

# Gender, Drug Offences and Criminalisation

---

**Drug Use and Gendered Criminalisation**

**Health Issues**

**Legal Discrimination, Law Reform, Community Legal Education**





**Cover and Text Design by Robert McMillan, Baseline Design**

**Photographs by Jessie Boylan**

**Cover image by Feliciano Guimarães**

**ISBN 978 0 9808527 9 0**

# CONTENTS

---

<b>Preface</b> .....	iv
<b>Program</b> .....	vi
<b>Introduction</b>	
Phoebe Barton, Centre for the Human Rights of Imprisoned People .....	viii
<b>Part 1 – Drug-Use and Gendered Criminalisation</b>	
Amanda George, Flat Out .....	2
Cam Nguyen, Australian Vietnamese Women’s Association .....	10
<b>Part 2 – Health Issues</b>	
Nadia Gavin, Harm Reduction Victoria .....	14
<b>Part 3 – Legal Discrimination, Law Reform, Community Legal Education</b>	
Jill Prior, Victorian Aboriginal Legal Service.....	26
Meghan Fitzgerald, Fitzroy Legal Service.....	40
<b>Feedback</b> .....	49
<b>Further Information</b> .....	52
<b>Notes</b> .....	53

# PREFACE

---

On 6th May 2011, the Centre for the Human Rights of Imprisoned People (CHRIP), a project of Flat Out Inc., organised a public forum, *Gender, Drug Offences and Criminalisation* in Melbourne, Victoria.

Flat Out is a Victorian state wide support and advocacy service founded in 1988 for women who have had contact with the criminal justice system. Flat Out's vision is that women are not imprisoned; women's rights are understood and upheld; and there is a compassionate response to personal and social trauma. The organisation leads and participates in research and community education, seeking to inform the community and other service providers about the issues that occur for women in the prison system and post-release. Flat Out works towards having a strong voice in the prison abolition movement in Australia, in the hope that eventually prisons will not be seen as a legitimate arm of the justice system, but will be viewed as an antiquated, cruel and ultimately ineffective institution.

The Centre for the Human Rights of Imprisoned People (CHRIP), a project of Flat Out, focuses on education, community capacity building, and systemic advocacy. The work of Flat Out and CHRIP builds on the intrinsic connection between service delivery and systemic social change work that has been present since Flat Out's inception. This model ensures that the individual needs of women who are criminalised, imprisoned or recently released from prison are met alongside work to address broader structural issues such as poverty, institutional racism and violence against women.

The *Gender, Drug Offences and Criminalisation* forum arose in part from the 2010 Drugs and Crime Prevention Committee *Inquiry into the Impact of Drug Related Offending on Female Prisoner Numbers*. See details on the 'Further Information' page of this booklet.

The booklet draws together speeches from a number of presenters at the forum who brought critical analysis and in-depth knowledge about the three themes raised at the forum: *Drug-Use and Gendered Criminalisation*; *Health Issues*; and *Legal Discrimination, Law Reform, and Community Legal Education*. Please note Aunty Diane Kerr, Lola Tsiaras and Rachel Ball also presented at the forum but their speeches are not included in this booklet for various reasons.

Special thanks to Aunty Diane Kerr and all of the speakers for their time, knowledge and expertise shared at the forum. We are grateful for funding for the CHRIP project during the time of the forum; the R E Ross Trust and the Reichstein Foundation. We are also grateful for funding at the time of compiling this publication from the Sidney Myer Fund, and funding to print and distribute the resource from the Victoria Law Foundation. Finally, thanks and gratitude to the CHRIP Advisory Panel and Flat Out Management Collective for support with developing the themes and content of the program.

# PROGRAM

---

## GENDER, DRUG OFFENCES AND CRIMINALISATION FORUM

FRIDAY 6 MAY 2011

We would like to acknowledge that we meet today on stolen land and pay our respects to elders past and present of the Wurundjeri community.

We would also like to acknowledge men and women imprisoned in Victoria, the family members and friends of people who have died in custody in Victorian prisons, and men and women who are here with the lived experience of imprisonment.

We are grateful for funding for the Centre for the Human Rights of Imprisoned People (CHRIP) Project from the Reichstein Foundation and the R E Ross Trust.

**12:45–1:15**

### **Registration**

**1:15–1:30**

### **Welcome to Country**

Aunty Diane Kerr,

Wurundjeri Tribe Land Compensation Cultural Heritage Council

**1:30–1:35**

### **Introduction to Flat Out and Centre for the Human Rights of Imprisoned People**

Phoebe Barton,

Centre for the Human Rights of Imprisoned People (CHRIP)

**1:35–2:30**

### **Drug-Use and Gendered Criminalisation**

Mrs Cam Nguyen,

Founder and CEO of the Australian Vietnamese Women's Association

Amanda George,  
Prisoner Advocate, Lawyer and Activist, Flat Out Management Collective

**2:30–3:30**

**Health Issues**

Nadia Gavin,  
Young Users Project Worker, Harm Reduction Victoria

Dr Lola Tsiaras,  
Clinical and Forensic Psychologist, Insight Clinical and Forensic  
Psychological Services

**3:30–4:00**

**Break – Afternoon tea provided**

**4:00–5:00**

**Legal Discrimination, Law Reform, Community Legal Education**

Jill Prior,  
Executive Officer of Legal Practice, Victorian Aboriginal Legal Service

Meghan Fitzgerald,  
Community Development Worker and Solicitor at Fitzroy Legal Service

Rachel Ball,  
Director Policy and Campaigns, Human Rights Law Resource Centre

**5:00**

**Close**

# INTRODUCTION

---

PHOEBE BARTON

PROJECT WORKER, CENTRE FOR THE HUMAN RIGHTS OF IMPRISONED PEOPLE

Thank you Auntie Di Kerr for your Welcome to Country. I'd like to acknowledge that we meet today on stolen land, and pay my respects to elders past and present of the Wurundjeri people of the Kulin Nations, as well to those who can't be here today; men and women and young people imprisoned in Australia, and also the family members and friends of people who have died in custody in Australian prisons.

As we know from our work and experiences, women in Australian prisons are predominantly jailed for victimless trivial offences, drug misuse, or crimes of survival. The violent and dehumanising nature of prisons, the lack of post-release support and rehabilitation services, and the failure of the criminal justice system to address the initial causes of crime, be it socio-economic marginalisation, mental or physical disability, racism, or violence in the home, all lead to rising rates of imprisonment, and deaths post-release, and impact not just women but their families and the broader community.

Before we start the forum, some brief background information on Flat Out and the Centre for the Human Rights of Imprisoned People. Flat Out is a state-wide organisation providing support and advocacy to women exiting prison. The service has been operating since 1988 and was established out of recognition that women coming out of prison were exposed to risks including: homelessness, inappropriate/unsafe housing, poverty, physical/mental health issues and drug dependency. Many receive inadequate support, leading to recidivism and a high number of deaths post release.

Flat Out's work consists of direct support services including providing information, facilitating access to housing, case work, crisis intervention, court support, reunification of children with



their families, and support for women preparing to enter prison. The organisation also participates in research and community education, seeking to inform the community and other service providers about the issues that occur for women in prison.

The Centre for the Human Rights of Imprisoned People (CHRIP) is a project of Flat Out that began in 2007, working to increase prison legal capacity in Victoria, whilst challenging the systemic issues that lead to imprisonment, through community education, advocacy, and policy work. CHRIP has an underlying framework of social justice and decarceration (a reduction in the number of people going to, and returning to prison). The stance of decarceration ensures our work contributes to and builds a movement, rather than just a service, because although we are accountable to the people we work with who are surviving prison, we never want our advocacy to prison reforms that ultimately expand or strengthen the prison system.

The CHRIP project has grown out of prison law and human rights work done by community legal centres, advocates, and activists since 1982. Since the 80s people have been working on a diversity of issues in Victoria including discrimination against women in prison, deaths in custody or post-release, prison privatisation and systemic violence, accountability and transparency of prisons through freedom of information and litigation, and direct support around issues of housing, children, education and employment.

Part of the reason we organised this forum is because in 2010 the Drugs and Crime Prevention Committee conducted an Inquiry into the *Impact of Drug Related Offending on Female Prisoner Numbers*, with an interim report released in October. In the past week the government's official response has been tabled, and can be found online or there are some copies on the information table. This forum is timely in how the community is facing and responding to the issues outlined, including homelessness, access to health care, physical and sexual abuse, mental health issues etc all impacting who is imprisoned for drug-offences.

Thank you for coming, and please allow me to introduce the MC Amanda George. Amanda is a prisoner advocate, lawyer and activist who has worked on prison human rights issues in Victoria since the early 80s. Amanda is one of the founders of Flat Out and continues to be on the Management Collective.

