers in NSW reveals that maintaining relationships with their children whilst imprisoned is of great importance to the women.⁴⁶⁶

*Many Aboriginal women have had their children removed. This impacts on the family and the broader community as Aboriginal women are the glue that hold the family together, this has ripple effects in the community.*⁴⁶⁷

However, due to their forced separation many Koori women return to fractured and dysfunctional relationships with their children, family and community. As Koori women in prison explained, disconnection from their children once released from prison continues to drive reoffending, as many return to drugs to deal with their grief.

*Women usually turn to drugs/old lifestyle mainly because of not being unified with their children. Addressing this issue post and pre-release is crucial.*⁴⁶⁸

*I have my mum but since I lost my kids things have got a lot worse. I feel like there is no use without them and I keep on using drugs.*⁴⁶⁹

458 Competing needs include their own needs as a Koori woman, mother, substance abuser, trauma survivor, et cetera.

459 Focus group interview, 17 January 2013

460 Key informant interview, Victorian Aboriginal Community Controlled Health Organisation, 7 March 2013.

461 Focus group interview, 17 January 2013

462 Key informant interview, Victorian Aboriginal Community Controlled Health Organisation, 7 March 2013.

463 Case study 4.

464 Key informant interview, Victorian Aboriginal Community Controlled Health Organisation, 7 March 2013.

465 Eileen Baldry et al, 'Costs of Homelessness', above n 17, 104-112.

466 Eileen Baldry et al, 'Needs Analysis Report', above n 62, 27.

467 Key informant interview, Flat Out, 5 March 2013.

468 Case study 4

469 Case study 3.

A consequence of not being reunited with their children is that their caring and kinship obligations remain unfulfilled. Some use drugs as way to cope with this which further disconnects them from their children, family and culture and exacerbates their feelings of loss and shame.

There is a chronic undersupply of suitable post-release accommodation for Koori women where they can stabilise and begin to rebuild their lives, and their relationships with their children, family and community.

Lack of stable, supported accommodation

Research has found that stable and supported accommodation is crucial to reducing recidivism and increase reintegration into the community.⁴⁷⁰ It is also a vital platform for complying with parole conditions. A 2010 Parliamentary Inquiry found that parole breaches by female prisoners were largely linked to disadvantage, including lack of access to housing. Indeed they described lack of sufficient housing options for women associated with the criminal justice system as the “most overwhelming problem identified by the Committee.”⁴⁷¹

*Of particular concern are the number of women being placed on remand due to lack of stable housing; the forestalling of parole and release due to lack of housing; and links between lack of housing and breaches of parole and reoffending.*⁴⁷²

*I really needed help with getting housing. I can't get my kids back without a house. If you don't have a house you're stuffed.*⁴⁷³

There is a significant lack of culturally and gender appropriate supported accommodation options for Koori women post-prison. This has been noted in previous studies.⁴⁷⁴ Despite their desperate need for housing Koori women compete with others for limited housing resources post-release.

For example, the two transitional (bail) houses that are delivered in partnership with the Department of Human Services are also available to women post-release.⁴⁷⁵ However, as noted in Chapter 5, only two of these are specifically for Koori women. Thus, while Koori women nominally have priority for the remaining 10 houses, demand pressures for these properties from both women seeking bail, and exiting prison suggest that vacancies would rarely arise in practice.

The Commission understands that Restart Project, a pilot project which provides post-release accommodation with wrap-around support for female offenders has had very few Koori residents, despite it being a very promising solution to what has long been an intractable problem of homelessness post-release.⁴⁷⁶

Post-release housing is also available through nomination rights to community sector housing providers, including HomeGround. The Commission understands that Corrections Victoria has access to around five transitional housing properties through HomeGround, with accommodation available for up to 12 months.

Previously, Koori women exiting prison have also moved into the Elizabeth Street Common Ground supportive housing project run by HomeGround.⁴⁷⁷ This provides housing and wrap-around onsite supports for people who have experienced chronic homelessness. It has proven to be challenging for some women leaving prison to make the transition to life at Common Ground whilst they are already struggling with multiple demands contained in parole orders, and where mental health, trauma and drug and alcohol issues remain unresolved following time in prison.

If anything, this illustrates how a range of housing and support options need to be provided for Koori women if they are to stand the best chances of success when leaving prison. A one size fits all approach to accommodation and support is unlikely to work.

470 Eileen Baldry et al, 'Needs Analysis Report', above n 62, 10.

471 Parliament of Victoria, Drugs and Crime Prevention Committee, Report no 371, *Inquiry into the Impact of Drug-Related Offending on Female Prisoner Numbers: Interim Report* (2010) v.

472 Ibid vi.

473 Case study 3.

474 See for example, Human Rights and Equal Opportunity Commission, 'Social Justice Report 2004', above n 82, 34.

475 Information provided to the Commission by Corrections Victoria, 15 April 2013.

476 Restart is also available prior to prison and is utilised by some CISP services. However, as it is based on an 'affordable rent' calculated as a percentage of market rent, residents may still need a brokerage rental subsidy to maintain the accommodation.

477 See, Homeground Services, *Elizabeth Street Common Ground*. <<http://www.homeground.org.au/case-studies/elizabeth-street-common-ground/>> at 17 July 2013.



The Restart program is a new adult foyer service for women exiting Victorian prisons. It is a Homelessness Innovation Action Project funded under the Victorian Homelessness Action Plan 2011-15. Delivered in partnership by Mission Australia

and Melbourne City Mission it aims to address homelessness in female offenders by providing intensive wrap-around support services to women by assisting with long term affordable housing, individualised intensive support, job or employment/training pathways, living skills and mentoring support.

Support commences three months prior to release. With a total case load of 50 women, there is daily interaction in the initial three to four weeks following release.

The support program has a significant emphasis on creating direct links with employment, education and training providers. It also provides intensive supports, group work, individual case management services and the opportunity of the development of independent living skills and community connections with a view to supporting people through a transition from dependence to independence.⁴⁷⁸

In addition, there are infrequent occasions when prisoners who would be granted parole are held beyond their eligible release date because acceptable housing cannot be obtained.⁴⁷⁹ As noted by the APB there is a need for supervised accommodation, which is less expensive than the continued costs and consequences of imprisonment.⁴⁸⁰

As stated by participants in our focus groups, and numerous key informants:

[A] Transitional/parole house is needed to readjust and reintegrate into the community. We need independence to build up life skills but we also need support with this.⁴⁸¹

In conjunction with supported stable housing, Koori women also require programs and services that are flexible, holistic, and take into account the woman's family/caring commitments, needs and structure. Programs should also be tailored to their specific cultural and gender needs as well as the causal factors/drivers of their offending. Sufficient support services need to be put in place to deal with these.⁴⁸²

The Commission supports these views.

478 Restart was a finalist in the National Homelessness Services Achievement Awards 2012. See, Australian Government, Department of Families, Housing, Community Services and Indigenous Affairs, *Excellence or Innovation in addressing homelessness by an organisation*. <<http://www.fahcsia.gov.au/our-responsibilities/housing-support/programs-services/homelessness/national-homelessness-services-achievement-awards/excellence-or-innovation-in-addressing-homelessness-by-an-organisation>> at 18 July 2013.

479 Adult Parole Board of Victoria, *Adult Parole Board of Victoria 2011-2012 Annual Report* (2012) 7.

480 Ibid 7.

481 Focus group interview, 17 January 2013

482 Key informant interview, Victorian Aboriginal Legal Service, 15 November 2012.

Recommendations

Noting the low numbers of Koori women in Tarrengower prison that Corrections Victoria, in consultation with the Aboriginal Justice Forum:

- establish a sustainable model for delivering Koori specific programming and supports across Tarrengower and Dame Phyllis Frost Centres in order to address the isolation reported by Koori women when transferred to Tarrengower
- promote earlier access from Dame Phyllis Frost Centre to Tarrengower, by enhancing the cultural appropriateness of security assessment and classification tools, as set out in the Sentence Management Manual (AC3).

Noting that there are currently only two Koori independent prison visitors in Victoria, that Corrections Victoria review this program, including eligibility criteria so that more Koori community members may participate.

Noting the complexity of navigating services, that Corrections Victoria publish, in a range of formats, a list of programs available to Koori women on Community Corrections Orders, custodial sentences and remand. This information should be updated regularly, tabled at the Aboriginal Justice Forum and distributed to female Koori prisoners, Community Corrections clients, Corrections staff, including those in regional offices, Magistrates, Regional Aboriginal Justice Advisory Committees and Chief Executive Officers, legal services, community organisations and advocates.

Noting barriers to Koori women participating in mainstream programs, that Corrections Victoria establish Koori specific programming at Dame Phyllis Frost Centre, including culturally appropriate parenting support programs, cultural connection, trauma and victimisation interventions delivered by Koori practitioners, and that uptake of these programs be regularly reported to the Aboriginal Justice Forum.

Noting the high rates of trauma and victimisation among Koori women prisoners, and the need for dedicated healing programs in prison, that programs such as the Marumali Cultural Healing program be delivered on a regular basis.

That current restrictions on women who have accessed programs during previous sentences be removed.

That the prohibition on Koori remandees accessing transitional programs including Konnect and the Women's Integrated Support Program be removed.

That the response to the Koori Prisoner Mental Health and Cognitive Function Study include a specific focus on women.

That access to criminogenic alcohol and drug programs be extended to Koori women on remand where substance misuse is identified as a contributing factor to the alleged offence. Participation in such a program should not infer guilt. Access to these programs should also be improved for Koori women on short sentences.

That working in partnership with the Victorian Aboriginal Controlled Health Organisations that Justice Health further meets its obligations regarding culturally appropriate health programs and build a Koori health workforce. This includes:

- ensuring contracts with health providers contain requirements to recruit, train and deploy prison health workers who are Koori
- contracting Koori organisations to provide inreach services and to participate in transition planning to ensure continuity of health care.

Noting that few Koori women have accessed the Restart Housing project that the Department of Human Services, Mission Australia and Melbourne City Mission work with work with members of the Aboriginal Justice Forum to:

- enhance the cultural safety of the Restart Project so that Koori women are better able to access this comprehensive post-release housing option
- develop a Koori based Restart model to be delivered in partnership with an Aboriginal controlled organisation and funded as a homelessness initiative
- Corrections Victoria negotiate and resource nomination rights for Koori women exiting prison into these projects, and provide brokerage funds to support these placements.

The Koori Offender Support and Mentoring Program be enhanced for Koori women in order to support greater compliance with parole conditions.

That the Sentencing Advisory Council undertake research on patterns of parole conditions and breach rates for Koori women.

That the Victorian Auditor-General's Office undertake an audit of Koori women's programs in Tarrengower and Dame Phyllis Frost Centre, including post release support to complement the planned audit of Transition Support for Prisoners in 2014–15.



Case study 4: Sally

I had my first daughter in custody in 2001. I found the early separation from my child extremely difficult because I was not able to take her back to prison as I was a protected prisoner.

I think some ways to help Koori women leaving prison are:

- Housing families together on release (including offering cultural support and support reintegrating into community). Women usually turn to drugs and their old lifestyle mainly because of not being reunified with their children. Addressing this issue both before and after release is crucial.
- Offering VACCA (Victorian Aboriginal Child Care Association) involvement for families post-release. Most Koori women have DHS involvement but they need to be educated in the way of taking their powers back. Support from VACCA to encourage young mothers to speak on behalf of their own family and what they want and need for their family, instead of being dictated to as I found happened to me with my first child, would be helpful.
- Having an outhouse (halfway house) for women who are unable to get housing upon release with reunification with their children.
- Women need to be advised how to use the support. Often there are issues of trusting services and service providers. Some women know where services are and some do not. Most women do not understand how best to use the services provided and what they can and can't offer.
- Knowledge of post-release programs needs improvement.
- Dealing with life again, such as bills and managing money, so you are not left feeling like reoffending is the only choice.
- The chance to socialise with your community (for example, VACCA play group/outing). I found the VACCA outings helped me strengthen bonds with my children, especially my daughter who had been returned from care. It also helped me as an individual to step out of my comfort zone (I was housebound a lot) to enable me to do more activity-based outings on our own, without VACCA's assistance for funding.

Chapter 7: Consequences of lack of diversionary and post-release options

Main findings

- The impacts of imprisonment upon Koori women are profound. Failure to address the systemic drivers of increasing imprisonment jeopardises the human rights of Koori women, their children, and communities.
- The increasing incarceration of Koori women due to a lack of diversionary options and post-release support compared to men offends the right to equality before the law.
- Failure to provide culturally appropriate services to Koori women may breach the positive duty to eliminate discrimination contained in section 15 of the Equal Opportunity Act.
- Eight out of ten Koori women in Victorian prisons are mothers.⁴⁸³ Their incarceration has significant, harmful impacts upon their children.
- Beyond these human impacts of imprisonment, failing to invest in culturally and gender appropriate interventions before, during and after prison creates avoidable economic costs to the Victorian community.
- It costs three times more to put a Koori woman in prison than to divert her to a residential scheme.⁴⁸⁴ It costs 12 times as much to imprison a person than to have them complete a Community Corrections Order.⁴⁸⁵
- The treatment costs for a female offender completing treatment for drug/alcohol dependence outside prison is the same as five days imprisonment.⁴⁸⁶

483 Of those entering prison in 2012. Koori Justice Unit, above n 8.

484 Based on Wulgunggo Ngalu Learning Place for Koori men. Annual cost of \$47,750 compared to \$123,370.

485 Annual cost of \$9,855 compared to \$114,832.

486 The capital cost is \$52 per day. National Indigenous Drug and Alcohol Committee, *Prison vs Residential Treatment: An economic analysis for Aboriginal and Torres Strait Islanders* (Research Paper No 24, Australian National Council on Drugs, 2013) 49.



