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Dear Ombudsman

Submission to Ombudsman Victoria investigation into the rehabilitation and reintegration of prisoners in Victoria

INTRODUCTION

The Victorian Equal Opportunity and Human Rights Commission (the Commission) welcomes the opportunity to make a submission to your investigation into the rehabilitation and reintegration of prisoners in Victoria. The conduct of this investigation is timely given the rapid expansion of Victoria's prison population in recent years, and its forecasts for continued growth. There is no doubt that overcrowding is impacting upon the human rights of those in custody, including those on remand and those serving custodial sentences, as well as the rehabilitative prospects of those in custody. It is for this reason the Commission has a strong interest in these issues.

This submission is prepared by the Commission having regard in particular to the obligations on organisations under the *Equal Opportunity Act 2010* (Vic.) (particular relating to discrimination on the basis of disability and race) and under the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

This submission is in two parts. The first addresses issues raised in Chapter 3 of your discussion paper, with particular focus upon prisoners with disabilities. The second section considers the specific needs of Aboriginal female prisoners as highlighted in Chapter 4 of the discussion paper. This section make specific reference to our research into the experiences of Aboriginal women in the justice system, published in our 2013 report *"Unfinished Business"*, and information subsequently obtained by the Commission.

PRISONERS WITH DISABILITIES

This section responds to questions detailed in Chapter 3 of the discussion paper.

Assessment of Prisoners

What is the impact of delayed assessments on the rehabilitation of prisoners?

Delayed assessment could mean (among other things):

- a person with a disability's accessibility needs aren't understood or addressed
- there is insufficient time remaining in someone's sentence to complete a program
- delayed eligibility for parole
- that someone is held at a higher security prison for longer than necessary.

An important and related question is 'who is likely to have their assessment delayed?' For example, is it people experiencing mental health disabilities, people with communication disabilities, people who speak a language other than English, those with low literacy etc.?

What assessment information should be available to relevant departmental and agency staff who work with prisoners?

- Assessment of risk (for person's own safety as well as staff and others in the system)
- Assessments should include a determination of accessibility needs, which should then be available to staff so that they may make reasonable adjustments for a person's disability when providing rehabilitative programs, health services etc.

Case Management

How could the Victorian case management model be improved?

- All staff should receive disability awareness training at induction with compulsory refresher training provided at regular intervals.
- Case management should be assigned to staff with the requisite skills and training. The Ombudsman's audit revealed that case management has been performed well by some prison officers and poorly by others: What is the performance management structure around case management? What is the process and training offered to improve case management?
- Assigning case managers per prisoner rather than per unit may make it easier for prisoners to raise issues related to their unit and other people (including staff) based in that unit.

What can be done to improve access to relevant information to improve case management of prisoners?

Case conferencing is an effective way of improving access to relevant information and ensuring that all staff involved with a person (e.g. industries, education, medical, clinical program, transitional planning, Department of Human Services caseworker etc) are aware of their needs. Case conferencing is particularly important where a person has complex needs.

Programs for prisoners

Should assessment of a prisoner's language, literacy and numeracy skills upon reception be compulsory?

As noted above, the lack of assessment of language, literacy and numeracy skills is likely to hinder effective case management, appropriate program participation and rehabilitation/transitional planning. Assessment of a prisoner's language, literacy and numeracy skills upon reception should be compulsory. Given the low levels of literacy and

numeracy among the prison population, Corrections Victoria should develop all programs and information to be accessible, including use of alternative formats including Easy English.

What work needs to be done to ensure that programs offered are effective in improving reintegration and reducing recidivism?

All programs, including education, need to be provided in an accessible way. This may mean tailoring therapeutic programs for particular needs. Currently, limited programming is available for people who meet the DHS 'threshold' definition of intellectual disability, while many prisoners with disabilities (such as Acquired Brain Injury) are not offered programs suitable to their needs.

What is the practical experience of prisoners in accessing offending behaviour and educational programs?

I note that Corrections Victoria (CV) has moved away from offering individual therapeutic support to people in prison in favour of group programming. Those who cannot participate in group programs are unlikely to complete a program prior to release. This may have a disproportionate impact upon prisoners with disabilities and other groups, including Aboriginal prisoners who may prefer an individualised approach (see below).

