

DISCIPLINE and DISCRIMINATION

Women prisoners and human rights

By Amanda George

Today, 1,851 women and 24,117 men are in prison in Australia, the number of women having more than doubled in the last 10 years.¹

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HUMAN RIGHTS FOR PRISONERS

Enforcing any rights when you are a prisoner is extremely difficult. Many people on the outside are too intimidated to stand up for their rights. Imagine being in prison and trying to complain about the organisation that controls virtually every aspect of your life. The prison authorities effectively control your sentence length and how you do your time – access to visits, work or education, to legal materials, and the power to determine if you are in 23-hour or 12-hour lock-up. No wonder there is so little rights litigation by prisoners. And, of course, most prisoners who do take on the state are long-term prisoners and frequently those made 'notorious' by the media.

It is vital to talk about human rights for those in prison. Prison practices are done in our name, yet they are rarely subject to rigorous public scrutiny. Many of these practices disproportionately affect women because of their life experiences and gender differences.

For example, an independent review of prison discipline in Victoria, investigating where and how prisoners are charged with internal prison offences, found that women in prison were charged three times more with good order offences and five times more with assault offences than men in prison.² This phenomenon is not confined to Victoria. In Western Australia, women inmates are charged with internal prison offences at three times the rate of other prisoners.³ On top

of this, only 15% of women are classified as maximum security, yet 80% of women are in a maximum security prison.⁴ This excessive surveillance and discipline highlights the disproportionately coercive and punitive environment of prison for women, which is completely at odds with the risk that they represent to the community.

The disparity between men and women does not end when they are released: women are four times more likely to die an unnatural death after leaving prison than men.⁵

SYSTEMIC DISCRIMINATION AGAINST WOMEN

How has this systemic discrimination arisen? The prison system is a patriarchal, militaristic institution designed by men, for men and is inappropriate for the 7% of its population who are women.

But first we must understand how the lack of economic, social, gender and cultural rights on the outside leads to the filling up of prison cells. This is important because if we attend to these rights abuses on the outside, we will dramatically reduce prisoner numbers and minimise the human rights risks that are endemic within the prison system.

Imagine the MCG full of non-Indigenous women from across Australia; if the prison van pulled up, 22 would be going to prison. But if the MCG were full of Indigenous women, the number would jump to 348.⁶ This over-representation reflects the enormity of the burden that Indigenous women carry as a consequence of colonisation and continuing gender crimes against them.

One Koori woman told the 2005 Victorian Review of the Implementation of Deaths in Custody Recommendations that 'at least in prison we have a bed, our bills are paid and we are safe'.⁷

This is the human rights trifecta that all women need to stay out of prison – secure housing, an income and physical safety. It is appalling to realise that, for some women, it is only going to prison that secures these basic human 'rights', albeit at the expense of many others.

It is a truism that women prisoners have overwhelmingly been criminalised through acts of violence perpetrated by men: 87% of women inside have been victims of sexual, physical or emotional abuse, the majority of them by a combination.⁸ Coping with these experiences of violence and abuse of trust lead many women to self-medication and substance abuse. Experiences of ongoing violence can also manifest in mental health problems, which are compounded by women's prison experiences.⁹

And not only are prison officers not trained to deal with these issues, but their lack of training can easily translate into punitive treatment of women in the midst of psychiatric distress.

HOUSING AND SEPARATION FROM CHILDREN

What has the human right to housing got to do with prison? Most women lose their housing when they go inside, even for short sentences. Once women have done one prison sentence, a key predictor for whether they will go back inside is whether they get stable, safe, long-term housing on

release.¹⁰ Women have a much harder time getting housing on release than men. Research has shown that 67% of men expect to live with a partner or parents on release from prison, whereas only 32% of women do.¹¹ This in turn influences whether women re-offend.

The right to housing on the outside is all the more significant for women prisoners, 74% of whom are mothers, mostly sole parents. By going inside, most women lose their housing – and many fear losing their children forever. This fear is realistic, because reunification with children when a woman gets out of prison is not automatic; and access to housing is crucial to this outcome.

Victorian research found that when women are in prison, one-third of their children are placed in foster care. Reunification on release depends on stable housing, but getting public housing when your children are not with you is virtually impossible. Fewer than one-third of children in foster care are subsequently reunited with their ex-prisoner mothers. These reunifications take from one to two years to complete, depending on how many foster placements the child has had.¹² The more placements, the smaller the chance of reunification. And the more this goal fades away, the more attractive painkillers like ice and heroin become.