PART 1

---

**DRUG-USE AND  
GENDERED  
CRIMINALISATION**

# AMANDA GEORGE

---

PRISONER ADVOCATE, LAWYER AND ACTIVIST,  
FLAT OUT MANAGEMENT COLLECTIVE



This afternoon I will be talking about gendered criminalisation and gendered drug use. I want to acknowledge the traditional custodians of the land on which we meet, the Wurundjeri. I also wish to acknowledge the 321 women in prison today and to ponder the fact that 53 of these women are Vietnamese and 24 of them Indigenous. Each of these figures represents a gross overrepresentation.

When we talk about criminalisation there are two aspects to consider. Firstly the reasons that underlie the prohibition of certain drugs, which results in the criminalisation of those associated with it and secondly how the policing of drug and alcohol laws operates selectively depending on your race or ethnicity, class and gender.

Underscoring any discussion of the criminalisation of drug users is the need to articulate the factors that lead to people relying on drugs of any description. Patriarchal societies rely on

violence or the threat of it to ensure compliance and control of those with less power – women and children. This violence takes a myriad of forms and includes physical emotional, sexual and social. Compounding patriarchal control is the violence of systemic racial and economic discrimination that arises from the corporate capitalist individualist economic system that perpetuates and exploits inequality.

In a nutshell, our society has drug prohibition laws that consume billions of dollars in enforcement, that create more social harm than they stop and which largely punish individual's who have already experienced egregious harms.

Criminalisation should have nothing to do with drug and alcohol use. Prohibition and criminalisation have never been about reducing social harms; they have been brought about by vested interests and historically have served a political purpose in demonizing particular groups of people. Prohibition and the criminalisation of users serves as a decoy to obscure from view the social factors which result in high levels of drug dependency and deflect our gaze from the vested interests that benefit from prohibition and criminalisation.

The focus on criminalizing and punishing users is money spent at the entirely wrong end of the equation. If we imagined that these billions of dollars, could be directed to addressing the distress and injury that individual and systemic violence and abuses have caused, through the provision of housing, support, education, health care and income we would slash levels of drug dependence.

I want to spend a few minutes discussing the history and politics of some specific drug prohibitions to describe what I mean.

Before drug prohibition took hold in the 20th century, in the west, the main users of opium and cocaine were the medical profession and middle class women who used them for menstrual relief and depression arising from the constrictions of life. Opium cordials were sold to pacify children. At the turn of the 20th century Australia had the highest

consumption of patent medicines whose active ingredients were principally opiates and alcohol. By 1951 Australia had the highest per capita consumption of heroin in the world via these medicines.

Yet it was the demonisation of the Chinese smokers of opium that was a significant factor in opium's prohibition. Chinese workers who came to Australia (and the US) to mine for gold were seen to undermine labor practices. Opium was a convenient vehicle for targeting them, however the use of opium within the Chinese community was a direct consequence of the rapacious need for trade by the British and other colonial powers who flooded China with opium. The Chinese government tried to ban opium because of its widespread use and the consequent breakdown in social order, but the British went to war with China over this to protect its commercial interests.

In the north of Australia specific laws were enacted to prohibit Aboriginal people from smoking opium because they were a labor market that white farmer's needed and Aboriginal people apparently preferred to work for Chinese farmers. Opium was the scapegoat. And concerns about Aboriginal women's morality being compromised by contact with Chinese men, was also in the mix.

If we look at tobacco, this is a drug that far outstrips all others in respect of social harms. We know that it is the chemicals that the tobacco companies put in commercial tobacco that are the worst of its poisons, yet it is an offence to grow your own tobacco. Why? Because tobacco corporations are extraordinarily powerful and governments are addicted to tax revenue. So the prohibition and criminalisation of home tobacco growers has nothing to do with reducing social harm.

So far then I have talked about the criminalisation of drug users through policies of prohibition. The second aspect to criminalisation is to consider how these laws are policed. I think it is fair to say that the majority of people on the street would consider that so called 'hard drugs' produce the greatest social harm and would probably assume that they are the focus of police

activity. Yet last year in Australia there were 83,000 drug arrests and 2/3 of them were for marijuana. Of the marijuana arrests 87% were marijuana consumers. This is a spectacular waste of money for all arms of law enforcement and no doubt created harms and problems for the 55,000 people, far outweighing the harm of their marijuana use.

I now want to move to issues of gender and criminalisation.

I have said that prohibition and criminalisation have nothing to do really with preventing social harm and that in fact they divert attention from the reason that people are drug dependent. The experience of women drug users who have been imprisoned poignantly illustrates this.

Bree Carlton in her research, *‘They died of a broken heart’: Bearing Witness to Women’s Experiences of Surviving on the Outside*, quotes a woman who has been transitioning in and out of prison for most of her life, who says: “I believe all these people ... they died of a broken heart, died of their kids being taken, or they couldn’t live up to someone’s expectations. That’s what kills you. It’s not the drug, yes the drug is the substance that kills you but it’s only because your brain has given up on you.”

Women in prison have generally experienced the most extreme and damaging forms of violence’s the picture painted is the same all over Australia – physical abuse and emotional neglect as children, sexual abuse as children and adolescents, multiple moves, poverty, homelessness, breaches of trust, foster care, disrupted schooling and marginalization. It is no wonder then that before prison women have much higher rates of illicit drug use and injecting drug use than men.

The Flat Out/CHRIP submission to the Victorian Parliamentary Drugs and Crime Prevention Committee Inquiry into the impact of drug related offending on female prisoner numbers, describes women’s lives thus:

- Substance abuse, male partners, family violence and their struggle to support themselves and their children, are the main factors that drive women into crime;

- Women are more likely to be convicted of crimes involving property or drugs motivated by poverty, gambling and/or substance abuse;
- Research in Victoria a number of years ago revealed that 32% of women prisoners had been adopted or fostered as children;
- Mental illness, abuse and trauma are important factors: more women than men experience sexual, physical and psychological abuse; and
- Needs for support are linked to this victimisation, child rearing responsibilities and self-esteem.

Research has found that before prison women have almost double the percentage of attempted suicides or self harms that men, almost double the rate of Hepatitis C, with Indigenous women higher than anyone. Yet despite the extremely high risk of blood borne virus transmission in prison, Australian governments refuse to introduce syringe programs in prison, even though they operate successfully and safely overseas.

When in prison more than twice as many women are at risk of suicide and self-harm than men and women experience higher levels of stress and trauma inside prison than men, primarily because of separation from children. Better Pathways research found that 80% of women in prison received a parenting payment prior to going to prison. Given that approximately 575 women go in and out of prison each year is likely that some 400–600 children a year are affected by their mother's incarceration.

When incarcerated, women are acutely traumatized by separation from children and concerns about where the children are being looked after and by whom whilst they are inside, apart from worries about how their children are being treated. Children rarely get to stay in the same house when their mothers go inside, and usually are separated from siblings, pets and friends. Time and time again research has shown that women's children are women prisoners' greatest source of stress and anxiety.



One of the recommendations of the Parliamentary Inquiry was to give each woman in prison a free weekly phone call to her children on the outside. The Ballieu government has decided to reject this recommendation because it is **too expensive** and would mean that they would have to give this phone call to men inside who are fathers. It is mind-boggling to think that the welfare of children in the community whose parents are inside is not even worth 40 cents a week.

Interventions by DHS when women are incarcerated often make it extremely difficult for women to get reunited with their children on release. There is a significant difference to women's experience compared to men on release. Men often go straight back home to their partners and their children on release and usually do not have external intervention to determine what and if any contact they can have with their children.

Some 67% of men expect to live with their partners or their parents on release from prison whereas only 30% of women do. If people move once in the first 12 months post release, they have a 22% chance of re-offending, however if they move more than twice this increases to 60%. The message is clear; we need to spend money to secure housing for prisoner's post release to ultimately save the cost of the most expensive emergency accommodation of all, prisons.

Women's prisons are a revolving door for women on remand and un-sentenced. Last year when looking at the number of women who were **received** into prison 73% of them were un-sentenced. In numbers this means 424 of 575 women who went into prison came un-sentenced. This indicates that there are huge shortages in the community of appropriate accommodation for women seeking bail.

Research by Dr Rosemary Sheehan from Monash University revealed that 14% of women do a sentence which is under a month and a further 10% do from one to three months. NSW

research has shown how completely out of proportion is the harm done by these short sentences – losing housing, jobs, creating debt, losing children, losing possessions, pets etc – relative to the offence which attracts the short sentence. There is absolutely no ‘benefit’ to the community by these short sentence, they actually cost more to administer than long sentences and there is nothing that is gained from them that could not be secured by a community based sentences.

It costs Victorians \$276 a day (including capital) to keep women in prison. This money would have a far greater impact on community safety and reduce social harm if it were spent on things that actually make a difference. Housing makes a difference, support for dealing with long term trauma makes a difference as does, support with child reunification, programs to prevent violence in families and addressing poverty and education and employment opportunities.

This suggestion is not pie in the sky. Interestingly the most recent report of the Victorian Sentencing Advisory Council found that this vision does have community support. 83% of people supported the proposition that drug addicted offenders should be given intensive rehab rather than prison and 74% said nonviolent offenders should be given community corrections orders rather than prison.

