



Flat Out Inc & the Centre for the Human Rights of Imprisoned People
Submission to Australian Human Rights Commission

*Access to justice in the criminal justice system for people with a
disability*

Submission prepared for Flat Out Inc & the Centre for the Human Rights of Imprisoned
People
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The following submission has been prepared for Flat Out Inc. by the Centre for the Human Rights of Imprisoned People (CHRIP), a project of Flat Out. Flat Out is a state-wide advocacy and support service for criminalised and imprisoned women in Victoria. 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. Flat Out's work with women includes providing access and referrals to appropriate and affordable housing; and linking women with support, education and information to re-establish them in the community post-release, and prevent their re-incarceration.

The Centre for the Human Rights of Imprisoned People (CHRIP) is a project of Flat Out focusing on education, community capacity building, and systemic advocacy. The work of Flat Out and CHRIP builds on the intrinsic connections 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 CHRIP project is generously funded by the W.C.F Thomas Charitable Trust and the Sidney Myer Fund.

Characteristics of incarcerated adult women in Victoria

As at June 2012 there were on average 4884 people in prison in Victoria, 340 of whom were women.ⁱ According to the *Statistical Profile of Victorian Prisoners 2006- 07 to 2010-11* (2012):

- 82.9% of incarcerated women were born in Australia
- 12.3% of incarcerated women were Indigenous
- The largest group of women born outside Australia are those born in Viet Nam, equalling 15.6% of women inside
- 10.9% of women inside were under 25
- The median age was 38.2 years
- 35.9% of women had been previously been incarcerated

Indigenous women

- 50% had been in prison before
- 70% were sentenced and 30% were on remand
- Are more likely to be in prison for offences against the person and property offences than other women

Legal status and security classification of incarcerated women

Of the incarcerated women in Victoriaⁱⁱ:

- 78.4% of women were sentenced
- 19.1% of sentenced women had a maximum security classification
- 39% of sentenced women were classified as a medium security risk
- 41.8% of sentenced women were classified as minimum security

- 21.6% of women were on remand
- 68.1% of un-sentenced had a maximum security classification
- 31.9% of un-sentenced women had a medium security classification

Sentencing characteristics

- 46.8 % received sentences of less than six months
- 32.3 % were sentenced for a period of less than 12 months
- 59.6% who were sentenced were expected time to serve less than one year in prison

Characteristics of young people incarcerated in youth justice centres in Victoria

According to the latest publically available information of the 168 males and 8 females incarcerated at youth training centre:ⁱⁱⁱ

- 22% were registered with disability services
- 38% had previous involvement with child protection
- 18% had a child protection order
- 65% were victims of abuse, trauma, neglect prior to incarceration
- 68% had been suspended or expelled from school
- 40% presented with mental health issues
- 39% presented with issues concerning their intellectual functioning
- 92% were alcohol users
- 84% were drug users
- 84% of cases had alcohol or drug use related to their offending
- 10% were parents themselves

Prison growth in Victoria

Victoria's prison population has increased by nearly 40% in the last 10 years. Growth in the prison population has been attributed to a combination of factors, including:^{iv}

- An increase in the length of prison sentences given
- An increase in the use of custodial sentences in the higher courts
- An increase the number of offences against the person, drug offences and offences against good order.

The numbers of incarcerated women rose by 24.5% between June 2007 and June 2011^v.

The number of people being held on remand has risen significant and remandees now represent over 20% of the prison population.^{vi}

Access to justice in the criminal justice system for people with a disability

Flat Out and CHRIP's submission focuses on criminalised women and formerly incarcerated women and in particular the Victorian context. I contains four documents:

1. 'Decentring the prison' in *Women exiting prison: critical essays on gender, post-release support and survival* by Debbie Kilroy, Phoebe Barton, Suzi Quixley, Amanda George and Emma Russel (2013)¹
2. *Inquiry into the value of a justice reinvestment approach to criminal justice in Australia*– tended to the Legal and Constitutional References Committee (March 2013)
3. *Inquiry into the impact of drug-related offending on female prison numbers* submitted to the Drugs and Crime Prevention Committee (June 2010)
4. A bibliography of recommended reading

Flat Out & CHRIP submits these documents to *access to justice in the criminal justice system for people with a disability inquiry* as they contain valuable information on the gender specific experiences of women within the criminal justice system. They elucidate the unique experiences of women, many of whom have physical, intellectual and mental health disabilities, in addition to coming from marginalised and racialised communities such as Aboriginal, refugee and/or, intergenerational disadvantage.