- Keeping Koori women cycling through the criminal justice system is economically inefficient. Recent modelling found that the institutional costs of a female Aboriginal offender in NSW with a history of homelessness, drug and alcohol misuse, family violence and mental illness to be over \$1.1 million per offender.

The Charter of Human Rights and Responsibilities Act 2006

The following agencies are public authorities under section 4 of the Charter. These organisations and their staff have obligations under section 38 of the Charter to act compatibly with human rights, and to consider human rights when developing policies, making laws, delivering services and making decisions.

- Department of Justice
- Victoria Police, including Protective Service Officers
- Magistrates' Courts and the Supreme Court (when acting in an administrative capacity)⁴⁸⁷
- Bail justices⁴⁸⁸
- Office of Public Prosecutions
- Victoria Legal Aid
- Corrections Victoria
- G4S (who deliver prisoner transport and run the Melbourne Custody Centre on behalf of the State of Victoria)
- Non-government organisations that provide services on behalf of the state of Victoria, before, during and after a Koori woman is in prison.⁴⁸⁹

These organisations must protect and promote Charter rights. Not only should these organisations and individuals observe these minimum rights, they must also take rights into account in all aspects of service delivery.

Relevant Charter rights include liberty and security of the person, rights in the criminal justice system, and protections to ensure the dignity of the person when in custody.⁴⁹⁰ The right to equality before the law and cultural rights must also be considered whenever a Koori woman is incarcerated, and throughout the criminal justice system.⁴⁹¹

Rights of other people, including children, are also engaged whenever a child is separated from their mother entering prison.⁴⁹²

487 For example when listing matters. The Courts also have obligations under s 6(2)(b) of the Charter to the extent that they have functions under Part 2 and Division 3 of Part 3 of the Act. For example, this means that the Charter recognises the role of the courts in guaranteeing the fair trial right.

488 *Bail Act 1977* (Vic) s 12. Section 10 of the Act also makes provision for a police sergeant or the officer in charge of a police station to grant bail in some circumstances. When Bail Justices and police are making bail decisions, these decisions are administrative in nature and so must be consistent with the Charter.

489 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 4(1)(c).

490 *Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 21, 22, 25. These rights are also protected by the *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force on 23 March 1976).

491 *Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 8, 19. These rights are also protected by the *International Covenant on Civil and Political Rights*.

492 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 17.

Figure 10 – Charter rights in the criminal justice system

Activity	Charter rights to consider
Police contact, arrest and charge	s 8 – recognition and equality before the law s 12 – freedom of movement s 13 – right to privacy and reputation s 21 – right to liberty and security of person s 25 – rights in criminal proceedings
Scheduling of bail proceedings and time taken to be brought before a court	s 8 – recognition and equality before the law s 12 – freedom of movement s 21 – right to liberty and security of person, right to be promptly brought before a court without unreasonable delay
Recommendations and decisions about bail	s 8 – recognition and equality before the law s 21 – right to liberty and security of person – a person may only be deprived of his or her liberty in accordance with the law
Communication with legal representatives	s 8 – recognition and equality before the law s 24 – right to a fair hearing s 25 – rights in criminal proceedings
Conditions when detained/in custody, including transport	s 8 – recognition and equality before the law s 9 – right to life s 10 - protection from degrading treatment s 21 – right to liberty and security of person s 22 – humane treatment when deprived of liberty
Access to culturally appropriate services and ability to practise culture while in custody	s 8 – recognition and equality before the law s 12 – freedom of movement s 13 – right to privacy and reputation ⁴⁹³ s 19 – cultural rights
Contact with family and needs of children involved	s 8 – recognition and equality before the law s 13 – right to privacy and reputation, including the right not to have family unlawfully or arbitrarily interfered with s 17 – protection of families and children, including the best interests of the child

Charter rights may be limited

All Charter rights may be limited, but only to the extent that the limitation is reasonable and demonstrably justified in a free, democratic society based on human dignity, equality and freedom. When looking at what is reasonable, the Charter says that public authorities have to take into account the nature of the right, the purpose of the interference, and whether there is another way of doing things that is less restrictive on people’s human rights (section 7(2)).

Importantly, while being in prison will restrict rights (for example restrictions on freedom of movement) it does not void the rights of Koori women. Other rights can only be restricted to the extent necessary, for example, there will be flow-on limitations on the right to privacy in a prison setting. However, the usual Charter tests for determining what is a reasonable limitation on rights still applies.

It is also important to note that the Charter is founded on principles that human rights belong to

all people without discrimination and that human rights “have a special importance for the Aboriginal people of Victoria, as descendants of Australia’s first people”.⁴⁹⁴ Accordingly, when considering the human rights consequences of increasing rates of incarceration, we must consider not only the consequences for individual Koori women, but also for their family and kin, and communities.

Human rights consequences for Koori women

Whenever a Koori woman is arrested, charged, prosecuted, makes a bail application, is transported, is placed on remand or serves a term of imprisonment, human rights protected by the Charter are engaged, along with rights protected by international human rights laws.

493 Cultural practices are included in the concept of privacy and personal autonomy.

494 *Charter of Human Rights and Responsibilities Act 2006* (Vic), preamble.

International human rights protected by treaties under which Australia has obligations, that relate to Koori women in contact with the criminal justice system include the:

- International Covenant on Civil and Political Rights⁴⁹⁵
- International Covenant on Economic, Social and Cultural Rights⁴⁹⁶
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁴⁹⁷
- International Convention on the Elimination of All Forms of Racial Discrimination⁴⁹⁸
- Convention on the Rights of the Child (in relation to young Koori women under 18 years)⁴⁹⁹
- Convention on the Elimination of all Forms of Discrimination Against Women.⁵⁰⁰
- The Australian Government also supports the United Nations Declaration on the Rights of Indigenous Peoples.⁵⁰¹

495 *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171, arts 2, 6, 7, 9, 10, 12, 14, 17, 23, 24, 26, 27 (entered into force 23 March 1976).

496 *International Covenant on Economic, Social and Cultural Rights*, opened for signature 19 December 1966, 999 UNTS 3, arts 2,3,10,12 (entered into force 3 January 1976).

497 Under this Convention, state parties are obliged to prevent acts of cruel, inhuman or degrading treatment or punishment; ensure that education and information regarding the prohibition against torture and other cruel, inhuman or degrading treatment or punishment are included in the training persons that are involved in the arrest, custody and interrogation, detention or imprisonment of any individual; and implement mechanisms to regularly review this. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).

498 *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force on 4 January 1969).

499 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force on 2 September 1990).

500 *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force on 3 September 1981).

501 UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, Resolution adopted by the General Assembly, 2 October 2007, A/RES/61/295. The Declaration does not create new rights. It elaborates upon existing international human rights norms and principles as they apply to Indigenous peoples. However, it is one of the first international instruments to explicitly provide for the adoption of measures to ensure that Indigenous women enjoy protection and guarantees against all forms of violence.

The right to equality and non-discrimination

Section 8 of the Charter protects the right of all Victorians to enjoy their human rights without discrimination, to equal and effective protection against discrimination, and to equal protection of the law.

As noted in Chapter 1, equality considerations are of particular concern because:

- Koori women are over-represented in the criminal justice system. In addition, Koori children and young people are also over-represented in the youth justice system and in out-of-home care in Victoria. Both systems act as entry points to the adult criminal justice system.
- Over-representation is driven by multiple factors including poverty and intergenerational trauma. Koori women are among the most disadvantaged groups in Victoria.
- There is a well established link between discrimination and disadvantage. For example, unfair treatment in education, employment, health and housing exacerbates disadvantage and contributes to the risk factors driving more Koori women towards the criminal justice system.⁵⁰² This raises issues about access to culturally and gender appropriate services inside and outside prison.
- Practices, policies and decisions by Victoria Police, Courts and Corrections Victoria may also lead to individual instances of discrimination, or more endemic problems.

Special measures and the right to equality

As noted in Chapter 5, in 2010 the Victorian Parliament made significant amendments to the Bail Act. Among these changes, Aboriginality is now a factor to be considered when making a determination for bail.⁵⁰³

502 In addition to equality protections, this will also engage rights protected at international law, including rights to health and education. *International Covenant on Economic, Social and Cultural Rights*, opened for signature 19 December 1966, 999 UNTS 3, arts 12, 13 (entered into force 3 January 1976).

503 *Bail Act 1977 (Vic)* s 3A.

Section 3A is a special measure to achieve substantive equality within the meaning of section 8(4) of the Charter. It recognises that to achieve equality Koori offenders need to be treated differently in recognition of the historical disadvantage that has led to the over-representation of Aboriginal people on remand.⁵⁰⁴

This means that in order to act compatibly with the Charter Aboriginality must be taken into account whenever police, bail justices or Magistrates are making decisions to bail or remand a Koori woman.

The increase in the number and proportion of Koori women on remand suggests that section 3A, and its connection to the right to equality is not well understood. In particular, the vulnerabilities and needs of Koori women are not being taken into account when determining bail. This has a profound impact on individual Koori women who enter prison on remand and are at risk. It is another lost opportunity to use existing laws to address the escalating numbers of Koori women on remand or to break the cycle of offending, imprisonment and further offending.

Equal Opportunity Act 2010

Discrimination based on personal attributes, including race and gender is unlawful under the Equal Opportunity Act.⁵⁰⁵ Discrimination is treating, or proposing to treat, someone unfavourably because of a personal characteristic protected by law. Discrimination also includes imposing unreasonable requirements, conditions and practices that disadvantage, or could disadvantage, people with a particular personal characteristic.

These provisions protect Koori women from discrimination in areas of public life such as education, health, accommodation and services – which includes police and the provision of support services in prison and post-release.

The concept of a service under the Equal Opportunity Act has its broad, ordinary meaning and relates to any helpful activity performed for the benefit of a person.

Corrections Victoria is not providing a “service” under the Equal Opportunity Act when it holds a prisoner on remand or when he or she is sentenced to imprisonment. However, education, health, vocational and other programs provided by Corrections Victoria, or non-government organisations in prison are services under the Act. Community Correction programs delivered by or on behalf of Corrections Victoria are also services.

Corrections Victoria and community organisations must not discriminate in the way that they provide these services. Failing to tailor services to the needs of Koori women can be a form of indirect discrimination when this is not reasonable in the circumstances.

The Equal Opportunity Act also requires duty holders to take a proactive approach to preventing discrimination. This positive duty requires service providers to take reasonable and proportionate measures to eliminate discrimination as far as possible.⁵⁰⁶ This includes taking steps to address the structural barriers disadvantaged groups face in accessing services, paying regard to particularly vulnerable groups who may face multiple disadvantages, including Koori women.

In particular, if a lack of access to appropriate support services compromises a Koori woman's ability to stay out of prison, or avoid the justice system in the first place, access housing, or has other negative impacts on her family and life chances, then we need to consider if this amounts to discriminatory treatment that could be reasonably prevented.

In other words, given the human rights and equality implications, we need to ask why have suitable support and diversionary options not been made available to Koori women in ways that take into account their individual needs?

Other Charter rights

Rights to a fair hearing (section 24) and rights in criminal proceedings (section 25)

There are a number of minimum guarantees that a person has when charged with a criminal offence. These include the right to be told the charges against you in a language you understand; the right to an interpreter if you need one; the right to have time and the facilities to prepare your own case or to talk to your lawyer; the right to have your trial heard without too much delay; the right to be told about Victoria Legal Aid if you do not have a lawyer and that you are presumed innocent until proven guilty.

504 Section 3A also promotes the cultural rights of Aboriginal persons protected by the section 19(2) of the Charter because it requires a decision-maker to take into account any issues that arise due to the Aboriginality of an accused, which may, include participation in cultural events or ceremonies. It also responds to the particular vulnerabilities and risks that Koories may experience in custody.

505 *Equal Opportunity Act 2010* (Vic) s 6.

506 *Equal Opportunity Act 2010* (Vic) s 15.

Section 25 (2) specifies that the minimum guarantees of rights in criminal proceedings must be observed without discrimination.⁵⁰⁷ This reinforces the right to equality before the law in section 8 which guarantees that Charter rights are enjoyed without discrimination.

Freedom of movement (section 12) protects the rights of people to move around freely within Victoria and choose where they live. If a person is held on remand or sentenced to imprisonment, this right is reasonably limited as long as the detention is in accordance with law.

Right to liberty and security of the person (section 21) includes the right to be free from arbitrary arrest or detention, and requires that a person may only be deprived of his or her liberty in accordance with procedures established by law.⁵⁰⁸ The right to liberty and security of the person also includes the right to be promptly brought before a court without unreasonable delay and to be released if this is not complied with.⁵⁰⁹

Protection from degrading treatment (section 10) can include protection from treatment that amounts to an affront to human dignity, arousing feelings of anguish and inferiority capable of humiliating or debasing the victim. What constitutes such treatment will depend on all the circumstances, including the age, sex and health of the person subject to the treatment. Section 10 may also give rise to certain positive obligations, including an obligation to take steps to prevent and minimise the risk of degrading treatment while in custody.

Humane treatment when deprived of liberty (section 22) complements the prohibition on torture and cruel, inhuman and degrading treatment by protecting those serving custodial sentences against less severe incidents of ill-treatment and may encompass the general conditions of detention, including while on remand or in police custody.

