



Unfinished business

> Koori women and the justice system

For over 20 years, national and Victorian government policies have attempted to respond to the over-representation of Aboriginal and Torres Strait Islander peoples in prison.

In 2012, an independent evaluation of the Aboriginal Justice Agreement Phase 2 (AJA2) found that the rates of imprisonment of Koori women were increasing and had overtaken those of non-Koori men. It noted that imprisonment had a disproportionate impact on women and their dependent family members. However, culturally and gender appropriate diversionary options have yet to be established in Victoria.

As a commitment under the Aboriginal Justice Agreement 3, the Victorian Equal Opportunity and Human Rights Commission undertook research to document Koori women's experiences of the justice system, particularly their experiences of custody, to provide evidence to support the implementation of diversionary programs for Koori women.

The Commission spoke to Koori women about their experiences and their views about the services and support they need to break the cycle of offending. We also sought the views of those that work with Koori women in the justice system, including Victoria Police, Magistrates, prison officers, community organisations and government departments.

The research considered:

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



Main findings

More Koori women are going to prison than ever before

- In Victoria, the total number of Koori women in prison is low compared to other states; however, it is increasing, and at a higher rate than that for both non-Koori women and Koori men.
- Koori women now comprise the fastest growing segment of the Victorian prison population.
- Between 2007 and 2012, Koori female prisoner numbers doubled in Victoria, from 14 to 28.
- Once Koori women enter the prison system they are more likely to be re-imprisoned. In 2012, more than half the Koori women in custody had a history of prior offending and imprisonment.

More Koori women are on remand

The number of Koori women on remand is also increasing. In September 2012, one in three Koori women in Victorian prisons was on remand.

Many cycle through the system multiple times, often on short sentences, or on remand and then are not sentenced.

- In 2012, 67 out of 89 Koori women entering prison were on remand (75 per cent).
- Of those 67 Koori women on remand, 60 per cent were released without being sentenced. The majority were placed on bail.
- Of those that were sentenced to prison, the highest number received short sentences of less than three or six months.

Overall, a greater proportion of female prisoners than male prisoners are in prison on remand. In addition, Koori women are more likely to be on remand than non-Koori women.

Our research found that too many Koori women are refused bail because there is a chronic under-supply of accommodation that they can be bailed to.

In addition, Section 3A of the *Bail Act 1997*, which requires decision-makers to consider Aboriginality, is under-utilised. This is a significant lost opportunity to address the escalating numbers of Koori women on remand.

Profile of Koori women in prison

Koori female prisoners are generally young. Many have grown up experiencing family violence, sexual abuse and intergenerational trauma. Homelessness before and after prison is common.

- Eight out of ten Koori women in Victorian prisons are mothers. Their incarceration has significant, harmful impacts upon their children.

- A high proportion of Koori women prisoners were themselves clients of child protection services as children. Many now have their children in informal or formal out-of-home care.
- Ninety-two per cent of Koori women prisoners have experienced mental illness at some stage in their lives.
- Koori prisoners also have higher drug or alcohol treatment needs than non-Koori prisoners.

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

The justice system is struggling to respond to the increasing incarceration of Koori women

Koories are overrepresented in all parts of our criminal justice system, from contact with police and the courts, and throughout youth justice, community corrections and adult prisons.

- Over the last seven years, the number of individual Koori female offenders processed by Victoria Police has increased by 21 per cent.
- The number of Koori women on Community Corrections Orders has increased by 73 per cent over the last seven years. Around one in ten women sentenced to Community Corrections Orders are Koori.
- Multiple and outstanding fines is another frequent issue for Koori women. A failure to pay these fines or to comply with their conditions can eventually lead to imprisonment.

While Koori women often come into contact with police for property offences, they are most likely to be imprisoned for robbery, burglary and assault.

- On 31 May 2013, 52 per cent of the Koori female prison population was in prison for offences against the person, the most common of which was robbery and extortion (21 per cent) and assault (17 per cent).
- Thirty-four per cent were in prison for burglary, fraud, and other property related offences.

There is a lack of appropriate diversionary options for Koori women before prison

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

- Koori women appear to underuse mainstream pre-sentence programs such as the Court Integrated Services Program (CISP). In 2012, 48 Koori women used the CISP program and the CREDIT Bail Support Program across Victoria. If there were Koori-specific CISP services, Koori women's utilisation rates would improve.