If these ideas were put into practice this would translate into probably 300 women being released to do their sentence in the community. Drug prohibition and criminalisation is a policy that is way overdue for change, tackling that issue would also empty our prisons and release resources that could be used positively rather than punitively.

**Selected References:**

- Australian Crime Commission (2008–09) *Illicit Drug Data Report 2008–09*, available [online] at <http://www.crimecommission.gov.au/publications/illicit-drug-data-report/illicit-drug-data-report-2008-09>
- Baldry, Eileen (2003) *Ex-prisoners and accommodation: what bearing do different forms of housing have on social reintegration?* Australian Housing and Urban Research Institute
- Loxley, Wendy and Adams, Kerryn (1999) *Women drug use and crime: findings from the Drug Use Monitoring in Australia program*, Australian Institute of Criminology, available [online] at <http://www.aic.gov.au/documents/A/F/4/%7BAF425925-9725-4BC7-96B7-61ED6EE5338C%7Drpp99.pdf>
- Johnson, Holly (2006) *Factors associated with drug and alcohol dependency among women in prison*, Australian Institute of Criminology, available [online] at <http://www.aic.gov.au/documents/6/8/A/%7B68A7B093-7AE3-4C5E-8802-F3ABEA840CB5%7Dtandi318.pdf>
- Council of Australian Governments (2011) *Report on Government Services, Corrective Services*, available [online] at [http://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0015/105315/033-chapter8.pdf](http://www.pc.gov.au/__data/assets/pdf_file/0015/105315/033-chapter8.pdf)
- Victorian Drugs and Crime Prevention Committee (2010) *Inquiry into the impact of drug related offending on Female prisoner Numbers*, available [online] at <http://www.parliament.vic.gov.au/dcpc>
- Hamilton, Margaret, King, Trevor, Ritter, Alison, eds. (2004) *Drug use in Australasia Preventing Harm*, Oxford University Press in association with Turning Point Alcohol & Drug Centre
- Manderson, Desmond (1994) *From Mr Sin to Mr Big, A history of Australian drug laws*, Oxford University Press, USA
- Stokes, Geoff, Chalk, Peter, Gillen, Karen (eds.) (2000) *Drugs and Democracy, In Search of New Directions*, Melbourne University Press
- Gelb, Karen (2011) *Alternatives to Imprisonment: Community Views in Victoria*, Sentencing Advisory Council, available [online] at <http://sentencingcouncil.vic.gov.au/content/publications/alternatives-imprisonment-community-views-victoria>

# MRS CAM NGUYEN

MA (Cambridge U.), Dip.Ed., Dip.Ed.Admin.

---

FOUNDER AND CEO

AUSTRALIAN VIETNAMESE WOMEN'S ASSOCIATION



In Vietnamese culture, there are groups of words that are very often referred to in conversation. One of them is “Tuu, sac, tai, khi”. Tuu, meaning wines and spirits; sac, beauty and sex; tai: gambling and khi: smoking opium and using drugs. The words refer to the four main pleasures or doors of perdition, depending on how you look at them.

A couple of weeks after my 10th birthday, I, my parents and siblings were at the house of a younger brother of my mother for a Christmas dinner. My uncle offered me a small glass of Benedictine. It was the first time ever I was offered “tuu”. I was carried away immediately, I just loved the flavour and sweetness of the liquor. I slowly savoured the drink to the last drop.

When the family sat down to dinner, I piped up: “That Benedictine drink was just wonderful. Now, I know which door I would open: tuu absolutely!” All the adults roared with laughter. After

they calmed down, one of them said: “The four doors are only for men, dear, not for women, and absolutely not for girls. For them, there are the four virtues which you would surely know”.

And don't I know them! Mothers and aunties, nurses and school teachers keep repeating the four words to us girls ad nauseam: Cong (housekeeping skills), dung (good appearance), ngon (good speech), hanh (good behaviour). It is very clear that in our paternalistic traditions, only males are allowed all the fun and sins while females are expected and brainwashed to stick to virtues!

Vietnamese women who have been living overseas even for several decades, still feel obliged to follow this tradition. Most feel very guilty when they enter any of the four doors. The first two doors: alcohol and sinful sex are very rarely touched. The third one, gambling is the one the temptation which a lot of women fall for, while the fourth one, drugs, has so far tempted only a few women.

Gambling is all the more popular for Vietnamese women living in Australia because a lot of them are not fluent in English (nearly half declared that they spoke little or no English in the 2006 Census) and therefore cannot access English language entertainment be it radio, TV, comedies or musicals. Even when English fluency is not a problem, women are isolated because they are usually too shy to join the local association or sports club unless either there happens to be a Vietnamese one – or an Australian friend or neighbour happens to be at hand to introduce and support them in the initial stage. Our association, the Australian Vietnamese Women's Association runs from playgroups to women's groups, men's groups, senior citizens' groups, bike club, etc.

Smoking is very rare and drug use is rather limited. Vietnamese women in Dame Phyllis Frost Centre are much more often involved in drug trade or cannabis growing than drug use.

How common is the incidence of women accepting responsibility for crimes committed by or with their male partners, as women are of lower status and therefore, more expendable is hard to tell? This is a factor that must be reckoned with in a still very traditional community.



PART 2

---

# HEALTH ISSUES

# NADIA GAVIN

---

YOUNG USERS PROJECT WORKER

HARM REDUCTION VICTORIA



Note: This publication has transferred Nadia Gavin's presentation from a PowerPoint slide show

## **This presentation includes:**

- A brief overview of Harm Reduction
- Peer Education and Prison Workshops
- Key Issues re drug treatment for female drug users
- Female drug users are mothers and primary carers
- The removal of children – lost to the system
- The way forward

## **Harm Reduction Victoria:**

- Harm Reduction
- Health Rights
- Human Rights



I am from Harm Reduction Victoria (HRV), formerly named VIVAIDS, the state drug user org of Victoria. We recently changed our name to HRV after 20 years of operation. We wanted to change our name to represent what we actually do, which is pure harm reduction. We were having issues with people wanting to participate in our workshops but thought they had to have HIV to participate, which is untrue but perception sometimes outweighs fact.

Our mission statement is that we aim to provide a voice for people who inject or use other drugs, and to address the health and social justice issues experienced by people who use/inject drugs. We consider that health and social justice issues affecting the day to day lives of drug users is our core business.

We know that drug users come from a broad spectrum of society, and we try to target the most vulnerable and marginalised who are at the greatest risk of drug related harms. Therefore we see prisoners and ex-prisoners as a key group within our constituency.

**Roles and programs at Harm Reduction Victoria include:**

- Executive Officer
- Hepatitis C Education and Support Officer
- DOPE – Drug overdose prevention Peer Educator
- PAMS (Pharmacotherapy advocacy mediation and support) Coordinator and Officer
- DanceWize Coordinator and Assistant Coordinator and 12–15 KPE's (volunteer Key Peer Educators)
- Communication Officer – Whack magazine and other publications (Position unfilled at the moment)
- Harm Reduction Peer Educator

**The issues drug users face in day to day life:**

- Discrimination
- Isolation
- Stigmatisation
- Alienation

## **What is Harm Reduction compared other drug use reduction strategies?**

### Supply Reduction

- Police
- Customs
- Current Drug Laws
- Prisons
- Courts

### Demand Reduction

- Abstinence Based Programs
- Prevention Education
- Drug Counselling
- Court Diversion
- Methadone/Suboxone

### Harm Reduction

- Needle and Syringe Programs
- Drug User Organisations
- Peer Education
- Safe Injecting Facilities
- Needle and Syringe Programs in Prison
- Heroin Prescriptions
- Methadone/Suboxone

### **Other Harm Reduction Strategies that are not illicit drug related:**

- Seat belts in cars
- Cancer Screening
- Wearing helmets on bikes
- Sun Protection (hats, sunscreen, etc)
- Using condoms/Safer Sex

- Nicotine patches/gum/nasal-spray
- Heart-smart foods

## **Peer Education**

Peer Education is HRV's primary model of education with drug users. We run workshops for users on a range of topics of INTEREST and RELEVANCE.

Illicit drug users come from very diverse backgrounds but do share common experiences, because drug use is unlawful. Every time a user takes drugs they are doing something that is illegal, every day they break the law.

- Informal Peer Education is an organic process that has occurred since people began taking drugs
- Formal Peer education is health education that needs to be credible, relevant and practicable
- Drug User Organisations' peer educators make sure they are well informed with best available evidence from research and examples of best practice in Australia and overseas

## **Harm Reduction Victoria Prison Project**

HRV was contracted by the Department of Justice from 2003-2007 to design and deliver peer education workshops that focused on Overdose Prevention, Recognition and Response.

Some of the best anecdotal feedback I've gotten was when one day I was standing at a tram stop, someone said to me 'I know you, you came in and did a workshop while I was in prison.' I unfortunately couldn't remember the person, but I was glad they remembered me. They said they had just got out of prison and were on their way to see their dealer and that they remembered what I had said about after having a break your tolerance is down and you are at more risk of overdose. So they were only buying \$50 instead of a half a gram. Their dealer asked why they were only getting such a small amount, and the reply was because their tolerance was down after having a break whilst in prison. It is always good when you get feedback like that, and your words are remembered.