The right to humane treatment also requires authorities to take positive measures to ensure detainees are treated with dignity.⁵¹⁰

When considering this right the Charter permits reference to relevant United Nations instruments relating to standards in detention, including the *United Nations Standard Minimum Rules for the Treatment of Prisoners*.⁵¹¹

Right to life (section 9) which includes a duty on government to take appropriate steps to protect the right to life. For example, Corrections Victoria must take positive steps to ensure that the person is in a safe environment while in prison and to ensure adequate access to health care while in custody.

This right should also be considered in the context of the findings of the Royal Commission into Aboriginal Deaths in Custody, noting the profile of Koori offenders being at risk in police cell and prison environments. This means that the vulnerability of individual Koori women should be considered when making bail and sentencing decisions. Vulnerability factors include age, history of abuse, health status, substance dependence, and loss of children. These factors should also be considered by Corrections Victoria when they are deciding on the classification and placement of Koori women prisoners, particularly where prisoners are being placed in management units (solitary confinement).

Right to privacy and reputation (section 13), including a person's right not to have her or his privacy, family, home or correspondence unlawfully or arbitrarily interfered with, and the right not to have their reputation unlawfully attacked. This right is not limited to the handling of personal information, but is also engaged when police interact with the community, including through stops and arrests, and when people are in prison. The right protects that part of life that is 'private' and the person's reputation from unlawful and arbitrary interference by public authorities.

Right to protection of families and children (section 17), including protection of the best interests of the child and recognition that families are entitled to protection. This right requires public authorities to consider the best interests of families and children involved in a situation when they are making a decision. The right is also engaged when public authorities are putting in place policies and services that could either support or have a negative impact on family relations and the best interests of children. The protection of family life includes the kinship structures of the Koori community.

507 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 25(2).

508 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 21(3).

509 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 21(5).

510 This right is also engaged when a Koori woman is transported to court or prison and is dependent upon the conditions in the transport vehicles and the personal circumstances of the woman; for example, if she is pregnant.

511 *United Nations Standard Minimum Rules for the Treatment of Prisoners* ESC Res 2076/62, UN ESCOR, U.N. Doc E/5988 (1977). See also *Standard Guidelines for Corrections in Australia* (2004).

Cultural rights (section 19), including the right people have to practise religion and enjoy their culture, and recognising the distinct cultural rights of Aboriginal persons. This right requires Corrections Victoria to ensure that a Koori woman in custody has access to culturally appropriate services, is able to maintain cultural connections and can practice her culture while in custody.

Impacts on the rights of Koori women

Loss of liberty and freedom of movement – the revolving door of prison

By its nature, spending time in prison involves the loss of liberty and freedom of movement. However, our corrections system is predicated on more than just punishment. Rather “Corrections Victoria is responsible for achieving the appropriate balance between a high level of community safety and the humane treatment of prisoners, focusing on strategies to rehabilitate prisoners in custody and tackling the underlying causes of crime to reduce re-offending”.⁵¹²

In 2012, more than half the Koori women in custody had a history of prior offending and imprisonment.⁵¹³ This starts with time spent on remand or short sentences and then escalates into a pattern of periods in prison, reoffending and then reimprisonment. Reoffending could be regarded as a failure to rehabilitate prisoners and tackle the causes of crime.

Many of the women we spoke to in focus groups had been in prison before, some multiple times.

*I have been in prison six times...What brings me back in? When I get out I reconnect with the wrong girls and start stealing again to support my habit. This is what brings me back to prison.*⁵¹⁴

*I am 23 years old. This is the fifth time I have been in prison...Before prison, I got bail about 30 times and I feel like I was given lots of chances but I couldn't stop taking drugs.*⁵¹⁵

Women mentioned experiences of family violence, cultural disconnection, separation from children and homelessness as factors that led to drug taking, and then imprisonment.⁵¹⁶ These factors were exacerbated by a lack of services before, during and post-imprisonment.

For some women, prison caused such profound losses of freedom, independence and basic life skills that it fuelled a vicious cycle. Prison acted as a catalyst for destructive behaviours, contributing to the spiral downwards into further criminal conduct post-release.

*With all that has been taken, we have to start over again.*⁵¹⁷

*...the longer someone stays in custody, the more likely they are to lose everything – and I mean everything! They lose their kids, their families, their jobs if they have one, their accommodation, their health...all their possessions and their memories and the list goes on...I don't know if anyone really realises, apart from maybe natural disaster survivors, how hard it is to rebuild a life, no matter how pitiful, from such ruins.*⁵¹⁸

For these women, prison had caused trauma that went beyond punishment for the original offending behaviour.

*Prison is a trauma in itself. It represents a separation from all they have known, so there is a real sense of loss... short custodial periods puts housing and employment in jeopardy.*⁵¹⁹

*One woman had a house with Office of Housing for six years. She is serving a nine-month sentence. The housing policy only 'holds' the house for six months. She had to relinquish the house. When she is released, she will be homeless and unable to get care of her children.*⁵²⁰

Rather than rehabilitating the women or tackling the factors contributing to their offending, imprisonment of these women further damaged the protective factors that might have prevented reoffending.

Ironically, some women felt that prison was the safest place to be or provided them with access to supports that they could not get on the outside. It is plausible that prison conditions are more favourable for some Koori women than their prospects out in the community, which is also driving high reimprisonment rates.

512 Corrections Victoria, *Prison*. <<http://www.corrections.vic.gov.au/home/prison/>> at 18 July 2013.

513 State of Victoria, Corrections Victoria, 'Transition to Tarrengower', above n 331, 11.

514 Case study 3.

515 Case study 1.

516 For example, case study 1; case study 2.

517 Focus group participant, 17 January 2013.

518 Case study 5.

519 Key informant interview, Victorian Aboriginal Legal Service, 15 November 2012.

520 Focus group participant, 14 December 2013.

*When things get bad on the outside, jail is a better option. Jail provides security.*⁵²¹

*[In prison] you know where you are going and this is like home.*⁵²²

Psychological impacts

Research demonstrates that the majority of Koori women in prison have multiple and complex needs, including mental health, drug and alcohol issues and experience of sexual abuse and family violence. Many of the women we spoke to told us about the deep and persistent trauma that the cycle of poverty, violence, homelessness, ill health and family breakdown creates across generations. Many women described how these health impacts were exacerbated by incarceration and persisted on leaving prison.

*Leaving prison is very overwhelming. [I] have suffered from panic attacks and have ended up reoffending, as [I] can't cope with the outside world.*⁵²³

Recent Victorian research has found that Koori women in prison have experienced high rates of mental disorder and poor rates of social and emotional wellbeing.⁵²⁴ This reflects similar findings in NSW, where the 2009 NSW inmate health survey found that prisoners in general are more likely to report both mental and physical health problems.⁵²⁵

As noted in the Koori Prisoner Mental Health and Cognitive study, Koori prisoners require culturally appropriate mental health assessment upon reception into prison as well as adequate aftercare once released from prison.⁵²⁶ Studies have shown that demand for mental health and drug and alcohol services increases after time spent in prison.⁵²⁷

The Koori women we spoke to were also clear about the need for holistic health services.

*[We] need ongoing sessions for women around their health and sexual health. It can't just be a one-off program.*⁵²⁸

*[We] need medical services that are culturally appropriate. Years ago, there was a Koori nurse provided through the gathering place.*⁵²⁹

*Health services are critical for women [leaving] prison. Many women have drug and alcohol issues and need to be able to access programs. Some women also have mental health issues and so need case management or counselling to assist to treat these issues. Counselling is also important as many women have suffered varying degrees of trauma. Based on past experiences, many women are unable to trust others. It is also important to start to build up their self esteem, their sense of self worth and purpose.*⁵³⁰

Some key informants identified barriers to services or questioned the quality of available health services, within and outside prison.

*The prison system is not well equipped to support people with disabilities or the elderly.*⁵³¹

*Health care is an area of huge concern within the women's correctional framework. It has long been recognised that women's health issues are greater, more complex and occur at a higher rate than those of men.*⁵³²

Health impacts

We also know that mortality rates amongst ex-prisoners are "alarmingly high, particularly within the first few weeks of release" and that the mental health and substance misuse risks contribute to this.⁵³³

521 Focus group participant, 17 January 2013.

522 Focus group participant, 17 January 2013.

523 Focus group participant, 14 December 2013.

524 James Ogloff et al, 'Koori Prisoner Mental Health', above n 134, 17-18.

525 Devon Indig et al, *2009 NSW Inmate Health Survey: Key Findings Report* (New South Wales Justice Health, 2010) 51, 135.

526 James Ogloff et al, 'Koori Prisoner Mental Health', above n 134, 17-18.

527 Hobbs et al (2006) cited in National Indigenous Drug and Alcohol Committee, above n 487, 41. Note: Admissions to general hospitals also increase after imprisonment.

528 Focus group participant, 14 December 2013.

529 Focus group participant, 6 March 2013.

530 Focus group interview, 17 January 2013.

531 Key Informant interview, Aboriginal Outcomes Unit, Department of Human Services, 30 November 2012.

532 Case study 5.

533 Kinner et al (2010) cited in National Indigenous Drug and Alcohol Committee, above n 487, 41.

*Aboriginal prisoners also experience poorer health, with much higher rates of sexually transmitted infections, blood borne viruses, high blood sugar and diabetes, liver-disease markers, asthma and more. These health problems lead to poor quality of life and premature death and results in grief, loss, and trauma among family, friends, and communities. VACCHO concluded that these imprisonment costs are a significant economic burden and an unquantifiable social cost.*⁵³⁴

Previous research and reports from the Koori women in this study tell us that this cohort has highly complex needs, and that they may enter prison with poor health profiles and an “infrequent and sporadic history of accessing community health services”.⁵³⁵ There may also be a compounding impact on health due to the cycling of Koori women in and out of prison, including on remand.

The Commission considers that if these complex health needs are not adequately addressed through the provision of culturally appropriate and holistic care, this may offend Charter rights. Further, if access limits or eligibility requirements are framed in such a way that Koori women are disproportionately affected, this may also amount to indirect discrimination or a breach of the positive duty to eliminate discrimination as far as possible.⁵³⁶

Loss of cultural connection

Koori women’s health and wellbeing depends on a strong connection to culture. Key informants described connection to culture as a ‘crucial protective factor’.⁵³⁷ Conversely, disconnection drove the cycle of imprisonment.

*Young Aboriginal women in particular have no sense of a future. There is a disconnection from culture where prison becomes almost a rite of passage.*⁵³⁸

*For some, who were not from Victoria, discrimination and shame felt about being in prison was of particular concern.*⁵³⁹

*[Koori women in prison] are disconnected from culture and community. If community does not accept them, they are a write-off.*⁵⁴⁰

Despite the importance of culture, Koori women’s contact with the legal system often damaged, rather than rebuilt, cultural connections.

*Women come [to prison] from all different geographic locations. [They] lose connection to their cultural identity.*⁵⁴¹

*I felt humiliated [by treatment within the legal system] but also shamed in my community. Being from an Indigenous community, everyone knows everyone’s business and word got around that [I] was ‘in trouble’. Once this reputation started [I] was not able to change anyone’s view of [me] especially the Elders, which cause [me] more shame. This was part of the reason why [I] left my community and relocated.*⁵⁴²

Recent research demonstrates that imprisonment has a significant impact on Koori women’s ability to practise and connect to their culture. This research found that 75 per cent of Koori women in Victorian prisons feel connected to their community and culture but few have had the opportunity to practise or live their spirituality over the last twelve months.⁵⁴³

Key informants and the women themselves made it clear that Koori women leaving prison needed assistance to reconnect to culture, including with family members.⁵⁴⁴

*The women need to reconnect with their culture. They can’t do it on their own...[taking] part in the community... would establish pride in their culture, give them a sense of belonging and help with the healing process.*⁵⁴⁵

534 Parliament of Australia, ‘Report into Justice Reinvestment’, above n 34, 24-5.
 535 Information provided to the Commission by Justice Health, 24 July 2013.
 536 However, if such limitations were found to be reasonable, these restrictions would not amount to unlawful discrimination.
 537 Key informant interview, Judge Paul Grant, President, Children’s Court of Victoria, 14 January 2013.
 538 Case study 5.

539 Focus group interview, 16 April 2013.
 540 Key informant interview, Dame Phyllis Frost Centre, 7 February 2013.
 541 Focus group participant, 14 December 2013.
 542 Case study 2.
 543 State of Victoria, Department of Justice, Justice Health, ‘Koori Prisoner Mental Health’, above n 7.
 544 For example, focus group interview, 17 January 2013.
 545 Key informant interview, Dame Phyllis Frost Centre, 7 February 2013.

Unfortunately, this assistance is not delivered in the current system. The sporadic delivery of culturally appropriate services to Koori women in prison impacts upon their right to practise their culture. Service providers have an obligation to protect and promote this right under the Charter and at international law.

Grief of separation from children and family

In 2012, 80 per cent of Koori women entering Victorian prisons were mothers.⁵⁴⁶

Unsurprisingly, one of the greatest concerns of Koori women in prison is the grief and trauma associated with being away from their children. Many key informants observed the profound effects forced separation had on Koori women.

*Most Koori women have children in their care prior to going into prison. Many don't have the children in prison with them. This is a real stressor for the women.*⁵⁴⁷

*Most [Koori women in prison] have children. Whenever we go into prisons, women want to talk about child protection matters. Most have had contact with child protection or child protection are involved.*⁵⁴⁸

Forced separation from family also significantly affects Koori women and their children, as their caring and kinship obligations are unfulfilled which exacerbates their feelings of loss and shame.

*The impact [of prison] on Koori women is significant. Even brief periods in custody were enough to remove any final connection that they have with their family and their social supports.*⁵⁴⁹

Both Koori women and key informants told us that prison and other forms of institutionalisation harmed the ability of Koori women to develop and maintain parenting skills. As a consequence, Koori women found it difficult to reconnect with their children after release from prison.