Women describe the separation from their children while inside as their greatest trauma, trauma they also feel on behalf of their children, who are not only separated from their >>



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parent but are invariably separated from siblings, pets and all that is familiar to them. The fear that this separation will be permanent is acutely felt, particularly as one-quarter of women inside experienced foster care or adoption as children themselves. One woman described how 'a prison community is the most reflective community on earth ... without exception everyone torments themselves with questions about their past, their present and their futures ... but it is the lack of tangible answers that causes the most unrest and leaves emotions raw'.¹³

So providing long-term housing for people leaving prison will increase the chance of reunification with children, reduce re-offending and reduce prison budgets. It is much easier to address housing compared with substance abuse and mental health issues. All it takes is money for bricks and mortar – pure and simple.

THE BURDEN OF SHORT SENTENCES

Women are inside for relatively short sentences; last year, in Victoria, 50% of women sentenced to prison got less than six months; in 2004, 20% of women were in for less than a month.¹⁴ These short sentences have a disproportionately detrimental impact. The Chief Justice of the UK Court of Appeal urged the consideration of three factors when sentencing women:

- the limited ability to achieve anything positive through imposing short sentences;
- the consequences for those children whose mother is their sole support; and
- the remarkable increase in the rise of the female prisoner population.¹⁵

Even though women get relatively short sentences, they are often incarcerated in maximum-security prisons, which impose conditions that are disproportionate to their risk to the community. Of women sentenced at Victoria's Dame Phyllis Frost Centre (DPFC), only 15% are classified as maximum-security,¹⁶ but every woman and child there lives in a maximum-security prison.

Moreover, the costs associated with a maximum-security prison sucks up money that could otherwise be spent on prisoner health, education, visit facilities, and so on. Women in prison have more instruments of restraint used on them than men – body belts, chains, leg shackles and handcuffs. Even women who have just given birth are chained.

STRIP-SEARCHES

The abuse of women's rights in prison also takes the form of strip-searching. Strip-searches are supposedly required to stop or reveal contraband. In a full strip-search, a woman must stand naked, open her mouth, lift her breasts, put her feet 12 inches apart, bend over and part her buttocks in front of officers, for a visual inspection of cavities. At the DPFC in 2002, when the population was around 200 women, 18,900 strip-searches were conducted: one item of contraband was found.¹⁷

The discipline and surveillance of women in prison is completely at odds with the risk that they pose to the community.

Until recently, a woman had to undergo these searches in order to have visits from family, children, grandmothers and lawyers that were not behind glass.

In 2003, after many years of campaigning by women's prison activists, Corrections Victoria took a bold step and decided to cut the number of strip-searches in half. It also undertook a three-year pilot to monitor contraband and urine tests at the women's prison to test the effect of the reduction in searches. There was a 40% reduction in the number of urine positives, a reduction in prison incidents – assaults – and an increase in the number of visitors. The same amount of contraband was found.¹⁸

It would appear that reducing the number of strip-searches of women, who were acknowledged to have experienced serious abuse prior to prison, actually reduced their need to self-medicate in prison.

Despite this initiative, there are still around 12,000 strip-searches of women each year at the DPFC. Given the dramatic reduction in urine positives caused by changing the strip-search regime, there is no good reason why strip-search practices in prison should not mirror the law in the community – that these searches should be done only on the basis of 'reasonable suspicion'.

PRISON DISCIPLINE AND FINES

In prison, women can earn up to \$32 a week by ironing transfers onto shirts. This money is used for phonecalls, smokes and canteen spends.

It is rare to meet a woman in prison who doesn't smoke, but new anti-smoking prison rules mean that you get a \$10 fine if you smoke in an unauthorised area, and \$50 and a loss of visits for a third offence. To recoup the fine money, the prison limits your spend to \$10 a week. This means that you must choose between your 50-pack of Holidays and tea, biscuits, shampoo. This policy has increased prison violence and standovers.

Moreover, a government review into the prison discipline system found that prison fines impact much more harshly on women, because it is women who buy gifts and send money to their children. Unlike men, they rarely have outside money coming in.

CONCLUSION

In 2005, in the face of all this evidence, the Federation of Community Legal Centres and VCOSS asked the Equal Opportunity Commission of Victoria (EOCV) to undertake a formal investigation into the systemic discrimination against women in prison.¹⁹ FCLC and VCOSS had noted that in Queensland, the Anti-Discrimination Commission undertook a comprehensive inquiry, following similar allegations of systemic discrimination against women prisoners.²⁰

But in Victoria, EOCV must get the attorney-general's consent to undertake such an investigation. In deciding whether to seek Rob Hulls' consent, EOCV made various inquiries and found that the allegations in the FCLC/VCOSS submission were already substantiated by the Ombudsman's Office and the Victorian Institute of Forensic Mental Health.²¹ Both had independently raised complaints over healthcare, the over-disciplining and over-classification of women prisoners, and documented that women with mental health issues were being placed in high-security cells when they really needed mental healthcare.