The aim of prison project was:

- To 'increase awareness of overdose factors and overdose prevention, management and response strategies' (Project Agreement DOJ and VIVAIDS Inc., 2002)
- To 'decrease the incidence of fatal and non-fatal heroin related overdose within, and on release from, prison.' (Project Agreement DOJ and VIVAIDS Inc., 2002)

The VIVAIDS peer education workshop was:

- Designed specifically in response to the particular needs of prisoners and ex-prisoners
- Focus group tested at 3 correctional facilities.

### **Drug of Choice**

- Out dated term
- People use what they have access to and can change from day to day

In 2001 there was a heroin drought, a lot of people went on to Methadone or Buprenorphine and then started using Speed or Ice.

People will use what they can get a hold of i.e. Monday they might smoke some Marijuana take some Benzo's and drink alcohol, Tuesday they might just use Benzo's, Wednesday they might just drink alcohol, Thursday they might use heroin, Friday they may use speed, Saturday ecstasy, K and Ice and Sunday heroin and marijuana for the come down.

### **Prisons and Drug Use**

- "At least 80% of Women inmates are serving a sentence for drug related offences." (Women and Drug. Gender Impact Assessment , Dec 2008, Women's Health Victoria)
- "Approximately one-third of all women released from prison upon completion of their sentence return to prison custody within two years." (Better Pathways Strategy, Department of Corrections 2008)

The implications of women's imprisonment are far-reaching, placing the state's prison system under unprecedented pressure. Social and economic costs are incurred not only by the community and the women themselves but also by their families, particularly their children. As a result, increasing numbers of Victorian children will experience dislocated and disadvantaged lives, thereby increasing the likelihood that they will be exposed to the criminal justice system later in life. (Better Pathways: An integrated response to women's offending and re-offending)

The number of female prisoners in Victoria has more than doubled over the last decade. In 2008, the female prisoner population was 260 compared with just over 100 in 1995.

### **Key issues of drug treatment for women prisoners who use drugs:**

- Lack of gender specific treatment options
- The shortage of treatment places
- Lack of pharmacotherapy programs in prison and in the community: you need to already be on a pharmacotherapy program to get your methadone or suboxone in prison. In the female prisons there is a lot of standing over for women's pharmacotherapy's especially suboxone.
- Cost of pharmacotherapy after the subsidy runs out 30 days after release from prison

### **Other issues**

- Extremely high rates of Hep C amongst female inmates: WIPAN (The Women in Prison Advocacy Network) notes, "given the sharing of drug injecting equipment, the risk of a women prisoner contracting a blood borne viral infection continues to exist, increasing the possibility of a prisoner leaving the prison in poorer state of health than when they entered."
- NSW 45% women in prison tested positive to Hepatitis C
- Female drug users are mothers and primary carers

## **Personal Stories**

### **Story 1.**

He always looked after me, scoring the drugs, getting the equipment, mixing up and injecting me, all off it. I was always at home looking after the kids. I would get called into a room, have my shot and that was my only involvement in the process, but now he's gone. He went to work, doing things to support our habit that I didn't know about. He didn't just look after the drug thing; he was the money earner in the house.

So I was alone now with no partner, two kids and a raging habit, "what am I going to do?" no money coming in, can't get onto a methadone program for a couple of days maybe a week, I was lucky to get some tick from my dealer, made a complete mess of my arms though, I said "I'll have some now and save some for in the morning" so I can get my eldest to school on time which I haven't been doing lately as we've been sick in the mornings which has been making things harder, now the principle wants me to come and see her this afternoon and now I've got to go and pinch some food from the supermarket so the kids have something to eat for tonight.

And then I got pinched shoplifting food with my kids (I made sure they never saw me steal but that security guard did) and then they called the police who searched me and found the gear as well. They took me to the police station and my kids I don't know where; this is the worst day of my life. I am in the lock up and don't know where my kids are and I don't know if I'm even going to get my kids back. They're my life; my youngest hasn't even been away from me not even for one day.

### **Story 2.**

Sam was 28 when she had her first child. Her labour was difficult, but Sam gave birth to a healthy baby girl. Within 24 hours the baby began to withdraw from methadone, and was taken to the Special Care Nursery. Sam was then sent home, which was very painful for her, even though she knew her daughter needed special care that in this state she couldn't provide.

Sam and her partner did not have a car, and Sam would catch a train and bus to get to the hospital. Sam would call and let the staff know she was coming in, made sure she was at the nursery at three hour intervals so that she could feed her baby. More and more often she would be told over the phone, ‘you don’t need to come in, we’ve already fed her.’

Four days after her baby was born, Sam was feeding her and felt excruciating pain that doubled her over. She was wheeled into emergency by a special care nursery staff member who left her there and where she sat for the next 3 ? hours. Luckily her midwife came to find her, and it was discovered Sam was hemorrhaging.

Sam felt there was no aftercare for her, and she wasn’t really treated like a human being. However she was happy when she was readmitted as she was able to see her baby as often as she liked. Sam found the experience of having to leave her behind her newborn daughter the most crushing.

### **Story 3.**

I’d been homeless for a few months, living out of my car. My ex-boyfriend was getting too violent, I was ending up in hospital too often. I went to stay at my Aunts place but he knew where she lived, he put two and two together and came around and was causing heaps of trouble, so I high tailed it out of there, unfortunately not before they (Child Protection) took my son for not being in a safe environment and my drug use didn’t help matters.

I started using even more drugs probably due to stress and more than likely because I missed my son so much, he is my life without him I feel empty, I don’t have anything to live for. Then I started doing stupid things, things that got me in trouble and next step was getting myself locked up.

My attitude was “I guess my chances of getting my son back are gone now I really don’t want to live” then my next smart trick was to try and hang myself in the cells, I couldn’t even do that properly. It was probably good that I wasn’t successful because now I am gonna work so hard getting my son back no matter what.

### **The way forward:**

It is almost a cliché these days to observe that the laws which were meant to deal with the drug problem are a big part of the drug problem and a major cause of drug related harm.

Similarly our prisons are regularly acknowledged as high risk environments and in the absence of NSP's in prisons, a glaring gap in our blood borne virus (BBV) prevention efforts. Even so, questioning our drug laws or advocating for drug law reform or decriminalisation which would appear to be a logical extension of these sorts of observations has until recently remand largely off limits.

Fortunately in the last few years the human rights approach has enabled this issue of drug law reform to become part of the harm reduction agenda. The best Harm reduction programs in the world will achieve little if people are too afraid to access them for fear of being identified as a drug user and while punitive drug laws prevail the health of drug users remains in jeopardy.

Little evidence suggests that risk of imprisonment offers any deterrence to illicit drug use and while we criminalise certain drugs and imprison those who use them we prevent drug users from accessing health and support services, we further dislocate the lives of drug users their children and families we increase the likelihood of offending and re-offending.

HRV advocates for alternatives to incarceration of nonviolent drug related offenders, including community based treatment options as opposed to law enforcement options and structural reforms targeting the causes of inequality and poverty particularly in relation to female offenders. Income generation and skill building.

- Treatment services must be gender sensitive and accommodate dependent children
- More childcare facilities so women can attend service (there is only 1 inpatient drug withdrawal program in Victoria that accommodates women and children)
- Needle and Syringe Programs in Prison
- Involving women prisoners should be given a voice and allowed to play a vital role in finding the best outcomes for their overall situations (WIPAN).



“We need to seriously look at the issues, the connection between illicit drugs and criminal activity, that it will remain intact and the systemic discrimination of female drug users and female prisoners will continue. When we start to look at drug use as a health issue and treat people with drug related problems with compassion rather than condemnation, if not a majority of female prisoner will be stuck in the vicious loop of relapse, re-offending and end up back in prison.”<sup>1</sup>

Thank You

---

<sup>1</sup> Kelsall, Jenny (2011), HRV Submission to the Drugs and Crime Prevention Committee,





PART 3

---

**LEGAL  
DISCRIMINATION,  
LAW REFORM,  
COMMUNITY  
LEGAL EDUCATION**

# JILL PRIOR

---

EXECUTIVE OFFICER OF LEGAL PRACTICE

VICTORIAN ABORIGINAL LEGAL SERVICE CO-OPERATIVE LIMITED



## **Acknowledgment:**

I would like to take this opportunity to acknowledge the land on which we meet – the land of the Wurundjeri and people of the Kulin Nations. I pay my respects to their elders, both past and present.

## **Background:**

In looking at the agenda of this afternoon – and in particular the speakers and their respective organisations, it seems a telling indication of where we are at this point in time in terms of those who are identified as marginalised, and those who suffer in our society in terms of mental health issues, those in the criminal justice system and those suffering from social disadvantage. There is certainly a consistency and a recurrence of indicators that broadly identify those who live extraordinarily difficult lives. I see that there are addresses by Flat Out, the Vietnamese Women’s Association, Harm Reduction Victoria, Fitzroy Legal Service and

the Human Rights Law Resource Centre. This isn't a coincidence – and that the Victorian Aboriginal Legal Service joins that agenda also is no accident.

