

**Remarks of the Hon. Marilyn Warren AC  
Chief Justice of Victoria  
on the occasion of the**

**The WAM Pilot Program Evaluation  
Monday, 26 March 2012**

**Brief History of Women's Gaols**

A few examples from history on the development of female prisons.

The first prison specifically for women, the Spinhuis, opened in Amsterdam in 1645. The women were employed in supplying personal services such as spinning, weaving and sewing.<sup>1</sup> Elsewhere in Europe at that time, women were mostly kept in the same buildings as men with minimal separation between the two.

Under the auspices of Sir Robert Peel, the 1823 *Gaol Act* provided that women and men be kept in separate quarters. Further, women were only guarded by other females. However it was not until the energetic philanthropist, Elizabeth Fry took an interest that these reforms started to come into effect 30 years later. 'The Quakers' further encouraged notions of compassion and self-motivation in the female prisoners. Groups of Quakers would voluntarily visit women in gaol, reading them passages of the Bible and providing other mechanisms for self-improvement. This practice began in England and quickly spread to the United States.<sup>2</sup>

Over time different penal reform movements have taken different paths and developed disparate reform programmes for men and women premised on common perceptions of the nature of each sex.

However it remains the fact that female prisons are a derivation of the male paradigm – in other words, women are essentially an afterthought in penal theory. This state's Dame Phyllis Frost Centre is an example of some of the issues faced by women offenders. While there are multiple prisons for male offenders, allowing segregation by age and type of offence, the women offenders are housed together in the one prison (save for the modest facility

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<sup>1</sup> Lucia Zedner, 'Wayward Sisters: The Prison for Women' in Norval Morris and David Rothman (eds) *Oxford History of the Prison* (1998), 295.

<sup>2</sup>*Ibid* 296-7.

at Tarangower). But at the same time, the statistics show that the number of women offenders has increased in recent years.

### **A few facts about female prisoners in Australia and Victoria:**

- according to a recent report from the Australian Bureau of Statistics,<sup>3</sup> in December 2011 there were 83,799 persons in prison custody in Australia, including full-time prisoners and those in community-based corrections;
- at that time, 2,021 (or 7 per cent) of the full-time prisoners were female compared with 27,054 (or 93 per cent) male prisoners;<sup>4</sup>
- the median age of male prisoners is 33.5 years, females 34.8 years;<sup>5</sup>
- also in December 2011, the rate of male offenders in full-time prisons (311 prisoners per 100,000 adult males) was 14 times more than the rate of females (22 prisoners per 100,000 adult females);
- the rate of male offenders in community-based corrections (514 per 100,000 adult males) was four and a half times that of females (110 females per 100,000 adult females);
- right now there are about 327 women prisoners in Victoria, compared with 4,485 that are male.<sup>6</sup>

Thus, it is readily apparent that women are in the minority compared with the overall number of persons in the prison system across Australia.

With regard to the Indigenous population of Australia, the situation is much the same – of the total 7,638 indigenous Australians in full-time prisons in 2011, 7,016 (or 91 per cent) were male and only 622 (or 9 per cent) were female. However, indigenous prisoners represented 26 per cent of the full-time prisoner population, which is a very high amount, considering that only 2 per cent of the Australian population is of indigenous descent. Vietnamese women are also over-represented in prisons, with one figure putting the number at about 45 women in Victorian prisons, out of a total of 312. Mrs Nguyen, founder and chief executive of the Australian Vietnamese Women's Association, has said the women were overwhelmingly convicted of drug-related offences or crimes such as receiving stolen goods or fraud, but that the motivation for the crime was usually to repay gambling debts from the Melbourne casino.<sup>7</sup>

<sup>3</sup> Australian Bureau of Statistics, *Corrective Services Australia*, 4512.0 (December quarter, 2011).

<sup>4</sup> Australian Bureau of Statistics, *Corrective Services Australia*, 4512.0 (2011).

<sup>5</sup> Australian Bureau of Statistics, *Corrective Services Australia*, 4517.0 (2011).

<sup>6</sup> Australian Bureau of Statistics, 'Demographic Characteristics: By States and Territories' in *Prisoners in Australia* (2011).

<sup>7</sup> Statement by Mrs Nguyen, founder and chief executive of the Australian Vietnamese Women's Association, in an article entitled 'Gambling turns Vietnamese women to crime', published in *The Age*, 22 June 2010.

In Victoria, the total prisoner population increased by 30 per cent, from 22,458 in 2001 to 29,106 in 2011. During that time, the number of male prisoners increased by 29 per cent, from 20,953 to 27,078, while the number of female prisoners increased by 35 per cent, from 1,505 to 2,028. At present, the rate at which women are entering the justice system is still increasing and with it, the need to address any issues women face, particularly issues of gender bias.