In addition, the EOCV noted that the Chief Justice of the Victorian Supreme Court, Marilyn Warren, had highlighted the 'deficiencies in the provision of mental health services to women in prison' in a case before her; and judges in two other Supreme Court cases had made similar comments.²²

However, in December 2006 the EOCV decided against seeking the attorney-general's permission to investigate systemic discrimination experienced by women prisoners.

Instead, the EOCV opted for a 'collaborative approach' with Corrections Victoria, proposing an equal opportunity/human rights audit that would be independent and transparent, with publicly available findings. Corrections Victoria refused.

What women inside are left with are 'healthy prison audits' by the Victorian Corrections Inspectorate (VCI). The VCI conducts thematic reviews of prisons for the Department of Justice, but none of its reports are public and it has thus far refused disclosure under FOI.²³ So absurdly secret is its work that it would not even disclose the names of its prison reviews when I wrote to request this information.²⁴

The Victorian Ombudsman is currently reviewing the VCI, and will hopefully recommend that it makes its reports public. Transparency is vital if the community is to have confidence in the prison system. Prisons are closed institutions; we do not see what goes on inside them in our names. We must rely on others to tell us whether they are acting in accordance with human rights principles. Those who work in the prison system, and those who review it, should be public servants not secret servants. Victoria should adopt the model of the WA Correctors Inspectorate, which reports directly to parliament and publishes its work for all to see. ■

Notes: **1** Australian Bureau of Statistics (2007) *Corrective Services, March Quarter 2007*; Australian Bureau of Statistics (1997) *Corrective Services, March Quarter 1997*. In 1997, there were 15,874 men in prison. **2** J Dugan, V Roche, I Tucker (2003) *The Prison Discipline Regime Review: Report to the Correctional Services Commissioner into Prison Discipline* 22. **3** WA Office of the Inspector of Custodial Services (2006) *Report of an Announced Inspection of Bandyup Women's Prison* 79. **4** Department of Justice, *Statistical Profile of the Victorian Prison System 2001-2 to 2005-6*. **5** A Graham, 'Post Prison Mortality: Unnatural Death Among People Released from Victorian Prisons between January 1990 and December 1999' (2003) 36(1) *Australian and New Zealand Journal of Criminology* 94-108. **6** Australian Bureau of Statistics (2006) *Corrective Services, June Quarter 2006*. **7** Department of Justice (2005) *Victorian Review of the Implementation of Deaths in Custody Recommendations Review Report, Volume One* 514. **8** H Johnson (2004) *Drugs and Crime: A Study of Incarcerated Female Offenders*, Australian Institute of Criminology, Canberra, xiv. **9** See Claire O'Connor, 'Victims or Offenders? Mental Health Issues in Women's Prisons' in this

edition, p26. **10** See Eileen Baldry, 'Recidivism and the Role of Social Factors Post-Release' in this edition, p4. **11** A George, 'Women and Home Detention – Home is Where the Prison is' (2006) 18 *Current Issues in Criminal Justice* 82. **12** Flat Out Inc and VACRO (2006) *Children: Unintended Victims of Legal Process, Discussion Paper*, available at http://www.vacro.org.au/Children_Unintended_Victims/PDFs/Discussion_Paper.pdf. **13** Flat Out Inc (2007) *Call Me By My First Name – Women's Issues Pre and Post Release from Prison* 24. **14** See above note 4. **15** [2002] 2 Cr App R (S) 52. **16** See above note 4. **17** Information released under FOI to Brimbank Community Legal Centre. **18** Corrections Victoria (2005) *Piloting a Way Forward: The Women's Prisons Region Strip-search Pilot*, obtained under FOI. **19** Federation of Community Legal Centres & Victorian Council of Social Services (2005) *Request for a Systemic Review of Discrimination Against Women in Victorian Prisons*, available at <http://www.sistersinside.com.au/media/VICComplaint.pdf>. **20** Anti-Discrimination Commission Queensland (2006) *Women in Prison: A Report*, available at http://www.adcq.qld.gov.au/pubs/WIP_report.pdf. This 152-page report made substantial findings and recommendations. **21** Equal Opportunity Commission Victoria (2006) *Women Prisoners in Victoria*, available at http://www.humanrightscommission.vic.gov.au/publications/reports%20and%20discussion%20papers/downloads/EOCV_report_final%20060830.pdf. **22** *Ibid*, at 28, footnote 47. **23** An appeal has been lodged at VCAT in June 2007 against the refusal of the disclosure under FOI of the 2004 *Corrections Inspectorate Review of Administration of Separation Orders – High Security and Management Units: Western Suburbs Legal Service v Department of Justice*. **24** Letter to author from Victorian Corrections Inspectorate, 27 March 2006.

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