Further, I look at the title of the forum – Gender, Drug Offences and Criminalisation and the general banner under which I speak – discrimination and the law. Again, it is the very coupling of these words that speaks volumes to the nexus at which we can conceive the notion of discrimination and, in my brief, Aboriginal and Torres Strait Islander peoples.

I was wondering where to begin in this talk. Where to start to take a look at what the situation is in this country and I guess from my point of view in particular, in this State. There is almost 250 years of time in which to posit the discussion. Furthermore, there are as diverse as there are far-reaching 'areas' to sit this discussion – whether we look at racial discrimination on a day to day basis, in the international context (in light of UN declarations, conventions and protocols), or in context of the systemic discrimination that my colleagues across the country talk about so painfully. I have just spent two days in Adelaide with Chairpersons, CEOs and lawyers from Aboriginal and Torres Strait Islander Legal Services (ATSILS) across the country and the experiences and stories of discrimination and suffering they see in their daily lives and in the lives of their clients and community members is raw and occurs across each jurisdiction.

And again I question where to centre this discussion. We live in a country where the government can suspend the operation of the Racial Discrimination Act in order to implement policy which directly and (arguably) exclusively impacts on the lives of Aboriginal and Torres Strait Islander peoples in the Northern Territory. One can't dare imagine the impact of that "Emergency Intervention" sitting in the relative comfort of Victoria – here in the middle of the city on the other end of the country – the tangible and palpable trauma experienced by our community in the Northern Territory – the anguish in the voices of the Elders as they watch their people suffer at the hands of others, repeated over and over.

This product of government policy continues to reign in the Northern Territory and flies in the face of national and international obligations. It flies in the face of what is reasonable and should be seen as unacceptable by the national community. But this is not my area of expertise and there are people well versed in the Northern Territory Intervention who can talk to this.

### **So: Discrimination and the Law?**

The topic is so broad and in its strictest form in terms of academic or theoretical consideration, again falls well outside of my area of expertise. What I can consider in the Victorian context, and from my position as a lawyer at VALS, is how I see discrimination artfully lying in wait around the criminal justice system and therefore in the daily lives of Aboriginal and Torres Strait Islander peoples in this community.

I can speak to the experiences I have been allowed to share through the stories I have been told and the interplay I have seen when our clients, members of the Aboriginal and Torres Strait Islander community, are captured in time – framed by the criminal justice system. I experience these stories from my position as a non-Aboriginal, middle class person and born and bred in Melbourne. I experience these stories as someone who has not experienced discrimination and who grapples to make sense of the systemic and historical factors which allow it to continue. My experience is of criminal law and of struggle for members of our community – people who populate the most marginalised and disadvantaged places in our communities. I don't occupy those places and I do not suffer from discrimination.

So what is it? What is the daily experience for members the Victorian Aboriginal community? I looked for a definition of discrimination. There are academic definitions, there are dictionary definitions, and there are generally accepted usages of the term. Wikipedia defines discrimination as 'the prejudicial treatment of an individual based on their membership in a certain group or category. Discrimination is the actual behaviour towards members

of another group.’ There are volumes of work around what is considered discrimination. There are many variations on this definition depending on where we search and the level of analysis undertaken.

Someone suggested that I “pick an area of law where I see discrimination and talk to that”. I could do that, quite easily but rather than talking about the discrimination that some believe to start and stop with single incidents, I am interested in the insipid and historical torrent that flows beneath the lives of Aboriginal and Torres Strait Islander people in this country and the continued disadvantage that arises as a result. It is too easy to identify individual and isolated incidents of discrimination. Until we look at the whole of the picture we will not go forward. For each isolated incident of discrimination and for each ‘area of law where I see discrimination’ that we speak to, we tend to distance ourselves from the systemic network of discrimination that provides the opportunity for these individual instances. And as long as we focus on the individual instances we don’t acknowledge the role we all play in doing too little.

This is a poem I discovered by an Aboriginal poet named Colin Johnson (Mudrooroo Nyuonogah) born in 1938. It was written in 1986.

*A youthman was found hanging in his cell  
On Naidoc day when everywhere the Aborigines  
Were dancing, everywhere the Aborigines were marching.  
‘They’re just like us’, was the quaint refrain,  
‘They like balls and footy and songs and beer’:  
They ignored our call for Landrights!*

*On Naidoc day a youthman strangled in a cell:  
Who killed him, who were his murderers?  
‘Not I,’ said the cop, ‘I only took him in.’*

*'Not I,' said the town, 'I never spoke his name,  
It's no fault of mine that he had to die  
We treat them as we would our own,  
There's no racism in our town.'*<sup>1</sup>

## **RCIADIC**

A Royal Commission into Aboriginal Deaths in Custody (RCIADIC) was announced in 1987 after a spate of Aboriginal deaths in prison and police custody and in response to a growing public concern that such deaths were too common and poorly explained. Hearings began in 1988 and the final report was submitted in April 1991.

The Royal Commission looked at all the different factors which impact on why Aboriginal and Torres Strait Islander people may have contact with the police or end up in prison – including poverty, drug and alcohol use, history and police racism. The report found that being Aboriginal “played a significant and in most cases a dominant role” in why a person may be in custody and die in custody. The report found that Aboriginal and Torres Strait Islander peoples were between 7 and 22 times more likely to die in custody than non-Indigenous Australians.<sup>2</sup>

Of the 339 Recommendations of the Royal Commission, No 92, ‘Imprisonment as a Last Resort’ states: “That governments which have not already done so should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort”. This key recommendation is often talked about, but not wholeheartedly practised by State and Territory authorities. So the imprisonment rates of Aboriginal and Torres Strait Islander peoples have continued to rise.

---

<sup>1</sup> Colin Johnson, ‘Song Twenty-Seven’, in *The Song Circle of Jacky, and Selected Poems*, (Melbourne, 1986), p. 40.

<sup>2</sup> <http://reconciliation.org.au/nsw/education-kit/justice-and-police/#custody>



Is that a product of discrimination? ***“the prejudicial treatment of an individual based on their membership in a certain group or category. Discrimination is the actual behaviour towards members of another group”?***

The Royal Commission identified specific demographic pointers as to why it was that Aboriginal and Torres Strait Islander peoples came before the notice of the Courts and then were incarcerated. The recent analysis arising from RCIADIC of where we have come tells us that numbers of Aboriginal and Torres Strait Islander people dying in custody has dropped but numbers of Aboriginal and Torres Strait Islander people in custody has not.

**Why do Aboriginal and Torres Strait Islander people come before the courts?**

**Why do they end up in custody?**

What is the history that we can point to when we know that for tens of thousands of years there were communities in this land living their lives differently? What is the legacy of colonisation and criminalisation that has created an environment of such gross over-representation of Aboriginal and Torres Strait Islander peoples and with such dire and harmful consequences to communities and to individuals?

Intergenerational trauma, legacies of the stolen generation, over-policing, health, drug and alcohol issues, housing; these are all interconnected. The number of Aboriginal and Torres Strait Islander peoples suffering from homelessness or transience, mental health issues, substance abuse issues and lack of formal education increase the likelihood of coming before the criminal justice system. Statistical analysis tells us that the numbers are stacked against Aboriginal and Torres Strait Islander people. The confluence of poverty, poor health, mental health, homelessness, lack of access to education, incarceration are the hallmarks of a history riddled with discrimination. There is a legacy of government policy and policing that has scarred this community and created challenges for us which urgently need addressing.

Our experience tells us what issues people are dealing with when they present before the courts. And the statistics support that experience.

### Education

- 2001–13% of Aboriginal and Torres Strait Islander population completed year 12 as compared to 32% of non-Aboriginal and Torres Strait Islander completed year 12.

### Life expectancy

- In the period 2005–2007 nationally, Aboriginal and Torres Strait Islander males were dying 12 years younger than non-aboriginal males; and Aboriginal and Torres Strait Islander women were dying 10 years younger than non-aboriginal women.

### Family/ Community

- According to the ABS National Aboriginal and Torres Strait Islander Social Survey (2002a), 46 per cent of Aboriginal and Torres Strait Islander people (aged 15 years and older) in Victoria reported they or a relative had been removed from their natural family. Of those aged 35 years and over, 16 per cent said they themselves had been removed.

### Criminal Justice System

- Aboriginal and Torres Strait Islander people are 10 times more likely to be identified for public order offences;
- Aboriginal and Torres Strait Islander people are 17 times more likely to be identified for aggravated burglary offences;
- Aboriginal and Torres Strait Islander people are 8 times more likely to be identified for homicide;
- In 2006 – Aboriginal and Torres Strait Islander people are 12.8 times more likely to be in prison nationally than non-Aboriginal and Torres Strait Islander people and 9.6 times more likely in Victoria.
- In 2010 – Aboriginal and Torres Strait Islander people are 14.2 times more likely to be in prison nationally than non-Aboriginal and Torres Strait Islander people and 11.2 times in Victoria.
- In 2002 only 5% of atsi youths were cautioned by police – compared with 36% of non-Aboriginal and Torres Strait Islander youth.

