

GREENS LIST
BARRISTERS

Catch 22 – VLSB Modern Slavery Project Launch

Dr Felicity Gerry KC

Greens List barrister and co-author of the Modern Slavery Guide Card in Bourkes
Criminal Laws of Victoria

Introductions

- ▶ **Dr Felicity Gerry KC** - Principal investigator and co-author of *Catch 22*
- ▶ **Dr James Cockayne** - NSW Anti-Slavery Commissioner
- ▶ **Dr Marietta Martinovic AO** Associate Professor in Criminology and Justice studies in the School of Global, Urban and Social Studies at RMIT
- ▶ **Phillipa Stafford** - co-author of *Catch 22*

Project purpose

- ▶ **Funding & institutional base:** Funded by the Victorian Legal Services Board (VLSB) Grants Program and conducted as post-doctoral research through Deakin University's Centre for Protection, 2023-2025
- ▶ **The gap this project fills:** It is the *first* evidence-based Victorian research project producing policy and legislative recommendations directed at reducing barriers for modern slavery survivors to be identified and protected in criminal justice in Victoria...
- ▶ **Inspiration for the project:**
 - ▶ MSA 2015 (UK), Cases taken in England and Wales. Mary Jane Veloso case in Phillippines / Indonesia
 - ▶ Evidence given / submissions made which led to Recommendation 22 of the Australian Government's Hidden in Plain Sight Report leading to the establishment of Australia's Modern Slavery Act 2018 (Cth) and Finding 22 of the Targeted Review of Modern Slavery Offences in Divisions 270 and 271 of the Criminal Code Act 1995 (Cth).
 - ▶ The motivation for this project was inspired by bail application in *Re Boo* VSC [2020] 882, where a Chinese/Malaysian drug-trafficking syndicate allegedly used vulnerable persons in clandestine labs – the police and the prosecution and the court did not recognise the modern slavery dimension.
 - ▶ The absence of the non punishment principle from Judicial College guidance and Sentencing guidance in Victoria.

Project ethics and objectives

- ▶ **Ethical approvals required dual committee sign-off:** Both JHREC (Justice Human Research Ethics Committee) and Deakin's DUHREC approved the project; direct interviews with women were not approved – workshops were – causing design adjustment and delays
- ▶ **Trauma-informed research:** The team undertook specialist trauma-informed interview training; workshops were built on trauma-informed principles including minimising re-traumatisation, collaborative relationships and cultural competency
- ▶ **Project objectives:**
 - ▶ (1) Increase publicly available knowledge of women's lived experience in the Victorian criminal justice system;
 - ▶ (2) Increase stakeholder familiarity with those experiences;
 - ▶ (3) Increase cross-sector collaboration among survivors, researchers, policymakers and legal practitioners

Project design and methodology

- ▶ **Two-phase workshop design:** First, workshops with *stakeholders* (prosecutors, defence lawyers, judges, corrections staff, social workers, NGOs) to map the knowledge landscape; then workshops with *participant women* with lived experience of incarceration — ensuring findings were grounded before speaking to women
- ▶ **Methodology — socio-legal & qualitative:** A layered, mixed-methods socio-legal approach examining the gap between "law on the books" and "law in action," with qualitative lived-experience data at its centre (hence Green's List launch)
- ▶ **Language pivot — key design decision:** The project reframed language from "modern slavery/human trafficking" to "**forced, compelled or coerced offending**" because stakeholder knowledge was so low that terminology was derailing discussion; plainer language was also required by Corrections Victoria and enabled ethics approval.
- ▶ **Lived experience is essential to any solution:** All participants said women will only speak to those they trust — including peers with shared experience. Protection was defined by participants themselves as **BEING HEARD AND ACTION BEING TAKEN**.

