

Culturally and Linguistically Diverse Women in Victorian Prisons

Update on Developments since the 2005 Request for Systemic
Review of Discrimination against Women in Victorian Prisons

Final Report

funded by a grant from

**Victoria
Law Foundation**

Grants
Publications
Education



This Report has been produced by the Centre for the Human Rights of Imprisoned People (CHRIIP). The Report began as a project under the supervision of the Springvale Monash Legal Service during July 2008 – January 2009 which was carried out by Zoe Jones, a student of Monash University.

The conclusions contained within this Report are based on information available up until October 2009. However, Part 3.6 of the Report dealing with the Powers of the Equal Opportunity and Human Rights Commission have been updated to reflect the passage of the new *Equal Opportunity Act 2010*.

Title: *Culturally and Linguistically Diverse Women in Victorian prisons*.

Author: Centre for the Human Rights of Imprisoned People.

Dated: October 2010

ISBN: 978-0-9808527-1-4

For more information contact:

Phoebe Barton,
Centre for Human Rights of Imprisoned People
tel: (03) 9376 0800

Dave Taylor,
Springvale Monash Legal Service
tel: (03) 9562 3144



Acknowledgements

This project has benefited greatly from the supervision of Dave Taylor at the Springvale Monash Legal Service, and feedback and assistance from Charandev Singh and Phoebe Barton of the Centre for the Human Rights of Imprisoned People (CHRIP).

Contributions

Significant contributions were made in researching this project from a large number of community organisations and individuals who volunteered their time to discuss these issues and provided useful information and resources. Semi-structured interviews were held with a number of individuals directly involved in support and advocacy for women in prison, and imprisoned and formerly imprisoned people. These interviews have been of great assistance to the project. To protect the confidentiality and sensitivity of the information discussed, and consistent with the consent granted by individuals to participate in the project, these interviews have been numbered in references to the report and interviewees are generally not identified directly unless they gave their express consent to be so identified.

Table of Contents

1. Executive summary	1
1. TOÁT YÉU	6
2. Introduction	10
3. Background	13
3.1 Statistical profile of CALD women in Victorian prisons	13
3.2 Legal and policy framework	14
3.3 Research and studies	15
3.4 2005 Request for Systemic Review	16
3.5 Response to the Request	17
3.6 VEOHRC powers to address systemic discrimination	18
4. Project methodology	21
5. Results and evaluation	22
5.1 The treatment of CALD women in Victorian prisons	22
5.1.1 Access to interpreters and translations	22
5.1.2 Access to culturally and linguistically appropriate services	26
5.1.3 Cultural and religious freedoms	27
5.1.4 Humane treatment when deprived of liberty	29
5.1.5 Evaluation	31
5.2 Relevant policy developments concerning CALD women	32
5.2.1 Collection of statistical data	32
5.2.2 Vietnamese Liaison Officer	33
5.2.3 Post-release services	35
5.2.4 Evaluation	37
6. Conclusion and systemic findings	39
7. Recommendations	42
7. ĐỀ NGHỊ	44
8. Bibliography	46
9. List of acronyms	49
10. Appendix	50

1. Executive Summary

The number of women imprisoned in Victoria has increased by 25% over the past year, with a disproportionate number of the women imprisoned coming from Culturally and Linguistically Diverse (CALD) backgrounds.¹ The number of women born in Vietnam who are imprisoned in Victoria has almost doubled during the period of June 2008 to June 2009.² There are currently more than 300 women imprisoned in Victoria, which is the highest number of women imprisoned in the state at any one time since prior to Federation.³ This dramatic increase is therefore unprecedented and extremely alarming, particularly as it affects women of CALD backgrounds.

This project examines the situation of CALD women who are imprisoned in Victoria. To do this, the project follows up the serious issues of discrimination raised in *the Request for a Systemic Review of Discrimination against Women in Victorian Prisons*, made in 2005 by the Federation of Community Legal Centres FCLC and Victorian Council of Social Services vCOSS to the Equal Opportunity Commission Victoria (EOCV).⁴

The 2005 Request for Systemic Review raised significant allegations of discrimination affecting the women held in custody in Victoria. Although this discrimination was attributed firstly to the gender of prisoners, the Request also identified specific areas of discrimination on the basis of race and cognitive ability by the State Government of Victoria in its management of the Victorian women's prisons at Tarrengower and the Dame Phyllis Frost Centre at Deer Park.

In relation to women from CALD backgrounds, the 2005 Request for Systemic Review contained significant anecdotal evidence highlighting incidents and practices of direct and indirect discrimination on the basis of race and religion that impacted on the day-to-day life of imprisoned CALD women. The report remains significant as the only detailed investigation and documentation of the treatment of CALD women in the Victorian prison system.

The 2005 Request for Systemic Review called upon the EOCV to use their powers under s 156 of the *Equal Opportunity Act 1995* (Vic) to initiate a systemic review of the discrimination identified. Despite acknowledging the serious allegations of discrimination set out in the report, EOCV decided not to exercise its power to conduct an independent audit. The Commission considered that such an investigation would be too formal and adversarial, and also that policy developments such as the Better Pathways Strategy showed that Corrections Victoria was concerned to address these issues. The EOCV therefore decided to adopt a "collaborative approach" to work with Corrections Victoria to develop an anti-discrimination and human rights framework against which the women's prison system would be audited. Corrections Victoria subsequently refused to engage with the EOCV in such an audit.

Therefore, although the EOCV had accepted that there were serious and systemic breaches of discrimination law affecting the rights of women prisoners in Victoria, the EOCV failed to act to address, respond to, or investigate these breaches in any substantive way. No publicly available review or investigation of the serious allegations of discrimination raised in the 2005 Request for Systemic Review has ever been made available by either Corrections Victoria or the EOCV.

This project seeks to address the failing by the EOCV and Corrections Victoria to adequately respond to and investigate the issues of discrimination against CALD women raised in the 2005 Request. To do this, the project further investigates the issues of discrimination raised in the 2005 Request for Systemic Review and evaluates whether Corrections Victoria complies in these areas with the

¹ Weekly Custody Report, 28 October 2009 (Compiled by Corrections Victoria, PIMS Report).

² Department of Justice, *Statistical Profile of the Victorian Prison System, 2004-05 to 2008-09*, Table 26.

³ Victorian Year Book, 1973 (ABS), p. 116.

⁴ Corrections Working Group of the Federation of Community Legal Centers (FCLC) and the Victorian Council of Social Service (vCOSS), *Request for a Systemic Review of Discrimination Against Women in Victorian Prisons*, March 2005. Hereafter '2005 Request for Systemic Review'.

Victorian *Charter of Human Rights and Responsibilities Act 2006*. The project also evaluates the major policy developments in relation to CALD women in Victorian prisons, to consider the practical impact such measures have had in addressing issues of discrimination faced by CALD women.

The project has adopted a consultative approach, which prioritised the collection of data and information from community organisations, advocates and government agencies directly involved with women who are imprisoned or the provision of post-release support. Where possible, input has also been sought from women who have been or are imprisoned.

Key Systemic Findings

The project has concluded that the failure by EOCV to investigate the allegations made in the 2005 Request for Systemic Review has meant there has been limited action taken by Corrections Victoria to address the serious issues of discrimination raised in that Request. Initiatives such as Better Pathways and the enactment of the Victorian Charter have been insufficient, on their own, to create change. This is in large part because such measures do not involve any independent monitoring or public reporting mechanisms which are necessary to ensure oversight and accountability in the prison system.

Regarding the treatment of CALD women in Victorian prisons the project concludes:

- ▶ CALD women may be isolated, marginalised and subject to discrimination on a day-to-day basis in Victorian prisons. This suggests that CALD women may experience prison in a way that is more punitive and harsh than other women. The issues concerning the unfair and discriminatory treatment of CALD women do not appear to have substantially altered since the 2005 Request for Systemic Review was made;
- ▶ Instead, it appears that the women's prison system has become even more closed and secretive since the 2005 Request for Systemic Review was made. It is extremely difficult to obtain information as to the day-to-day conditions faced by women in Victorian prisons;
- ▶ As a result, discrimination is much less likely to be identified within the women's prison system and it is likely to become normalised and embedded, significantly affecting the lives and treatment of CALD women in prison; and
- ▶ In a number of ways, Corrections Victoria may also be in breach of its obligations under the Victorian Charter in its treatment of CALD women in the prison system.

In examining the policy developments concerning CALD women since the 2005 Request for Review, it has been found that:

- ▶ Since 2005 the Department of Justice and Corrections Victoria have increasingly adopted a language of cultural inclusiveness and respect for diversity in policy frameworks relevant to imprisoned women;
- ▶ There is an overwhelming lack of substance to this language, centrally because there is a lack of transparency and accountability in the implementation of policy initiatives that are released and championed by Corrections Victoria and the Department of Justice;

- ▶ Specific policy initiatives could be improved by direct consultation with CALD women who have or who are currently imprisoned and their families to determine the most effective and appropriate strategies to address CALD women’s isolation and marginalisation in the prison system; and
- ▶ Alternative policy strategies, such as decreasing spending on prisons and investing in local communities ought to be prioritised by policy makers to create effective change and alter the damaging cycle of imprisonment affecting particular CALD communities.

Key Systemic Recommendations

- ▶ It is essential that the EOCV (now the Victorian Equal Opportunity and Human Rights Commission) have fully independent powers to conduct investigations and enquiries into the compliance of public authorities with the *Equal Opportunity Act 2010* and the *Charter of Human Rights and Responsibilities Act 2006*. These powers should not be dependent upon the consent of any government Minister or public authority for their exercise;
- ▶ VEOHRC should commit to exercising its new investigation and enquiry powers under the *Equal Opportunity Act 2010* in a way that is open, transparent and accountable. Where a matter is of public interest and significance and arises in relation to a public authority, any inquiry or investigation into systemic discrimination must be conducted publicly, and VEOHRC should table its full findings in Parliament;
- ▶ The guidelines governing the circumstances in which VEOHRC will conduct inquiries and investigations into systemic discrimination under ss 127 and 128 of the *Equal Opportunity Act 2010* should be transparent and publicly available; and
- ▶ VEOHRC’s powers to enforce its recommendations following an enquiry or investigation into systemic discrimination should include:
 1. The ability to require the tabling of government responses to parliament within a specified time frame; and
 2. The power to request additional reports on a yearly basis from public authorities demonstrating their continued performance in relation to the VEOHRC’s findings and recommendations.
- ▶ Given that VEOHRC does not have direct power to mandate public reporting, these requirements should be made part of the enforceable undertakings or compliance notices issued by VEOHRC to public authorities.

Recommendations regarding policy and procedure

Access to interpreters and translators

- ▶ Interpreter access should be part of regular procedure and protocol within prisons, as should the use of translated materials on an everyday basis. This should be the case not only for major decisions, such as medical

and sentence management, but also for the access and use of programs and services.

- ▶ Priority should be placed upon the use and funding of face-to-face interpreters for legal advisors and support workers who seek to communicate with persons of non-English speaking background in prison;
- ▶ Clear procedures should be developed to permit “call-ins” for legal advisors and support workers assisting non-English speaking prisoners to prisoners, to allow the use of telephone interpreters.

Religious Freedom

- ▶ There should be increased training of officers and management regarding religious freedom and respect for diverse religious practices.

Leisure Activities

- ▶ Women from CALD backgrounds should be asked, on entering the women’s prison, if they want to be linked to ethnic community organisations and services, where appropriate. These linkages could then be used by the women to request/borrow books, DVDs and magazines in their own languages.

Strip Searching

- ▶ If strip searching of women is to be conducted at all, it must be limited to use as a last resort only where there is a demonstrated and imminent security issue which has not been capable of investigation or resolution via less intrusive methods and/or searches.

Promotion of cultural diversity in prisons

- ▶ The Multicultural Corrections Committee, should seek broad community involvement and engagement including from CALD women and men within the prison system. The Committee should encourage the Department of Justice (DOJ) to promote and publicise strategies which promote cultural and linguistic inclusion, both publicly and within Victorian prisons.

Data collection

- ▶ Data collection on language and ethnicity in Victorian prisons should be available publicly;
- ▶ Data collection should also involve a women’s length of time in Australia, citizenship and Migration status.

Vietnamese Liaison Officer (VLO)

- ▶ Multiple workers are required to support the needs of CALD women, and these workers should preferably be female and appointed as independent community workers, attached to a community agency, rather than prison officers;
- ▶ A multicultural social worker or counsellor should be appointed to the women’s prisons, and their role clearly distinguished from that of the Vietnamese Liaison Officer.

Post-release and pre-release supports available to CALD women

- ▶ Post-release organisations and service providers should direct services and resources to respond to the particular situations and trauma faced by CALD women leaving prison;
- ▶ Any review of CALD women's access to post release services should prioritise consultation with CALD women and their families to evaluate post release needs and supports available;
- ▶ Women facing deportation require assistance and support to prepare them for circumstances post release. This support should involve, at a minimum, linkages to specialist community groups and support workers providing migration assistance and legal support.

Alternative Policy Approaches

- ▶ The Department of Justice in consultation with local communities and the Multicultural Corrections Committee, should give consideration to Justice Reinvestment policy approaches and spending.

1. TOÁT YẾU

¹ Weekly Custody Report, 28 October 2009 (Compiled by Corrections Victoria, PIMS Report).

² Department of Justice, *Statistical Profile of the Victorian Prison System, 2004-05 to 2008-09*, Table 26.

³ Victorian Year Book, 1973 (ABS), p. 116.

⁴ Corrections Working Group of the Federation of Community Legal Centers (FCLC) and the Victorian Council of Social Service (vcoss), *Request for a Systemic Review of Discrimination Against Women in Victorian Prisons*, March 2005. Hereafter '2005 Request for Systemic Review'.

Số lượng phụ nữ bị đi tù tại tiểu bang Victoria đã tăng đáng kể lên 25% trong năm qua và phần lớn thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt.¹ Trong khoảng thời gian từ tháng Sáu năm 2008 – tháng Sáu năm 2009² số lượng phụ nữ sinh ở Việt Nam, bị đi tù tại tiểu bang Victoria tăng lên gần gấp đôi. Hiện nay tại tiểu bang này có hơn 300 phụ nữ đang ở tù, con số phụ nữ bị tù cao nhất tại tiểu bang này ở bất cứ thời điểm nào tính từ lúc trước khi thành lập Liên Bang.³ Sự gia tăng đáng kể này, do đó, chưa có tiền lệ và là điều cực kỳ đáng lo ngại, đặc biệt nó ảnh hưởng tới phụ nữ có nguồn gốc văn hóa và ngôn ngữ dị biệt.

Mục đích của dự án này là khảo sát tình trạng của phụ nữ có nguồn gốc văn hóa và ngôn ngữ dị biệt (CALD) đang ở tù tại tiểu bang Victoria. Để đạt được mục đích vừa nêu, dự án này xem xét những vấn đề nghiêm trọng về phân biệt đối xử đã được nêu trong Thịnh Cầu Xem Xét Rộng Khắp về Vấn Đề Phân Biệt Đối Xử đối với Phụ Nữ tại các Nhà Tù của Tiểu Bang Victoria (Request for a Systemic Review of Discrimination against Women in Victorian Prisons) được Liên Đoàn Trung Tâm Luật Pháp Cộng Đồng và Hội Đồng Tiểu Bang Victoria về Các Dịch Vụ Xã Hội thực hiện vào năm 2005 cho Ủy Hội Bình Đẳng Cơ Hội Tiểu Bang Victoria (EOCV).⁴ Thịnh Cầu Xem Xét Rộng Khắp Năm 2005 đã nêu lên những lời cáo buộc quan trọng về vấn đề phân biệt đối xử ảnh hưởng đến phụ nữ bị ở tù tại tiểu bang Victoria. Dù nguyên nhân đầu tiên của vấn đề phân biệt đối xử này là phái tính của tù nhân, Thịnh Cầu này cũng xác định được những lãnh vực cụ thể về vấn đề phân biệt đối xử của Chính Phủ Tiểu Bang Victoria trong việc quản trị các nhà tù phụ nữ của tiểu bang Victoria tại nhà tù Tarrengower và Trung Tâm Dame Phyllis Frost vì lý do chủng tộc và khả năng nhận thức.

Do đó, dù chấp nhận là có những vi phạm nghiêm trọng và rộng khắp đối với luật đối xử phân biệt có ảnh hưởng tới quyền hạn của nữ tù nhân tại tiểu bang Victoria, EOCV đã không có hành động đáng kể để giải quyết, ứng phó hoặc điều tra những vi phạm này. Cả Cơ Quan Cải Huấn Victoria lẫn EOCV đều không công bố cuộc xem xét hoặc điều tra công khai nào về những lời cáo buộc nghiêm trọng đối với vấn đề đối xử phân biệt được nêu ra trong Cuộc Xem Xét Rộng Khắp Năm 2005.