- In 2007/8 Aboriginal and Torres Strait Islander young people made up 5% of the population yet 40% of young people under supervision were Aboriginal and Torres Strait Islander.
- An Aboriginal and Torres Strait Islander young person is 16 times more likely than a non-Aboriginal and Torres Strait Islander youth to be under a supervision order.
- On a daily basis, over half the number of young people in detention on average are Aboriginal and Torres Strait Islander.
- [GRAPH] – detention rates per 100,000 population show Aboriginal and Torres Strait Islander juveniles to be 28 times higher than non-Aboriginal and Torres Strait Islander juveniles.

It is 20 years since RCIADIC and reports are continuously being gathered to create an analysis of where we have come to. There were rafts of recommendations which specifically sought to address the over-representation of Aboriginal and Torres Strait Islander peoples in custody and to therefore reduce the likelihood of Aboriginal and Torres Strait Islander being at risk and dying in custody.

#### Deaths in custody

- Between 1980 and 2000, a total of 1,442 people died in all forms of custody in Australia;
- 2.3% of the Australian prison population in this 21 year period were of Aboriginal and Torres Strait Islander descent;
- 32% of the women who died in custody were Aboriginal and Torres Strait Islander; and
- 18% of men who died in custody were of Aboriginal and Torres Strait Islander descent.<sup>3</sup>

And for every single statistic – every number and every gasp that these numbers exist, there is a person behind the statistic and that person lives in your community.

#### “Uncle”

I met with an Elder of the community earlier this year. He is an amazing man with stories of a lifetime drawn from his 62 years. He is kind and reserved and I have met him a number of

---

<sup>3</sup> <http://www.aic.gov.au/publications/current%20series/tandi/221-240/tandi238/view%20paper.aspx>

times now – once when he pushed a man he thought was taking his money from the ATM and once recently.

Uncle was stolen as a child, as were all of his siblings, of which there are many. He was removed from his family and from his community as part of government policy. He was raised for part of his life in a boy's home where he suffered ongoing physical and sexual abuse – such quantifiable statements of experience. He also suffered the unimaginable trauma and abuse inherent in the removal from family and the fracturing of family and of community and of place. He made his way alone after that and sought to connect with his people, with his family and with his community.

Uncle made his way, as so many members of his generation did, to Collingwood and Fitzroy – known places to congregate and to find family and place. He spent years drinking and using drugs and coming into contact with Victoria Police. He spent a lot of time in prison. He tells me he has 'retired from that life' now. He is an amazing man who has suffered immeasurably for one lifetime.

I spoke with him recently as he was charged with criminal damage and witnesses for the police talked so flippantly of this man. They talked of him ranting and about him being upset about land rights, etc. They described him as "ranting". He broke a bottle in a bar after being refused service. He then left and 'continued ranting'. I asked him why he was so upset and as soon as I had said the words I kicked myself. Why was he so upset?!!

Well, he said, calmly and gently – I sometimes just get overwhelmed by everything I have seen and all the bad things that have happened. I was just overwhelmed. He was taken into custody and searched and the story was oh so familiar to him – he knew the routine and knew what he had to do. And they released this angry man.

And so at 62 he is banned from Collingwood and he is banned from Fitzroy. The police arranged this and released him from custody conditional upon that exclusion. When the Courts were

asked to recognise the unfairness of this and to have regard to the Bail Act, let alone the Victorian Charter of Human Rights. The courts supported the exclusion.

Imagine his life for just a moment and tell me this – is this fair? Is this discrimination? Is that a product of discrimination? **“the prejudicial treatment of an individual based on their membership in a certain group or category. Discrimination is the actual behaviour towards members of another group”?**

Is it over-policing? Is it a legacy of discriminatory policies that continue to ripple through our community as people deal with trauma and with inter-generational trauma and struggle with life?

These statistics and these stories are not isolated. These are not remarkable stories in their uniqueness. Our clients almost without exception have suffered from intergenerational trauma, and live lives riddled with uncertainty and with endemic problems around housing, mental health, drug and alcohol issues and interaction with the criminal justice system.

Looking back to the point of “gender drugs and criminalisation” I see women who are mothers without children, who are mentally unwell, fractured from community and suffering in custody or to break a cycle of offending that is intrinsically linked to disadvantage. That disadvantage is squarely posited within their Aboriginality.

I see men who are fathers and who are disempowered within their own communities and ostracised within the broader community. I see grandfathers parenting in their 40s the children of the children they couldn’t parent in their 20s. Why? Because they tried to survive in an environment that tore away the strength of Aboriginal communities and that enforced environments where trauma continues.

Is this fair? Did this family suffer discrimination? Where does this story fit? And if it sits outside of a ‘definition’ of discrimination does it take away from the lived experience of this mother,

this daughter, this member of your community? Does it tear at the fabric of our sound and reasonable society?

### **My experience**

I have learnt more than I can convey about disadvantage and trauma. About members of my community and yours who occupy the fringes and are forgotten, who are our most disadvantaged members of community. The scars that exist in our community are deep. And they won't heal without change.

I have also learnt of incredible and unimaginable strength of community and resilience of spirit which humbles me daily. I have experienced overwhelming generosity and patience and a trust and acceptance that I treasure. I am amazed almost daily at the people I meet and the stories I hear. For those reasons I urge you today – make it your responsibility to look at how this discrimination continues to occur and why. It is unacceptable that members of this community are treated in this way and experience hardship in the way they do. And it is the responsibility of us all. I call on all of us to acknowledge the racism in the policies of our governments and the discrimination in the legacies left to this community.

In November last year Roberta Sykes passed away. She was an inspirational Aboriginal woman who challenged the system and wrote the words that were for many, unpalatable. I will leave you with her powerful words.

### **Who Am I – Roberta B. Sykes / Aboriginal Poet**

I am every black woman who has ever been raped,  
I am every black woman who has ever been murdered,  
I am every black woman who has ever been called a “nigger”,  
I am every black woman who has ever been called a “slut”.

But racism is not as sexually specific as you might imagine. When the racists are out there, they're not too worried about gender. And my response to that is, ... well, it's probably predictable. When you see me, you ought to know I am also -

Every black man who's ever been whipped and beaten  
Every black man who's been strung up in a cell  
Every black youth turned down for a job  
And every black boy conforming all the closed doors

I am every black boy who has seen his mother raped, I am every black girl who has seen her father arrested and humiliated, I am every black child taken away from their family.

But that's not all I am, I am not only the victim that white society has made me.

I am every black woman who has ever been loved -  
Lain the night through in sensual caring arms -  
And every black girl who has ever flirted,  
And has danced, and known the wind and the rain  
On her skin and in her hair.

I am the woman of mystery at night.  
My eyes, too, peep from under the brim of my pert hat  
Silk swirls loose and colorfully around me  
The scent of flowers lingers in my footsteps.

My low cut black negligee is worn from use -  
And see my scabby knees from climbing trees  
The fine-tooth comb dragged nits from my hair  
And my back is bent from scrubbing floors

I am every black man come in from a successful hunt  
– bought joy and survival to my family in need -  
Have carried my woman across water too dirty/too deep  
And every black man in communion with God

I have known both lust and passion  
And murderous deeds I have done  
I have caught the blood-wet baby as it fell  
From its safe place in the womb

I am not merely who you want – or need – me to be. Racism does not shape my every movement, does not prevent me from feeling trickling sand move beneath my feet or sun beating warmly on my shoulders.

I am humble  
I am every black person who has ever been wrong,  
Who has ever said “sorry”, who has ever felt stupid,  
Who has lost their way home/forgotten where they parked their car/or arrived at the shop  
and not remembered what they came for.

I am every black parent  
My child has won his race/come top in her exam/been the beauty queen at the ball  
Or become a yuppie professional.

Of course, my child has also – been arrested/overdosed on drugs/been found hanging in a cell/been shot in his bed/come home unwed and pregnant – but that’s not all I am!



I have seen the lights, the min-min lights,  
I have spent a lifetime around a campfire,  
Huddled intimately over candle-lit dinner,  
And watched bushfire eat trees and people.

I am a successful liar – I have to be  
In order to be a politician  
And a successful thief – to steal back  
That which has been stolen from me.  
I am a land rights advocate,  
And an equal rights supporter,  
A global citizen and a human rights endorser.

And I've been alive long enough to know  
That – to be all these things, and live ...  
I have also had to be black and proud and strong.

Roberta Sykes

# MEGHAN FITZGERALD

---

COMMUNITY DEVELOPMENT WORKER/ SOLICITOR

FITZROY LEGAL SERVICE



I'll just put on the table that I was pretty overwhelmed preparing for this particular forum because it traverses such a broad territory, and I think there are a lot of issues that haven't been spoken about very much that we're talking about today.