PART 2- ABORIGINAL WOMEN PRISONERS

I particularly welcome your investigation's focus upon Aboriginal women prisoners, in recognition of the specific gender and cultural factors that should be taken into account by the prison system, consistent with rights to equality before the law, and cultural rights protected by the Charter. The failure to provide culturally appropriate services to Aboriginal women may also amount to a breach of the positive duty to eliminate discrimination contained in section 15 of the *Equal Opportunity Act 2010*.

I also note that:

- Aboriginal female prisoners are generally young, however the number aged over 35 years is increasing. Many have grown up experiencing family violence, sexual abuse and intergenerational trauma. A high proportion of Aboriginal women prisoners were themselves clients of child protection services as children. Many now have their children in informal or formal out-of-home care.
- A very high proportion of Aboriginal women in prison have been victims of physical or sexual abuse.¹
- A significant proportion of Aboriginal women were homeless or in unsafe housing due to violence prior to entering prison.
- Over 85 per cent of Aboriginal and Torres Strait Islander prisoners have mental health issues or cognitive disabilities.²
- Eight out of ten Aboriginal women in Victorian prisons are mothers.³ Their incarceration has significant, harmful impacts upon their children.

¹ A study of Victorian female prisoners found 87 per cent were victims of sexual, physical or emotional abuse, with most having suffered abuse in multiple forms. Data drawn from a 2004 study. Smart Justice, *Factsheet: more prisons are not the answer to reducing crime* (2011) 2 <<http://www.smartjustice.org.au>>.

² State of Victoria, Sentencing Advisory Council, *Comparing Sentencing Outcomes for Koori and non-Koori Adult Offenders in the Magistrates' Court of Victoria* (2013) 50; Parliament of Australia, Senate Standing Committee on Legal and Constitutional Affairs References Committee, *Report of the Inquiry into the value of a justice reinvestment approach to criminal justice in Australia* (2013) 35.

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

- Ninety-two per cent of Aboriginal women prisoners have experienced mental illness at some stage in their lives.
- Aboriginal prisoners also have higher drug or alcohol treatment needs than non-Aboriginal prisoners.

As noted in a study of Aboriginal prisoner mental health and cognitive functioning:

Rates of substance misuse are high among Aboriginal prisoners; therefore, culturally relevant interventions programs for substance use disorders, and co-occurring mental illnesses and substance use disorders are required.⁴

When an Aboriginal woman enters prison, it has a significant impact on community connection and kinship obligations. Aboriginal women have the primary role in child rearing and family obligations within the community. As a result, the imprisonment of Aboriginal women has a greater effect on family, community and society compared to the imprisonment of Aboriginal men.

Incarceration also creates avoidable costs to the Victorian community.

- Keeping Aboriginal women cycling through the criminal justice system is economically inefficient. Recent modelling found that the institutional costs of a female Aboriginal offender with a history of homelessness, drug and alcohol misuse, family violence and mental illness to be over \$1.1 million per offender.⁵
- It costs nearly five times as much to have a woman in prison than to provide post-release supported accommodation, with wrap-around support, including drug and alcohol, mental health, childcare and parental skills and assistance with employment/training with the option of permanent housing.⁶

As you will be aware, in 2013 the Commission published its report of research into the experiences of Aboriginal women in the justice system, entitled *"Unfinished Business"*. I attach a copy of that report for your information.

In summary, that research found that Aboriginal women face specific barriers to successful rehabilitation in a prison system which is largely male focussed and which currently lacks a comprehensive approach towards culturally and gender appropriate programs.

Offending and imprisonment patterns for Aboriginal women differ from those of Aboriginal men. They also differ from those of other women. Aboriginal women's health and wellbeing depends on a strong connection to culture. Thus connection to culture is a crucial protective factor and must lie at the heart of any rehabilitative intervention.

The main findings relating to your investigations are detailed below.

More Aboriginal women are going to prison than ever before

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

- Aboriginal women now comprise the fastest growing segment of the Victorian prison population.

⁴ State of Victoria, Department of Justice, Justice Health, 'Koori Prisoner Mental Health Cognitive Functioning Study' (Presentation by Professor James Ogloff to Aboriginal Justice Forum 14-15 March 2013).