Mục đích của dự án này là giải quyết việc EOCV và Cơ Quan Cải Huấn Victoria đã không giải quyết thích đáng và điều tra các vấn đề đối xử phân biệt đối với phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt được nêu ra trong Thịnh Cầu Năm 2005. Để đạt được mục tiêu này, dự án sẽ điều tra thêm về vấn đề đối xử phân biệt được nêu ra trong Cuộc Xem Xét Rộng Khắp Năm 2005 và đánh giá xem Cơ Quan Cải Huấn Victoria có tuân thủ Hiến Chương Tiểu Bang Victoria về Đạo Luật Nhân Quyền và Trách Nhiệm Năm 2006 (Victorian Charter of Human Rights and Responsibilities Act 2006) hay không. Ngoài ra, dự án này cũng đánh giá những phát triển chính sách quan trọng liên quan tới phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt trong các nhà tù của tiểu bang Victoria, để cân nhắc tác động thiết thực mà những biện pháp như vậy đem lại trong việc giải quyết các vấn đề đối xử phân biệt mà phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt gặp phải.

Dự án này được thực hiện theo phương pháp tham khảo, dành ưu tiên cho việc thu thập dữ liệu và thông tin từ các tổ chức cộng đồng, người/nhân viên bên vực quyền lợi và cơ quan chính phủ trực tiếp làm việc với phụ nữ đang ở tù hoặc việc cung cấp dịch vụ trợ giúp sau khi ra tù. Nếu được, phụ nữ đã từng bị ở tù hoặc đang ở tù cũng sẽ được mời đóng góp ý kiến.

Những Kết Quả Rộng Khắp Chủ Yếu

Dự án này kết luận rằng việc EOCV không tiến hành điều tra những lời cáo buộc nêu ra trong Cuộc Xem Xét Rộng Khắp Năm 2005 đã khiến cho những hành động mà Cơ

Quan Cải Huấn Victoria thực hiện để giải quyết các vấn đề đối xử phân biệt nghiêm trọng nêu ra trong Thịnh Cầu chỉ có tính cách giới hạn mà thôi. Những sáng kiến như Những Đường Lối Tốt Hơn và việc ban hành Hiến Chương Tiểu Bang Victoria không thôi thì chưa đủ để làm thay đổi tình hình, vì phần lớn những biện pháp như vậy không bao gồm phần theo dõi độc lập hoặc cơ chế báo cáo công khai, cần thiết để bảo đảm việc giám sát và yếu tố phải chịu trách nhiệm trong hệ thống nhà tù.

Về việc đối xử với phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt tại các nhà tù của tiểu bang Victoria, dự án này kết luận:

- ▶ Phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt có thể bị cô lập và cô thế và bị đối xử phân biệt hàng ngày tại các nhà tù của tiểu bang Victoria. Sự kiện này cho thấy tình trạng phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt bị ở tù có thể tệ hơn và khổ hơn phụ nữ khác. Kể từ Cuộc Xem Xét Rộng Khắp Năm 2005 đã được thực hiện, các vấn đề đối xử bất công và phân biệt đối với phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt dường như không thay đổi gì nhiều;
- ▶ Thay vào đó, dường như hệ thống nhà tù phụ nữ còn trở nên khép kín và bí mật hơn nữa kể từ khi Cuộc Xem Xét Rộng Khắp Năm 2005 được thực hiện. Việc tìm biết thông tin về tình trạng hàng ngày mà phụ nữ tại các nhà tù của tiểu bang Victoria phải trải qua là chuyện cực kỳ khó khăn.
- ▶ Vì vậy, vấn đề phân biệt đối xử ít khi được nhận ra nội trong hệ thống nhà tù phụ nữ và vấn đề này dễ trở thành chuyện bình thường và ăn sâu, từ đó ảnh hưởng đáng kể đến cuộc sống và việc đối xử với phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt trong tù.
- ▶ Trong một số khía cạnh, Cơ Quan Cải Huấn Victoria có thể cũng vi phạm bốn phạm của họ theo Hiến Chương Tiểu Bang Victoria trong việc đối xử với phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt trong hệ thống nhà tù.

Khi xem xét những phát triển chính sách liên quan tới phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt kể từ Thịnh Cầu Xem Xét Năm 2005, người ta nhận thấy:

- ▶ Kể từ năm 2005, Bộ Tư Pháp và Cơ Quan Cải Huấn Victoria sử dụng ngôn từ có tính cách bao gồm hơn về mặt văn hóa và tôn trọng tính đa dạng ngày càng nhiều hơn trong những khuôn khổ về chính sách có liên quan tới phụ nữ bị ở tù;
- ▶ Ngôn từ này rõ ràng là không có thực chất, chủ yếu vì thiếu yếu tố công khai và chịu trách nhiệm trong việc thực hiện các sáng kiến về chính sách đã được Cơ Quan Cải Huấn Victoria và Bộ Tư Pháp công bố và thúc đẩy;
- ▶ Các sáng kiến về chính sách cụ thể có thể được cải thiện bằng việc trực tiếp tham khảo ý kiến phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt đã từng bị ở tù hoặc đang ở tù và gia đình của họ để xác định những sách lược hiệu quả và thích hợp nhất để giải quyết vấn đề phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt bị cô lập và cô thế trong hệ thống nhà tù; và
- ▶ Các nhà làm chính sách nên đặt lên hàng ưu tiên những sách lược khác hơn về chính sách, chẳng hạn như giảm bớt chi tiêu cho các nhà tù và đầu tư vào các cộng đồng địa phương để tạo ra sự thay đổi hiệu quả và biến đổi chu kỳ vào tù ra khám tại hại, có ảnh hưởng đến các cộng đồng có nguồn gốc văn hóa và ngôn ngữ dị biệt nhất định.

Những Đề Nghị Rộng Khắp Chủ Yếu

Điều thiết yếu là EOCV (bây giờ là Ủy Hội Bình Đẳng Cơ Hội và Nhân Quyền Tiểu Bang Victoria) được giao quyền hành động độc lập để điều tra những vấn đề phân biệt đối xử rộng khắp tại tiểu bang Victoria. Ủy Hội nên mạnh dạn sử dụng bất cứ quyền lực pháp định nào như vậy theo cách công khai, minh bạch và chịu trách nhiệm. Trong trường hợp phát sinh vấn đề thuộc quyền lợi công chúng và quan trọng có liên quan tới cơ quan công quyền, bất cứ cuộc điều tra nào về vấn đề đối xử phân biệt rộng khắp đều phải được tiến hành công khai và Ủy Hội nên đệ trình các báo cáo của cuộc điều tra trong Nghị Viện.

Việc Ủy Hội thực thi các đề nghị của các cuộc điều tra về vấn đề phân biệt đối xử rộng khắp nên bao gồm yêu cầu chính phủ phải đệ trình cách thức đối phó trong Nghị Viện trong vòng thời hạn nhất định. Nếu Ủy Hội không được trao quyền lực trực tiếp để ủy nhiệm cách thức đối phó như vậy, thì các yêu cầu báo cáo công khai phải là một phần của cam kết, các thông báo tuân thủ hoặc kế hoạch hành động phải thực thi do Ủy Hội đưa ra.

Ủy Hội nên được trao quyền lực độc lập để xem xét việc tuân thủ đạo luật bài trừ nạn đối xử phân biệt và Hiến Chương Tiểu Bang Victoria của các cơ quan công quyền. Những quyền lực này phải do Ủy Hội có thể tùy nghi sử dụng, thay vì phụ thuộc yêu cầu của cơ quan công quyền liên quan.

Đề nghị liên quan tới chính sách và thủ tục

Có thông ngôn và phiên dịch viên

- ▶ Việc có thông ngôn viên phải là một phần trong thủ tục và quy cách thường lệ trong các nhà tù, cũng như việc sử dụng các tài liệu dịch trong sinh hoạt hàng ngày. Sự việc này phải được thực hiện không chỉ với những quyết định quan trọng, chẳng hạn như việc quản trị về y tế và bản án mà còn với việc sử dụng và hưởng các chương trình và dịch vụ.
- ▶ Ưu tiên một cần phải được áp dụng với việc sử dụng và đòi hỏi dịch vụ thông ngôn viên mặt đối mặt cho các cố vấn pháp lý và nhân viên trợ giúp nào muốn nói chuyện với người có nguồn gốc không nói Tiếng Anh trong tù;
- ▶ Phải lập thủ tục rõ ràng về việc cho phép “cú gọi vào” dành cho cố vấn pháp lý và nhân viên trợ giúp đang giúp đỡ cho tù nhân có nguồn gốc không nói tiếng Anh để họ được sử dụng dịch vụ thông dịch qua điện thoại;

Quyền Tự Do Tín Ngưỡng

- ▶ Nhân viên và ban quản trị nên được huấn luyện nhiều hơn về quyền tự do tín ngưỡng và tôn trọng việc theo các đạo giáo khác nhau.

Sinh Hoạt Giải Trí

- ▶ Nên hỏi phụ nữ có nguồn gốc văn hóa và ngôn ngữ dị biệt khi họ mới vào nhà tù phụ nữ xem họ có muốn được liên kết với các tổ chức và dịch vụ cộng đồng sắc tộc hay không, nếu được. Sau đó, phụ nữ này có thể sử dụng các mối liên kết vừa nêu để yêu cầu/mượn sách, DVD và tạp chí bằng ngôn ngữ của họ.

Lục Soát Cởi Bỏ Quần Áo

- ▶ Nếu bắt buộc phải tiến hành lục soát cởi bỏ quần áo, việc này nên được hạn chế là biện pháp cuối cùng trong trường hợp rõ ràng thấy có vấn đề an ninh cấp bách

mà không thể điều tra hoặc giải quyết theo phương pháp và/hay cách thức lục soát ít xâm phạm hơn.

Quảng bá tính đa dạng văn hóa tại các nhà tù

- ▶ Ban Cải Huấn Đa Văn Hóa nên tạo điều kiện để cộng đồng đóng góp ý kiến và tham gia rộng rãi kể cả nam lẫn nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt trong hệ thống nhà tù. Ủy Ban nên thôi thúc Bộ quảng bá và công bố các sách lược nhằm cổ xúy việc không phân biệt văn hóa và ngôn ngữ cả trong và ngoài các nhà tù của tiểu bang Victoria.

Thu thập dữ liệu:

- ▶ Việc thu thập dữ liệu về ngôn ngữ và sắc tộc tại các nhà tù của tiểu bang Victoria nên được công bố;
- ▶ Việc thu thập dữ liệu cũng nên bao gồm thời gian phụ nữ ở Úc, quốc tịch và tình trạng Di Trú.

Nhân Viên Liên Lạc Người Việt (VLO)

- ▶ Cần phải có nhiều nhân viên khác nhau để đáp ứng nhu cầu của phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt và các nhân viên này phải nên là phái nữ và được chỉ định làm nhân viên cộng đồng độc lập, trực thuộc một tổ chức cộng đồng thay vì nhân viên nhà tù;
- ▶ Nhân viên xã hội hoặc nhân viên tư vấn đa văn hóa phải được bổ nhiệm tại các nhà tù phụ nữ và giữ nhiệm vụ khác hẳn nhiệm vụ của Nhân Viên Liên Lạc Người Việt.

Sự trợ giúp sau khi ra tù và trước khi ra tù dành cho phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt

- ▶ Các tổ chức và cơ sở cung cấp dịch vụ sau khi ra tù nên dồn dịch vụ và nhân vật lực để đáp ứng những tình huống và sang chấn đặc biệt mà phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt trải qua khi ra tù;
- ▶ Bất cứ cuộc xem xét nào về việc phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt sử dụng các dịch vụ sau khi ra tù đều phải đặt lên hàng ưu tiên một việc tham khảo ý kiến với phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt và gia đình của họ để đánh giá nhu cầu và những trợ giúp sau khi ra tù có sẵn;
- ▶ Phụ nữ diện bị trục xuất cần được trợ giúp và nâng đỡ để chuẩn bị tinh thần cho tình huống sau khi ra tù. Sự trợ giúp nên gồm có, tối thiểu, những mối liên kết với các nhóm cộng đồng chuyên ngành và nhân viên trợ giúp, cung cấp sự trợ giúp về di trú và hỗ trợ pháp lý.

Các Phương Sách Khác về Chính Sách

- ▶ Bộ Tư Pháp qua tham khảo ý kiến với các cộng đồng địa phương và Ban Cải Huấn Đa Văn Hóa xem xét các phương sách về chính sách và chi tiêu về Tái Đầu Tư Tư Pháp.

2. Introduction

⁵ Ombudsman Victoria, *Conditions for Persons in Custody*, Report of Ombudsman Victoria and Office of Police Integrity, July 2006, p. 80.

⁶ Sentencing Advisory Council, *Overall Numbers of Indigenous and Non-Indigenous prisoners in Victoria, 2004 – 2008*.

⁷ For a discussion of the role of systemic racism in relation to the over-representation of Indigenous people within the criminal justice system, see Harry Blagg et al, *Systemic Racism as a Factor in the Overrepresentation of Aboriginal People in the Victorian Criminal Justice System*. September 2005.

“The needs of non-English speaking prisoners do not appear to present a major concern in the current prison environment, as they are relatively small in number”,
— Victorian Ombudsman, 2006.⁵

The statement of the Victorian Ombudsman highlights a key problem in the way men and women from CALD backgrounds are treated in the Victorian prison system. The statement suggests that as persons of CALD backgrounds are a minority in the prison system, their needs and rights can be overlooked.

The limited literature and academic reports concerning CALD women within the prison system have highlighted this problem, describing CALD women as the forgotten, silenced few. Equally importantly this research has also emphasised that CALD women experience imprisonment in a way which is extremely punitive. This is due to language and cultural barriers which create isolation, and embedded prejudice and discrimination which impacts on CALD women’s day-to-day prison life and post release experiences.

This project examines the situation of CALD women who are imprisoned in Victoria. To do this, the project has drawn upon the 2005 Federation of Community Legal Centres (FCLC) and Victorian Council of Social Services (vCOSS) *Request for a Systemic Review of Discrimination against Women in Victorian Prisons*, which raised significant issues concerning discrimination against CALD women on the basis of their race and religion within the prison system. This project follows up the serious issues raised in the 2005 report, specifically by:

- ▶ Further investigating the issues of discrimination raised in the 2005 Request for Systemic Review;
- ▶ Considering what problems these issues may raise in terms of Correction Victoria’s compliance with the *Victorian Charter of Human Rights and Responsibilities 2006*; and
- ▶ Evaluating the major policy developments in relation to CALD women in Victorian prisons to consider the practical impact such measures have had in addressing issues of discrimination.

Although some of the issues raised in this report may be applicable to CALD men in the Victorian prison system, the focus in the report has been placed directly on CALD women, and the particular policies and conditions of women’s imprisonment in Victoria. The decision has been made to build on existing research into discrimination against women prisoners because the conditions women face in the prison system have historically failed to inform policy and legislation. However, it must be noted that the situation of CALD men in Victorian prisons has been largely overlooked in academic and government research, and further attention to this area is urgently required.

Indigenous women’s experience of the prison system raises particular and complex issues, and it does not form the focus of this report. However, it is acknowledged that indigenous women continue to be massively over-represented in the Victorian prison system, and are more than 14 times likely to be imprisoned in Victoria than non-indigenous women.⁶ It is also considered that the complex and interconnected factors of disadvantage, poverty, over-policing and systemic racism which contribute to the over-representation of indigenous women in the criminal justice system can be used to inform our understanding of CALD imprisonment. Not simply in the over-representation of certain CALD backgrounds within the prison system, but the racist and damaging consequences of the prison industrial complex more generally.⁷

CALD is defined in this report to mean persons of non-English speaking backgrounds, or persons who use English as a second language. The terms Non-English Speaking Background (NESB) and CALD are used interchangeably throughout this report. Women born in non-English speaking countries currently make up 24.1% of the women in Victorian prisons.⁸ The background of the women, based on their country of birth, is diverse, with women born in Africa, the Middle East, Latin America, Asia and Europe all imprisoned in Victoria. Although women born in Vietnam constitute the largest group of CALD women in Victorian prisons, the focus of this report has not been placed upon Vietnamese women as a group, but rather the way in which the prison system responds to cultural, linguistic and religious diversity more generally.