## **Women and Sentencing in Modern Courts**

I will now examine how femininity affects sentencing in modern courts.

First, however, it is important to note that it is a general expectation of the community that people who commit crimes in similar circumstances are expected to receive similar treatment by the courts. *DPP v Ellis*<sup>8</sup> was concerned with the sentence handed down to a 36 year old female teacher who had intercourse on a number of occasions with a 15 year old student. Mr. Justice Callaway reasoned that:<sup>9</sup>

it is no longer acceptable that an offender be given a different sentence *solely* because of his or her sex.

Nevertheless, the Court recognised that there may be particular circumstances, perhaps arising directly out of a perpetrator's femininity, that will properly mitigate a sentence.

Thus it has been judicially recognised that 'The fact that a prisoner is the mother of a young child may mean that a prison sentence will have a more devastating effect upon her than it would have upon others.'<sup>10</sup>

In the case of *R v SH*,<sup>11</sup> the Victorian Court of Appeal pointed out that,

[i]t is well recognised in penological research that female prisoners have substantial psychological difficulties in the corrections system that warrant higher levels of treatment, support and care than is represented by their proportion of the entire prison population.<sup>12</sup>

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<sup>8</sup> [2005] VSCA 105.

<sup>9</sup> *Ibid* at [10]; citing *R v Harkness and Ors* [2001] VSCA 8, 58.

<sup>10</sup> *R v Zampaglione & Ors v R* (1981) A Crim R 287, 310.

<sup>11</sup> [2006] VSCA 83.

<sup>12</sup> [2006] VSCA 83, at 23.

In *R v Woden*,<sup>13</sup> the Court of Appeal reduced a sentence imposed on a woman offender in relation to culpable driving causing death, on the grounds that she was suffering from a serious mental illness with symptoms of depression and anxiety, and that she had deteriorated as a result of the accident. In *R v Rollo*,<sup>14</sup> the Court of Appeal<sup>15</sup> similarly reduced a woman offender's sentence on appeal on the basis of her mental health condition and the consequently harsh effect of prison on the mental health of the offender.

## Women's Differences

In this light, allow me to highlight a couple of circumstances common to many women in our criminal justice system.

1. Medical requirements: Women have different medical needs to men. Apart from their obvious gynaecological needs, it is recognised that '[T]he mental health profile of a female prisoner is characterised by high rates of depression, anxiety disorders, substance abuse and personality disorders.'<sup>16</sup>
2. Family situation: Often women have different needs with respect to family. Of the male prison population who have children, 89 per cent leave their children in the care of their biological mother. Contrastingly, 22 per cent of female inmates have left the care of their children to the care of their biological father.<sup>17</sup> The significance of these numbers lies in the fact that a female offender's prospects of rehabilitation are often closely linked to their maintenance of their familial ties.<sup>18</sup> Further, recidivism in women can be caused by their 'rusty' mothering skills on their return to the community. Such considerations make desirable the further development of facilities that allow for women to keep their family bonds whilst in prison.

## The need for further research

One criminologist has noted:<sup>19</sup>

A coherent and effective policy towards women in the criminal justice systems will only be developed when it is recognised: that women's crimes are

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<sup>13</sup> [2006] VSCA 97.

<sup>14</sup> [2006] VSCA 154.

<sup>15</sup> Warren, CJ, Buchanan and Vincent JJA.

<sup>16</sup> Mitchell Byrne and Kevin Howells 'The Psychological Needs of Women Prisoners: Implications for Rehabilitation and Management' (2002) 9(1) *Psychiatry, Psychology and Law* 34, 35.

<sup>17</sup> Judith Miller-Warke 'Prisoners as Women: Questioning the Role and Place of Imprisonment', paper presented at the Women in Corrections: Staff and Clients Conference, Adelaide, 31 October 2000.

<sup>18</sup> *Ibid.*

<sup>19</sup> Pat Carlen, *Sledgehammer: Women's Imprisonment at the Millennium* (1998) 10.

committed in different circumstances to men's; that women's lawbreaking is, on the whole, qualitatively different to men's; and that therefore the response to both men and women should be *in-part* gender-specific, rather than merely crime and sentence specific.

A study of female offending is important to crime and justice as a whole: to better understand the nature of female offending and enable appropriate responses to be developed, which may differ significantly from the programs designed for males. There is a 'pressing need' in light of the rising levels of female juvenile offending.

The predominant, informed view is that, in fact, 'there is relatively little research on how women's involvement in crimes of violence has changed over time' and the available data indicates little variability in violence amongst women over time.<sup>20</sup> Instead, the on-going concern over women who commit crimes is more likely driven by the public perception that women criminals 'directly contradict the role women in our society are supposed to play.'<sup>21</sup> In other words, women who commit crime are seen to be acting contrary to the characteristically feminine nature, a nature that is essentially nurturing and non-violent.