There's also quite a lot of grief wrapped up in some of those issues that doesn't necessarily get an airing.

I'm the Community Development Officer at Fitzroy Legal Service, which means that I do community legal education, law reform, some policy work and some public interest litigation. I don't do bulk casework with women, so I don't want to put myself forward as some sort of expert in this area.

In the lead up to presenting today I talked to a number of my colleagues who do duty lawyer

work in family law, family violence, in the Children’s Court, and in criminal law, to find out what they saw as some of the main issues in this area, which is the background for my talk today.

Personally, I thought I’d start with saying how I became interested in this area. I started off doing criminal law file work at Fitzroy Legal Service and in the process of doing that I was reading a lot of psychiatric reports, as you do, and the women clients that we had, many of them had stories about their children being taken from them, usually by the department. This was causing significant harm; these women were suffering which was contributing to their mental state and their offending. I started to think about how we as a service were possibly not focusing enough energy on those women and their different legal needs as a result of the criminalisation of drug offences.

So that was the beginning of my thinking about that. The other thing I thought is that we put so much energy into making the law accessible to the male population around crime, but maybe we hadn’t been putting enough energy into making the law accessible to women around areas of life that are more specific to their needs.

After that I was doing some work with Western Suburbs Legal Service on a legal resource on child protection law, and did quite a lot of interviews with people who were using illicit drugs and spoke to them about their impressions of the child protection system. What they told me was really interesting: that they were afraid to ask questions. They felt that the institution was something to fear, they didn’t have any kind of concept about how their illicit drug use might be regarded, or whether it could result in the removal of children. Obviously, this is a huge concern. But it made me think about how difficult it is to obey the law when you don’t know what it is. And also, it seemed to me that in this particular area of the law that affects women, information is almost purposefully not available.

In the context of children – children often don’t have a voice to express their own experiences, so there are reasons why discretion is maintained, and some of the concepts are necessarily slightly amorphous. However, on the other side of that, there is some information that I think

would be in the interests of children and their parents to know. If I go to a shop and steal some food I know I'm breaking the law. If I use illicit drugs, it might be quite hard to figure out if I'll end up with a notification, or if I continue to use drugs I might end up losing my children. It might be quite hard to get that information.

In delivering legal education in this area, it was often difficult to give people hard and fast information because the concepts around these issues and issues relating to children are quite amorphous and they have a lot of value judgements attached to them. For example, over attachment might be a risk factor if a child is over attached to their parents. Trying to explain to someone what that means – there's a lot of concepts that crystallise in particular proceedings – but trying to give someone particular information about those kinds of issues is very difficult. So that's some of the reasons I became interested in this particular area.

I'm really pleased that we're having a forum around criminalisation and gender. Amanda was talking earlier about the process of criminalisation. I think it's really interesting from a community legal perspective to engage in that deconstructing process; the process by which the behaviour as an individual is transformed into crime and criminals. When we look at criminalisation processes we tend to accept them, but there are things that we want. We want an evidence base to show that that's an appropriate process. When we think about it we realise that there are issues of morality and different value judgements, there are class issues, there are also modes of social control that are at play in criminalisation processes, and Amanda has spoken a bit about those. I think that's a really useful exercise.

In terms of thinking about gendered impacts there are a lot of common discursive things we talk about and stereotypes that are at play in advocacy and legal frameworks when we talk about women. Some of those are around women as being passive, or being victims, as lacking agency, as being inanimate products of power structures, or women having shared qualities. Sometimes women are constructed as having too much agency; in the domestic world they're considered to have complete responsibility and control. Also there are certain values that are brought to bear when we think about women. For example, what's a good

woman, what's a bad or a deviant woman? I think there is a lot of conditioning that we all carry when we talk about women – even when we've thought about it a lot – I think we experience it as women, and also in the communities that we live in. So it's a really good thing for us to be talking about this.

As workers in a legal context, some of those stereotypes and discourses can lead to improved outcomes for our clients. There's a couple of ways this happens. In the criminalisation frame we have to accept certain structures when we advocate for our clients. We accept that there's an abstinence based model and we need to be able to present our client as being able to comply with that. There's a whole lot of things we need to accept to get a good court outcome. Sometimes stereotypes will be used for and against women in advocacy that affects them. From a community law perspective, that's quite a significant thing that I'll be talking a little bit more about.

There are some relevant facts that I thought I'd throw out there. More men than women are sentenced for drug offences: about 80% men, 20% women.<sup>1</sup> More men are charged and sentenced for crime more generally.<sup>2</sup> Women are more likely to be victims of sexual assault<sup>3</sup> and domestic violence.<sup>4</sup> Women are more likely to engage in work in the sex industry<sup>5</sup>, and women are more likely to be primary care givers of children. These are just some basic things that I'm accepting as a given.

There's some relevant information that we don't have access to as far as I know. The numbers of people that use illicit drugs generally, and the numbers of women that use illicit drugs who don't come to the attention of authorities and whose conduct for some reason is not criminalised. The number of families with primary caregivers who use illicit drugs but don't come to

---

1 Australian Institute of Criminology, *Australian Crime: Facts and Figures 2010*, Australian Government, Canberra, 2011.

2 Australian Institute of Criminology, *Australian Crime: Facts and Figures 2010*, Australian Government, Canberra, 2011.

3 Australian Institute of Criminology, *Australian Crime: Facts and Figures 2010*, Australian Government, Canberra, 2011, p. 24.

4 Australian Institute of Criminology, *Australian Crime: Facts and Figures 2010*, Australian Government, Canberra, 2011.

5 Prostitution Licensing Authority, *Select Prostitution Statistics*, Queensland Government, Brisbane, 2007.

the attention of authorities, and also the relationship between illicit drug use and work in the sex industry. Whilst anecdotally we know that some women working in the industry use that money to purchase illicit drugs, it is difficult to ascertain increased risk factors that might be at play, and risky choices that might be altered as a result of dependence on illicit drugs. I think that is relevant to the harms that are specific to women.

I'm going to move to the anecdotal feedback that I got from various lawyers. The lawyers are working in the areas of criminal law, family law, child protection and family violence, victims of crime and infringements. I'll just give you a brief summary of what they said. I don't want to put this forward as anything other than what it is – I just did a quick survey of what people saw as common features.

In the criminal law context, common features that were identified where women were engaging in a lot of criminal offending, or multiple or serious offending which might land them in prison. Those were: mental health issues that were possibly not being totally controlled – one description was the 'too hard basket'; a background of sexual assault or childhood abuse; often women have been in Department of Human Services (DHS) care at some time; have unresolved grief and post-traumatic stress; and the use of illicit drugs as a form of self-medicating – a coping strategy – as well as a cause of engagement with the criminal justice system. So that's not anything surprising I don't think.

In family court proceedings it was anecdotally reported to me that a very hard line view is taken of any illicit drug use other than marijuana which can be serious or not serious, it's a little bit less predictable. But in those cases where there was illicit drug use, supervision of contact would usually be ordered. Also, that there is really no functional model in relation to illicit drug use that could effectively be argued. Disclosure that you have a drug problem, even if it means that you access counselling and treatment, can work against you, and there's a strong judgement of your credibility and parenting capacity where any illicit drug use might be shown. Outcomes are often dependent on how the other parent presents, and other factors that are at play. So there are no hard and fast rules.

In child protection proceedings it was reported that illicit drug use is prima facie considered to be a very serious risk factor. Because of the way the court views illicit drug use it can encourage non-disclosure. If you're not at the attention of authorities, it can really discourage people from accessing that help. This is mainly because illicit drug use is not seen as something you can manage and gradually reduce; it's seen only in the abstinence model. Some models of responsible parenting that are used in proceedings were critiqued by some of the people that I spoke to as having a strong class bias and carrying a lot of subjective values, so it's quite difficult to analyse critically and advise about in a pre-emptive way. The advice that people would consistently provide to their clients is to comply with all directions in order to retain their children.

In family violence proceedings it was anecdotally reported to me that women are more likely to be believed in that context than men, who may be denying the violence occurred. In other proceedings however, being a victim of family violence and having children in your care can attract judgement and have an adverse effect on women. This is because you are perceived to be responsible for the children and that you haven't been able to protect them from that risk.

In victims of crime applications, the prior criminal history of an applicant is relevant in determining whether assistance should be provided, in what form, and in what measure. Victims can find this aspect of proceedings harmful not only to outcomes but to their experience of the law as a victim, because their prior convictions may be closely linked with their experiences of victimisation, and also because the impact of those priors on proceedings reinforce that they are unworthy of recognition as a victim.

In infringement cases, from a community legal perspective, it's more common for women to report that they have a lot of fines in a coercive context, perhaps in a relationship where the fines aren't actually theirs but they're not in a position where they feel they can pass those along.

So that was the feedback that I received.

My personal observations are that the gendered impact of the criminalisation of illicit drugs have been given too little attention given the number of areas of the law where women tend to wear much heavier impacts, especially around parenting, or are exposed to different kinds of harm as a result of the criminalisation processes. For example, they may be exposed to an increased risk of assault or sexual assault as a result of being part of a criminalised class of people, with all that entails.