The report begins with a discussion of the social and policy background surrounding the imprisonment of women from CALD backgrounds. It then outlines the relevant project methodology. The key findings of the project are then discussed and evaluated, and some tentative conclusions and recommendations are drawn.

⁸ Department of Justice, *Statistical Profile of the Victorian Prison System, 2004-05 to 2008-09*, Table 27.



3. Background

3.1 Statistical profile of CALD women in Victorian prisons

The number of women imprisoned in Victoria has increased by 25% over the past year, with a disproportionate number of the women imprisoned coming from CALD backgrounds.⁹ The number of women born in Vietnam imprisoned in Victoria has almost doubled during the period of June 2008 – June 2009.¹⁰ There are currently more than 300 women imprisoned in Victoria, which is the highest number of women imprisoned in the State at any one time since prior to Federation.¹¹ This dramatic increase is unprecedented and extremely alarming, particularly as it affects women of CALD backgrounds.

There are two publicly run women's prisons in Victoria. The Dame Phyllis Frost Centre (DPFC), which is a maximum security prison with capacity for 288 persons, in Deer Park, and Tarrengower, a minimum security prison with capacity for 58 persons.¹² From the period June 2004 – June 2009, there were between 240 to 300 women imprisoned at both prisons at any one time.¹³

Data collected by the Department of Justice (DOJ) and published in the *Statistical Profile of Victorian Prisons* collates information concerning persons of CALD backgrounds in Victorian prisons only in terms of their country of birth, and whether that country is English speaking or non-English speaking. The most recent survey, as of June 2009, shows that women from non-English speaking backgrounds constituted close to 25% of the total number of women imprisoned in 2009. This is a dramatic increase from in the total number of CALD women imprisoned in Victoria, which was only around 16% of the totally prison population in June of 2008. It is also important to note that non-English speaking background women actually make up a higher proportion of the prison population than do non-English speaking background men, who currently constitute just over 20% of the male prison population.¹⁴ The current prison population of women from non-English speaking backgrounds is also significantly above the estimated number of women from non-English speaking backgrounds in the Victorian population, which the Australian Bureau of Statistics (ABS) 2006 census put at 17.6% of the population.¹⁵

The most significant change in the recent data has been the dramatic increase in the number of Vietnamese born women in Victorian prisons in 2008 – 09. Although there were 24 – 25 Vietnamese born women in prison during 2004 – 05, this number dropped to 15 – 16 women in 2006 – 07, but has recently risen to a high of 39 women, close to 14% of the overall women's prison population.¹⁶ In contrast, Vietnamese born men make up just over 5% of the male prison population.¹⁷

Given that in Victoria only around 1.5% of households speak Vietnamese within the home, these figures show that the number of Vietnamese born women in Victorian prisons are massively over-represented.¹⁸ Vietnamese women in Victoria are not only nine times more likely to be imprisoned than women from other backgrounds, but are also three times more likely to be imprisoned than Vietnamese men.

It is difficult to discern any other real trends in the numbers of overseas born women in prison, both because the total number of women concerned is small, and data collected by DOJ is broadly categorised. It is also noted that as the statistics concerning CALD women in Victorian prisons are collated only in terms of the women's country of birth, this data may exclude many women born in Australia but who have strong ethnic or cultural identities. The key point is that the background of the women, based upon their country of birth, is diverse,

⁹ Weekly Custody Report, 28 October 2009 (Compiled by Corrections Victoria, PIMS Report).

¹⁰ Department of Justice, *Statistical Profile of the Victorian Prison System*, 2004 – 05 to 2008 – 09, Table 26.

¹¹ Victorian Year Book, 1973 (ABS), p. 116.

¹² Stocktake Muster for 1 November 2009, sourced by Charandev Singh.

¹³ Department of Justice, *Statistical Profile of the Victorian Prison System*, 2003 – 04 to 2007 – 08 and 2004 – 05 to 2008-09, Table 26.

¹⁴ *Ibid.*, Table 27. In 2004, 20.5% of the women's prison population was born in non-English speaking countries, compared to 16.8% in June of 2008.

¹⁵ Victorian Multicultural Commission, *Population Diversity in Local Councils in Australia*, Based on 2006 Census.

¹⁶ Department of Justice, *Statistical Profile of the Victorian Prison System*, 2004 – 05 to 2008 – 09, Table 27.

¹⁷ *Ibid.*, Table 26.

¹⁸ Hanh Tran, 'Vietnamese Women Offenders: Challenges for the Victorian Correctional System?' Presentation to the Corrective Services Administrators Council, 7th National Women Offenders Conference, Department of Justice, November 2007.

¹⁹ Department of Justice, *Statistical Profile of the Victorian Prison System*, 2007 – 08, Table 26.

²⁰ Corrections Victoria, *Standards for the Management of Women Prisoners in Victoria*, April 2008, p. 6.

²¹ Hereafter the 'Victorian Charter'.

with women from a range of different regions including Africa, the Middle East, Latin America, Asia and Europe.¹⁹

3.2 Legal and policy framework relevant to CALD women in the corrections system

A. Corrections Legislation and Procedures:

- ▶ *Corrections Act 1986* (Vic): key legislative document concerning the corrections system. Contains minimal information concerning prisoners' rights or treatment within the corrections system.
- ▶ *Standards for the Management of Women Prisoners in Victoria*: sets the minimum requirements for women's correctional services in Victoria and is also described as the "basis for ensuring accountability" of the system.²⁰ Section 27 of the Standards describes requirements in relation to women from CALD backgrounds, but provides only broad guidelines regarding language, interpreters and respect for cultural diversity.
- ▶ *Director's Instructions (Procedures)*: more detailed document which deals with operating principles and procedures in the corrections system. Instruction no. 2.9 regards prisoners from non-English speaking backgrounds. These procedures apply to both men and women in public prisons in Victoria, and similar procedures apply to private prisons.

B. Key Policy Documents

- ▶ *Better Pathways Strategy* (2004 – 2009): the four year strategy adopted by DOJ primarily to address the increase in the number of women imprisoned in Victoria and the high levels of women returning to prison. The strategy has involved infrastructure and programs spending, including on post release programs and community corrections.
- ▶ *Women's Correctional Services Framework* (August 2007): an initiative of the Better Pathways strategy and described as a "blue print" for the delivery of correctional services to women. Contains broad operational objectives of the women's correctional system and a work plan for priority projects.
- ▶ *Cultural Diversity Plan* (2006 – 2008): the plan adopted by the DoJ to promote cultural diversity within the Victorian justice system. Contains a specific section concerning "*CALD Prisoners and Offenders*" which outlines several high level commitments to be acted on by DoJ and Corrections Victoria in the 2006 – 08 period.

C. Relevant Rights and Anti-Discrimination Mechanisms

- ▶ *Equal Opportunity Act 1995* (Vic): prohibits direct and indirect discrimination including where that discrimination is made on the basis of race, religion and sex.
- ▶ *Victorian Charter of Human Rights and Responsibilities 2006*²¹: applicable to public authorities since 1 January 2008. Corrections Victoria is the public authority responsible for correctional facilities in Victoria, and it is assumed

that Corrections Victoria, in its management and operation of the women's prisons, is obliged to act compatibly with human rights as specified in the Charter.²²

3.3 Research and studies considering the situation of CALD women in prison

There has been limited and sporadic research into the situation of women from CALD backgrounds who are imprisoned in Victoria. What attention there has been to CALD women within the prison system in Australia has largely been the result of independent academic research and work undertaken by prisoner advocacy groups, particularly the Queensland based organisation Sisters Inside.

Patricia Easteal's 1991 study examining overseas born women in Australian prisons remains the most comprehensive enquiry into the situation of imprisoned women from CALD backgrounds.²³ The study was based on Australia-wide prisoner census data, surveys of prison employees and semi-structured interviews with a large number of overseas-born women in Victorian, Queensland and NSW prisons. The study concluded that, "These women's imprisonment experiences were, in a plethora of ways, more difficult and problematic than the experiences of those born in Australia."²⁴ Particular attention was drawn to prison culture shock, the lack of multiculturalism in the prison environment, prejudice and discrimination, language problems, isolation and the inadequacy of prison work and education programs. The research also highlighted the distinct experiences of overseas born women, and the particular and extreme difficulties faced by "deportee" women who will be removed from Australia at the end of their sentences.

It was suggested that many of the difficulties faced by overseas born women in Australian prisons could be addressed by prison authorities, but remained unheeded centrally due to a "paucity of numbers, poor communication, and a monolithic approach to correctional services."²⁵ Within the women's prison population, a group which is itself often overlooked as a subset of the larger male prison population, overseas born women were almost totally ignored — in Easteal's description, they were therefore "the forgotten few".

Although some effort was made, following Easteal's work in the 1990s, to highlight the voices of NESB women in Victorian prisons²⁶, it was not until 2001 that focused research on the specific issues faced by women from NESB was published by Sisters Inside, which drew on extensive surveys of women in South Eastern Queensland prisons.²⁷

The Sister's Inside report highlighted that although some improvements had been made in Queensland prisons since Easteal's 1991 report, such as the increased use of interpreters and cross-cultural training of prison staff, these improvements remained limited. The surveys carried out with NESB women highlighted that in many circumstances they remained isolated within the prison environment, with limited understanding of what was happening to them.²⁸ It was also noted that although there has been an increased use of telephone interpreters, procedures for their use remained largely ad hoc, and the services often poorly and ineffectively used.²⁹ NESB women were also found to have experienced extensive violence in their lives prior to imprisonment, to suffer acutely from day to day abuse and racism that exists within prison life, and generally not have their cultural and religious needs met by the system. As such, the report concluded that while "Prison is a traumatic environment for anyone, it is doubly traumatic for those who have little or no English."³⁰

Another essay by Greta Bird in 2002 emphasised the need to address ethno-centricism and latent racism within the prison system, highlighting the limited

²² See Victorian Government Solicitor's Office, *Charter of Human Rights Newsletter*, January 2007, Issue 1.

²³ See generally Patricia Easteal, 'The Forgotten Few: Overseas-born Women in Australian Prisons', Bureau of Immigration, Canberra. Easteal's study examined the situation of overseas born women in Australian prisons, rather than using the language of CALD of NESB which has been adopted by more recent research and policy. For simplification, I rely throughout this report primarily on the terminology of "CALD" and NESB.

²⁴ Patricia Easteal, 'The Forgotten Few: Overseas-born Female Inmates in Australia', *Paper Presented at the Australian Institute of Criminology Conference, The Criminal Justice System in a Multicultural Society*, May 1993.

²⁵ *Ibid.*, p.15.

²⁶ See especially Barbara Denton, 'The voices of overseas-born women in Victorian prisons', *Paper Presented at the Australian Institute of Criminology Conference, The Criminal Justice System in a Multicultural Society*, May 1993.

²⁷ Sisters Inside, 'Bars Behind Bars', Women Against Violence, 11, 2001 - 2002, and Debbie Kilroy, 'The Silenced Few — NESB women in Prison', *Women in Action*, No. 3, 2003.

²⁸ Sisters Inside, 'Bars Behind Bars', *op cit.*, p. 36.

²⁹ *Id.*

³⁰ *Ibid.*, p. 41.

³¹ Greta Bird, 'Prisoners of Difference' in David Brown and Meredith Wilkie (eds.), *Prisoners as Citizens: Human Rights in Australian Prisons* (The Federation Press, Sydney, 2002).

³² On 1 Jan 2007, The Equal Opportunity Commission Victoria changed its name to the Victorian Equal Opportunity and Human Rights Commission. For simplicity, it is referred to throughout this report as 'EOCV'.

³³ Corrections Working Group of the Federation of Community Legal Centers and the Victorian Council of Social Service, *Request for a Systemic Review of Discrimination Against Women in Victorian Prisons*, March 2005.

³⁴ The Request for Systemic Review formed part of a broader national and international movement to address discrimination against women in prisons. Internationally, the process had been commenced in 2001 by the Canadian Association of Elizabeth Fry Societies, which requested a systemic review of women's imprisonment pursuant to the Canadian Human Rights Act, s 61(2). It was also envisaged that, should domestic mechanisms fail to address or remedy the issues of discrimination raised in the complaints, then a broader complain could also be made to the United Nations to address these issues. See further Greta Jubb and Claire Weigall, 'Systemic Discrimination against Women in the Prison System in Victoria,' *Presentation at the Darebin Community Legal Centre Law Week Event Doubly Damned: Women, Prison and Society*, May 2005.

³⁵ See 2005 *Request for Systemic Review*, pp. 28 - 36.

attention to CALD women and therefore, "The urgent need for an inquiry into the position of female and male NESB inmates in Australian gaols."³¹

This research highlights that the most effective means of understanding the experience of CALD women in prison is by directly engaging with and speaking to these women themselves. However, such research has not been done on a systematic basis in Victoria since Eastaer's 1991 study. The research in this area also highlights that in a number of ways, women from NESB or CALD backgrounds may experience prison in a way which is not only different from that of other women, but also in a way that is extremely punitive. This area is complex, due to the diversity of backgrounds of CALD women, and therefore the different ways in which the women respond to, resist, and are silenced by a prison culture that is predominantly Western. Research has also identified problems in the way in which prison authorities have responded to cultural and linguistic difference, and limits on the extent to which this difference has been recognised and respected.

3.4 Request for systemic review of discrimination against women in Victorian prisons

In 2005 the Federation of Community Legal Centres and Victorian Council of Social Services lodged a formal complaint to what was then the Equal Opportunity Commission Victoria (EOCV)³² requesting a systemic review into discrimination against women in Victorian prisons.³³ The request highlighted that although this discrimination was attributed firstly to the gender of prisoners, there were also specific areas of discrimination on the basis of race and cognitive ability by the State Government of Victoria in its management of the Victorian women's prisons at Tarrengower and Deer Park. The request called upon the Commission to initiate a systemic review of this discrimination under s 156 of the *Equal Opportunity Act 1995* (Vic). Similar requests for systemic review of discrimination against women prisoners were also lodged in the same period in NSW and Queensland.³⁴

One of the primary issues addressed in the Victorian Request for Systemic Review was discrimination against women from CALD backgrounds in contravention of s 7 of the Equal Opportunity Act. The complaint relied upon anecdotal evidence which highlighted incidents and practices of direct and indirect racial discrimination directed towards women from CALD backgrounds. The report therefore remains significant as the only thorough investigation and documentation of the practices inside the Victorian prison system which are discriminatory and infringe upon the rights of CALD women. Some of the key areas highlighted in the report affecting CALD women inside the Victorian prison system concerned:

- ▶ **Racism:** by prison officers and other women;
- ▶ **Religion:** unequal access to faith services and religious representatives;
- ▶ **Interpreters and translators:** prison system based on the assumption that prisoners speak English;
- ▶ **Medical services:** absence of culturally and linguistically appropriate medical services;
- ▶ **Programs:** unequal entry and access to programs due to a dominant requirement of English to participate in these programs;
- ▶ **Food:** failure to provide access to culturally specific food.³⁵

The discrimination identified in the report impacted upon the day to day life of CALD women in multiple ways, and was also considered embedded in aspects of the practice and culture of the primary women's prison in Victoria, the Dame Phyllis Frost Centre at Deer Park.

3.5 Response to the request

Corrections Victoria and the EOCV failed to publicly investigate or act upon the serious allegations of discrimination against women in Victorian prisons which were raised in the 2005 Request for Systemic Review.³⁶ Although the EOCV issued a report on its “considerations and conclusions” in relation to the Request, this report did not provide any fresh investigation or determination of the issues of discrimination which had been raised. The response of the EOCV has therefore been characterised by the FCLC not only as one of delay, but also of deference by the EOCV to Corrections Victoria.³⁷

Corrections Victoria consistently denied the presence of any serious or systemic discrimination against women in Victorian prisons despite the evidence presented in the Request for Systemic Review.³⁸ In addition, Corrections maintained that any concerns which the Request raised concerning the conditions of imprisonment of women in Victoria would be addressed by the Better Pathways policy strategy.