⁵ Based on NSW modelling, the institutional costs of a female Aboriginal offender with a history of homelessness, drug and alcohol misuse, family violence and mental illness is \$1,118,126. Eileen Baldry et al, *Lifecourse Institutional Costs of Homelessness for Vulnerable Groups* (Australian Government, Department of Families, Housing, Community Services and Indigenous Affairs, 2012) 49-53.

⁶ For example, the now defunded Restart Program had a daily unit cost of \$70 per participant, compared to \$338 per person per day in prison in 2013. Under the Restart Program, support commences three months prior to release.

- Between 2007 and 2012, Aboriginal female prisoner numbers doubled in Victoria, from 14 to 28. I understand that between June 2009 and June 2014 the increase in Aboriginal female prisoners was in the order of 130 per cent, compared to a 46 per cent increase for all female prisoners. I also understand the number of Aboriginal women released to parole has decreased substantially over the last two years.
- Once Aboriginal women enter the prison system they are more likely to be re-imprisoned. In 2012, more than half the Aboriginal women in custody had a history of prior offending and imprisonment.

More Aboriginal women are on remand

The number of Aboriginal women on remand is also increasing. In September 2012, one in three Aboriginal women in Victorian prisons was on remand. I understand that in 2013-14 there was a further large increase in the number of Aboriginal women remanded to custody.

Many cycle through the system multiple times, often on short sentences, or on remand and then bailed.

- In 2012, 67 out of 89 Aboriginal women entering prison were on remand (75 per cent).⁷
- Of those 67 Aboriginal women on remand, 60 per cent were released without being sentenced. The majority were placed on bail. Of those that were sentenced to prison, the highest number received short sentences of less than three or six months.⁸
- Overall, a greater proportion of female prisoners than male prisoners are in prison on remand. In addition, Aboriginal women are more likely to be on remand than non-Aboriginal women. A large and increasing proportion of female Aboriginal prisoners remand episodes end with the woman being released to bail.

The remand status of prisoners is significant because remandees have limited access to the majority of prison-based programs. Justice Health informed the Commission that all prisoners, including those on remand have access to an Opioid Substitution Therapy Program as clinically indicated. However, if a person is not sentenced they are not eligible for criminogenic treatment programs.

Prisoners informed the Commission that very few Aboriginal women have taken part in the drug treatment program at Dame Phyllis Frost Centre (DPFC) in recent years. This is despite 90 per cent of Aboriginal women in that prison participating in a survey being classified as having a substance misuse.⁹

The length of the program may also be a factor. The Commission understands that due to the length of offending behaviour programs, these are generally for sentenced women rather than those on remand. However, behaviour/mood management programs are available to remand prisoners.

Prison programs for Aboriginal women are patchy

Access barriers for prison services include remand status and previous completion of prison programs. While there is no official policy creating these restrictions, women told us that in practice accessing programs is rare for those on remand, or who have completed programs on previous sentences. As Aboriginal women are over-represented amongst those cycling through our prisons multiple times, these barriers have a disproportionate

⁷ State of Victoria, Department of Justice, Koori Justice Unit, above n 3. Note also, that on 31 May 2013, 22 per cent of all Koori prisoners (male and female) were on remand compared to 18 per cent of non-Koori prisoners. State of Victoria, Corrections Victoria, 'Indigenous Offenders and Prisoners Data Report to the July 2013 AJF' (Presentation to Aboriginal Justice Forum, 18-19 July 2013).

⁸ State of Victoria, Department of Justice, Koori Justice Unit, above n 3.

⁹ James Ogloff et al, *Koori Prisoner Mental Health and Cognitive Function Study: Final Report* (2013) 12-13. Note however a small sample size of 15 prisoners.

effect on Aboriginal women's prospects for rehabilitation. The drivers of the cycle of imprisonment thus remains unaddressed due to capacity issues within the prison system.

I remain concerned that Corrections Victoria (CV) is unable to extract or link program data regarding women who have accessed programs across previous sentences. This means that there is no way to test CV's assertion that there are no restrictions operating on women who have accessed programs on previous sentences.

Our research found that general programs in prison tend not to be used by Aboriginal women, and there is a lack of culturally appropriate services in prison for this cohort. While examples of culturally appropriate services do exist, Aboriginal women told us these are infrequently run, have eligibility restrictions and waiting lists.