In supporting clients through court proceedings, there tend to be tensions where – even though a legal approach is not underpinned by sufficient evidence – there isn't much room in the legal sphere to test those assumptions. An example would be if somebody is using illicit drugs twice a week, but it may be likely to lead to a preferable court outcome if they are on a maintenance program. Most people would agree their opiate dependence would increase as a result of that particular strategy. But there isn't always room in that particular environment to argue that point of net harm. Mainly because it's a criminal act every time you use drugs, which makes it difficult to talk about these issues.

At a policy level, legalisation/decriminalisation discourse is still marginalised as an endorsement of drug use rather than an acknowledgment of the failure to achieve positive outcomes through the war on drugs; to take account of the really serious harms that have been caused through the war on drugs on illicit users, and on their families and the communities that they live in.

In community legal education, which I do a bit of in these areas, it's really challenging because of the issues I alluded to earlier. People often have a lot of questions that you can't give definitive answers to. In some areas, particularly in child protection proceedings, there is a real lack of legal services available to women at an early stage to support them in their advocacy and understanding. There are also often economic factors that might be relevant to a positive outcome, for example in issues related to housing.



Another observation I would make is that the health service provision area functions very much on a harm reduction model and those principles are quite inconsistent with the legal approach, and I think that can create confusion sometimes for people. An example would be if you're pregnant and accessing a program and you're encouraged to give full disclosure, and encouraged to reduce your use, but you might not realise that just the fact that you're still using is such a serious risk factor. If there's not transparency in that dialogue it doesn't give people a great opportunity to – in a way – be responsible for the impact of their actions. Which is when the discourse and value judgements about what a good woman ought to know enter in.

Some of the ongoing challenges from my perspective, in my work, is to continue to work for gender equality in our service provision, which is an ongoing process. In relation to stereotypes and discourses around criminalisation of illicit drug use and also around women, I think it's good to acknowledge that we're working within a dominant set of values that we need to adopt in certain circumstances to advocate effectively for our clients, but also to take the opportunities as they arise – as workers – to identify the harms directly caused by the criminalisation process, right at the beginning. And to share that perspective when we can.

I think also to be wary of stereotypes and discourses that might be meeting our own needs, in terms of legitimising our work and our role, instead of sitting with the inherent contradictions with it, and accepting that that's there. It's important – I mean, I'm preaching to the converted, but I like to remind myself – that stereotyping can be really harmful to people, and it's our obligation as advocates working in an empowerment framework to work towards self-determination, and respect for all of people's human rights, despite that criminalisation frame we're working in. And it is a tension.

In collective advocacy it feels like there's a strong responsibility to keep returning to the people who have direct experiences of the issues. Even though that's complicated because every woman is different, every person's experience, their solution and where they want to be might

be different. We can often get caught up projecting our own values and thoughts, or even what we would want for that person onto them. If we can keep going back to people with direct experience, I think that that's a really important strategy.

In summary, I just want to say it's a great opportunity to talk about criminalisation and keep thinking about it, and I think that we need to be a little bit gutsy about talking about what the world might look like when you don't have this criminalisation framework that we're sometimes trying to mop up, and ameliorate the negative impacts of, but don't often get opportunities to stand outside of.

# FEEDBACK

---

## GENDER, DRUG OFFENCES AND CRIMINALISATION FORUM

### **What was your overall experience of the forum?**

- Enjoyable and incredibly informative day. Being part of a community and learning from people's experience working within these areas was wonderful
- It's great that this is a place where people can talk about the topic
- Informative, great to meet people from other community services
- Positive, informative, and unfortunately all too depressingly familiar
- Was interesting and useful for my future work/study etc.
- Excellent; really informative and moving
- Thoroughly enjoyed it!
- Really inspiring to meet people motivated in the sector
- Very informative; good variety of speakers and topics

### **What part(s) did you find the most interesting, helpful? Why?**

- Hearing from a range of organisations, range of experiences within and around the criminal justice system. All organisations were great, I couldn't choose a favourite
- Working in the drug and alcohol sector all of the subjects covered were quite relevant. Primarily the connections between drug prohibition and criminalisation of users
- All of it, all was very relevant to what I came to hear/wanted to hear about
- Everything was so enlightening and informative. All speakers were passionate about their cause
- All – Cam Nguyen on issues particular to Vietnamese women, Nadia Gavin on HRV, opportunity to meet other people/organisations involved/interested in this nexus
- The reiteration of the questioning of effectiveness of the criminal justice system
- Amanda George's speech due to passion; Harm Reduction Victoria due to the things they're doing; Insight due to treatment overview; VALS due to passion, stories and things they're doing; HRLRC due to the story/case example

- The statistics provided were alarming yet very interesting
- Government lack of intervention; therapy types
- Presentation by Cam Nguyen – helpful to hear about gendered criminalisation from a cultural perspective
- Presentation by Amanda George – effects of prohibition laws on incarceration

**Was there a topic you hoped would be covered that wasn't?**

- To explore the lack of treatment options (mainly pharmacotherapy) available to people in custody. Also the move to push NSPs in prison needs more discussion
- Government (Corrections Victoria) and/or Victoria Police representatives
- Maybe just a little more focus on the differential impact of the criminal justice system on women, sexism, discrimination etc., and the damage that stereotypes have in regards to women and crime
- Information on services available to women who are incarcerated, and ongoing support services
- Would have liked to hear more on the topic of childcare in drug treatment services (as discussed by Nadia Gavin)

**Is there anything you would like to see come out of this forum?**

- Newsletter and/or annual forum
- More activism involved in human rights, policy changes, decriminalisation, discrimination, and general flaws in system. Knowledge is power!
- An end to the 'war on drugs'
- I'd personally like to be more involved in Flat Out forums etc.
- Continuing advocacy in services/organisations/activists for the rights of drug users
- More forums
- More services uniting to provide more evidence based research in order to lobby government to effect change in legislation

- What is being done to advocate for a women's transition centres (JLTC for men: 25 beds, very successful program)
- Movement towards better use of tax payers' money; awareness

**Is there anything else you would like us to know?**

- Thanks a lot for organising this event
- Thank you, it was a positive and necessary experience
- Thank you so much!

# FURTHER INFORMATION

---

**For more information on forum organisers and speakers, see:**

Flat Out and the Centre for the Human Rights of Imprisoned People (CHRIP) project:

<http://www.flatout.org.au>

Australian Vietnamese Women's Association: <http://www.avwa.org.au/>

Harm Reduction Victoria: <http://www.hrvic.org.au>

Victorian Aboriginal Legal Service: <http://vals.org.au>

Fitzroy Legal Service: <http://www.fitzroy-legal.org.au/>

Darebin Community Legal Centre: [http://www.communitylaw.org.au/clc\\_darebin/cb\\_pages/about\\_us.php](http://www.communitylaw.org.au/clc_darebin/cb_pages/about_us.php)

**For more information on the Drugs and Crime Prevention Committee's 2010**

**Parliamentary Inquiry into Drug-Related Offending on Female Prisoner Numbers, see:**

Drugs and Crime Prevention Committee: <http://www.parliament.vic.gov.au/dcpc>

***Inquiry into Drug-Related Offending on Female Prisoner Numbers Interim Report:***

[http://www.google.com.au/url?sa=t&rct=j&q=parliamnetray%20inquiry%20gender%20drugs%20prison&source=web&cd=1&ved=0CCkQFjAA&url=http%3A%2F%2Fwww.parliament.vic.gov.au%2Fpublications%2Fcommittee-reports%2F913-interim-report-of-the-inquiry-into-the-impact-of-drug-related-offending-on-women-prisoner-numbers%2Fd-ownload&ei=nIN6T6fnBo-ciQe00LGCaw&usg=AFQjCNFOre\\_Af\\_9fa4dWyjWd-77Rk5jybA&sig2=wu2Aawz8NpfHoevTUnUdVQ](http://www.google.com.au/url?sa=t&rct=j&q=parliamnetray%20inquiry%20gender%20drugs%20prison&source=web&cd=1&ved=0CCkQFjAA&url=http%3A%2F%2Fwww.parliament.vic.gov.au%2Fpublications%2Fcommittee-reports%2F913-interim-report-of-the-inquiry-into-the-impact-of-drug-related-offending-on-women-prisoner-numbers%2Fd-ownload&ei=nIN6T6fnBo-ciQe00LGCaw&usg=AFQjCNFOre_Af_9fa4dWyjWd-77Rk5jybA&sig2=wu2Aawz8NpfHoevTUnUdVQ)

**Government Response to the *Inquiry into Drug-Related Offending on Female Prisoner Numbers Interim Report:***

[http://www.parliament.vic.gov.au/images/stories/committees/dcpc/Women\\_prisoners/Gov\\_Response\\_03052011.pdf](http://www.parliament.vic.gov.au/images/stories/committees/dcpc/Women_prisoners/Gov_Response_03052011.pdf)