That Better Pathways would be adequate to address the issues raised in the 2005 Request for Systemic Review was always highly questionable, given that the strategy consisted primarily of a building program and programs spending directed at reducing the numbers of women imprisoned. Better Pathways was not directed at addressing the conditions of detention and the systemic, underlying issues of discrimination and inequality that the Request identified.³⁹

However, more problematic than Corrections Victoria’s failure to adequately respond to the allegations of systemic discrimination was the absence of any substantive action or investigation by the EOCV, which is the body to whom the Request for Systemic Review was actually made. This failure is even more apparent because the EOCV did accept that breaches of the laws prohibiting discrimination under the Equal Opportunity Act had been raised by the Request, that these allegations were of a systemic and serious nature, and also that the issues raised were of broad public interest.⁴⁰ Furthermore, although the EOCV considered that the Better Pathways strategy might constitute a step forward in improving the circumstances under which women are imprisoned in Victoria, these measures were not considered sufficient, on their own, to address the allegations of discrimination which the Request raised. The EOCV stated specifically that “The Commission does not accept that the strategy directly addresses the allegations of discrimination against women prisoners.”⁴¹

Despite these findings, the EOCV declined to seek the consent of the Victorian Attorney General to conduct a formal investigation into systemic discrimination against women in Victorian prisons. In its written response to the Request, the Commission considered that its powers to investigate were “unnecessarily formal and too adversarial”, suggesting also that it was not clear that the exercise of its investigative powers would lead to “durable solutions”.⁴² On this basis the EOCV considered it justified to conclude that an alternative and preferable remedy to a formal investigation would be to adopt a collaborative approach working with Corrections Victoria. This approach was to involve:

- ▶ EOCV was to exercise its power under s 162 of the Equal Opportunity Act to carry out public education and dissemination of information concerning the elimination of discrimination in Victorian prisons;⁴³ and
- ▶ EOCV sought to be involved in a human rights audit, initiated by Corrections Victoria, of the women’s prison system, which would have the capacity to identify measures necessary to eliminate and avoid discrimination applying to women in prison. This audit was to be independent, transparent and release publicly available findings.⁴⁴

³⁶ Amanda George, ‘Discipline and Discrimination: Women prisoners and human rights’, *Precedent*, July/August 2007, p.25.

³⁷ FCLC, *Equal Opportunity Act Review Submission*, January 2008, p. 12.

³⁸ *Ibid.*, p. 12 and Equal Opportunity Commission Victoria (EOCV), *Women Prisoners in Victoria*, December 2006, p. 4.

³⁹ For example, although Corrections Victoria have maintained that the Better Pathways strategy was a sufficient response to deal with issues concerning the conditions of women’s imprisonment, only one of the 28 Better Pathways initiatives was directly addressed to CALD women: the institution of a Vietnamese Liaison Officer at DPFC. This initiative was clearly insufficient, on its own, to address the multiple issues of discrimination against CALD women raised in the complaint.

⁴⁰ EOCV, *Women Prisoners in Victoria*, op cit, pp. 5 and 35.

⁴¹ *Ibid.*, p.5 – 6.

⁴² *Ibid.*, p.6 and pp. 35 – 37.

⁴³ *Ibid.*, p. 7.

⁴⁴ *Ibid.*, p. 8.

⁴⁵ Amanda George, 'Discipline and Discrimination,' *op cit.*, p.25.

⁴⁶ See Anti-Discrimination Commission Queensland, *Women in Prison*, March 2006 and the ACT Human Rights Commission, *Human Rights Audit on the Operation of ACT Correctional Facilities under Corrections Legislation*, July 2007.

⁴⁷ DOJ has released the executive summary of an evaluation of the Better Pathways strategy carried out by Pricewaterhouse Coopers in 2009. Given that the full report of this evaluation has not been released publicly, the broad conclusions reached by Price Waterhouse Coopers as to the positive impacts of the strategy are difficult to independently assess. This assessment also took place on the basis of limited data, and before the dramatic increase in the number of women imprisoned in Victoria during 2009. The conclusions reached in the evaluation as to the impact of the strategy in reducing the number of women imprisoned in Victoria therefore require reassessment. See *Evaluation of the Better Pathways Strategy — Executive Summary*. (Held by author).

⁴⁸ With the enactment of the Victorian Charter on 1 January 2007 the EOCV was changed to the Victorian Equal Opportunity and Human Rights Commission. References to the Commission after 2007 therefore generally use its new name of the VEOHRC.

The Final Report of the Equal Opportunity Act Review, An Equality Act for a Fairer Victoria, July 2008, recommendation 9.

⁴⁹ *Ibid.*, recommendation 67.

It is not clear that either of these responses were put into action by the EOCV. The key element of EOCV's preferred remedy was to collaborate positively with Corrections Victoria to develop an anti-discrimination and human rights framework against which the policies, programs, practices and infrastructure of the women's prison system would be measured. When Corrections refused to undertake an open and transparent audit and instead allocated a review of women's prisons to an internal departmental body, the Victorian Corrections Inspectorate, the EOCV refused to reconsider its decision not to carry out their own review.⁴⁵ The EOCV was powerless to compel Corrections Victoria to submit to an audit by any other mechanism.

As such, although the EOCV had accepted that there were serious and systemic breaches of discrimination law affecting the rights of women prisoners in Victoria, it failed to act to address, respond to or investigate these breaches in any substantive way. This failing can be contrasted with the response to similar requests for systemic review of discrimination in women's prisons which were launched in the ACT and Queensland, where substantial investigations were launched by the Queensland Anti-Discrimination Commission and the ACT Human Rights Commissioner into these issues.⁴⁶

Finally, although Corrections Victoria had maintained that the Better Pathways strategy was a sufficient response to address any issues regarding the conditions of women's imprisonment in Victoria, the success of that strategy itself is highly questionable, given the recent dramatic increase in the number of women incarcerated in Victoria, and reports of chronic overcrowding at DPFC. Equally importantly, no detailed evaluation of the Better Pathways policy has been released publicly, again preventing proper scrutiny of the strategy and the full assessment of its effects.⁴⁷

3.6 VEOHRC powers to address systemic discrimination

The failed response to the 2005 Request for Systemic Review demonstrates clear problems in the powers and capacity of the VEOHRC to respond to issues of systemic discrimination in Victoria. The response showed not only that the VEOHRC lacked adequate powers to investigate and respond to a complaint concerning systemic discrimination, but also that the way in which the VEOHRC proposed to exercise its authority was flawed, given the reliance it placed upon cooperation and collaboration with Corrections Victoria.

The 2008 Equal Opportunity Review (EO Review) recognised that the authority of the VEOHRC to address and eliminate discrimination in Victoria had been weakened, given that this authority was dependent upon approval by the Attorney General to initiate and conduct investigations into systemic discrimination.

The EO Review recommended:

- ▶ The VEOHRC be under an express, statutory duty to eliminate discrimination as far as possible;⁴⁸
- ▶ The VEOHRC should be able to conduct own motion investigations into systemic issues arising from disputes that the Commission becomes aware of; and
- ▶ The VEOHRC should be given power to conduct inquiries on its own motion or on referral from the Attorney General into any issues arising in relation to the operation of the Act, including issues of systemic discrimination.⁴⁹

The EO Review considered that a broad and flexible own motion inquiry power was required by the VEOHRC in order to permit the Commission to adopt gradual,

flexible responses to serious issues of systemic discrimination.⁵⁰ The Review also stated that it was envisaged that the use of inquiry powers would be infrequent, and that generally “cooperative” and “flexible” approaches to the conduct of inquiries would be adopted.⁵¹

⁵⁰ Ibid., at 6.166.

⁵¹ Ibid., at 6.123, and 6.111.

The difficulties that were faced by the VEOHRC in adopting a flexible or co-operative approach with Corrections Victoria in response to the 2005 Request for Systemic Review has demonstrated not only that inquiries ought to be open, accountable and transparent, but also that the outcomes of these inquiries must be clearly stated, enforceable and monitored closely by VEOHRC.

New powers granted to VEOHRC

In 2009 the *Equal Opportunity (Amendment) Act 2009* expanded the powers of VEOHRC to investigate systemic discrimination by inserting additional powers under s 156 of the *Equal Opportunity Act 1995* for VEOHRC to conduct investigations which was not dependent upon the consent of the Attorney General for initiation. These powers will be altered with the full commencement of the new *Equal Opportunity Act 2010* in August of 2011, which repeals the *Equal Opportunity Act 1995* and creates new powers for VEOHRC to conduct public inquiries and investigations.

However, the new *Equal Opportunity Act 2010* significantly waters down the powers which were recommended by the 2008 EO Review. Some of the key problems in relation to VEOHRC’s powers have not been fully remedied by the new Act.

Section 127 of the new Act grants VEOHRC a modified investigation power, which will permit VEOHRC to investigate issues of systemic discrimination. However, the broader public inquiry power under s 128 of the Act remains dependent upon the consent of the Attorney-General for VEOHRC to initiate an inquiry. This is in contrast to the recommendations of the EO Review which emphasised that VEOHRC’s powers to conduct public inquiries ought to be exercisable at VEOHRC’s own motion.

VEOHRC’s submission to the EO Review specifically requested powers both to table reports in Parliament as to the outcome of inquiries and also the power to mandate government responses to such reports and recommendations within a specified time. Although VEOHRC has been granted the power to publish reports to the public and also report to the Parliament, no specific power has been granted to VEOHRC to mandate government responses to its reports or recommendations.

The experience of the 2005 Request for Systemic Review, particularly the inability of VEOHRC to mandate a response or concrete actions from Corrections Victoria, demonstrated that it is essential for public enquiries to be widely publicised. It is also essential that the non-compliance of public authorities with discrimination and human rights principles be brought to the attention of Parliament and the public generally.

Recommendations

- ▶ It is essential that VEOHRC has fully independent powers to conduct investigations and enquiries into the compliance of public authorities with the *Equal Opportunity Act 2010* and the *Charter of Human Rights and Responsibilities Act 2006*. These powers should not be dependent upon the consent of any government Minister or public authority for their exercise;

- ▶ VEOHRC should commit to exercising its new investigation and enquiry powers under the *Equal Opportunity Act 2010* in a way that is open, transparent and accountable. Where a matter is of public interest and significance and arises in relation to a public authority, any inquiry or investigation into systemic discrimination must be conducted publicly, and VEOHRC should table its full findings in Parliament;
- ▶ The guidelines governing the circumstances in which VEOHRC will conduct inquiries and investigations into systemic discrimination under ss 127 and 128 of the *Equal Opportunity Act 2010* should be transparent and publicly available; and
- ▶ VEOHRC's powers to enforce its recommendations following an enquiry or investigation into systemic discrimination should include:
 1. The ability to require the tabling of government responses to parliament within a specified time frame; and
- ▶ The power to request additional reports on a yearly basis from public authorities demonstrating their continued performance in relation to the VEOHRC's findings and recommendations.
- ▶ Given that VEOHRC does not have direct power to mandate public reporting, these requirements should be made part of the enforceable undertakings or compliance notices issued by VEOHRC to public authorities.

4. Project methodology

⁵² It is not clear that either of these reviews will be made fully public.

The project provides an update on the situation of CALD women in Victorian prisons, following on from the *2005 Request for Systemic Review*. There are two key project aims:

1. To further investigate the areas of discrimination raised in the 2005 report, and consider:
 - (i) Do these issues remain relevant to CALD women in Victorian prisons?
 - (ii) What problems do these issues raise in terms of Corrections Victoria's compliance with the Victorian Charter of Human Rights and Responsibilities? and
2. To evaluate policy developments relevant to CALD women, and consider:
 - (i) Whether these measures have had a practical impact to address the issues of discrimination faced by CALD women;
 - (ii) Whether such policy measures could be altered or improved.

The project results are structured in accordance with the aims of the project, with Part I of the results further investigating issues of discrimination relevant to CALD women and Part II examining major policy developments.

It is a pertinent time to consider and evaluate the extent to which the practice and procedures of Corrections Victoria do actually comply with the Human Rights standards under the Victorian Charter, given that the Charter has now been operational with respect to public authorities since 1 January 2008. Furthermore, it is also an appropriate time to review the extent to which the

broad policy commitments of the DOJ and Corrections Victoria have been translated into practice, given that the Better Pathways strategy is scheduled to be reviewed 2009 and the Department's Cultural Diversity Plan is currently being revised.⁵²

The project has adopted a consultative approach, which has sought to prioritise the collection of data and information relevant to the project area from community organisations, individuals and government agencies directly involved with, or who have experience in the area of women's imprisonment and related support services. Three mechanisms have been used to gather information and data:

- ▶ Qualitative research into persons and organisations involved with service delivery, advocacy and support for men and women who are imprisoned, particularly community groups, organisations independent of government, and academics.
- ▶ Research into previous studies and reports that have considered the situation of women from CALD backgrounds in Australian prisons. This has also involved consultation with persons and organisations involved in the 2005 Request for Systemic Review.
- ▶ Examination of relevant Victorian Government policy concerning CALD women in Victorian prisons. This has also involved consideration of procedures and standards relevant to the DPFC and Tarrengower prisons, and the sourcing of relevant data on women from CALD backgrounds in these prisons.

⁵³ 2005 *Request for Systemic Review*, op cit., p. 31.

⁵⁴ Kilroy, 'The Silenced Few' op cit., p. 2.

⁵⁵ Sisters Inside, 'Bars Behind Bars', op cit., p. 37.

⁵⁶ 2005 *Request for Systemic Review*, op cit., p. 33.

5. Results and evaluation

5.1 The treatment of CALD women in Victorian prisons

As discussed above, the 2005 Request for Systemic Review identified serious issues of systemic discrimination against CALD women in the Victorian Prison system on the basis of race, ethnicity and religion.

Although this project has aimed to further investigate these issues of discrimination, there were real difficulties encountered in accessing adequate information as to the day-to-day practice and conditions within the Victorian women's prison system, and also time constraints which prevented a detailed examination of all issues affecting CALD women. Two key areas of importance — culturally and linguistically relevant medical services and food — have not been addressed in this report due to these constraints.

The results address the following areas:

- ▶ Access to interpreters and translators;
- ▶ Access to culturally and linguistically appropriate programs and services;
- ▶ Cultural and religious freedoms; and
- ▶ Humane treatment when deprived of liberty.

5.1.1 Access to interpreters and translations

A. Within prison

The 2005 Request for Systemic Review highlighted that, "The prison's failure to provide interpreters and translations in all situations where they are required by CALD prisoners is a clear case of indirect discrimination."⁵³ The complaint emphasised that the operational procedures of the prison are based on a presumption that prisoners speak English, which affects CALD women's knowledge, understanding and access to services within the prison system. Specific issues raised which concerned CALD women's access to interpreters and translated materials included:

- ▶ Vietnamese inmates are often called upon to translate for other women, rather than officers accessing telephone interpreters;
- ▶ Induction materials are not translated into relevant language;
- ▶ Signage, emergency procedures and operating procedures of prisons are only available in English; and
- ▶ There is routine lack of access to interpreters for medical appointments.

The issue of access to interpreters is significant for CALD women with limited English skills who are imprisoned. In a survey of NESB women in Queensland prisons, Sisters Inside found that of the "worst issues" faced by these women, 85% nominated language and cultural barriers, and 62% that they did not understand sentence and prison process.⁵⁴ Information is central to prison life and the ability of people inside prison to cope with and respond to prison rules and regulations. At each stage of progress through the system, "Important information must be taken in and crucial decisions made."⁵⁵ Not knowing or fully understanding this information due to limited or poor English skills may render women from CALD backgrounds more likely to break prison rules, which risks disciplinary action and affects parole.⁵⁶

The prison system also requires filling out many forms, which may be especially difficult for CALD women and therefore affect their ability to access programs. As a consequence, it has been reported that CALD women find it stressful within

prison to ask permission to do the smallest thing, due to the requirement of filling in forms and waiting long periods. As a result, it was observed that women would actually give up and do without social contact with people from outside of the prison, including their children.⁵⁷

The failure to provide adequate access to interpreters may therefore seriously jeopardise CALD women's contact with their family. Given that contact with children has consistently been reported to be one of the most significant worries women inside prison face, it also suggests that CALD women are likely to have this stress seriously exacerbated and suffer depression and anxiety within prison even more severely.

Policy Changes: Vietnamese Liaison Officer⁵⁸

The Vietnamese Liaison Officer (VLO) is required to interview all Vietnamese women within 48 hours of reception into the prison, and part of the VLO's role is also specified to be the delivery or organisation of interpreters and translations. Although this may be a positive step in providing some avenue for Vietnamese women to ask questions regarding procedure and practices in the prison and facilitate access to translated materials, some problems remain, in particular:

- ▶ Reliance on ad-hoc, in house interpreting and translating rather than that of a qualified and independent third party. This practice potentially undermines the development of systemic procedures by officers for the use of in person and telephone interpreters;
- ▶ The VLO is only available during the day-time and is often called away from DPFC. Access to interpreters for Vietnamese women should not be delayed in such circumstances;
- ▶ The privacy of women may be compromised by the use of the VLO rather than an independent third party, especially in context of the receipt of health and legal advice, where an independent, phone or onsite interpreter should be used;

It is important to also note that the position of the VLO does not address the situation of women from other CALD backgrounds with limited English skills. It is unclear whether prison management has sought to translate materials for these women or develop systemic procedures for access to interpreters.