*Many of the young women who have been institutionalised have not learnt appropriate parenting skills...there needs to be culturally appropriate parenting supports.*⁵⁵⁰

*I have never had any experience to be a mum, DHS never helped me.*⁵⁵¹

*Women exiting prison need assistance to reconnect with their children. Whilst in prison their mothering skills have been taken away from them or they have not learnt these skills as they were in out-of-home care as children. Whilst in prison the children's needs have also changed. Women need support to develop these parenting skills. Family support programs are crucial.*⁵⁵²

For some women, the inability to reconnect with children drove them to reoffend and return to prison.

*Women usually turn to drugs [and their] old lifestyle...because of not being reunified with children. Addressing this issue post and pre-release is crucial.*⁵⁵³

*...a woman spoke about being out of jail for three and a half years. She had stable housing and her children in her care. Her father died, a number of other problems occurred and her life started to go off the rails. She contacted Child First for support. She wanted counselling for her daughter due to the loss in her family. In the end, they weren't helpful as they removed her children which made everything worse.*⁵⁵⁴

Impacts on children and families

Research has shown that 20 per cent of Aboriginal and Torres Strait Islander children have a parent or carer in prison.⁵⁵⁵ Aboriginal and Torres Strait Islander prisoners are three times as likely as non-Aboriginal and Torres Strait Islander prisoners to have had a parent in prison as a child.⁵⁵⁶

Key informants repeatedly stressed that imprisoning Koori mothers harms Koori children.

546 Of those entering prison in 2012. Koori Justice Unit, above n 8.

547 Key informant interview, Victorian Aboriginal Legal Service, 15 November 2012.

548 Key informant interview, Aboriginal Family Violence Prevention Legal Service, 13 December 2012.

549 Key informant interview, Dr Harry Blagg, 23 November 2012.

550 Key informant interview, Judge Paul Grant, President, Children's Court of Victoria, 14 January 2013.

551 Focus group participant, 17 January 2013.

552 Focus group participant, 17 January 2013.

553 Case study 4.

554 Key informant interview, 17 January 2013.

555 Michael Levy, *Children of Prisoners: an issue for courts to consider in sentencing* (Presentation to Federal Criminal Justice Forum, Canberra, 29 September 2008).

556 Ibid.

*Witnessing their mother going in and out of prison leaves children searching for love. They are exposed to so much at a young age. There is also a real disconnect to culture.*⁵⁵⁷

*Imprisonment, even [for] short periods, [has] profound impacts on children. They lose their protector, they lose their connections and attachments and they can become displaced from their home. This leads many of them to feel resentful, angry and they learn to hate.*⁵⁵⁸

*Often no counselling is provided to the child. This may be as the family is wary about seeking counselling as they may be concerned that they may put other children at risk of being removed from the family.*⁵⁵⁹

*In addition to the emotional and behavioural impacts [on children], the imprisonment can often impact on their sense of cultural identity.*⁵⁶⁰

Children need attachment to develop. Stability – knowing that we will see the same people every day – is a simple part of everyday life for most of us. However, for children of women in prison, there is no such stability.

As noted by the Senate Standing Committee on Legal and Constitutional Affairs References Committee:

*Children with an incarcerated parent commonly experience a similar pattern of traumatic events, often witnessing their parent's crime and arrest, losing a parent, the disruption of their family environment, and the difficulties associated with visiting their parent within the prison system. Children with parents in prison are also more at risk of abusing drugs and alcohol, dropping out of school and exhibiting aggressive and/or antisocial behaviours.*⁵⁶¹

Separation from their mother affects a child's development and sense of cultural identity. It significantly undermines that child's right to family and to enjoy their culture. Both these rights are

protected by the Charter and at international law.⁵⁶² Imprisonment of mothers engages both arms of section 17 of the Charter. The first protects the family unit (the Koori mother and her children's rights) and the second protects the best interests of the child, including the right of children to be with their parent unless it is not in their best interests.⁵⁶³

At an international level, the negative impacts of imprisonment of Aboriginal and Torres Strait Islander women on their children has been noted by the United Nations Committee on the Rights of the Child in its Concluding Remarks on Australia's progress in implementing the Convention on the Rights of the Child.⁵⁶⁴ This Convention includes specific rights around removal from family and special protections when in child protection.⁵⁶⁵ It also protects a child's rights to family, health, an adequate standard of living and development.⁵⁶⁶

Another generation of Koori children in care?

When a Koori woman enters prison, it has a significant impact on community connection and kinship obligations. Koori women shoulder the responsibility of child rearing and family obligations within the Koori community. As a result, the imprisonment of Koori women has a greater effect on family, community and society compared to the imprisonment of Koori men.

When a Koori mother enters prison, their child may be looked after informally by relatives or formally placed in out-of-home care. Under the *Children, Youth and Families Act 2005* (Vic), Aboriginal children will be placed as a priority with their extended family or relatives.⁵⁶⁷ The purpose of this placement principle is to assist children to maintain contact with family, culture and community – which is positive.⁵⁶⁸ However, this places an additional burden on already disadvantaged families and communities.

557 Key informant interview, Koori Programs and Initiatives Unit, Specialist Courts and Courts Support Services, Department of Justice, 15 February 2013.

558 Key informant interview, North West Regional Aboriginal Justice Advisory Committee and Victoria Aboriginal Community Services Association, 16 January 2013.

559 Key informant interview, Victorian Aboriginal Legal Service, 15 November 2012.

560 Key informant interview, Flat Out, 5 March 2013.

561 Parliament of Australia, 'Report into Justice Reinvestment', above n 34, 22.

562 *Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 17, 19.

563 Section 13 of the Charter (the right to privacy and reputation) also provides protection from unlawful or arbitrary interference with family life.

564 Committee on the Rights of Child, *Consideration of reports submitted by States parties under article 44 of the Convention- Concluding observations: Australia*, UN Doc CRC/C/Aus/Co/4 (2012) 17. <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_AUS_CO_4.pdf> at 14 February 2013.

565 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 3 UNTS 1577, arts 9, 12, 18, 20. (entered into force 2 September 1990).

566 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 3 UNTS 1577, arts 16, 24, 27, 29 (entered into force 2 September 1990).

567 *Children, Youth and Families Act 2005* (Vic) s 13.

568 *Ibid.*

There is...a broader impact on the community. Often grandmothers and other relatives have to pick up the care of the children whilst the mother is incarcerated. This places a heavy burden on Koori families who may already be struggling with health, financial and other pressures.⁵⁶⁹

Imprisonment also has real impacts on other family members, who are often picking up the care of the child. Grandparents are caring for grandchildren and are often struggling to make ends meet.⁵⁷⁰

Placing a child in out-of-home care also risks creating a pathway for the child to be exposed to the justice system later in life. The poorer health, education and life outcomes for children leaving care are well understood.⁵⁷¹

There is also a significant impact on the children – some are imprisoned with their mother or they are caught up with child protection. They become institutionalised. This creates a vicious cycle and trajectory. The children are caught up in child protection system, before long the children start offending themselves and then become involved with juvenile justice and then onto the adult justice system.⁵⁷²

As well as the immediate pain and trauma of separation, Koori children can be further traumatised by being labelled as the child of a prisoner. This label can follow them throughout their lives.

The children often experience discrimination at different points in their life – school, services, interaction with police.⁵⁷³

Young people often feel a real sense of anger, which may lead to them into a cycle of offending.⁵⁷⁴

Charter rights and prevention

Although the Charter does not include the right to specific services, it does protect the right to protection of families and children without discrimination. When a lack of access to support services compromises a Koori mother's ability to provide effective ongoing care for her child, the protection of the child's best interests is at risk.

Further, the Charter requires public authorities to think about the best interests of the child and protection of families when making decisions about services. For example, when the Department of Justice is considering the number, type and scope of diversionary programs and services, the Charter obliges them to think about the specific needs of Koori women (and their children) in determining what is reasonable.

Impact on Koori communities

Detaining a large proportion of the population weakens the community, creating the conditions for further crime. Research indicates that a 'tipping point' may occur in communities once crime and incarceration reaches a certain point.⁵⁷⁵

The removal of Koori women from the community leads to a loss of leadership, culture and identity.⁵⁷⁶

As noted by the Senate Standing Committee on Legal and Constitutional Affairs References Committee:

Indigenous prisoners are affected profoundly with the breakdown of links with family members and communities. Indigenous communities are also affected as every individual has a role to play including financial and social. If an individual or group of individuals is removed, the community is heavily burdened, weakening the community and exacerbating economic distress creating prime conditions for further offending behaviour.⁵⁷⁷

569 Key informant interview, Dr Harry Blagg, 23 November 2012.

570 Key informant interview, Victorian Aboriginal Legal Service, 15 November 2012.

571 See for example, Joseph McDowell, *CREATE Report Card: Transitioning from care in Australia* (2009).

572 Key informant interview, Aboriginal Family Violence Prevention Legal Service, 13 December 2012.

573 Key informant interview, Flat Out, 5 March 2013.

574 Key informant interview, Victorian Aboriginal Legal Service, 15 November 2012.

575 Dina Rose and Todd Clear, 'Incarceration, Social Capital and Crime: Implications for Social Disorganization Theory' (1998) 36(3) *Criminology* 441, 457; Mick Gooda, Emilie Priday and Louise McDermott, 'Looking beyond offenders to the needs of victims and communities' (2013) 8(5) *Indigenous Law Bulletin* 13, 14.

576 Key informant interview, Aboriginal Family Violence Prevention Legal Service, 13 December 2012.

577 Parliament of Australia, 'Report into Justice Reinvestment', above n 34, 22.

Incarcerating increasing numbers of Koori women leads to a void of carers and leaders in the community. This impacts significantly on the children who grow up without their mothers and with limited knowledge about their cultural identity. In addition, the community is affected, as there is a lack of leaders resulting in the further erosion of cultural knowledge.

High rates of imprisonment break down the social and family bonds that guide individuals away from crime, remove adults who would otherwise nurture children, deprive communities of income, reduce future income potential, and engender a deep resentment toward the legal system. As a result, as communities become less capable of managing social order through family or social groups, offending increases.⁵⁷⁸

Costs to the community

Adult imprisonment is an expensive intervention, costing \$339 per day, per prisoner in Victoria.⁵⁷⁹

It is estimated that the length of time Indigenous people, who have been convicted of non-violent crimes spend in prison is around 12 months. The cost per person of 12 months in prison is \$114,832.⁵⁸⁰

This does not take into account costs to health or other services system, that ex-prisoners may increase their use of after prison. Nor does it include the costs of recidivism, the risk of which is much higher for those who have already been in prison. "Ultimately, the social factors created by imprisonment reinforce recidivism increasing the economic cost on the state".⁵⁸¹

Costs of diversion compared to imprisonment

On average, it costs more to incarcerate a person than to divert them from the system.⁵⁸²

- It costs 12 times as much to imprison a person than to have them complete a Community Corrections Order.⁵⁸³
- It costs nearly five times as much to have a woman in prison than to provide post-release supported accommodation, with wrap-around support, including drug and alcohol, mental health, childcare and parental skills, assistance with employment/training with the option of permanent housing.⁵⁸⁴
- It costs around three times as much to imprison a person than to send them to a culturally appropriate residential diversionary placement such as the Wulgunggo Ngalu Learning Place for Koori men.⁵⁸⁵
- It costs 38 per cent more to send someone to prison than to place them in a culturally appropriate residential drug and alcohol centre.⁵⁸⁶
- The treatment costs for a female offender completing treatment for drug/alcohol dependence in a facility that allows her children to live with her in a semi-independent environment is \$1,798, or the equivalent of 5.3 days in prison.⁵⁸⁷

578 Don Stemen, *Reconsidering Incarceration: New Directions for Reducing Crime* (2007) 6. <http://www.vera.org/sites/default/files/resources/downloads/veraincarc_vFW2.pdf> at 18 July 2013.

579 Total net operating expenditure and capital costs 2011-12. Productivity Commission, *Report on Government Services 2013* (2013) Corrective Services Table 8A.35. <<http://www.pc.gov.au/gsp/rogs/2013>> at 18 July 2013.

580 National estimate based on ABS data. National Indigenous Drug and Alcohol Committee, above n 487, 53.

581 Parliament of Australia, 'Report into Justice Reinvestment', above n 34, 25.

582 Youth justice costs are also considerable, particularly if children enter the system at a very early age. Recent research by Jesuit Social Services found that for their sample of 27 children who first experienced remand at 10 to 12 years, the total cost of custody in Victorian Youth Justice was \$3,046,560. Cost is from first ever youth justice custodial order to May 2012. This does not include collateral costs including policing, court time, legal aid, or social services. Jesuit Social Services, above n 190, 36.

583 Annual cost of \$9,855 compared to \$123,370.

584 Mission Australia and Melbourne City Mission Restart Program. Includes three months pre-release support. The program houses 50 women at a total cost of \$1,284,973 per annum. That is \$25,699 per client per year or \$70 per client, per day.

585 Annual cost of \$47,750 compared to \$114,832.

586 Annual cost of \$89,425 compared to \$114,832.

587 The capital cost is \$52 per day. National Indigenous Drug and Alcohol Committee, above n 487, 51.

Figure 11 – Costs of diversion options compared to prison

Service	Estimated daily cost per offender	Estimated annual cost per offender
Prison	\$339	\$123,370
Community Corrections Order	\$27 ⁵⁸⁸	\$9,855
Residential drug and alcohol treatment	\$205-\$285 (mean= \$245) ⁵⁸⁹	\$89,425
Residential mental health service	\$338 ⁵⁹⁰	\$123,370
Wulgunggo Ngalu Learning Place	\$131	\$47,750 ⁵⁹¹
Restart program- post-release supported housing	\$70	\$25,699

Investment in prevention

It costs even less to support prevention through interventions such as mental health support.