- In 2011/12, less than one per cent of all referrals to the Criminal Justice Diversion Program (CJDP) were Koori. As the people who effectively recommend offenders to the Court for the Victoria Police members have the capacity to contribute to a greater use of diversion for Koori women. This option is currently under-utilised.

Inequity in residential diversion

The lack of pre (and post) sentence residential options is a significant barrier to Koori women staying out of jail and/or being placed on remand. Having a safe place, cognisant of Koori 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 Koori men.
- When provided, culturally appropriate residential diversion enjoys strong success rates, with over 90 per cent of Koori men successfully completing the program.

Prison programs for Koori women are patchy

- Programs in prison tend not to be used by Koori women, and there is a lack of culturally appropriate services in prison for this cohort. While examples of such services do exist, women told us these are infrequently run, have eligibility restrictions and waiting lists.
- Access barriers for prison services include remand status and previous completion of prison programs. These restrictions have a disproportionate effect on Koori women.

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

Consequences of failing to invest in diversion

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

- The impacts of imprisonment are profound. Failure to address the drivers of increasing imprisonment jeopardises the human rights of Koori women and their children.
- The increasing incarceration of Koori women due to a lack of diversionary options and post-release support, compared to men offends the right to equality before the law.
- The failure to provide culturally appropriate services to Koori women may amount to a breach of the positive duty to eliminate discrimination contained in section 15 of the *Equal Opportunity Act 2010*.

Costs to the community

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

It also creates avoidable costs to the Victorian community.

- It costs three times more to put a Koori woman in prison than to divert her to a residential scheme. It costs 12 times as much to imprison a person that to have them complete a Community Corrections Order.
- The treatment costs for a female offender completing treatment for drug/alcohol dependence outside prison is the same as five days imprisonment.
- It costs nearly five times as much to have a woman in prison than to provide post-release supported accommodation, with wrap-around support, including drug and alcohol, mental health, childcare and parental skills, assistance with employment/training with the option of permanent housing.
- Keeping Koori 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.

We must act now

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

A new approach to keeping Koori women out of prison

Offending and imprisonment patterns for Koori women differ from those of Koori men. They also differ from those of other women. Koori 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 intervention.

If diversion is going to work, it needs to be tailored to the particular circumstances of these women. A one size all approach does not work.

The "hub and spoke"

The most sustainable and comprehensive way to reduce the over-representation of Koori women in prison is to establish a "hub and spoke" model of diversion and post release services, where Koori women can step up and step down supports they need at any particular time, without losing continuity.

A residential service, developed with a community-centred methodology, would act as the "hub". It could be used by women on bail, Community Corrections Orders and post-release.

It would be closely linked to a range of "spokes", including drug and alcohol treatment services, further post-release residential options, as well as case management, trauma, family support and other services.

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

It offers the best prospects for success as it has culture at its heart.

It may take time to fully establish the hub. In the meantime, there are practical things that can and should be done, particularly at the front end of the justice system. These include:

- extending CISP to more courts
- establishing a Koori CISP

- changing the CJDP so that Koori women are better placed to participate
- enhancing the Local Justice Worker and Koori Offender Support and Mentoring Program
- keeping women out of remand by getting more accommodation and prevention services on the ground, including residential drug and alcohol services.

That is, working on the spokes while the hub comes together.

Recommendations

The report makes 29 recommendations to agencies across government, including Victoria Police, Magistrates' Court, Corrections Victoria, Justice Health, Department of Justice, Department of Human Services, the Commissioner for Aboriginal Children and Young People and the Victorian Auditor General's Office.

The recommendations address over-representation of Koori women across the criminal justice system, as well as specific recommendations regarding the establishment of a culturally and gender appropriate model of diversion (the hub and spoke).

The Commission also recommends further investment in transitional housing for women on bail and post release; improving access to treatment and services in prison for Koori women on remand and short sentences, and increasing the availability and cultural competency of post-release services.

Next steps

As a commitment under the Aboriginal Justice Agreement 3, the Commission will work with the Aboriginal Justice Forum to progress the implementation of these recommendations.

References

All data in this document is referenced in *Unfinished business: Koori women and the justice system*, available at humanrightscommission.vic.gov.au/kooriwomenandprison.



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Published by the Victorian Equal Opportunity and Human Rights Commission, Level 3, 204 Lygon Street, Carlton Victoria 3053. August 2013.

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