Current Use of Interpreters and Translators

The Standards for the Management of Women Prisoners in Victoria do provide that CALD women should be able to indicate a preference for the use of an interpreter, and further, in certain situations where significant issues and information is conveyed interpreters should be provided for women with difficulty comprehending English.⁵⁹ However, the more practical Director's Instructions state only that case managers should access interpreters "as required" in a more limited number of situations.⁶⁰ Other procedural documents tend to suggest that interpreters will only be accessed where information has been conveyed to women in English, but where the woman has then responded that they have not understood that information.⁶¹ This suggests the tendency only to access interpreters as a "last resort".

Although s 19 of the Victorian Charter provides that a person must not be denied the right to use his or her own language, this is a right which women of non-English speaking backgrounds in prison find difficult to exercise.

⁵⁷ Adele Murdolo, *Multilingual Health Education with Immigrant Women in Victorian Women's Prisons: Project Report*, Working Women's Health, 2002 – 2004, p. 28.

⁵⁸ The role of the Vietnamese Liaison Officer is discussed in detail at 5.2.2 below.

⁵⁹ Corrections Victoria, *Standards for the Management of Women Prisoners in Victoria*, section 27.2.

⁶⁰ Director's Instruction No. 2.9, Prisoners from Non-English Speaking Backgrounds, Correctional Standard No. 36.

⁶¹ Director's Instruction No. 1.11, Reception, Care and Control of Prisoners, Correctional Standard No. 3.0.

⁶² Adele Murdolo, *Multilingual Health Education*, op cit., p. 21.

⁶³ Id.

⁶⁴ Section 15 (2) *Charter of Human Rights and Responsibilities 2006* (Vic).

⁶⁵ Director's Instruction No. 4.7, Prisoner Communications, Correctional Standard No. 44, at 2.2.

⁶⁶ Interview 1F.

⁶⁷ Id.

⁶⁸ Section 25 (2)(b) *Charter of Human Rights and Responsibilities 2006* (Vic).

Working Women's Health has suggested that the immigrant women with whom they worked were often reluctant to identify themselves as preferring to speak a language other than English, as they did not want to separate from the broader group.⁶² It was noted that this suggests a dominant culture of racism within the institutional setting.⁶³ More practically, it also suggests that women from CALD backgrounds may often seek to "get by" by saying they understand information that is conveyed to them, even when it is difficult to understand. This reinforces the need for interpreter access to be part of regular procedure and protocol, and also the use of translated materials on an everyday basis. This should be the case not only for major decisions, such as medical and sentence management, but also for access to and use of prison programs and services.

B. Communication with the outside world

Non-English speakers inside the prison system face significant barriers to both seeking and receiving information from outside of the prison in the English language. Limits on access to phones and interpreter services may not only increase the isolation of people from CALD backgrounds within the prison system, but also prevent those individuals from seeking legal advice or assistance from government agencies while imprisoned.

Section 47 of the Corrections Act provides an extremely limited list of prisoner's rights while imprisoned. The receipt or making of telephone calls is not listed as a right of prisoners. However, the Victorian Charter provides that individuals have not only a right to use their language, but also a right to free expression, which includes the freedom to seek, receive and impart information.⁶⁴ The imposition of barriers to communication may impinge upon these rights.

Receipt of phone calls using an interpreter

Procedures for the receipt of phone calls by individuals in prison, even legal phone calls, is not provided for in the prisons Director's Instructions. "Free" telephone calls can only be approved by a unit manager where there are "exceptional circumstances"⁶⁵ There are no procedures established for the receipt of telephone calls with an interpreter. As such, access to phone calls from outside the prison is entirely at the discretion of prison management. This may cause barriers to persons with limited or no English who are unable to receive any telephone calls from persons outside the prison in English.

A Victorian legal service has reported that it was denied access to speak with a male non-English speaking client who was located at Port Phillip prison, despite needing to provide that client with urgent information regarding changes to his sentence.⁶⁶ As the client spoke only Vietnamese, and the legal service English, the advisor sought to have a telephone interpreter call into Port Phillip prison in order to facilitate a three-way conference call. However, prison authorities advised simply that such communication was "not permitted", despite the circumstances. The legal service was instead told a letter could be sent to this client, but the prison management refused to guarantee that anyone would be available to translate that letter for the client.⁶⁷

In this situation, there was no means for the legal service to speak with the client in his preferred language, or to pass on any communication to that client in English. The prison procedures prevented adequate communication in resolving the legal matter. This may constitute a breach of the right, guaranteed under the Victorian Charter, for a person charged with a criminal offence to communicate with their chosen legal representative.⁶⁸

Making phone calls using the telephone interpreter system

This situation is even more problematic when it is considered that persons with limited or no English skills also face significant barriers to the making of phone calls from inside prison using interpreters, and therefore are limited in their ability to seek information from outside prison in the English language. Again, there are no clear procedures in the Director's Instructions established for individuals in prison to phone outside using an interpreter.

The Arunta phone system is the Telstra controlled phone network which controls outgoing phone calls from Victorian prisons. The system permits prisoners to make phone calls only to a limited number of approved persons/numbers.⁶⁹ Approval for listing on the prisoner's phone record has been said to take weeks.⁷⁰ In general, telephone interpreter systems, when conducting three-way conversations (i.e. prisoner, legal advisor, interpreter) require that the individual dials the interpreter from within prison, then either a conference call facility must be used, or the interpreter must use their own conference facility and dial the third party. The system does not require, when a person is using the system inside the prison, anyone to "dial in" to the prison. However, several features make it difficult for CALD persons to access the service:

- ▶ The Arunta phone system does not permit access to 1800 or 1300 numbers — so access to cheaper telephone interpreter numbers is often blocked;⁷¹
- ▶ Phone calls to interpreter services will then be charged at STD rates. The Ombudsman has noted that because of limited prisoner income (up to \$5 per day), STD call rates are prohibitively expensive for many prisoners;⁷²
- ▶ The individual must also bear the costs of connecting to the third party and also the interpreter fees themselves; and
- ▶ The Arunta system is also monitored by prison authorities and phone calls are time limited. This means that an individual's privacy is compromised when using the system, and it is difficult to communicate in depth about complex issues, especially if reliant on a telephone interpreter to do so.

This suggests that although theoretically non-English speaking prisoners could access the telephone interpreter system, in practice there are significant practical impediments to such access imposed by the prison system. As Bird notes "this situation makes it difficult for non-English speaking prisoners to communicate with the world outside."⁷³ The range of impediments to the use of the Arunta phone system to communicate via third party interpreters suggests that it fails to provide an adequate mechanism by which CALD persons can communicate with the outside world while in prison.

One practical effect of the limits on CALD people's communications with the outside world may be their inability to seek legal advice regarding the conditions of their imprisonment. Prisoners' advice services have reported having very few CALD clients, either male or female, who access their services.

Recommendations for change

Both the barriers upon persons with limited English receiving phone calls via an interpreter and the impediments to NES prisoners seeking information from English speakers outside of the prison may therefore constitute an

⁶⁹ Director's Instruction No. 4.7, Prisoner Communications, Correctional Standard No. 44.

⁷⁰ Bird, 'Prisoners of Difference', op cit., p.72.

⁷¹ Id.

⁷² Ombudsman Victoria, *Conditions for persons in Custody*, op cit., p. 92.

⁷³ Bird, 'Prisoners of Difference', op cit., p.72.

⁷⁴ Adele Murdolo, *Multilingual Health Education*, op cit, p.10.

impediment to the individual's right to free expression under s 15(2) of the Victorian Charter. Although "lawful" restrictions may be imposed under the Charter, the limits here do not appear either justifiable or reasonably necessary, particularly where the limits interfere with an individual's right to access to legal advice.

Where the barriers actually operate to prevent a person from accessing legal advice, they may constitute an infringement of that persons' rights in relation to criminal proceedings, specifically the right under s 25(2)(b) to communicate with a chosen legal representative, and the right protected under s 25(2)(i) to have the free assistance of an interpreter if he or she cannot speak English.

The barriers to prisoners communicating with the outside world therefore need to be addressed, in the following ways:

- ▶ Priority should be placed upon the use and funding of face-to-face interpreters for legal advisors and support workers who seek to communicate with persons of non-English speaking background in prison;
- ▶ Clear procedures should be developed to permit "call-ins" for legal advisors and support workers assisting NES prisoners and allowing the use of telephone interpreters; and
- ▶ Prisons should also have their own interpreter code, and facilitate both personal and legal calls of NES prisoners using an interpreter, at an appropriate and non-prohibitive cost. In this respect, it should be noted that it is standard for Victorian and Federal government agencies to offer interpreter and translation services free of charge to CALD clients. This practice should be no different for individuals who are imprisoned.

5.1.2 Access to culturally and linguistically appropriate programs and services

The 2005 Request for Systemic Review also highlighted that the culture within the women's prisons, which assumed the ability of inmates to speak English and was predominantly Anglo-Australian, also indirectly discriminated against women from CALD backgrounds by limiting their access to prison programs and services. In particular, it was suggested that:

- ▶ There is a failure to provide culturally and linguistically appropriate medical and health services to CALD women;
- ▶ CALD women are unable to participate in many of the educational programs run in the prison due to the prison's failure to use interpreters in education; and
- ▶ CALD women are often unable to access release from prison programs as this information is provided only in English.

Working Women's Health worked with Immigrant women in DPFC and Tarrengower during 2002 - 04 and has emphasised that the cultural and linguistic appropriateness of the programs and services in prison are extremely important for the mental and physical wellbeing of CALD women who are imprisoned.⁷⁴ The organisation has suggested that the lack of appropriate cultural sensitivity within Corrections, and language barriers to services and programs, may result in CALD women experiencing fear, isolation, powerlessness and the stigmatisation of their culture. In addition,

CALD women may have insufficient information to act regarding sentence management, legal representation and health care.⁷⁵

The Women's Correctional Services Framework, adopted in 2007, has also begun to emphasise that Correctional Services should respond to women's diverse characteristics.⁷⁶ In this respect, it has been identified as an "operational objective" that women's Correctional services should be "culturally relevant ... [and] delivered in partnership with community based providers."⁷⁷ However, it is unclear to what extent this objective is being implemented in practice.

5.1.3 Cultural and religious freedoms

The 2005 Request for Systemic Review observed key areas of direct and indirect discrimination against CALD women in terms of their religious freedom and access to culturally appropriate foods. In particular it was noted that:

- ▶ The prison directly discriminates against women who are of certain religions by providing more religious services to women of other religions;⁷⁸
- ▶ The prison indirectly discriminates against CALD women of certain races and religions who are unable or unwilling to eat foods typical of an Anglo-Australian diet, by the practice of freely providing only those foods typical of an Anglo-Australian diet.⁷⁹

Under section 19 of the Charter, a person must not be denied the right to enjoy his or her culture. Freedom of religion is also protected under s 14(1)(b) which provides that every person is entitled to demonstrate his or her religion: s 14(2) which provides that a person must not be coerced or restrained from adopting or observing their religion: and s 19 which provides that a person must not be denied the right to declare or practice his or her religion. As such, the Charter seeks to guarantee both a broad freedom to observe different religious practices and also limits the extent to which any public authority can interfere with those practices.

A. Religion

The Regional Liaison Chaplain for the Victorian Women's Prison Region has stated clearly that she does not believe women face difficulties in freely practicing their religion while they are in prison. She emphasised that Christian, Jewish, Buddhist and Muslim faiths are all part of the Chaplaincy, and further that women are facilitated to celebrate key religious holidays and practices such as Ramadan, Eid, Hanukkah and the Vietnamese Moon Festival.⁸⁰ This is reflected in the Director's Instructions, as contracts with mainstream Christian, Islamic, Jewish and Buddhist organisations are held with the prison authorities to provide chaplaincy services. Detailed documents concerning the religious observances and practice of certain non-Christian faiths have also been attached to these procedures.⁸¹

However, some women may still face difficulties in accessing religious representatives and practicing their faith, similar to the problems noted in 2005. In particular, where the faith in question is not contracted to be part of the chaplaincy to provide religious services, a special application needs to be made to see a religious advisor.⁸² The prison general manager must then approve the request and regional chaplains organise visits. A woman of an Orthodox Church has reported that although Catholic priests visit weekly, Christian Orthodox priests visit only every two months, despite their being a number of women of this faith in DPFC.⁸³

⁷⁵ Id.

⁷⁶ Department of Justice, *Better Pathways in Practice: The Women's Correctional Services Framework*, August 2007, p. 16.

⁷⁷ Ibid., p. 17.

⁷⁸ 2005 *Request for Systemic Review*, op cit., p. 31.

⁷⁹ Ibid., p. 37.

⁸⁰ Interview 1D.

⁸¹ Director's Instruction No. 3.7, Religion, Correctional Standard No. 29.0, schedule 3.7(1).

⁸² Ibid., at 1.3.

⁸³ Interview 1C.

⁸⁴ Interview 1E.

⁸⁵ Interview 1C.

⁸⁶ Interview 1E.

The respect of prison officers and even prison management for religious diversity has also been questioned. Although schedule 3.7 of the Director's Instructions sets out in detail the religious festivals of Jewish, Muslim, Buddhist and WICCA faiths, not all religious festivals and practices are facilitated. Orthodox religions make traditional bread at Easter time, and some women of Christian Orthodox faiths in DPFC made a request to make this bread to celebrate the festive season. The request was refused by prison management on the basis that yeast was required to make the bread and could be used to make alcohol. No attempt to facilitate the cultural and religious practice was made (i.e. by allowing the women to use the yeast in the presence of an officer).⁸⁴

One woman from a minority faith was given a religious symbol by her religious advisor to wear. All of her possessions were later removed from her as part of a prison search procedure. When her possessions were later returned to her and she asked for the return of the religious symbol, the prison officer told her she wasn't allowed to wear it. The symbol was never returned to her.⁸⁵

These examples suggest that although prison procedures are very detailed regarding the major faiths and prison chaplains which seek to facilitate different faiths, there remains discrimination on the basis of religion in the women's prisons. Most troubling is however, that prison management and officers may not be aware of the importance of religious freedom and practice in their day to day interactions with CALD women in the prisons. This suggests that there may be numerous incidents, similar to those above, which interfere with the right of women to demonstrate and practice their religion, in conflict with ss 14 and 19 of the Victorian Charter.

Recommendations

- ▶ Under the Cultural Diversity Plan, 2006 – 2008, the Department of Justice has committed to investigating the role of Chaplaincy services in reducing the isolation of CALD women in prison. This would appear to be an important step, but it is not clear to what extent this has been done.
- ▶ There needs to be increased training of officers and management regarding religious freedom and respect for diverse religious practices.

B. Leisure activities and cultural rights

Although it has been reported that some library material is available in different languages in the DPFC library, not all languages, or even major community languages, have books or other reading materials available. A woman has reported that while the women are permitted to buy DVDs into the prison using "special spend," a request she made for a DVD in her own language was rejected by the finance officer, who said it "does not exist." She also reported that although she can order in a newspaper in this language, she must pay for it herself.⁸⁶ It is not clear that any linkages are being made between CALD women who are imprisoned and ethnic community organisations and services outside of the prison system.

Recommendation

Women from CALD backgrounds should be asked, on entering the women's prison, if they want to be linked to ethnic community organisations and services, where appropriate. These linkages could then be used by the women to request/borrow books, DVDs and magazines in their own languages.

⁸⁷ 2005 *Request for Systemic Review*, p.15.

⁸⁸ Bird, 'Prisoners of Difference,' op cit., p. 73.

⁸⁹ Sisters Inside, *A Campaign to end the Sexual Assault of Women by the State*, (2005), p. 5.

⁹⁰ George, 'Discipline and Discrimination,' op cit., p. 25.

⁹¹ Taken from Stocktake Muster for 27 November 08, provided by Charandev Singh.

5.1.4 Humane treatment when deprived of liberty

Section 22 of the Victorian Charter imposes an obligation on Corrections Victoria that they must treat all persons detained with humanity and with respect for their inherent dignity as human beings. Systemic racism identified in the 2005 Request for Systemic Review and the continued practices of strip searching women, without reasonable grounds for believing that the women has prohibited materials, could constitute infringements upon this right.