- The cost of providing support to a person at risk of, or experiencing homelessness is \$1,459, or the equivalent of 4.3 days in prison.⁵⁹²
- In Victoria, we spend \$179 per person, per annum on specialised mental health services, which is around half of what we spend on a single prison bed, every day.⁵⁹³

The savings to be made by investing in services that address some of the causes of offending are considerable. For example, based on NSW data, the National Indigenous Drug and Alcohol Committee found that for Indigenous prisoners:

- “The total financial savings associated with diversion to community residential rehabilitation compared with prison are \$111,458 per offender.

The costs of treatment in community residential rehabilitation services are substantially cheaper than prison. Diversion would lead to substantial savings per offender of \$96,446, based on a cost of community residential rehabilitation treatment of \$18,385 per offender). Even if the high side estimate of the cost per offender for residential

rehabilitation treatment was used (\$33,822), the saving would still be substantial at around \$81,000.

Community residential treatment is also associated with better outcomes compared with prison – lower recidivism rates and better health outcomes, and thus savings in health system costs. The savings associated with these additional benefits of community residential treatment are approximately \$15,012 per offender.

- In addition, treatment of Indigenous offenders in the community rather than in prison is also associated with lower mortality and better health-related quality of life. In monetary terms, these non-financial benefits have been estimated at \$92,759 per offender”.⁵⁹⁴

Lifetime costs

It is well understood that the earlier we can intervene and address the person’s causes of offending, the more significant the savings. This is not just because early intervention and prevention services are cheaper. It is also because of the whole of lifetime/ government costs that are generated once a Koori woman gets on the pathway to prison.

Keeping Koori women cycling through the criminal justice system is economically inefficient. Recent modelling by the University of NSW found that the institutional costs of a female Aboriginal offender in NSW with a history of homelessness, drug and alcohol misuse, family violence and mental illness to be in the order of \$1,118,126.⁵⁹⁵

Costs to other systems

This modelling does not include the cost of out-of-home care or kinship care (formal or informal) that often occurs when a mother serves a term of imprisonment. Many of the prisoners we interviewed for our research had a long history of contact with child protection, often as children and then as mothers. A number had children living with relatives in informal arrangements (a hidden cost).

588 Total net operating expenditure and capital costs 2011-12. Productivity Commission, ‘Government Services 2013’, above n 580, Corrective Services Table 8A.38.

589 National Indigenous Drug and Alcohol Committee, above n 487, 51.

590 National average cost per patient day. Australian Institute of Health and Welfare, *Expenditure on Mental Health Services* (2012) 3. <<http://mhsa.aihw.gov.au/resources/expenditure/>> at 18 July 2013.

591 The 2011-12 budget allocation for Wulgunggo Ngalu Learning Place was \$955,000. It accommodates up to 20 men, representing an annual unit cost of \$47,750 for a full year. State of Victoria, Corrections Victoria, ‘AJA2 Progress Report: 1 January - 30 June 2012’ (Tabled at Aboriginal Justice Forum, November 2012).

592 Recurrent costs per client accessing homelessness services 2011-12. Productivity Commission, ‘Government Services 2013’, above n 580, Homelessness Services Table 17A.16.

593 Australian Institute of Health and Welfare, ‘Expenditure on Mental Health’, above n 591, 2.

594 National Indigenous Drug and Alcohol Committee, above n 487,6.

595 Eileen Baldry et al, ‘Costs of Homelessness’, above n 17, 47-49.

Other women were subject to child protection orders and their children were in out-of-home care (kinship care or residential care).

Out-of-home care represents an additional financial impost to the Victorian Government in the order of \$286 per day, per person (annually \$104,443 per child). Overall, Victorian government expenditure on out-of-home care services in 2011-12 was over \$350 million with Aboriginal and Torres Strait Islander children significantly over represented in the out-of-home care cohort.⁵⁹⁶

Entering the out-of-home care system also comes at a significant personal cost to the families and children involved given the impact on the child of separation, poor outcomes for children in care and the intergenerational trauma caused by family breakdown and contact with the child protection and/or youth justice system.⁵⁹⁷

Costs of reoffending

It has been estimated that the recidivism cost of a single prisoner in 2012-13 is in the order of \$96,000.⁵⁹⁸

Various studies have found that a period in prison increases the risk of reoffending and reimprisonment, and that Koori prisoners are more likely to return to prison within two years of release.⁵⁹⁹

“The issue of recidivism is just as significant when it comes to female prisoners as it is with the general prison population, with at least 40 per cent of women leaving prison subsequently reoffending – 17 per cent of those within 12 months and 27 per cent within two years”.⁶⁰⁰

The costs of this cycle of reoffending to the community are considerable. These include justice system costs such as police, legal aid, courts and corrections, but also the costs to community safety within and beyond Koori communities and to community relations generally.

“Increasing the likelihood of reimprisonment is one of the most costly risks to society of incarceration”.⁶⁰¹

Koori women are the most victimised group in our population. They carry a heavy load within the community. Imprisoning Aboriginal women makes no sense – this is acknowledged internationally. They are often victims, have short criminal careers and their offending is less serious. Based on this, it is safe to divert women from the justice system.⁶⁰²

Recommendation

Noting that 80 per cent of Koori women prisoners have children, that the Commissioner for Aboriginal Children and Young People, in overseeing the development of the *Five year plan for Aboriginal children in out-of-home care* specifically identify and address the needs of Koori children with mothers in prison. This should include a focus on targeted supports for mothers and children in these circumstances, including education, health, parenting and life skills supports.

596 As at 30 June 2012, in Victoria, Indigenous children were 15.8 times more likely to be in out-of-home care than non-Indigenous children. Australian Institute of Family Studies, *Child Protection Statistics for Aboriginal and Torres Strait Islander Children* (2013). <<http://www.aifs.gov.au/cfca/pubs/factsheets/a142117/index.html>> at 15 July 2013.

597 Youth justice costs are also considerable, particularly if children enter the system at a very early age. Recent research by Jesuit Social Services found that for their sample of 27 children who first experienced remand at 10 to 12 years, the total cost of custody in Victorian Youth Justice was \$3,046,560. Cost is from first ever youth justice custodial order to May 2012. This does not include collateral costs including policing, court time, legal aid, or social service. Jesuit Social Services, above n 190, 15.

598 “The estimated cost of recidivism was approximately \$96,348 per incarcerated prisoners and \$84,888 per client referred to residential treatment in 2012-13”. National Indigenous Drug and Alcohol Committee, above n 487, 56.

599 See for example, Holland et al, Corrections Research Paper Series No 1, *Who Returns to Prison? Patterns of Recidivism Among Prisoners Released From Custody in Victoria in 2002-03* (2007). The paper found that 50 per cent of Koori prisoners returned to prison within two years compared to 35 per cent of all prisoners. <<http://www.corrections.vic.gov.au/utility/publications+manual+s+and+statistics/who+returns+to+prison>> at 20 June 2013. See also, State of Victoria, Sentencing Advisory Council, ‘Comparing Sentencing Outcomes’, above n 49.

600 Parliament of Australia, ‘Report into Justice Reinvestment’, above n 34, 17.

601 National Indigenous Drug and Alcohol Committee, above n 487, 40.

602 Key informant interview, Dr Harry Blagg, 23 November 2012.



Case study 5: Shelley

When I was released from the Dame Phyllis Frost Centre I was about a year into study. Out in the real world however, I struggled to live like a “normal person” and found it incredibly difficult juggling family obligations, part-time work, studies, my parole obligations and the million other little things people do every day without even thinking about them.

Disconnected and feeling isolated, I day-dreamed about a beautiful, peaceful place where Aboriginal women who’d started studying in prison, like me, or who had discovered an artistic bent while inside, as many do, could go after release and continue their studies or hone their craft in a safe, supportive and cultural environment.

After a while I finally got a job and moved back home to be closer to my ageing mother. After a rough patch where I lost this job and found myself homeless again, I finally found my feet and landed back where I’d spent the most significant part of my life.

On a trip down ‘memory lane’ one day, I visited an important Aboriginal site. In that place there had once been a women’s refuge. It was where my son was born and he and I had fled there once to escape his violent father. Far from being the scene of unhappy memories though, I’d gone there because I remembered a sense of peace and wellbeing while I’d lived there - and when I saw it again, I realised why - it was the retreat from my daydreams! It had everything! Large, sprawling grounds, exhibition spaces, studio and office spaces and even still, after all these years, some residential spaces upstairs. It was perfect and my imagination went into overdrive.

I’ve since made some enquiries and it looks like at least some of the building might be available for a purpose such as I propose. What I’d really like to see though is the entire building turned back to the community and as a place for women exiting prison.

A place like this -that develops wellbeing and economic sustainability for women exiting prison. These are the very things that promote rehabilitation and reintegration. If we are serious about Closing the Gap and reducing the extraordinarily high representation of Aboriginal women in our prisons, projects like my vision are what the justice system needs to be investing in – not more prisons.

Chapter 8:

A way forward

Despite Koori women comprising the fastest growing segment of the Victorian prison population⁶⁰³, limited resources are directed at addressing their specific needs. As identified in the evaluation of AJA2⁶⁰⁴ while the number of services had increased for Koories generally, there are still inadequate service provisions for Koori women in contact with the criminal justice system.

One of the six objectives of AJA2 was to increase diversion/strengthen alternatives to imprisonment.⁶⁰⁵ In particular to “increase the rate at which justice agencies divert Koories from more serious contact with the criminal justice system and strengthen community-based alternatives to imprisonment”⁶⁰⁶ and, specifically in relation to Koori women, “implement initiatives that divert Koori women from prison”.⁶⁰⁷

To support this objective, numerous strategies were developed including initiatives under the Better Pathways program. However, despite these efforts, there remain few community-based diversion facilities or initiatives specifically for Koori women. As a result, the number and proportion of Koori women in prison has continued to increase with far reaching impacts on families and communities. Thus addressing the needs of Koori women remains the unfinished business of the Aboriginal Justice Agreement.

Our research confirms previous studies that have noted the corrosive effects of imprisonment upon individuals and communities, as well as the fiscal impact of a growing population of Koori women in contact with the criminal justice system and in prison. There are few positives to imprisoning Koori women, and few disadvantages of diversion.

603 Nous Group, above n 25, 54.

604 Ibid 50-51.

605 Objective 2. State of Victoria, Department of Justice, ‘AJA2’, above n 24, 32.

606 Objective 2. Ibid 20.

607 Activity 2.4.2. Ibid 34.



The need for a more effective strategy

This, and previous research has established the need for a more comprehensive and effective approach to crime prevention and community safety that addresses the increasing incarceration of Koori women in Victoria. Patterns of Koori women's offending and imprisonment differ from those of other women and Koori men, consequently preventative and diversionary responses to need to differ as well.

*[We] need to learn how to break the cycle.*⁶⁰⁸

It has also been acknowledged in the research literature that programs for Aboriginal and Torres Strait Islander women exiting prison must be grounded in their cultural values, beliefs and realities, and should be developed in consultation with and run by Indigenous women.⁶⁰⁹ The Commission supports this view.

Prevention is the way to go, but it needs to be community driven.⁶¹⁰

A whole-of-system and whole-of-person approach

It is well recognised that to reduce imprisonment rates we need to address all the causes of offending- personal, social and economic. Similarly if we are to honour previous policy commitments to address the needs of Koori women we need to look at all aspects of the justice system, including the attitudes, practices and policies of Victoria Police, the courts, community corrections and prisons.

There was strong consensus among participants in this research that gaps and unmet need in universal platforms (education and health, including mental health and drug and alcohol services) and resource limitations of specialist platforms (most notably family/parenting support, homelessness and housing) contribute to the over-representation of Koori women in prison. These gaps need to be addressed.

608 Focus group participant, 17 January 2013.

609 Eileen Baldry et al, 'Needs Analysis Report', above n 62, 72.

610 Key informant interview, Victorian Aboriginal Community Controlled Health Organisation, 7 March 2013.

In short, we need a whole-of-system and whole-of-person approach. This is consistent with policy directions set out in key government agreements including the *Victorian Aboriginal Affairs Framework*, *Human Services Aboriginal Strategic Framework 2013-15*, *Victoria's Vulnerable Children's Strategy*, and the AJA3.⁶¹¹

Improving system integration

Currently services and programs are highly fragmented and hard to navigate, making it extremely difficult for Koori women to access supports in a timely way, or for the length of time needed to really make a difference. Fragmentation exists across universal and specialist service systems, both before, during and after prison. This fragmentation creates frustration for Koori women as well as for the people and services that are trying to assist them.

Many services, including crisis responses have long waiting lists, or eligibility requirements that Koori women prisoners and ex-prisoners cannot meet. While unmet need is a reality in many human services, the impact for Koori women is particularly felt, as they are likely to be struggling with multiple issues and significant levels of disadvantage. This disadvantage is exacerbated by discrimination in the basics of life including housing and employment and in service delivery.

Addressing barriers

Where services are available, they may contain cultural, geographic or gender barriers that limit the capacity of Koori women to engage and complete programs that might prevent problems escalating. This contributes to the pathway to prison, risks reoffending and entrenches the institutional effects of incarceration, at significant cost to the community and to Koori women.