### ***A case for special consideration - Aboriginal women in the corrections system***

If there is a minority group within women in the corrections system, it is that comprised of women offenders of Aboriginal descent. Even prior to entering the justice system, Aboriginal women are at a disadvantage – for instance one source cited their rate of family violence at 45 times that of non-Aboriginal women, with 69 per cent of assaults being committed by their partner.<sup>22</sup> These figures indicate that Aboriginal people frequently do not access the justice system, which is seen as draconian and unable to address the complex community issues particular to the Aboriginal culture. Former Chief Justice Brian Martin of the Supreme Court of the Northern Territory has strongly expressed concerns about this position.<sup>23</sup> In a very significant paper on

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<sup>20</sup> Ibid.

<sup>21</sup> Ward, D., Jackson, M., & Ward, R. (1969). Crimes of violence by women. In D.J. Mulvihill & M.M. Tumin (Co-directors) *Crimes of Violence, Vol. 13* (pp. 843-909). Cited by Candace Kruttschnitt, Rosemary Gartner and Jeanette Hussemann, 'Female Violent Offenders: Moral Panics or More Serious Offenders?' (2008) 41 *Australian and New Zealand Journal of Criminology* 9, 30.

<sup>22</sup> Dorinda Cox, Mandy Young and Alison Bairnsfather-Scott, 'No Justice Without Healing: Australian Aboriginal People and Family Violence' (2009) 30 *The Australian Feminist Law Journal* 151, 152.

<sup>23</sup> Former Chief Justice Martin spoke of his concerns at the JCA Colloquium on customary law, on 5 October 2007. His Honour also made strong remarks regarding violence of Aboriginal men toward women and the ineffectiveness of prison terms, on his retirement (the final remarks were published in *The Australian* on 28 May 2010 -

customary law, the former Chief Justice thoroughly articulated the problems. It is a paper those involved in policy decisions in the corrections system should be familiar with. As the former Chief Justice points out, it is the cultural differences that cause additional difficulties to Aboriginal women entering the justice system, making theirs a case for special consideration. While some Australian jurisdictions of today have specialist courts and processes designed to deal with Aboriginal offenders more remains to be done to effect equal treatment of Aboriginal women in custody, for several reasons. First, just as they are more likely to be victims of violence, Aboriginal women are over-represented in prisons. It is an issue of increasing magnitude, as figures show that between 1993 and 2003, imprisonment rates for women in Australia increased by 110 per cent, but by 343 per cent for Aboriginal women.<sup>24</sup> Secondly, due to their minority status and the general limited understanding of Aboriginal culture, women Aborigines who commit crime face greater prejudice than their non-Aboriginal counterparts.

### **Addressing gender bias**

The brief overview of some of the issues faced by women offenders highlights the need for a continuing study into the particular circumstances and special needs of women offenders. As recently highlighted, '[t]here is a significant absence of social work literature relating to women in corrections.'<sup>25</sup> At the same time, the need for such support is readily apparent, if one considers the circumstances that most women offenders find themselves in, including being sole carers of children, addicted to drugs or alcohol, or experiencing mental health problems. When generally compared with men, incarceration of women also seems to exacerbate their problems, indicating that in appropriate cases, different approaches to incarceration are necessary.<sup>26</sup>

Significantly, the gender demarcation in prisons has started to achieve due recognition in federal and state budgets.<sup>27</sup> These developments are an important advancement.

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<http://www.news.com.au/national/indigenous-violence-could-raise-for-25-years-warns-chief-justice-brian-martin/story-e6frfkvr-1225872287413> ).

<sup>24</sup> Julie Stubbs, Julia Tolmie, 'Battered Women Charged With Homicide: Advancing the Interests of Indigenous Women' (2008) 41 *Australian and New Zealand Journal of Criminology* 138, 140.

<sup>25</sup> Kylie Agllias, 'Women in corrections: A call to social work' (2004) 57(4) *Australian Social Work* 331.

<sup>26</sup> Ibid.

<sup>27</sup> The Government will invest a further \$80.6 million over four years in the women's prison system, adding 18 new beds at Tarrengower women's prison and 141 new beds at the Dame Phyllis Frost Centre. A further \$26 million over four years is being invested into programs to reduce re-offending among women prisoners. Source: Victorian Budget 2010 – 2011, statement by the Minister for Police and Emergency Services, 4 May 2010, [http://www.budget.vic.gov.au/domino/Web\\_Notes/budgets/budget10.nsf/d6e571e551bef80eca2572bb002bcea7/009fd3c7ad168f69ca25771a0003d91a!OpenDocument](http://www.budget.vic.gov.au/domino/Web_Notes/budgets/budget10.nsf/d6e571e551bef80eca2572bb002bcea7/009fd3c7ad168f69ca25771a0003d91a!OpenDocument).