A. Strip Searching and Humane Treatment

Strip searching continues to undermine the rights of all women within Victorian prisons to humane treatment. In the 2005 Request for Systemic Review, strip searching was described as "sexual assault by the state" and particularly traumatic to women within prison, given that a high proportion have experienced sexual assault during their lives. As such it was described as leaving women "demoralised, humiliated and traumatised."⁸⁷ Bird has considered that strip searching may also be especially abhorrent to women of CALD backgrounds, particularly Muslim women, due to religious beliefs. She suggests that as a consequence, this may lead to women refusing to have visits with family and friends, as strip searches have been mandatory for any visit.⁸⁸

Strip searching also has a limited purpose in actually preventing the entry of contraband substances into prisons. For example, Sisters Inside has reported that there were 41,728 searches conducted in the Brisbane Women's prison between August 1999 and August 2002, one of which was conducted on an infant. Only two of these searches discovered any significant contraband.⁸⁹

There has been a decline in the number of total strip searches carried out per year at DPFC, from 18,900 in 2002 to around 12,000 in 2007, and some change in the way in which the procedure is carried out.⁹⁰ However, this still remains a significant figure, given that DPFC houses only around 200 women.⁹¹ Most problematically, strip searching continues to be routine in DPFC for all contact visits, even though the practice results in negligible rates of contraband being discovered.

Recommendation

If strip searching of women is to be conducted at all, it must be limited to use as a last resort only where there is a demonstrated and imminent security issue which has not been capable of investigation or resolution via less intrusive methods and/or searches.

⁹² See the definition of systemic racism adopted in Harry Blagg et al, *Systemic Racism as a Factor in the Overrepresentation of Aboriginal People in the Victorian Criminal Justice System*, op cit., p. 12.

⁹³ Ombudsman Victoria, *Conditions for Persons In Custody*, p. 80.

⁹⁴ Department of Justice, *Cultural Diversity Plan*, 2006 – 2008, p. 11.

B. Racism

The 2005 Request for Systemic Review suggested that a culture of racism is allowed to perpetuate within the Victorian prison system and also identified the practices of prison authorities which directly and indirectly discriminated on the basis of race. Key issues identified included:

- ▶ Prisons' failure to take reasonable precautions to prevent racism, which may be in contravention of the prohibition against racial and religious vilification contained in the *Racial and Religious Tolerance Act 2001* (Vic);
- ▶ Anecdotal evidence of racism: which included that women did not want to identify as being from CALD backgrounds or Islamic faiths because of fear of being discriminated against; and
- ▶ Failure of prison authorities to respond to racial vilification.

More generally, the 2005 Request for Systemic Review also recognised that in key areas of prison life and administration (such as medical services, programs, food and religion) persons from CALD backgrounds suffered discrimination on the basis of race and religion. In making these observations, the report came close to identifying what can be understood as “institutional racism” in the women’s prison system, where what appear to be neutral policies and practices, actually operate in a way that is uneven, unfair and detrimental to ethnic minorities.⁹²

In further examining the allegations of discrimination against CALD women which were raised in the 2005 Request, this report has suggested that many of those issues remain of concern and impacts upon CALD women’s day-to-day prison life and post-release experiences. Prison procedures, sentence management and access to programs remains based upon the assumption that women will speak, write and read English as a first language. Prison culture remains dominantly western and hostile to persons from culturally and linguistically diverse backgrounds.

There has been some recognition by Corrections Victoria and government bodies of the need to address the culture of practices within the corrections system which are linked to race. The Victorian Ombudsman has recognised that there are “race based tensions” in the male prisons, and recommended centrally that this should be addressed by the recruitment of staff from culturally diverse communities, and also by ensuring that adequate training is available for prison staff.⁹³ The Cultural Diversity Plan also recognises that isolation and disempowerment may be suffered by CALD prisoners within the corrections system, and notes that this may be exacerbated by prison staff, many of whom are not from CALD backgrounds.⁹⁴ The Plan also commits to a review of cultural diversity policies, to introduce and promote cross-cultural awareness training programs and to adopt recruiting strategies that reflect cultural diversity in the community.

While these initiatives may be positive, to the extent they point towards a culture directed towards valuing cultural diversity, there are still questions as to the extent to which there has been any change in practice. This is particularly the case because even despite the public undertakings made towards valuing diversity, Corrections Victoria remains extremely closed as to how, or if, these undertakings are implemented. For example:

- ▶ There is no publicly available information as to prison cultural diversity policies (i.e. how cultural diversity is valued and promoted within the prison itself);

- ▶ There is no publicly available information as to how staff are trained in cultural awareness or cross cultural communication; and
- ▶ Although there has been a commitment to establish a Multicultural Corrections Committee, involving the input of community groups and Corrections Victoria, this Committee has been described as “internal”, and no information regarding the Committees composition or decisions has been made public.

The motivations for this increasing secrecy are not entirely clear, as the very objective of the policies should be to promote transparent, accessible and accountable culturally sensitive practices, via the broad promotion of these ideas, practices and standards. Without public scrutiny of these policies, accountability and oversight of the actions taken to enforce them is virtually impossible.

In the United Kingdom, a specific inquiry examining the issue of institutional racism in men’s prisons noted that discrimination which operates to disadvantage people of a particular race or religion is likely to be missed unless it is being specifically looked for.⁹⁵ The inquiry therefore considered that there is a need not only for specialist race advisors in prisons, and a focus on race by independent watchdogs, but race equality schemes should also be published and monitored, and complaints mechanisms ought to be clearly established and well-functioning to respond to allegations of racism.⁹⁶

More is clearly required than prison authorities simply stating that there is a policy to respect diversity, or that prison officers are “trained” at some point to do so. Given the purported establishment of a new Multicultural Corrections Committee by the Department of Justice a key area for immediate reform should be to make this Committee open to broad community involvement and engagement, and focused upon the promotion, publication and enforcement of strategies promoting cultural and linguistic diversity in Victorian prisons.

5.1.5 Evaluation

The further investigation of the areas of discrimination raised in the 2005 Request for Systemic Review has highlighted that the treatment of CALD women in Victorian prisons remains problematic in a number of ways.

Although there was a real difficulty encountered in writing this report to get access to information about the day-to-day issues faced by CALD women, where this information was available, two issues were highlighted:

- ▶ CALD women may be isolated, marginalised and subject to discrimination on a day-to-day basis in Victorian prisons. This suggests that CALD women may experience imprisonment in a way that is more punitive than other women;⁹⁷ and
- ▶ These issues also suggest that, in a number of ways, Corrections Victoria may be in breach of its obligations under the Victorian Charter.

Further investigation of the issues raised in the 2005 Request for Systemic Review has also highlighted that the women’s prison system appears to have become much more closed to public scrutiny and accountability since that report was released. It is therefore much more difficult to obtain information as to the day-to-day conditions faced by women in prison. This increased secrecy also means that discrimination and human rights infringement is much less likely to be identified

⁹⁵ See Mr Justice Keith, *Report of the Zahid Mubarek Inquiry*, House of Commons, June 2006.

⁹⁶ *Ibid.*, Chapter 62.

⁹⁷ This suggests also that a given sentence may weigh more heavily on a person from CALD background, and it may also have serious and significant adverse effects on that person. The line of authority set down in *R v Tsiaras* [1996] 1 VR 398 and *R v Verdins* (2007) 16 VR 269 concerning the relevance of mental impairment to sentencing could also be considered applicable where a person is of non-English speaking background. As the conditions faced by a person from non-English speaking background are likely to be more punitive than “normal” it is therefore relevant to the exercise of the judge’s sentencing discretion.

⁹⁸ Department of Justice, *Better Pathways in Practice*, August 2007, p. 16.

⁹⁹ Department of Justice, *Cultural Diversity Plan*, 2006 – 2008, p. 11.

¹⁰⁰ Id.

and addressed. Discrimination is therefore likely to become normalised and embedded, unless it is made subject to external review and scrutiny.

5.2 Relevant policy developments concerning CALD women

A key change since the issuing of the 2005 Request for Systemic Review is that the Victorian Government has adopted, primarily under the Better Pathways Strategy, a language of gender and cultural sensitivity in women's corrections. However, despite this language there have been limited concrete commitments to addressing the conditions of imprisonment of CALD women.

The key policy commitments have been:

- ▶ *Better Pathways Strategy*: the primary commitment directly relevant to CALD women was the institution of a Vietnamese Liaison Officer, which is discussed in detail below.
- ▶ *Women's Correctional Services Framework*: one of the guiding principles of the policy is stated to be "responding to diversity" by providing culturally appropriate and gender responsive correctional services.⁹⁸ The specific commitments under the Framework are extremely limited. Projects listed were to:
 1. Carry out a "profile" of the spoken and preferred languages of CALD offenders;
 2. Encourage the recruitment of prison visitors from CALD backgrounds.
- ▶ *Cultural Diversity Plan 2006 – 2008*: contained a section entitled "CALD prisoners and Offenders" which did note some key issues in relation to persons of CALD background within the Corrections System, including their isolation, disempowerment, and "perceptions" of insufficient English language programs and culturally specific post release programs.⁹⁹ The plan also sets out specific commitments as to what the Department of Justice will do in order to facilitate "culturally and linguistically relevant correctional services". This included:
 1. The establishment of a multicultural corrections committee;
 2. A review of post-release programs;
 3. A review of cultural diversity policies.¹⁰⁰

This section will elaborate on some of these policy commitments, and evaluate their effectiveness in addressing the particular issues faced by imprisoned CALD women.

5.2.1 Collection of statistical data

There are currently some gaps in the publicly available data regarding women from CALD backgrounds in prison. In particular, the data based on country of birth does not "pick up" women who are born in non-English speaking countries outside of Australia but who have a strong cultural or linguistic connection to another country. A key issue in this area is however, the diversity of women, including the women's backgrounds and the length of time they may have spent in Australia. This data is difficult to quantify and analysis of figures alone is insufficient to reveal a great deal about CALD women and their needs while imprisoned.

Under both the Women's Correctional Services Framework and the current Cultural Diversity Plan there are plans to "profile" and "develop tools" regarding the spoken and preferred languages of CALD women in Victorian prisons. While these initiatives

may fill up some gaps in publicly available information, it should also be noted that this information should, realistically, be collected as a matter of course when women are inducted into the prison system. Simply tabulating this information is not a significant step forward in terms of making corrective services more “culturally relevant.”

Patricia Easteal’s 1991 report suggests that “overseas born” women, as a broad grouping, could be better understood if broken down into three smaller groups, which she labelled deportees, adult migrants and child migrants.¹⁰¹ These groupings depended both upon the women’s length of time in Australia, but also their level of cultural and linguistic difference comparative to the Anglo-Australian population. A relevant area for data collection therefore may be a women’s length of time in Australia, citizenship or migration status.

¹⁰¹ Easteal, ‘The Forgotten Few,’ 1993, op cit., pp. 3-4.

¹⁰² Department of Justice, *Better Pathways, an Integrated Response to Women’s Offending and Re-Offending*, 2005, p 25.

¹⁰³ Corrections Victoria, *Better Pathways Report Card*, April 2008, p. 4.

¹⁰⁴ Interview, 1C.

Recommendations:

- ▶ Data collection on language and ethnicity in Victorian prisons should be available publicly;
- ▶ Data collection should also involve, at a minimum, women’s length of time in Australia, citizenship and migration status.

5.2.2 Vietnamese Liaison Officer

Under the Better Pathways Strategy a key initiative adopted to address the growing Vietnamese prisoner population was the funding of a full time Vietnamese Liaison Officer (VLO) for the women’s prison system. The position was clearly identified as one which sought to overcome barriers to the participation of Vietnamese women in prisons programs and services. It was specified as requiring a Vietnamese speaking individual, not only to communicate with women who spoke limited or no English, but also to “deliver or arrange interpreting and translation services as required.”¹⁰² In the 2008 Better Pathways Report Card, issued by Corrections Victoria, this position has been renamed a “Multicultural Liaison Officer” who is tasked with ensuring generally that “correctional services are sensitive to the cultural needs of CALD women.”¹⁰³

CALD women from non-Vietnamese backgrounds have reported that there is no specific multicultural worker at DPFC providing support to women of CALD backgrounds generally.¹⁰⁴ There is also some evidence that the provision of a specialist Vietnamese or South East Asian worker may have created resentment amongst other CALD and Anglo-Australian prisoners, with the perception that Asian or Vietnamese women therefore get “special treatment”. This perception may be especially strong amongst other CALD women, who feel that their own linguistic and cultural needs are not being met within the prison system.

This highlights that the position funded under Better Pathways, of a VLO, was designed to address a segment of CALD women, primarily Vietnamese women. The role cannot be simply relabelled to that of a Multicultural Liaison Officer and called a multicultural strategy to assist all CALD women. In this respect there is a need to recognise that CALD women come from a diversity of backgrounds, including African, Middle Eastern, Latin American, Asian and European. As Sisters Inside has noted, “The isolation and lack of services and support faced by these women is magnified when they are one of very few women — or the

¹⁰⁵ Sisters Inside, *Building on Women's Strength: Developing community-based service models for women in prison and released from prison in Victoria*, September 2005, p. 13.

¹⁰⁶ Despite the most recent government document re-labelling the role of the VLO to a "Multicultural Liaison Officer," I have continued to use the title of Vietnamese Liaison Officer here, as this is a more accurate reflection of the role and also appears to be used to describe the position internally at DPFC.

¹⁰⁷ Queensland Council of Social Service, *Response from a Multicultural Perspective to the Prisoners with Special Needs Consultation Paper*, November 2004 – March 2005, p. 4 and Sisters Inside, 'Bars Behind Bars' op cit., p. 41.

¹⁰⁸ Sisters Inside, 'Bars Behind Bars' op cit., p. 41.

¹⁰⁹ Department of Justice, *Better Pathways, an Integrated Response to Women's Offending and Re-Offending*, 2005, p. 25 and EOCV, *Women Prisoners in Victoria*, December 2006, Appendix 1.

¹¹⁰ Sisters Inside, 'Bars Behind Bars' op cit., p. 36.

only woman — in the prison system from a particular culture and language background."¹⁰⁵ Although strategies to address the situation of Vietnamese women as "a group" appear to be increasingly under development by policy makers, there is a real problem in assuming that these strategies can simply be transposed to other CALD women, or, worse still, assumed to address the situation of *all* CALD women.

The role of the Vietnamese Liaison Officer¹⁰⁶

There are also some problems with the role of the Vietnamese Liaison Officer itself. Both Sisters Inside and the Queensland Council of Social Services (QCOSS) have suggested that specialist bilingual support workers may fulfil an important function within the prison system. Specifically by providing direct support and assistance to CALD prisoners and their families; linking CALD women to ethnic community organisations; working with post-release support; and liaising with management to ensure non-discriminatory procedures and programs.¹⁰⁷ However, Sisters Inside has also recommended that any such role should be based in a community organisation, rather than with official programs staff. This was on the basis "Prison Program staff are probably careful to maintain the confidentiality of the women but they are not perceived as doing so."¹⁰⁸ Women are more likely to trust and use a specialist bilingual worker if they have a role independent of prison authorities. Particular issues could therefore be identified regarding the present role of the VLO for the Women's Prison Region:

- ▶ **VLO is funded as an officer of Corrections Victoria:** the role is administered and controlled by the Women's Regional Programs Manager. Recurrent funding for this role is also uncertain, as under Better Pathways the role was funded only for four years. As there is limited security of the VLO's position, this is likely to limit that person's ability to advocate for Vietnamese women's rights internal to the prison;
- ▶ **Broad Scope of role:** includes providing case management, liaising with case managers, facilitating the access of women to services in prison, providing support and welfare assistance, facilitating links to family and community, developing culturally relevant programs, as well as the delivery of interpreter and translator services.¹⁰⁹ As such, the VLO has multiple roles; prison officer, interpreter, support worker and pre-release coordinator. In expecting the VLO to take on such a broad role, Vietnamese women are called to depend and rely upon that worker as a broad source of information and support in many aspects of prison life;
- ▶ **Privacy and confidentiality issues:** particularly if the VLO is called upon to interpret matters for women of a personal nature (such as legal advice or medical issues) and where women may express concern or complaints regarding prison authorities and management, or access to and/or quality of medical care; and
- ▶ **The VLO currently employed is male:** cultural barriers and gender roles may particularly affect the willingness of Vietnamese women to seek support regarding mental health, domestic violence and sexual violence. Sisters Inside has noted generally that, "These abuse issues are the underlying factors that have lead these NESB women to their imprisonment."¹¹⁰ This raises concern as to how effectively the VLO may be able to provide effective and sensitive support to Vietnamese women (not to mention other CALD women).

Recommendations:

- ▶ Multiple workers are required to support the needs of CALD women, and these workers should preferably be female, and appointed as independent community workers, attached to a community agency, rather than prison officers;
- ▶ A multicultural social worker or counsellor should be appointed to the women's prisons, and their role clearly distinguished from that of the VLO.