611 "We need to ensure that in the 'justice system' that there are actions across the age spectrum to address parenting for Koori parents both in prison and upon release". State of Victoria, Department of Justice, 'AJA3', above n 15, 5. See also, State of Victoria, Department of Planning and Community Development, *Victorian Aboriginal Affairs Framework 2013-18* (2012) <<http://www.dpcd.vic.gov.au/aboriginal-affairs/aboriginal-affairs-policy/victorian-aboriginal-affairs-framework>> at 2 July 2013; State of Victoria, Department of Human Services, *Human Services Aboriginal Strategic Framework 2013-15* (2013) <<http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies,-guidelines-and-legislation/human-services-aboriginal-strategic-framework-2013-2015>> at 15 July 2013; State of Victoria, Department of Human Services, 'Vulnerable Children Strategy', above n 132.

A lack of suitable bail options means that Koori women end up in prison on remand. These women are denied bail because there is a chronic under-supply of accommodation that they can be bailed to. Section 3A of the Bail Act, which requires decision-makers to consider Aboriginality, is also under-utilised. This offends the right to equality in the Charter.

Koori women reported that they tend not to use pre-sentence programs such as the Court Integrated Services Program. This reflects barriers that permeate the system, including geographical inequalities, waiting lists for external services and lack of cultural and gender focus.

Similarly, very few Koori women are put forward for the Criminal Justice Diversion Program, even when they are first time offenders. Overall, less than one per cent of offenders on this scheme identify as Koori.⁶¹² Some of this results from the decisions of police and prosecutors who must agree to diversion. The focus on the program for first time offenders may also disadvantage Koori women, who because of specific patterns of multi-age peer groups, and/or police practices may have come into contact with the criminal justice system earlier and more frequently than non-Koori women.

In addition, the existing focus on community work in this program may also create a barrier for Koori women if available placements are not gender and culturally appropriate, or locally available. Koori women may also struggle to complete work placements when they have caring responsibilities.

A very clear concern identified was that there are no culturally and gender appropriate residential programs for Koori women on Community Corrections Orders in Victoria, despite these being available to Koori men. This inequity reduces the likelihood of women successfully completing orders, again contributing to higher risk of imprisonment if further offences are committed.

The inability to divert Koori women risks further rounds of imprisonment when in prison and post-release services are either unavailable or not suitable for Koori women. This offends the right to equality and several human rights protected by the Charter and international law, including cultural rights.

Principles for successful intervention

In finding solutions to these challenges research participants articulated several principles that need to inform future efforts.

- There needs to be a renewed focus on addressing barriers to Koori women across all domains of the service system, including justice and non-justice services.
- Interventions need to be both cultural and gender specific, and draw on community knowledge in design and delivery.
- The significant role of Koori women in family and community needs to be incorporated into design of prevention, diversion and post-release options. Further, these roles need to be acknowledged when establishing conditions for bail and Community Corrections Orders.
- For interventions to work, Koori women need a stable base, in particular safe and secure housing. Residential options are therefore critical to bail, diversion and post-release interventions.
- Diversion programs, particularly residential settings need to take into account the geographic diversity of Koori communities.
- Koori women need to be with their children. The design of diversionary and post-release options needs to incorporate flexibility and the potential for women to keep their children with them so that families can rebuild.
- Given the high levels of victimisation among Koori women in contact with the criminal justice system, interventions need to deal with trauma and have a healing focus.
- Connection to culture can serve as a protective factor from offending. However, by its very nature, prison cuts women off from culture. Interventions before, during and after prison need to address this cultural disconnect if they are to succeed.
- Services and programs need to adopt a 'wrap-around' approach. Basic life skills need to be addressed, along with parenting skills, and mental health, drug and alcohol and disability supports as appropriate. All of these need to be addressed holistically, before, during and after prison.
- Diversion and post-release services need to have an after-care program following completions so as to minimise the challenges Koori women currently face navigating a series of complex and fragmented service systems. This could include a mentoring function but such mentors need to be Koori women, who are already overstretched.

612 Fifty-four out of 5,932 offenders in 2011-12. Magistrates' Court of Victoria, 'Annual Report', above n 11, 98.

- One size does not fit all. Koori women in contact with the criminal justice system have complex needs and a range of interventions will be needed at different times. This has implications for the design of diversionary options.

Making prevention and diversion a reality regardless of race or gender

Diversion has several objectives including:

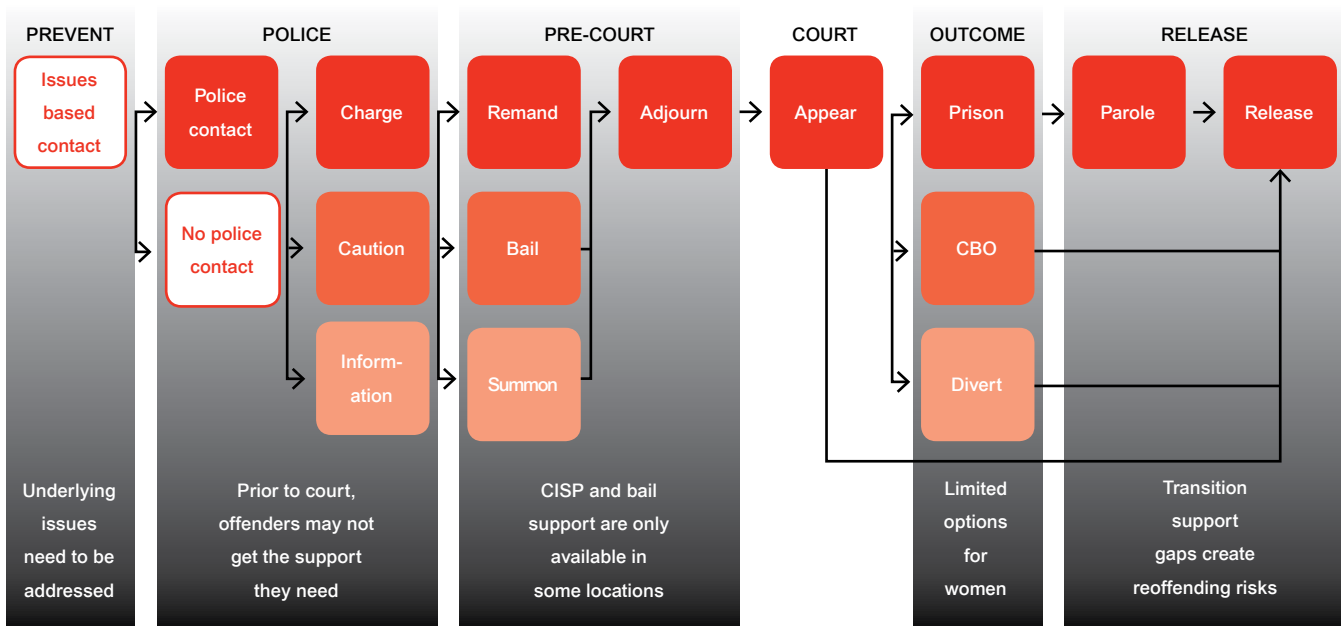
- avoiding the negative labelling and stigma associated with criminal conduct and contact with the criminal justice system
- preventing further offending by minimising a person's contact with and progression through the criminal justice system
- reducing the number of people reaching prisons (and associated burdens and costs in the criminal justice system)
- providing appropriate interventions to offenders in need of treatment or other services.⁶¹³

Diversion can occur at four main points in the system:

- pre-contact (for example preventative programs to address the risk factors for offending such as drug and alcohol misuse, exposure to family violence; family breakdown, experiences of out-of-home care and homelessness)
- pre-sentencing, including bail support programs, bail houses and the Criminal Justice Diversion Program
- post-sentencing, including Community Corrections Orders and supported residential options
- post-release (including transition programs and supported residential options).

Our research found that there are significant gaps for Koori women offenders across all four of these domains. The recent evaluation report of AJA2 identified key areas of diversion that are the focus of the AJA. Whilst not a comprehensive map of services, the figure below highlights points of diversion in the justice system and existing limitations.

Figure 12 – Simplified justice service delivery chain



Source: Nous Group, Evaluation of the Aboriginal Justice Agreement Phase 2: Final report (2012) 52.

613 Jacqueline Joudo, *Responding to substance abuse and offending in Indigenous communities: Review of diversion programs*, Research and Public Policy series no 88. (Australian Institute of Criminology, 2008). <<http://aic.gov.au/publications/current%20series/rpp/81-99/rpp88.aspx>> at 18 July 2013.

Adaptable diversionary models

The key informants gave numerous examples of diversion options and programs that would work best for Koori women. It is important to point out that some program components and services identified are already in operation in Victoria. However, these programs are for Koori men only, and would need to be adapted to meet the needs of Koori women. The Commission is of the strong view that solutions can be found in the community, to develop programs for Koori women that would work effectively.

A learning place for women

Key informants repeatedly raised the Wulgunggo Ngalu Learning Place as an example of an effective diversion program for Koori male offenders on Community Corrections Orders. Many participants suggested that a similar model is required for Koori women to increase the likelihood of completing Community Corrections Orders and that it would need to be set up in a similar way:

*The Wulgunggo Ngalu Learning Place is a good example of a successful diversionary program for Koori males. Vast community consultation went into developing this model. It was also purpose built for the environment and is culturally appropriate in the activities they run, for example the men's circle of sharing and the name Wulgunggo Ngalu itself. It is a voluntary program for Aboriginal and Torres Strait Islander men (over 18), who have been sentenced to a community based order to learn new skills, reconnect with their culture and address their offending behaviour. Elders are involved with the program. It also provides Koori men with a space to talk and build trust.*⁶¹⁴

However taking a 'men's model' and simply applying it to women is unlikely to work. Therefore, we asked key informants and Koori women themselves what would be needed. They told us such a facility must:

- reflect the geographical diversity of Koori women, recognising the importance of providing reconnection to culture
- involve Elders
- offer culturally appropriate support and programs from Koori and non-Koori service providers
- have a majority of programs developed and run by Koori women
- be holistic and take into account the needs of the family and the family structure, whatever that may be and however large that may be
- accommodate children
- be flexible and tailored to where women are in their life and their specific circumstances
- address causal factors and drivers of their offending and put in place support services to deal with these.⁶¹⁵

Developing a residential service for those on Community Corrections Orders will necessarily involve lead times. Further, it is not just those who might be suitable for a Community Corrections Order that need better options. These can and should be developed now.

Post-release housing for Koori women

The women at Dame Phyllis Frost Centre put forward their views regarding what is needed to better support their transition back into the community and help break the cycle of offending. They stated very clearly that a residential option was needed and that it should:

- be a fully supported halfway house/residential facility that provide counselling, drug and alcohol services, family violence services, life skills courses (including shopping, cooking, budgeting and finances)
- provide courses/ programs/ session to understand how things have changed since being in prison
- be female only, where you can bring children or have access to them
- offer services to assist with parenting skills
- deliver programs to assist/improve health and self-esteem and offer a sense of purpose once released.⁶¹⁶

614 Key informant interview, Koori Programs and Initiatives Unit, Specialist Courts and Courts Support Services, Department of Justice, 15 February 2013.

615 Key informant interview, Koori Programs and Initiatives Unit, Specialist Courts and Courts Support Services, Department of Justice, 15 February 2013.

616 Focus group interview, 12 December 2012; focus group interview, 17 January 2013.

Effective case management support before, during and after prison

Our research found that many women struggle to coordinate and access all the services they need or are compelled to attend as conditions on bail, Community Corrections Orders or parole. An inability to do so ultimately results in women reoffending.

*'Leaving prison is very overwhelming. I have suffered from panic attacks and have ended up reoffending as I can't cope with the outside world.'*⁶¹⁷

Intensive support to prevent escalating offending or reoffending is essential. Such support needs to be creative, quick, flexible and responsive. Koori women at risk of, or in contact with the criminal justice system want regular, predictable access to supports that are individualised and recognise the unique challenges they face. This involves shifting the focus in service delivery towards the whole person's wellbeing, including their cultural wellbeing.

Many told us that the experience of prison has taken away their sense of independence and therefore, upon release from prison they lack confidence in basic life skills and their ability to navigate the outside world.

Koori women told us that they wanted to focus on transition and preparing for release much earlier than is currently the case. They wanted to see services that they have accessed prior to and in prison, better coordinated with services exiting prison.

Some talked about having a one stop shop, that they could build a relationship with and so be more likely to stay engaged and motivated. They wanted this to include Community Corrections, Parole, Department of Human Services, including housing services, Aboriginal community services such as Connecting Home, drug and alcohol, counselling and family support.

Prison is a trauma in itself. It represents a separation from all they have known, so there is a real sense of loss. It has a real impact on how people conduct themselves when they are released. This is compounded as there are not effective post prison supports. It is also difficult to reintegrate upon release, re-employment statistics are low, housing is at risk. Even short custodial periods puts housing and employment in jeopardy.⁶¹⁸

Addressing trauma

Koori women experience family violence at 45 times the rate of non-Koori women.⁶¹⁹ These levels of victimisation contribute to increased rates of offending, as victims become perpetrators.⁶²⁰

In Victoria, while the number of services for survivors of trauma and family violence increased under AJA2 and other initiatives,⁶²¹ there is still significant unmet need for community-based services to assist Koori women who are dealing with the effects of trauma and family violence prior to involvement with the justice system.

It is therefore unsurprising that there was such strong support among research participants for Koori-specific community-based programs "to help women deal with the effects of violence and to help women develop alternative strategies for coping with violence in the future".⁶²²

618 Key informant interview, Victorian Aboriginal Legal Service, 15 November 2012.

619 National Congress of Australia's First Peoples, 'Justice Reinvestment Approach', above n 201, 12.

620 State of Victoria, Department of Justice, 'AJA2', above n 24, 18; Harry Blagg, 'Aboriginal women and justice', above n 108, 13-14.