Our research also found that some programs are not sustained due to lack of funding, or may stop and start due to variations in the number of Aboriginal women in a particular location.

I am aware that since the release of the Commission's research in 2013, CV has undertaken work on developing a more comprehensive approach to culturally appropriate programs for Aboriginal female prisoners.

I understand that since September 2013, CV has delivered the Marumali cultural program at DPFC to 13 women.¹⁰ This is a welcome initiative, as previously this program had not been run for several years.

I also understand that a further three cultural programs were scheduled between October and December 2013 at DPFC (Koori faces x 2, plus Aboriginal Cultural Immersion Program).

I have also been informed that cultural programs have not run at Tarrengower prison due to low numbers of Aboriginal women in that location.

Inequity in residential options

The lack of pre (and post) sentence residential options is a significant barrier to Aboriginal women staying out of jail and/or being placed on remand. Having a safe place, cognisant of Aboriginal women's cultural needs is vital to reversing the trend of increasing imprisonment.

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

There is only one residential program available in Victoria that encompasses cultural needs – the Wulgunggo Ngalu Learning Place, however it is only available to Aboriginal men. When provided, culturally appropriate residential diversion enjoys strong success rates compared to other corrections orders, with over around 68 per cent of Aboriginal men successfully completing the Wulgunggo Ngalu program.

While this is a pre-prison diversionary program- it does indicate the efficacy of having culturally appropriate residential options- which could be equally viable as a post release option.

Upon release from prison, services are fragmented, under resourced and hard to navigate.

- There are some transitional (pre-release) services that begin in prison and continue to support people on the outside. However, these are limited in the support they can offer Aboriginal women due to restrictions on eligibility for those on remand.

¹⁰ Marumali is a culturally appropriate program delivered to Koori female and male prisoners who are survivors of removal and assimilation policies. The program runs over five days and provides prisoners with a culturally appropriate model of healing, referred to as the Marumali model of healing.

- There are no culturally and gender appropriate support services, specifically for Aboriginal women upon release from prison. This impacts on their prospects for rehabilitation.
- Lack of appropriate housing after prison drives reoffending. Post-release accommodation is an urgent priority.

A number of Aboriginal women told us that their experience of prison had taken away their sense of independence and that, when they leave prison, they lack confidence in basic life skills and their ability to navigate day-to-day life when released. Healing, they said, was central to turning their lives around and should underpin all interventions and receiving support in their important role as mothers was among their top priorities. They told us that this should include dealing with experiences of trauma and helping them reconnect with their culture, which many had lost through being placed in out-of-home care as children.

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

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

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

I am aware that the provision of pre and post release support has just been re-tendered and that the Victorian Association for the Care and Resettlement of Offenders (VACRO) will provide in-prison programs across Victoria.

I am also aware that the new post-release program, the Corrections Victoria Reintegration Program (CVRP), will deliver specialist support for prisoners after they are released, providing links to mental health, housing, drug and alcohol support services. With services delivered by The Australian Community Support Organisation (ACSO), Jesuit Social Services (JSS), and VACRO.

I particularly welcome that the Victorian Aboriginal Legal Service will deliver a targeted post-release support Aboriginal offenders to supplement the new post-release program.

Principles for effective intervention

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

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

- be culturally and gender specific
- draw on community knowledge in their design and delivery
- recognise the significant role of Aboriginal women in family and community life
- ensure Aboriginal women have a stable base, especially safe and secure housing
- allow Aboriginal women to be with their children and support families to rebuild
- deal with experiences of violence, trauma and victimisation
- promote and strengthen connection to culture
- support Aboriginal women to navigate the complex and fragmented service system
- use a “wrap-around” approach, providing life skills, parenting skills, mental health services, drug and alcohol support and disability support, as required.

Thank you for the opportunity to make this submission. If you require further information please contact Michelle Burrell, Manager, Strategic Projects and Policy Unit, on (03) 9032 3422 or michelle.burrell@veohrc.vic.gov.au.

Yours sincerely

A handwritten signature in black ink that reads "K Jenkins". The signature is written in a cursive, flowing style.

Kate Jenkins
Commissioner