¹¹¹ Sisters Inside, 'Building on Women's Strength' op cit., p. 13.

¹¹² Sisters Inside, 'Bars Behind Bars' op cit., p. 36.

¹¹³ Id.

5.2.3 Post-release services

The primary issue concerning CALD women's access to post-release programs is the extent to which women are able to engage with mainstream services.

Program providers contacted considered that CALD women tend not to access mainstream services on the basis that the women have family support and housing outside of prison, or will access post-release support directly from ethnic community groups. However, other organisations and researchers have suggested that the support required by Vietnamese women on release may be especially complex, in particular as the majority of the women tend to be mothers, and there is a high degree of cultural shame associated with imprisonment, and a need for support to foster family relationships on release.¹¹¹ Sisters Inside have also documented that a high proportion of NESB women have been sexually assaulted, often by family members, and have experienced domestic violence before entering prison. The key problem is therefore that "a high percentage will return to violent homes, as they have no resources available to pursue their own safety or their children's safety."¹¹²

Therefore it is difficult to assume, that either Vietnamese or other CALD women have adequate family and housing support as the reason for their lesser access to post-release services. Rather, the key difference from other women is that: "Their language and cultural differences do not allow these women access to mainstream services."¹¹³ This has also been suggested in the research carried out for this report, in that the majority of mainstream post-release service providers contacted reported that they tended to have either a very limited number of CALD clients or none at all.

Providing culturally specific information about post-release services is not in itself sufficient if the programs are targeted towards the "standard female offender." Equally importantly, post-release services may not be adequately geared to address the particular and different trauma faced by CALD women leaving prison, and are often unable to provide the assistance which CALD women require. As a result, CALD women may miss out on assistance which is crucial to their rehabilitation after leaving prison.

A consequence of the limited access of Vietnamese women to mainstream post-release services has also been that the women tend to rely on the VLO for pre-release support, and further the majority of the work and support for Vietnamese women after release falls to ethnic community organisations. These organisations tend to be poorly funded, comparative to mainstream services. Importantly, CALD women's choice as to what assistance to access on release is limited. Although ethnic community organisations are often well respected and utilised, Sisters

¹¹⁴ Id., p. 41.

¹¹⁵ Department of Justice, *Cultural Diversity Plan*, 2006 – 2008, p. 11.

Inside has also noted that they may not provide the ideal model of support for all women, noting that in Queensland, “The Vietnamese women spoke about being afraid of seeking support from any ethnic organisation.” This was particularly due to issues of shame and fear of being judged by the community.¹¹⁴

Concurrently, ethnic community organisations have limited expertise in the provision of post release services to women who have been imprisoned, and therefore may not be able to provide appropriate or adequate post-release support to CALD women. This is especially concerning given the high level of marginalisation of CALD women inside prison, and correspondingly high level of trauma they face upon release.

It is essential that post-release organisations and service providers direct targeted and specialist assistance to CALD women.

A. Addressing post-release services available to CALD women

During the 2006-08 period, DOJ’s Cultural Diversity Plan committed to “evaluate all post release programs targeted at CALD prisoners.”¹¹⁵ It is not clear that this commitment has been fulfilled, and no information regarding any review has been released publicly. However, it can be noted that not only are there few post-release programs directed at CALD women, but that simply asking mainstream services about their programs and access to these programs is an insufficient review. Standard services providers have limited CALD clients and experience. The most effective way to review post-release services would therefore be to speak directly with CALD women who are either nearing release or who have re-entered the community, to find out about the support they and their families require, and how this support can be best provided.

Recommendations

- ▶ Post-release organisations and service providers should direct services and resources to respond to the particular situations and trauma faced by CALD women leaving prison;
- ▶ Any review of CALD women’s access to post-release services should prioritise consultation with CALD women and their families to evaluate post release needs and supports available; and
- ▶ Data regarding recidivism rates and return to prison rates of CALD women should also be collected and made publicly available.

B. CALD women facing deportation: pre-release support

One issue that is often overlooked concerning CALD women is the need for pre and post-release support of women facing deportation or removal from Australia. In particular, there appears to be an assumption that these women have no need for support, as they will be deported to another country. Non-citizen women may be deported after serving their sentence where they have been convicted of an offence while holding a temporary or tourist visa, where they lose their visa sponsorship while in prison (i.e. spousal visas), or if their visa is cancelled under the “bad character” provisions of the *Migration Act 1958* (Cth).¹¹⁶ Eastaer has

emphasised that the women prisoners who will be deported following their imprisonment tend to experience their imprisonment in a way that is extremely difficult and isolated, as they tend to experience the highest levels of cultural and linguistic difference from other prisoners.¹¹⁷ These women may also face extreme challenges on release, including migration review proceedings, removal to countries of origin where social and family networks have broken down, removal from families, including children, in Australia, and also protracted time in immigration detention awaiting deportation.

¹¹⁶ See further Corrections Victoria, *Sentence Management Manual*, Version 02/07 04, December 2007, Section 4.7, Prisoners Liable for Removal from Australia.

¹¹⁷ Esteal, 'The Forgotten Few', *op cit.*, p. 14.

It does not appear that any specialist programs or assistance have been developed for women or men facing deportation after their imprisonment has ended. Rather, the approach appears largely to be that as the individual is not being released into "our" community, their support is not "our" problem. Women facing deportation require assistance and support to prepare them for extremely difficult circumstances post release. This support should involve, at minimum, linkages to specialist community groups and support workers for migration assistance and legal support.

5.2.4 Evaluation

The 2005 Request for Systemic Review was avoided by Corrections Victoria and the Equal Opportunity Commission Victoria partly on the basis that the Better Pathways policy would address the significant issues of discrimination raised in the report.

However, the survey of the major policy responses adopted by the Victorian Government since 2005 and relevant to CALD women's imprisonment suggests that these policy responses have been insufficient to address the issues of discrimination and rights infringement that affect CALD women on a day-to-day basis within the prison system. This review has highlighted that the key change, since the 2005 Request for Systemic Review, has actually been one of the language used to describe prison policies.

Since 2005 the Department of Justice and Corrections Victoria have increasingly adopted a language of cultural inclusiveness and respect for diversity. However, there is an overwhelming lack of substance to this language. This has recently been demonstrated with the release of a revised Cultural Diversity Plan for the period 2009 – 2011 by the DOJ, in which:

- ▶ The review of post release programs targeted at CALD prisoners and data collection of language and ethnicity were both listed as "new initiatives" in the strategy, despite each of these initiatives actually being committed to three years earlier in the 2006 Cultural Diversity Plan; and
- ▶ The key initiative discussed in the 2009 Cultural Diversity Plan was that of the Multicultural Corrections Committee responding to the recommendations of the Language Services Review Project Report. This Committee is internal to DOJ and has yet to release any information publicly, and the review project itself was carried out by Corrections Victoria, with no information as to the results of the review released publicly.

Each of these issues highlights a serious lack of transparency, and therefore of accountability, in the implementation of the policy initiatives that are released and championed by both Corrections Victoria and DOJ.

Despite the massive amount of government spending on prisons each year, persistently high rates of recidivism show that individuals are not being

¹¹⁸ See <http://justicereinvestment.org/>.

rehabilitated within this system. It is highly questionable if Victorian policy responses have begun to address the over-representation of disadvantaged groups within the justice system and focus on post-release support after prison in any substantive or sustained way. However, these policy responses have not focused on what is perhaps the most important issue of all — investing in local communities to address the root causes of crime and imprisonment.

This preventative approach, which has been described as “Justice Reinvestment” in the US, has involved governments directing a proportion of their spending in prisons to local communities where there is a high concentration of individuals being imprisoned.¹¹⁸ Such a strategy involves recognising the loss caused to society by spending on imprisonment generally, and focuses upon reinvestment of that money, in consultation with local communities, in capacity building and community development initiatives.

This approach warrants consideration as a systemic model by Victorian policy makers because it has real potential to alter the damaging cycle of imprisonment affecting CALD communities.

Recommendation

DOJ in consultation with local communities and the Multicultural Corrections Committee, should give consideration to Justice Reinvestment policy approaches and spending.

6. Conclusions and systemic findings

This project aimed to examine the situation of CALD women imprisoned in Victoria by following up the issues of discrimination raised in the 2005 Request for Systemic Review. It sought to consider whether the policy changes under the Better Pathways Strategy have had impact on CALD women. The project has investigated the current situation within Victorian prisons in key areas of importance to CALD women, such as access to interpreters and translations; culturally specific programs and services; and cultural and religious freedoms.

In assessing both the relevant changes and current situation, it has become apparent that there remain significant issues as to the extent to which the management of Victoria's women's prisons does, or is capable of, respecting cultural diversity in practice. These issues raise questions about the extent to which Corrections Victoria complies with obligations under the Victorian Charter. They also affect the way in which CALD women experience imprisonment, by making it a harsher and more difficult environment than is experienced by other women. This in turn may also impact upon the rehabilitation of CALD women by the corrections system, and their ability to integrate back into their communities and families upon release.

The two key issues that have dominated this project have been the difficulties in accessing information concerning the current situation of CALD women within Victorian prisons, and also uncertainty as to whether the new Victorian Charter will have a measurable impact upon protecting and ensuring the rights of women in prison. The purpose of the 2005 Request for Systemic Review was to show that there was a systemic basis for human rights violations in the operation of the corrections system itself, and to call not only for an overhaul of this system but also the initiation of an independent review into its operation. This has not happened under the policy changes initiated under the Better Pathways strategy, as although the policies adopt a language of inclusiveness, gender sensitivity and respect for cultural diversity, analysis of specific initiatives and follow through on plans suggests that they have had, so far, limited impact in practice. Just as importantly, information as to prison conditions and the treatment of CALD women appears to have become, if anything, more closed and difficult to access.

This highlights that policies and plans are not, in themselves, sufficient. What is necessary are independent monitoring and public reporting mechanisms and community scrutiny of the corrections system. Even despite the passage of the Victorian Charter, there remains limited access to information and limited accountability mechanisms to ensure that the human rights of individuals are respected in the management of the corrections system.

Key systemic findings

The project has concluded that the failure by EOCV to investigate the allegations made in the 2005 Request for Systemic Review has meant there has been limited action taken by Corrections Victoria to address the serious issues of discrimination raised in that Request. Initiatives such as Better Pathways and the enactment of the Victorian Charter have been insufficient, on their own, to create change. This is in large part because such measures do not involve any independent monitoring or public reporting mechanisms which are necessary to ensure oversight and accountability in the prison system.

Regarding the treatment of CALD women in Victorian prisons the project concludes:

- ▶ CALD women may be isolated, marginalised and subject to discrimination on a day-to-day basis in Victorian prisons. This suggests that CALD women may experience prison in a way that is more punitive and harsh than other women. The issues concerning the unfair and discriminatory treatment of CALD women do not appear to have substantially altered since the 2005 Request for Systemic Review was made.
- ▶ Instead, it appears that the women's prison system has become even more closed and secretive since the 2005 Request for Systemic Review was made. It is extremely difficult to obtain information as to the day-to-day conditions faced by women in Victorian prisons.
- ▶ As a result, discrimination is much less likely to be identified within the women's prison system and it is likely to become normalised and embedded, significantly affecting the lives and treatment of CALD women in prison.
- ▶ In a number of ways, Corrections Victoria may also be in breach of its obligations under the Victorian Charter in its treatment of CALD women in the prison system.

In examining the policy developments concerning CALD women since the 2005 Request for Review, it has been found that:

- ▶ Since 2005 the DOJ and Corrections Victoria have increasingly adopted a language of cultural inclusiveness and respect for diversity in policy frameworks relevant to imprisoned women;
- ▶ There is an overwhelming lack of substance to this language, centrally because there is a lack of transparency and accountability in the implementation of policy initiatives that are released and championed by Corrections Victoria and the Department of Justice;
- ▶ Specific policy initiatives could be improved by direct consultation with CALD women who have or who are currently imprisoned and their families to determine the most effective and appropriate strategies to address CALD women's isolation and marginalisation in the prison system; and
- ▶ Alternative policy strategies, such as decreasing spending on prisons and investing in local communities ought to be prioritised by policy makers to create effective change and alter the damaging cycle of imprisonment affecting particular CALD communities.

Key systemic recommendations

- ▶ It is essential that VEOHRC has fully independent powers to conduct investigations and enquiries into the compliance of public authorities with the *Equal Opportunity Act 2010* and the *Charter of Human Rights and Responsibilities Act 2006*. These powers should not be dependent upon the consent of any government Minister or public authority for their exercise;
- ▶ VEOHRC should commit to exercising its new investigation and enquiry powers under the *Equal Opportunity Act 2010* in a way that is open, transparent and accountable. Where a matter is of public interest and significance and arises in relation to a public authority, any inquiry

or investigation into systemic discrimination must be conducted publicly, and VEOHRC should table its full findings in Parliament;

- ▶ The guidelines governing the circumstances in which VEOHRC will conduct inquiries and investigations into systemic discrimination under ss 127 and 128 of the *Equal Opportunity Act 2010* should be transparent and publicly available; and
- ▶ VEOHRC's powers to enforce its recommendations following an enquiry or investigation into systemic discrimination should include:
 1. The ability to require the tabling of government responses to parliament within a specified time frame; and
 2. The power to request additional reports on a yearly basis from public authorities demonstrating their continued performance in relation to the VEOHRC's findings and recommendations.

Given that VEOHRC does not have direct power to mandate public reporting, these requirements should be made part of the enforceable undertakings or compliance notices issued by VEOHRC to public authorities.

7. Recommendations

Recommendations regarding policy and procedure

Access to interpreters and translators

- ▶ Interpreter access should be part of regular procedure and protocol within prisons, as should the use of translated materials on an everyday basis. This should be the case not only for major decisions, such as medical and sentence management, but also for the access and use of programs and services.
- ▶ Priority should be placed upon the use and funding of face-to-face interpreters for legal advisors and support workers who seek to communicate with persons of non-English speaking background in prison;
- ▶ Clear procedures should be developed to permit “call-ins” for legal advisors and support workers assisting NES prisoners, to allow the use of telephone interpreters;

Religious Freedom

- ▶ There should be increased training of officers and management regarding religious freedom and respect for diverse religious practices.

Leisure Activities

- ▶ Women from CALD backgrounds should be asked, on entering the women’s prison, if they want to be linked to ethnic community organisations and services, where appropriate. These linkages could then be used by the women to request/borrow books, DVDs and magazines in their own languages.

Strip Searching

- ▶ If strip searching of women is to be conducted at all, it must be limited to use as a last resort only where there is a demonstrated and imminent security issue which has not been capable of investigation or resolution via less intrusive methods and/or searches.

Promotion of cultural diversity in prisons

- ▶ The Multicultural Corrections Committee, should seek broad community involvement and engagement including from CALD women and men within the prison system. The Committee should encourage the DOJ to promote and publicise strategies which promote cultural and linguistic inclusion, both publicly and within Victorian prisons.

Data collection

- ▶ Data collection on language and ethnicity in Victorian prisons should be available publicly;

- ▶ Data collection should also involve a women's length of time in Australia, citizenship and Migration status.

Vietnamese Liaison Officer

- ▶ Multiple workers are required to support the needs of CALD women, and these workers should preferably be female, and appointed as independent community workers, attached to a community agency, rather than prison officers;
- ▶ A multicultural social worker or counsellor should be appointed to the women's prisons, and their role clearly distinguished from that of the Vietnamese Liaison Officer.

Post-release and pre-release supports available to CALD women

- ▶ Post-release organisations and service providers should direct services and resources to respond to the particular situations and trauma faced by CALD women leaving prison;
- ▶ Any review of CALD women's access to post release services should prioritise consultation with CALD women and their families to evaluate post release needs and supports available;
- ▶ Women facing deportation require assistance and support to prepare them for circumstances post release. This support should involve, at a minimum, linkages to specialist community groups and support workers providing migration assistance and legal support.

Alternative Policy Approaches

- ▶ The Department of Justice, in consultation with local communities and the Multicultural Corrections Committee, should give consideration to Justice Reinvestment policy approaches and spending.