621 Nous Group, above n 25, 50-51.

622 Australian Human Rights Commission, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities – Key issues* (2006). <<http://www.humanrights.gov.au/publications/ending-family-violence-and-abuse-aboriginal-and-torres-strait-islander-communities-key>> at 18 July 2013.

617 Focus group participant, 14 December 2012.

Supporting Koori women prisoners as parents

There was consensus amongst key informants and Koori women that to really assist women to get back on track, support is needed to re-establish their skills as parents and to address basic life skills.

Many Koori women prisoners are quite young, have several children and were in out-of-home care themselves, so they may not have had a chance to develop these skills before coming to prison. In our conversations with Koori women, it was clear that women exiting prison need assistance to reconnect with their children and that support programs pre and post-release are crucial.⁶²³ This could take the form of extension to the Koori Faces program and could also form part of any residential diversion or post-release services developed in the future.

Connection back to community

*The Royal Commission into Aboriginal Deaths in Custody and international research have emphasised the devastating impact that a disconnect with country and culture caused by incarceration has on the identity and wellbeing of Indigenous people. Both conclude that connection to culture can serve as a preventive measure against risk-taking behaviours.*⁶²⁴

Key informants and focus group participants identified that disconnection from culture further entrenched Koori women in patterns of offending and imprisonment. Many women expressed concern about being judged and excluded because they had been in prison.

At the same time, culture was identified as essential to their healing and keeping them out of prison. They told us this could be done by:

- mentors in the community
- assistance with 'knowing your mob'
- support to locate family members, especially for women previously in out-of-home care.

Pulling it together into a hub and spoke

As noted above, one size does not fit all. This has implications for the design of diversionary options.

The Commission is of the view that the most sustainable and comprehensive means of reducing the over-representation of Koori women in prison is by establishing a hub and spoke where women can step up and step down supports as appropriate, without losing continuity.

Developing a residential option as the hub, and linking it with case management, drug and alcohol services, trauma, family support and other services as the spokes would be the most cost effective method of integrating services for Koori women and offers the best prospects for success.

Such a model would address fragmentation and service integration issues in a culturally appropriate way, and have the added advantage of establishing connections between the services that Koori women are using across all diversionary domains. It could also share its expertise with agencies including Victoria Police, Corrections Victoria and the Courts and so help to address some of the systemic barriers to take up of mainstream services and programs. Most importantly it could provide a sense of continuity and certainty to one of the most vulnerable groups in our community as they address the causes and consequences of their offending.

While establishing the hub would necessarily involve lead times, building the spokes and effecting service reforms on existing programs could be done more quickly. Thereafter, program additions such as the hub property could be added to the platform.

623 Focus group interview, 17 January 2013.

624 Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, cited in Parliament of Australia, 'Report into Justice Reinvestment', above n 34, 23.

Investing in diversion

The relatively low numbers of Koori women in Victorian prisons may be suggested as a reason for not investing in pre-sentence diversion, and post-release options for this cohort. It might seem that the economies of scale are not high enough to fund the actions and programs inside and outside prison that would make a difference.

However, we consider that the low numbers in Victoria are a good reason to invest in communities to minimise contact with the criminal justice system and to urgently invest in programs that work for those already in the system. Evaluations of previous Aboriginal Justice Agreements have also shown that when resources are effectively targeted and there is a clear focus on culturally sound interventions that reduction in over-representation will follow.⁶²⁵

Diversion has been shown to work for other cohorts and culturally appropriate residential options for Koori men to support completion of Community Corrections Orders also enjoy strong success rates.

Given that at any one time around 30 Koori women would be in prison, such investment would be relatively modest for a significant community gain. Compared to imprisonment and potential institutional costs of Koori women going through the system of over \$1 million per prisoner, programs to address the underlying causes of offending such as drug and alcohol abuse, mental health disability, family violence and intergenerational trauma cost significantly less.⁶²⁶

For those already in prison, we have an ideal opportunity to work with them to address their offending and turn their lives around. Indeed, as the numbers of women are relatively small compared to the total prison population, targeting efforts on this cohort makes sense. We know who they are, we know where they are and we know what is needed from years of research and policy discussion.

In particular, targeted interventions to break the cycle of offending, and support compliance with bail, Community Corrections Orders and parole conditions, including housing and casework support are much cheaper than prison.

Failing to invest now also risks escalating costs in the future. We already know that the number of Koori women at risk of entering the corrections system in Victoria is likely to grow due to demographic pressures. In Victoria, the Koori population is growing rapidly, and has a very high proportion of children and young people. Children make up almost half of Victoria's Koori population (43.5 per cent), almost double the proportion of children in the total population (23.6 per cent).⁶²⁷

This means that we have a valuable opportunity to "turn off the tap" to prison by investing in improved educational outcomes, and in turn employment opportunities for young Koori people.⁶²⁸ We can further break the cycle of disadvantage by supporting families to stay healthy and strong through early intervention and prevention. In the absence of a significant improvement on these systemic issues, the pipeline of Koori women in contact with the criminal justice system will continue to grow.

625 "The AJA2 evaluation indicated that where there has been a clear focus and investment of resources there has been a reduction in over-representation of Koories in prison". State of Victoria, Department of Justice, 'AJA3', above n 15, 19.

626 Based on NSW data for a female Aboriginal offender in NSW with a history of homelessness, drug and alcohol misuse, family violence and mental illness to be in the order of \$1,118,126. Eileen Baldry et al, 'Costs of Homelessness', above n 17, 48.

627 State of Victoria, Department of Premier and Cabinet, 'Report of the Protecting Children Inquiry', above n 211, 288.

628 Aboriginal students in Victoria generally have lower rates of literacy and numeracy, school attendance and school retention than non-Aboriginal students. Victorian Auditor-General's Office (2011) cited in Ibid 291.

Appendix 1

Key informants

1	Victorian Aboriginal Legal Service	15 November 2012
2	Dr Harry Blagg	23 November 2012
3	Aboriginal Outcomes Unit, Department of Human Services	30 November 2012
4	Antoinette Braybrook, CEO, Aboriginal Family Violence Prevention Legal Service	13 December 2012
5	Muriel Bamblett, CEO, Victorian Aboriginal Child Care Agency	14 December 2012
6	Judge Paul Grant, (then) President, Children's Court of Victoria	14 January 2013
7	Linda Bamblett, North West Regional Aboriginal Justice Advisory Committee and Victoria Aboriginal Community Services Association	16 January 2013
8	Staff, Dame Phyllis Frost Centre	30 January 2013
9	Staff, Dame Phyllis Frost Centre	7 February 2013
10	Koori Programs and Initiatives Unit, Specialist Courts and Courts Support Services, Department of Justice	15 February 2013
11	Magistrates' Court of Victoria	3 March 2013
12	Koori Justice Unit, Department of Justice	4 March 2012
13	Annie Nash, Manager, Flat Out	5 March 2013
14	Justice Health	5 March 2012
15	Jill Gallagher, CEO, Victorian Aboriginal Community Controlled Health Organisation	7 March 2013

Appendix 2

List of services

Police

Aboriginal Community Justice Panels (ACJP) are volunteers who assist Victoria Police in assuring the safety of Aboriginal people in custody.

Aboriginal Community Liaison Officer (ACLO) Program aims to enhance the relationship between Victoria Police and Victorian Aboriginal communities.

Aboriginal Liaison Officers (PALOs) are sworn officers of Victoria Police who work independently and in partnership with the ACLOs to resolve issues concerning Aboriginal people within their local area.

Courts

Specialist courts and support services:

Drug Court located in the Dandenong Magistrates' Court the Drug Court is responsible for the sentencing and supervision of offenders who have committed offences due to drug/and or alcohol dependency.

Koori Court is a division of the Magistrates' Court it provides greater participation by the Koori community in the court process. The Koori Court offers an alternative approach to sentencing by enhancing the Courts understanding of the underlying issues driving offending and offering programs and services to redress those issues.

Koori Family Violence Court Support Program assists Koories who have a family violence matter at the Magistrates' Court. The program employs a Koori Men and Women's Family Violence Support Worker, who provide support and information about the Court process and the family violence services.

Neighbourhood Justice Centre (NJC) was established in 2007 and is Australia's only community justice centre. The Centre is committed to resolving disputes by addressing the underlying causes of harmful behaviour and tackling social disadvantage by bringing together a wide array of support services and community initiatives.⁶²⁹

Specialist Family Violence Service and Family Violence Court Division hears and determines intervention applications in all courts. There are a range of support services available to assist applicants with intervention order process and those affected by family violence.

Court support and diversion services:

Assessment and Referral Court (ARC) List is a specialist problem solving court (being pilot in the Magistrates' Court) which assists accused persons whom have a mental illness and/or cognitive impairment.

Community Correctional Services Court Services Unit – provides pre-sentence court advice through the assessment of offenders in relation to their suitability for a Community Corrections Order.

Court Integrated Services Program (CISP) provides an integrated model of support and services at the pre-sentence stage primarily for accused persons with criminal offences with the aim of reducing reoffending.

CREDIT/Bail Support Program aims to increase the successful completion of bail by an accused person who would otherwise be remanded in custody by providing a range of services while bail including case management plan for treatment and support and housing.

629 Neighbourhood Justice Centre. <<http://www.neighbourhoodjustice.vic.gov.au/home/about+us/>> at 28 June 2013.

Criminal Justice Diversion Program provides mainly first time offenders with the opportunity to avoid a criminal record by undertaking conditions that benefit the offender, victim and community as a whole.

Enforcement Review Program assists members of the community who have 'special circumstances' and outstanding fines registered at the Infringements Court.

Koori Community Engagement Officer (KCEO) provides non-legal advice and access to culturally appropriate services to Koories in contact with the courts.

Koori Liaison Officer Program aims to address the over-representation of Koori people in the Victorian justice system by working with Koori accused persons when they enter the court system.

Koori Offender Support and Mentoring Program aims to improve justice outcomes by supporting Koori women and men to complete their community corrections/parole order.

Mental Health Court Liaison Service is a court based assessment and advice service delivered by Forensicare that provides the Court with information about the accused mental health to ensure they receive appropriate care.

Youth Justice Court Advice Service (YJCAS) aims to rehabilitate and divert young people (18-20 years old appearing in criminal courts) from the justice system through the provision of a specialist youth focused court.

Culturally appropriate Community Corrections services

Indigenous Leading Community Corrections Officers (ILCCOs) undertake a restricted caseload of general Community Corrections Services (CCS) work, and specialist functions to ensure the specific needs of Aboriginal offenders are met. ILCCOs provide a case consultancy role to other CCS Officers regarding responsive service provision to Aboriginal offenders and assist to develop and maintain relationships between prisons, CCS locations and the Aboriginal community and organisations. There are 10 ILCCOs located at community correctional services in Mildura (2); Bendigo; Shepparton (2); Warrnambool; Broadmeadows; Morwell; Sale and Reservoir.

Culturally appropriate residential facilities for Koori men (pre prison)

Baroona Healing Centre (Njernda Aboriginal Corporation) is a voluntary or court referred program for young Koori men in contact with the criminal justice system.

Galiamble Men's Recovery Centre (Ngwala Willumbong Co-operative Ltd) is a men's rehabilitation centre located in St Kilda. The program is voluntary or court referred. The facility can accommodate up to 16 men at a time.⁶³⁰

Warrakoo Rehabilitation Hostel⁶³¹ (Mildura Aboriginal Corporation/Mallee District Aboriginal Services) is a voluntary program designed to offer support to Aboriginal men who have Drug and/or Alcohol related issues.

Wulgunggo Ngalu Learning Place is a voluntary residential program for Koori men on Community Corrections Orders. It provides participants an opportunity to learn new skills, reconnect with, or further strengthen their culture and participate in programs and activities to help them address their offending behaviour.

Yitjawudik Men's Recovery Centre (Ngwala Willumbong Co-operative Ltd) is a men's rehabilitation centre located in Mooroopna. It is a voluntary or court referred program. The facility can accommodate up to eight men at a time.

Culturally appropriate residential facilities for Koori women (pre prison)

Winja Ulupna (Ngwala Willumbong Co-operative Ltd) is a women's voluntary or court referred rehabilitation facility. The facility can accommodate up to eight women at a time.

630 Ngwala Willumbong Co-operative Ltd. <<http://www.ngwala.org/>> at 18 July 2013.

631 Mallee District Aboriginal Services, *Warrakoo Rehabilitation Hostel*. <<http://www.macmildura.org/page.php?id=34>> accessed 28 June 2013.

Prison⁶³²

Koori women specific services:

Aboriginal Cultural Immersion Program (ACIP) aims to provide Koori prisoners with an increased understanding of their cultural identity to reduce the risk of reoffending.⁶³³

Aboriginal Family Visits Program assists the families of Aboriginal and Torres Strait Islander prisoners to visit their family members in custody. It recognises the importance of maintaining the prisoner's family relationships and links with their community.⁶³⁴

Aboriginal Wellbeing Officer⁶³⁵ (also known as the Aboriginal Liaison Officer) provides specific cultural support to Koori women in prison. She plays a critical role in supporting Koori prisoners and assisting their preparation for release by providing links to and liaising with their family, support agencies and Koori community organisations.

Konnect is a transitional support program for Koori women and men exiting the prison system. The program is designed to assist Koori women and men for release.

Koori Art Program (Kangan Batman TAFE) provides a Koori art program to all Koori women at DPFC.

Koori Education (Kangan Batman TAFE) delivers vocational training and education programs to Koori women at DPFC.