Project participants

- ▶ **Participant groups:** 13 women in total – 9 from the Changing Faces Think Tank (CFTT) at Dame Phyllis Frost Centre (in-person) and 4 from Beyond the Stone Walls Advisory Collective (BSWAC) (online); both are RMIT-established lived-experience think tanks
- ▶ **Sample size matches UK precedent:** The 13 participants mirrors the 2011 UK Sentencing Council "drug mules" study (12 interviews) which led to sentencing reform – this project expanded scope beyond drug trafficking to all forms of forced/compelled offending

Women's Experiences

- ▶ **Women estimated 40-80% of women in prison offended due to force, compulsion or coercion:** Participants from inside DPFC estimated 75-80%; community-based BSWAC participants estimated 40-60%; some said it was impossible to quantify because women in such situations "are not heard or understood"
- ▶ **Types of forced/coerced offending described:** Drug trafficking (including being used as "drug mules" with items placed inside their bodies); sex work in slave-like conditions; debt bondage and migration offences; financial crime/money laundering for family controllers; servitude in online scam marketing teams; holding weapons, driving vehicles, or perverting justice for violent partners
- ▶ **"Love bombing" and trauma bonding as trafficking tools:** Women described being deceived into relationships through "catfishing," false romance and emotional blackmail – traffickers exploited women's caring instincts: *"You think they will protect you. You protect them. They will use you and leave you."*
- ▶ **The dominant strategy is silence:** Women do not disclose forced/coerced offending because of: fear of traffickers/partners (including death threats to family); fear of becoming an informant; lack of trust in police and lawyers; shame; not understanding their own circumstances as exploitation; and prior experience of not being believed
- ▶ **Women are not believed or understood:** *"I was not understood."* *"Lots of women not understood."* *"Issues understood? Sometimes these issues are never acknowledged."* Women described being forced and coerced into pleading guilty and not being heard

Women's Experiences

- ▶ **Police experiences were overwhelmingly negative:** Participants reported deep distrust — *"Certainly no trust with police," "Trust police then they misrepresent what you say," "Girls raped and coerced do not go to police."* Women described police as having "two different beings" in the street and in court, and as focused on investigating crime rather than understanding circumstances
- ▶ **Defence lawyers largely failed to ask the right questions:** *"No lawyers asked me how I was going or whether I needed help." "Do job. Get paid. Get out." "Process not humanity."* Women reported lawyers as "clinical," "transactional," with no continuity of care — and some said even when they trusted a lawyer, "it doesn't make a difference in court"
- ▶ **Courts did not understand the full picture:** *"If court understood victims of circumstances would not be in prison." "No understanding from judges in general of women's situations."* Sentencing remarks were described as alienating: *"Speak like 'who you talking about? Not me'."*

SOME FINDINGS

The core problem: Trafficked persons who commit crime in Victoria are being silenced and punished — not identified and protected. This is the "Catch 22": without protection, survivors stay silent; without speaking, they cannot be protected

The expectation that most of the data would indicate some compulsion or exploitation prior to or during offending, as it had in a UK Sentencing Council study into 'drug mules' was fulfilled, alongside an indication that a non-prosecution policy could already have been applied to many women's cases in Victoria and should be applied in future.

The practical reality is that Australia has committed to the non-prosecution and non-punishment of survivors of modern slavery/human trafficking in criminal justice but is failing to implement it. This means that women in Victoria (from Victoria, interstate and overseas) are being arrested, prosecuted and punished and held in the corrections system when they should have been listened to and protected.

The current system is not designed for victims of modern slavery/human trafficking and, in the voice of one of our participants: needs 're-education of whole system.'

What can be done already?

- ▶ Expert evidence
- ▶ Referral mechanisms - AFP and Salvation Army - note not always experts
- ▶ Non prosecution - not dependent on giving evidence.
- ▶ Discontinuance - focus on Cth prosecutions of traffickers and corporate responsibility overlap (See Bourkes Chapter).
- ▶ Abuse of process?
- ▶ Non punishment / non conviction outcomes
- ▶ Appeals?
- ▶ LEGISLATION - DEFENCES - IMPROVE ON UK (See Hidden in Plain Sight Recommendation 22).



THANK YOU

Any
Questions?