7. ĐỀ NGHỊ

Đề nghị liên quan tới chính sách và thủ tục

Có thông ngôn và phiên dịch viên

- ▶ Việc có thông ngôn viên phải là một phần trong thủ tục và quy cách thường lệ trong các nhà tù, cũng như việc sử dụng các tài liệu dịch trong sinh hoạt hàng ngày. Sự việc này phải được thực hiện không chỉ với những quyết định quan trọng, chẳng hạn như việc quản trị về y tế và bản án mà còn với việc sử dụng và hưởng các chương trình và dịch vụ.
- ▶ Ưu tiên một cần phải được áp dụng với việc sử dụng và đòi hỏi dịch vụ thông ngôn viên mặt đối mặt cho các cố vấn pháp lý và nhân viên trợ giúp nào muốn nói chuyện với người có nguồn gốc không nói Tiếng Anh trong tù;
- ▶ Phải lập thủ tục rõ ràng về việc cho phép “cú gọi vào” dành cho cố vấn pháp lý và nhân viên trợ giúp đang giúp đỡ cho tù nhân có nguồn gốc không nói tiếng Anh để họ được sử dụng dịch vụ thông dịch qua điện thoại;

Quyền Tự Do Tín Ngưỡng

- ▶ Nhân viên và ban quản trị nên được huấn luyện nhiều hơn về quyền tự do tín ngưỡng và tôn trọng việc theo các đạo giáo khác nhau.

Sinh Hoạt Giải Trí

- ▶ Nên hỏi phụ nữ có nguồn gốc văn hóa và ngôn ngữ dị biệt khi họ mới vào nhà tù phụ nữ xem họ có muốn được liên kết với các tổ chức và dịch vụ cộng đồng sắc tộc hay không, nếu được. Sau đó, phụ nữ này có thể sử dụng các mối liên kết vừa nêu để yêu cầu/mượn sách, DVD và tạp chí bằng ngôn ngữ của họ.

Lục Soát Cởi Bỏ Quần Áo

- ▶ Nếu bắt buộc phải tiến hành lục soát cởi bỏ quần áo, việc này nên được hạn chế là biện pháp cuối cùng trong trường hợp rõ ràng thấy có vấn đề an ninh cấp bách mà không thể điều tra hoặc giải quyết theo phương pháp và/hay cách thức lục soát ít xâm phạm hơn.

Quảng bá tính đa dạng văn hóa tại các nhà tù

- ▶ Ban Cải Huấn Đa Văn Hóa nên tạo điều kiện để cộng đồng đóng góp ý kiến và tham gia rộng rãi kể cả nam lẫn nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt trong hệ thống nhà tù. Ủy Ban nên thúc Bộ quảng bá và công bố các sách lược nhằm cổ xúy việc không phân biệt văn hóa và ngôn ngữ cả trong và ngoài các nhà tù của tiểu bang Victoria.

Thu thập dữ liệu:

- ▶ Việc thu thập dữ liệu về ngôn ngữ và sắc tộc tại các nhà tù của tiểu bang Victoria nên được công bố;
- ▶ Việc thu thập dữ liệu cũng nên bao gồm thời gian phụ nữ ở Úc, quốc tịch và tình trạng Di Trú.

Nhân Viên Liên Lạc Người Việt (VLO)

- ▶ Cần phải có nhiều nhân viên khác nhau để đáp ứng nhu cầu của phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt và các nhân viên này phải nên là phái nữ và được chỉ định làm nhân viên cộng đồng độc lập, trực thuộc một tổ chức cộng đồng thay vì nhân viên nhà tù;
- ▶ Nhân viên xã hội hoặc nhân viên tư vấn đa văn hóa phải được bổ nhiệm tại các nhà tù phụ nữ và giữ nhiệm vụ khác hẳn nhiệm vụ của Nhân Viên Liên Lạc Người Việt.

Sự trợ giúp sau khi ra tù và trước khi ra tù dành cho phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt

- ▶ Các tổ chức và cơ sở cung cấp dịch vụ sau khi ra tù nên dồn dịch vụ và nhân vật lực để đáp ứng những tình huống và sang chấn đặc biệt mà phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt trải qua khi ra tù;
- ▶ Bất cứ cuộc xem xét nào về việc phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt sử dụng các dịch vụ sau khi ra tù đều phải đặt lên hàng ưu tiên một việc tham khảo ý kiến với phụ nữ thuộc nguồn gốc văn hóa và ngôn ngữ dị biệt và gia đình của họ để đánh giá nhu cầu và những trợ giúp sau khi ra tù có sẵn;
- ▶ Phụ nữ diện bị trục xuất cần được trợ giúp và nâng đỡ để chuẩn bị tinh thần cho tình huống sau khi ra tù. Sự trợ giúp nên gồm có, tối thiểu, những mối liên kết với các nhóm cộng đồng chuyên ngành và nhân viên trợ giúp, cung cấp sự trợ giúp về di trú và hỗ trợ pháp lý.

Các Phương Sách Khác về Chính Sách

- ▶ Bộ Tư Pháp qua tham khảo ý kiến với các cộng đồng địa phương và Ban Cải Huấn Đa Văn Hóa xem xét các phương sách về chính sách và chi tiêu về Tái Đầu Tư Tư Pháp.

8. Bibliography

Anti-Discrimination Commission Queensland, *Women in Prison*, March 2006.

ACT Human Rights Commission, *Human Rights Audit on the Operation of ACT Correctional Facilities under Corrections Legislation*, July 2007.

Phoebe Barton, "What might it mean, to live in a world without prisons?" Creating a Literacy around Prison Abolition in Australia, *Honours Thesis*, Melbourne University, 2006. Held by Author.

Greta Bird, 'Prisoners of Difference' in David Brown and Meredith Wilkie (eds.), *Prisoners as Citizens: Human Rights in Australian Prisons* (The Federation Press, Sydney, 2002).

Harry Blagg et al, Systemic Racism as a Factor in the Overrepresentation of Aboriginal People in the Victorian Criminal Justice System. Available from: http://www.cjrn.unsw.edu.au/news_&_events/documents/Systemic%20Racism%20Report_update.pdf

Barbara Denton, 'The voices of overseas-born women in Victorian prisons,' *Paper Presented at the Australian Institute of Criminology Conference, The Criminal Justice System in a Multicultural Society*, May 1993. Available: <http://www.aic.gov.au/conferences/multiculturalism/> (Accessed 18/09/08).

Deloitte Consulting, *Victorian Prisoner Health Study*, Department of Justice, 2003.

Department of Justice, *Statistical Profile of the Victorian Prison System, 2007 – 2008*. Draft release data, prepared by Corrections Victoria Data Analysis Branch. Held by Author.

Department of Justice, *Equal Opportunity Review Final Report: An Equality Act for a Fairer Victoria*, July 2008. Available: <http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/resources/file/ebadco4fdc8945a/Final%20Version%20-%20Final%20Report.pdf> (Accessed 10/12/08).

Department of Justice, *Equal Opportunity Review – Implementing the Recommendations*, website, Available at: http://www.justic.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/Your+RightsEqual_Opportunity/JUSTICE+-_Equal+Opportunity+Review+-+Implementing+the+Recommendations (Accessed 10/12/08).

Patricia Easteal, 'The Forgotten Few: Overseas-born Female Inmates in Australia,' *Paper Presented at the Australian Institute of Criminology Conference, The Criminal Justice System in a Multicultural Society*, May 1993. Available: <http://www.aic.gov.au/conferences/multiculturalism/> (Accessed 18/09/08).

Patricia Easteal, *The Forgotten Few: Overseas-born Women in Australian Prisons*, Bureau of Immigration, Canberra, 1991.

Equal Opportunity Commission Victoria, *Women Prisoners in Victoria*, December 2006.

Corrections Victoria, Appendix to the EOCV Report, *Women Prisoners in Victoria*, Further Information on Better Pathways Provided by Corrections Victoria to Equal Opportunity Commission Victoria on 2 August 2006.

Corrections Working Group of the Federation of Community Legal Centers (FCLC) and the Victorian Council of Social Service (VCOSS), *Request for a Systemic Review of Discrimination Against Women in Victorian Prisons*, March 2005. Available: <http://www.vco.org.au/pubs/reports.htm> (Accessed 20/08/08). Hereafter '2005 Request for Review'

Federation of Community Legal Centers, *Equal Opportunity Act Review Submission*, January 2008. Available: <http://www.communitylaw.org.au/fedclc/resources/EqualOpportunityActReviewSubmissionJan2008.pdf> (Accessed 25/08/08).

Amanda George, 'Discipline and Discrimination: Women prisoners and human rights', *Precedent*, July/August 2007.

Greta Jubb and Claire Weigall, 'Systemic Discrimination against Women in the Prison System in Victoria', *Presentation at the Darebin Community Legal Centre Law Week Event Doubly Damned: Women, Prison and Society*, May 2005. Available: <http://www.vals.org.au/news/submissions/34%20Law%20Week%20%20talk%2016%20May%202005.1.pdf> (Accessed 14/11/08).

Mr Justice Keith, *Report of the Zahid Mubarek Inquiry*, House of Commons, June 2006, available from: <http://zahidmubarekinquiry.org.uk/> .

Debbie Kilroy, 'The Silenced Few - NESB women in Prison', *Women in Action*, No. 3, 2003.

Adele Murdolo, *Multilingual Health Education with Immigrant Women in Victorian Women's Prisons: Project Report*, Working Women's Health, 2002 - 2004.

Adele Murdolo, 'We are prisoners but we are human": Health Issues for Victorian Immigrant Women After Prison', *Paper presented at the Beyond the Barriers forum*, July 2004.

Ombudsman Victoria, *Conditions for Persons in Custody*, Report of Ombudsman Victoria and Office of Police Integrity, July 2006.

Alistair Pound and Kylie Evans, *An Annotated Guide to the Victorian Charter of Human Rights and Responsibilities* (Lawbook Co., Sydney, 2008).

Maria Papadonata and Jocelyn Bignold, 'Women's Integrated Support Program', *Presentation made to the Correctional Services Administrators Council (CSAC) 7th National Women Offenders Conference*, November 2007. Available: http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/resources/file/ebeco64e6777bb2/Papadontas_1200_Tue.pdf (Accessed 1/10/08).

Sentencing Advisory Council, Overall Numbers of Indigenous and Non-Indigenous prisoners in Victoria, 2004 - 2008. Available from: <http://www.sentencingcouncil.vic.gov.au/wps/wcm/connect/Sentencing+Council/Home/Sentencing+Statistics/Adult+Prisoners/Indigenous+Rates/SENTENCING++Indigenous+and+Non-Indigenous+prisoners+in+Victoria>

Sisters Inside, 'Bars Behind Bars', *Women Against Violence*, 11, 2001 - 2002.

Sisters Inside, Building on Women's Strength: Developing community-based service models for women in prison and released from prison in Victoria, September 2005. Available: <http://www.sistersinside.com.au/media/BOWSReichstein.pdf> (Accessed 17/10/08).

Dave Taylor, A Rights Framework for Civil Inclusion: An analysis of State sanctioned civil impairment experienced by prisoners in Victoria, *Honours Thesis, RMIT University*, 2007. Held by Author.

Hanh Tran, 'Vietnamese Women Offenders: Challenges for the Victorian Correctional System?' *Presentation to the Corrective Services Administrators Council, 7th National Women Offenders Conference*, Department of Justice, November 2007. Available: http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/resources/file/eb6ab903547b5a9/Tran_1415_Wed.pdf (Accessed 1/10/08).

Chris Trotter, Rosemary Sheehan et. al., *Women After Prison*, 2006. Available: <http://www.css.org.au/documents/WomenAfterPrisonReportFinalAprilo7.pdf> (Accessed 14/11/08).

Queensland Council of Social Service, *Response from a Multicultural Perspective to the Prisoners with Special Needs Consultation Paper*, November 2004 - March 2005. Available: <http://www.qcross.org.au/Article.aspx?type=submission&id=5003> (Accessed 17/10/08).

Karolyne Quinn, *Gender Impact Assessment: Corrections*, Women's Health Victoria, 2008. Available: www.whv.org.au/gender-papers/corrections-gia.pdf (Accessed 24/11/08).

Victorian Multicultural Commission, *Population Diversity in Local Councils in Australia*, Based on 2006 Census. Available: <http://www.multicultural.vic.gov.au/Web24/vmc.nsf/allDocs/RWPAAA33284C2D8E696CA2572F4000ED010?OpenDocument> (Accessed 10/10/08).

Victorian Government Solicitor's Office, *Charter of Human Rights Newsletter*, January 2007, Issue 1. Available: <http://www.vgso.vic.gov.au/news/charterofhumanrightsnewsletter-issue1.aspx> (Accessed 1/10/08).

Victorian Equal Opportunity and Human Rights Commission, *The VEOHRC intervention power under the Charter of Human Rights and Responsibilities: When will the VEOHRC intervene?* November 2007. Available: www.equalopportunitycommission.vic.gov.au/pdf/intervention%20guidelines.pdf (Accessed 1/10/08).

Press

Nick McKenzie, Behind the wire, *The Age*, May 16, 2008.

Hugh De Kretser and Melanie Schleiger, Victorian prisoners deserve decent treatment, *The Age*, October 3, 2008.

9. List of acronyms

CALD	Culturally and Linguistically Diverse
DPFC	Dame Phyllis Frost Centre
DOJ	Department of Justice
EOCV	Equal Opportunity Commission Victoria
FCLS	Federation of Community Legal Centres
NESB	Non English Speaking Background
VCSS	Victorian Council of Social Services
VEORHC	Victorian Equal Opportunity and Human Rights Commission

10. Appendix

Project methodology

Project outline

The project was undertaken during July 2008 – January 2009 by Zoe Jones, a final year law student at Monash University, Clayton Victoria. The project formed part of the Monash University subject, Law Reform and Community Development and the project was conducted under the supervision of the Springvale Monash Legal Service.

The project had two key aims:

1. To further investigate the areas of discrimination raised in the 2005 Request for a Systemic Review of Discrimination Against Women in Victorian Prisons and consider:
 - (i) Do these issues remain relevant to CALD women in Victorian prisons?
 - (ii) What problems do these issues raise in terms of Corrections Victoria's compliance with the *Victorian Charter of Human Rights and Responsibilities*? and
2. To evaluate policy developments within the Victorian women's prison system which are relevant to CALD women and consider:
 - (i) Whether these measures have had a practical impact to address the issues of discrimination faced by CALD women;
 - (ii) Whether such policy measures could be altered or improved.

Data collection

The project has adopted a consultative approach, which has prioritised the collection of data and information relevant to the project area from community organisations, individuals and government agencies directly involved with, or who have experience in the area of women's imprisonment and related support services. Three mechanisms have been used to gather information and data:

- ▶ Qualitative research into persons and organisations involved with service delivery, advocacy and support for men and women who are imprisoned, particularly community groups, organisations independent of government, and academics.
- ▶ Research into previous studies and reports that have considered the situation of women from CALD backgrounds in Australian prisons. This has also involved consultation with persons and organisations involved in the 2005 Request for Systemic Review.
- ▶ Examination of relevant Victorian Government policy concerning CALD women in Victorian prisons. This has also involved consideration of procedures and standards relevant to the DPFC and Tarrengower prisons, and the sourcing of relevant data on women from CALD backgrounds in these prisons.

Qualitative research and ethical standards

Significant contributions have been made in researching the project from a large number of community organisations and individuals who volunteered their time

to discuss these issues. In total, more than 35 individuals and organizations were consulted and their input and assistance into the project was sought.

Eight semi-structured interviews were also held with individuals directly involved in support and advocacy for women in prison, and imprisoned and formerly imprisoned people.

In collecting data and information from community organisations and individuals, obtaining proper and informed consent to participate in the project has been a key part of the project's ethical framework. Persons who were interviewed for the project were asked to sign a consent form and were also given the option to choose the extent to which information they provided was used in the project report.

The options available to participants were:

- ▶ That the information would be used for background purposes only, and not directly used in the Report;
- ▶ That the information could be used in the Report, but that the participant or their organisation would not be directly identified in the Report; or
- ▶ That the information provided could be used in the Report, and the participant or their organisation could also be directly identified. If the information provided is so used, then the participant would be provided with a copy of the Report for their approval prior to the Report being circulated to any other organisations or otherwise published.

The majority of interviewees elected to provide information for use in the Project Report, but elected not to be identified. To maintain confidentiality and protect the identity of individuals we have assigned participant numbers to all interviewees, and this is how the information which they provide is presented in the Report.

Only a small number of participants chose to be directly identified in the Project Report, and in the most part the information provided by such interviewees has not been drawn upon specifically.

A small number of meetings were also conducted with persons involved in the 2005 Request for a Systemic Review of Discrimination Against Women in Victorian Prisons, however, these interviews were conducted for background purposes only, and the individual's consent to participate in the project report was not directly sought. In such cases the information discussed in these meetings has not been used directly in the project report.

Following the completion of a draft project Report, the persons who had participated in the project were contacted for the purpose of providing them with a draft version of the Report for their comment and requesting their feedback. Where, in a small number of cases, feedback was provided, effort has been made to incorporate this feedback into the final project Report.



Zoe Jones