Marumali is a culturally appropriate 'model of healing' offered to all Koori prisoners. It provides Koori prisoners the opportunity to deal with issues associated with removal in culturally appropriate and supportive environment.

Sentenced Prisoners

Drug and alcohol services provided by Caraniche:

24 hour group aims to introduce women (with a sentence of at least three months) to issues around drug use such as identifying and labelling feelings, relationship issues, coping strategies, anger management and relapse prevention.

40 hour program ongoing program to assist participants to address some of their issues underlying their drug and/or alcohol abuse.

4-6 month program (drug treatment unit) is an intensive program (minimum 8 hours contact per week) that requires participants to reside in the unit where the program runs. This is available to women with a sentence of greater than four months.

Individual counselling there is limited individual counselling available within the drug and alcohol services.

Orientation program is a six-day program accessed by all new receptions to DPFC. It provides women with information about what programs and services are available and how these can be accessed in the prison. Open to all prisoners except women returning to prison within three months of completing orientation.

Release Related Harm Reduction (RRHR) is designed to assist prisoners in their preparation for release to lower the risk of drug use.

Offending Behaviour Programs delivered by Corrections Victoria:

Anger management program for women is a moderate intensity program that explores issues related to anger and offending behaviour.

Behavioural management plans provides guidelines for how to best manage prisoners with behavioural difficulties and/or challenging behaviour.

Distress management (remand and sentenced prisoners) provides individual sessions to women who are experiencing difficulties in adjusting/ coping with imprisonment.

Exploring change program is short-term treatment readiness program that aims to increase levels of motivation to deal with the issues that lead to offending.

Individual treatment only available to sentenced prisoners assessed as unsuitable for group programs. This psychological program explores/ targets the risk factors that led to offending behaviour.

632 All information regarding prison programs is from Dame Phyllis Frost Centre Programs Directory 2011.

633 Carmel Barry, 'The Aboriginal Cultural Immersion Program', paper presented at the Best Practice in Corrections for Indigenous People Conference, Adelaide, (1999) 4.

634 Aboriginal Family Visits program is delivered by the Victorian Association for the Care and Resettlement of Offenders. <<http://www.vacro.org.au/SERVICES/FAMILIES.aspx>> at 13 June 2013.

635 The Aboriginal Wellbeing Officer an Indigenous identified position.

Making choices program for women is a high intensity therapeutic program that addresses general offending behaviour.

Offence-related treatment for sex offenders individual treatment that targets risk factors that contribute to this type of offending behaviour.

Family services:

Family support program (Melbourne City Mission) provides liaison, support, resources, encouragement, education, information, referral and practical assistance to deal with the Department of Human Services, one on one support on child and family issues, maintaining contact with children and linking women and families with relevant community support agencies to strengthen ties and support family reunification.

Mother and Child program all pregnant women and women with children residing outside prison are able to make an application to have their children reside with them in custody.

Tweddle child services provides support and information in relation to children's development, being a parent, understanding behaviour, babies and young children's nutrition.

Shine for kids is a prison visits program that offers activities to children between times spent interacting with their parent.

"Out of the Dark" program (Melbourne City Mission) is psycho-educational group program to address domestic/family violence.

West Centre Against Sexual Assault (CASA) is a counselling service available to all women. It aims to help people who have been sexually assaulted to heal.

Legal Services:

CISP see above

CREDIT/Bail support program see above

Family Violence Prevention and Legal Service provides assistance to victims of and families and communities affected by family violence.

Legal Resource Library prisoners have access to photocopying, printing and faxing facilities.

Legal Aid provides women on remand with link to Victoria legal aid and/or aid in communication between remanded prisoners and the legal representatives.

Victorian Aboriginal Legal Service provides legal advice and representation for the Koori community.

Other services in prison:

Alcoholics Anonymous is a non-profit fellowship for those who have a problem with alcohol.

Chaplaincy numerous chaplains of various denominations attend DPFC to provide religious instruction, support and welfare.

Gamblers Help – Western provides counselling for prisoners with gambling related offences and issues.

Kangan Education Courses include: information technology, Horticulture, operational health and safety, English as second language, literacy program, business administration, hospitality, numeracy program, Victorian Certificate of Applied Learning, printing and graphics, first aid training, and distance education.

Leisure centre services: drama, women's choir, sport, music, art and craft classes etc.

Library the DPFC library allows women to borrow books, magazines and games.

QUIT smoking program is a 6 week program is designed to support smokers to become non-smokers.

Remand prisoners

Arrival and Orientation program all new receptions at DPFC are able to access the following drug and alcohol services as part of their orientation:

- Drug and alcohol orientation session (1 hour)
- Adjustment to prison (3 hours)
- Prison-related harm reduction program (3 hours)
- Brief program assessment (1.5 hours) to identify which program would best meet individual needs

Distress management (remand and sentenced prisoners) provides individual sessions to women who are experiencing difficulties in adjusting/ coping with imprisonment.

Maintaining change program (parolees) aims to enhance offenders' awareness of issues that support their offending behaviour to better reduce the risk of reoffending.

Mood management for remand prisoners is a short-term program that provides remandees with an opportunity to learn how to recognise, assess and manage emotions and equip them with strategies to manage these more effectively.

Transitional and post prison services

Centrelink provides information to all prisoners regarding Centrelink enquiries and payments within two weeks of release.

Konnect is offered to all sentenced Koori women and men. It aims to provide a culturally specific response to Koori women and men to prepare them for release and reintegration into the community.

Restart Project (Mission Australia) a pilot project that provides comprehensive support, training and long-term accommodation options for women with complex needs and their children.

Transition Assistance Program (TAP) is a Corrections Victoria program offered to all sentenced prisoners within the final six months of their sentence. It provides prisoners with information about community-based services and supports available to assist their transition.

VACRO Women's Mentoring Program is offered to all women at DPFC. The program is designed to provide women with emotional support upon release to ease their transition back into the community.

Women's Integrated Support Program (WISP) is offered to all sentenced women at DPFC. It provides pre and post-release case management support to prepare prisoners for their release and transition back into the community.

Appendix 3

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Glossary

Bail

Bail allows people accused of a crime to remain in the community until their charges can be heard by a court. It ensures that people accused of crimes, who may be not guilty of some or all of the charges, do not unnecessarily spend time on remand.

Most people are bailed “on their own undertaking” which means that no money is required and they can stay out of custody if they agree to appear in court on a certain day and abide by the conditions set by a court.

Bail can be granted by a police sergeant, a bail justice, a magistrate or a judge.

Classification

Classification refers to the process of determining a prisoner’s security rating and prison placement.

As part of the classification process, the Sentence Management Panels assigns a prisoner with a security rating of either high, maximum, medium or minimum. The security rating is dependent on the assessed level of risk the prisoner presents to prison security, the community, himself, herself or any other person. A prisoner’s security rating limits the prison placement options for a prisoner, as a prisoner can only be placed in a prison with a security rating the same or higher as their individual rating.

Community Corrections Order

A Community Corrections Order (CCO) is a flexible court order that allows an offender to serve their sentence in the community, with at least one condition attached. These conditions differ according to the kind of offence the person has been found guilty of and their particular circumstances. CCOs are more serious than a fine but not as severe as being sent to prison.

Culturally safe

A culturally safe and secure environment is one where people feel safe and draw strength from their identity, culture and community.

Diversion

In Victoria, it is possible for Magistrates to adjourn proceedings for up to 12 months to allow for a person charged with criminal offences to take part in a diversion program. These may include attending counselling or treatment, performing community work, abiding by a curfew, not associating with certain persons, or apologising or compensating the victim. After the tasks are completed to the satisfaction of the Court, no plea is to be taken and the Court must discharge the accused without any finding of guilt.

Discrimination

Discrimination is treating, or proposing to treat, someone unfavourably because of a personal characteristic protected by law. In Victoria, a range of personal characteristics are covered by the law, including disability.

Discrimination also includes imposing unreasonable requirements, conditions and practices that disadvantage, or could disadvantage, people with a particular personal characteristic, and failing to make reasonable adjustments in education, employment and the delivery of goods and services.

DPFC

Dame Phyllis Frost Centre

Indictable offence that may be heard and determined summarily

An indictable offence is a serious crime which is generally triable before a judge and jury.

Management units

Management units are restricted regimes that limit prisoners' access to out-of-cell hours, programs, frequency and duration of telephone calls, number and type of visits, other prisoners and work. These restrictions may amount to solitary confinement, such as though limiting a prisoner to their cell for up to 23 hours per day.

Marrmak Mental Health Unit

The Marrmak Mental Health Unit is a 20-bed mental health unit and service for women prisoners who experience mental illness at the Dame Phyllis Frost Centre (DPFC). The Marrmak Integrated Mental Health Service includes a specialist mental health in-patient unit, as well as out-patient, outreach, consultancy, and training services at DPFC.

Parole

To free a prisoner on his or her own recognisances (q.v.) after serving a minimum term.

Remand

Remand is for people who have been accused of a crime and have been refused bail. Remandees are held in custody before and during their trial (on criminal charges) by order of a court, although they may be bailed at any point. Generally, remandees will be held in special remand facilities and will have fewer restrictions placed on them than convicted prisoners.

Removal

Forced removal of Koori children from their families was official government policy from 1909 to 1969, although the practice took place both before and after this period. The generations of children who were forcibly taken from their families became known as the Stolen Generations.

The intergenerational trauma and grief associated with removal is acknowledged as contributing to the over-representation of Koori people in prison.

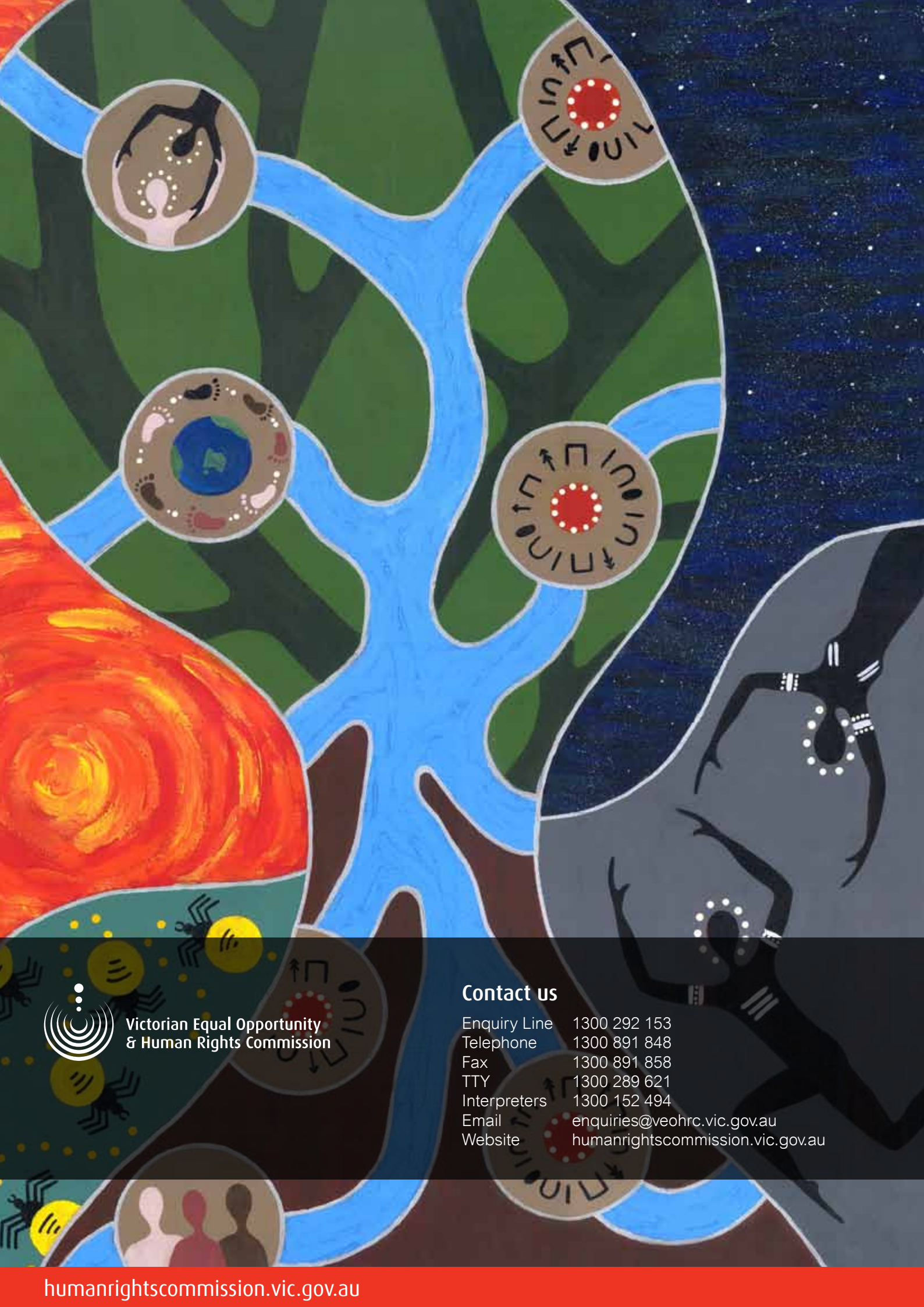
Sentence Management Panel

Sentence Management Panels consider individual security ratings, management and needs of the prisoner, community protection, and the efficient and effective operation of the prison. Assessment is ongoing throughout the prisoner's sentence.

Summary offence

A minor offence heard and decided in a Magistrates' Court and not sent for trial before a judge and jury.





Victorian Equal Opportunity
& Human Rights Commission

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