In 2005, the Victorian Government announced the development of reform programmes specifically for women over the next four years. This strategy encompassed a number of measures, including a new 20-bed intensive support ward to accommodate and provide specialist care to women prisoners with mental health care needs. The strategy succeeded, for example, in establishing a health and well-being centre at Dame Phyllis Frost centre and access to services was improved through initiatives such as the Vietnamese Liaison Officer and the creation of the Marmak unit which provided access to mental health services.

An independent evaluation of the strategy completed in 2009 found that it had contributed to a reduction in female imprisonment, that the responsiveness of the corrections system had been improved as had access to services. The number of female prisoners in Victoria had decreased by 15.3%. Programs specifically developed for women (rather than serving simply as an adaptation of male programs) were effective, including the Child Care and Transport Subsidy.

### **The Women and Mentoring Program**

The Women and Mentoring Program (WaM), a two-year Pilot initiated in 2009 by The Wellington Collingwood Inc., has created its own unique program model to support women charged with an offence.

The Wellington initiated the WaM pilot program in response to the identified need for new forms of community support for women in the initial stages of contact with the criminal justice system, particularly in the period of following the laying of charges and prior to appearing in court.

The rationale for the Women and Mentoring Program was considered to be consistent with criminological research that shows men and women have different patterns of criminal behaviour and pathways to crime, they tend to represent a lower-risk, higher-needs offered group than men and that gender-specific programs are required to respond to the distinctive needs of female offenders.

The Women and Mentoring program has operated through four grants sourced from three philanthropic and one small government grant. The Women and Mentoring pilot program recruited around twelve mentors over its two years of operation, in two intakes. The program was promoted in a range of sources (e.g. volunteer websites, local newspapers) as well as word of mouth. Mentors came from a range of professional and non-professional

backgrounds, from the local area and from outside the local area, including a regional centre.

Mentors were trained and resourced to provide appropriate support to participants. Mentors typically supported participants to prepare for and attend court hearings and other support services. They also assisted participants with day-to-day matters (e.g. childcare arrangements, Centrelink appointments) and with informal support. The process for providing this support was negotiated by each pair. It might involve transporting a client to appointments, meeting them at the appointment, having a coffee together or talking on the phone.

The most common charge faced by participants of the Women and Mentoring pilot was theft. In addition to their criminal charge the women participating in the program were also dealing with a complex constellation of factors, consistent with the findings of the literature, with issues ranging from drug and alcohol, mental health, family violence, poor physical health, drug and financial hardship. These were obviously significant in reducing their capacity to cope with their legal issues. Most lacked supportive or constructive relationships in some cases were extremely socially isolated. Most who were parents were sole parents, often concerned about protecting their children from further exposure to violence. Seven of the eleven participants had – between them – twelve children under the age of 18. Six of these children are currently in care, generally of extended family members.

The report issued about the program discusses in detail how those participating in the pilot concluded that it:

- made a significant positive difference to the female offenders' confidence;
- trained and resourced volunteer mentors to provide appropriate support to the participants;
- gained the support of the magistrate, police and lawyers by providing a referral option.

The Women and Mentoring pilot has concluded that it delivered significant benefits to participants. Long term outcomes of the pilot are not yet available, but they found that the short and medium results showed that that the program could make a significant difference to female offenders' capacity to respond to their legal matters, and their coping mechanisms more broadly. The benefits of changes made by participants had also been found to flow through children and families.



## **The Future of the Program**

Programs which enable women to avoid the criminal justice system are welcome. The WaM project is one to be highly commended. Invariably if a woman ends up in the criminal justice system it is not just the individual who suffers direct consequences. Experience dictates that the family, particularly the children, are affected. In turn this creates the additional risk in the community as to what happens to the children. They themselves can be placed at risk because of their vulnerability and ultimately be pushed into the criminal justice system also. Any way this can be avoided is desirably pursued.

In the Supreme Court we see many of the worst of cases in the criminal justice system. Invariably they involve the death of a victim in tragic circumstances accompanied by the terrible fate that can await the accused. As judges engaged in the sentencing process we regularly see a life history of an accused person, and sometimes too of a victim, from a broken family background, lack of parental and mentoring support, homelessness, drug and alcohol addiction and all the challenges life can provide.

WaM is an additional way to try to keep women out of the criminal justice system, but also, help them to keep their families out.

Against this background it is my privilege and honour to launch the WaM program. I look forward to its exciting future. I hope to see it roll out across all the Magistrates' Courts across the State, and, in time, into the higher jurisdictions where appropriate.