We know that many of the submissions you will have received will discuss the experiences of men as they constitute the largest number of criminalised and incarcerated people. Subsequently, many services systems and indeed the criminal justice apparatus are designed for males and respond to the criminalised behaviours of men. They will not have interrogated and acknowledged the powerful role that gender plays in influencing an individual's experience in all facets of their contact with law enforcement agencies whether it be as a victim or a criminalised person.

In contrast, our contribution draws upon twenty five years of experiences working alongside criminalised women. Subsequently, it reflects a deep appreciation of the complex issues that lead women to become victims and often, criminalised. Our documents also contain the voices and experiences of the women we work with, which speak vividly of the harms of punitive social measures that the criminal justice system and its apparatus inflict upon women, their families and subsequently, the wider community.

Our documents will demonstrate that women having contact with the criminal justice system:

- Experience a complex intersection of social vulnerabilities such as being Aboriginal, refugee, transgender, in addition to having a disability and this places them at increased risk of becoming victims and criminalised
- Many women in the criminal justice system are survivors of family and domestic violence, sexual assault, sex work, poverty and homelessness
- Who are remanded or incarcerated for drug-related charges have an acquired brain injury (ABI), or suspected, undiagnosed or unreported ABI or disability.

As the prison industrial complex grows in Australia, in part driven by law and order campaigns, it is imperative that the Human Rights Commission intervenes to uphold and

¹ Please note as the chapter provided is a copy draft from the editors of this text- we politely request that it is not publically circulated. The chapter will soon be available as part of a hard copy text.

advocate our communities' most vulnerable members. The issue of criminalised and incarcerated people cuts across the scope and work of different Commissioners- including the Commissioner for Disability, Aboriginal and Torres Strait Islander, Race and Gender.

The Commission must take a leading role in ensuring the different levels government in Australia redirect their political and economic resources to the most vulnerable individuals and communities. This requires a shift from budgetary and policy commitments to the criminal justice system – that sees resources diverted to prisons and correction systems- to the creation of an equitable society. The Commission can do this by arguing for and supporting a shift to justice reinvestment, a public policy that would see resources directed towards to remedying racial, social, economic and political marginalisation instead of criminal justice policies that further traumatise and compound disadvantage. The Commission must publically endorse justice reinvestment, and advocate for government to change its publically policies to focusing on addressing structural factors that result in criminalisation.

Until these significant political and social changes can be achieved the Human Rights Commission can also support the decarceration strategies outlined in *Inquiry into the impact of drug-related offending on female prison numbers (2010)* pages 9 to 15. As outlined in these pages, this work could be undertaken into three areas - 'front end' or early intervention strategies, respond to women's needs during imprisonment and back end, or post release strategies. These strategies would enable women to access better health care and increase women's social capital through education, training and employment opportunities and life skills, for instance, thereby decreasing the risk of women being victimised and criminalised. In doing so, the Commission would play an influential role in shifting the focus of individual and personal failures of women having contact with the criminal justice system to one that acknowledges and works to ending the deep and systemic forces that underpin criminalisation and victimisation of women.

Flat Out Inc & CHRIP believe strongly that economic and social justice is the short and long term goal for resolving the criminalisation and imprisonment of all women, including those with a disability. We call on the Human Rights Commission and the wider community to be pro-active in addressing social and economic disadvantage. A corner stone of this will necessitate governments to redirect funds away from punitive regimes and responses towards community programs and therapeutic services and supports that enhance women's autonomy and safety.

ⁱ Statistical Profile of Victorian Prisoners 2006- 07 to 2010-11, (2012): 13

ⁱⁱ Statistical Profile of Victorian Prisoners 2006- 07 to 2010-11, (2012): 13 and 16

ⁱⁱⁱ Youth Parole Board and Youth Residential Board Victoria Annual Report 2011-2012:12.

^{iv} *Victoria's prison population 2002-12* a report by the Sentencing Advisory Council (SAC)

^v Statistical Profile of Victorian Prisoners 2006- 07 to 2010-11, (2012): 13

^{vi} *Victoria's prison population 2002-12* a report by the Sentencing Advisory Council (SAC)