

Stigma against people who use drugs specified as a causative factor in Veronica Nelson's passing writes Fitzroy Legal Service's Managing Lawyer Meghan Joy Fitzgerald.

"That Veronica was separated from her family, community, culture, and Country at the time of her passing is a devastating and demoralising circumstance."

Coroner Simon McGregor, 30 January 2023.

Background

When Veronica Nelson died in a prison cell on 2 January 2020, picked up on shop theft allegations, a gaping hole was torn in the heart of Collingwood, Melbourne, and in all of the Countries where her family and community live.

Rumours travelled quickly of her cries for help before she passed.

When the announcement was made in the papers some months later that she had died from a rare disorder "Wilkie Syndrome", no one believed it. Intuitively the collective belief from where I stood was that she had been in rapid forced withdrawal, and that the prison had treated her as they do; as a person to be punished and denied treatment because of the criminalisation of her health condition, substance dependence.

The hole Veronica left has not closed. She is not forgotten, and what has happened never will be. I want to pay respects to her mother Aunty Donna Nelson, partner Uncle Percy Lovett, her family, and her community.

Veronica lived in the same neighbourhood I live in. I would see her most days buying smokes or milk or whatever she needed. Then she was gone.

The visceral loss and mourning continues because of the gravity of the injustice. Veronica was greatly respected as a holder of culture, stories, principles, and kindness. I would look out my window and think of Veronica's death for shop-theft, assumed to be driven by drug use, and consider all that had been taken from her – all that she may have been trying to forget or manage.

The injustice of our justice system knows no bounds. Sitting on and exploiting stolen land under legal sanction, with no recompense or genuine reckoning, Country scarred by generations of massacres, the violence of being dragged on and off missions, peoples collectively denied the right to practice language and culture, generations upon generations of children taken into institutions – experiencing all manner of harm – and now, the traditional and rightful owners of this country are the most imprisoned population in the entire world.

There is a pathological denial and shame that continues to drive the war on First Nations people, including through the war on drugs. It enables a collective and bloody mindset that is homicidal, genocidal, and profoundly immoral — keeping our society sick to the core.

Coroner's Court proceedings

The coronial jurisdiction is a truth-seeking jurisdiction led by families of those who have passed away, predominantly in the custody of the state. The Coroner is empowered to make findings of fact, comments, and recommendations. There are two key features to the Coroner's role: firstly, to

reveal and speak to factors that played a role in causing Veronica's death; secondly, to recommend changes to systems operations, practice, policy, and law that could prevent future deaths.

As an independent intervener, Fitzroy Legal Service ('FLS') were not directly instructed by Veronica's senior next of kin, and were confined in our role to systemic concerns and prevention matters. Because of the risks associated with the intervention, I sought the counsel of local elders through talks with Uncle Frank Hayes (Veronica's uncle), the late Uncle Jack Charles, and the late Aunty Viv Malo, each of whom carried deep knowledge of intersectional discrimination and associated harms.

FLS is grateful for their guidance. The application ultimately filed as an interested party was supported by Veronica's senior next of kin and was unopposed by any parties in the court proceedings.

What FLS did

FLS was given standing as a result of our drug outreach lawyer program (which has operated for 21 years), our prisoner legal advice clinic (which has operated for 25 years), and our 'women transforming justice' program, which involved a leadership program of women with lived-experience of imprisonment, driving our work on gendered injustice. FLS had also recently published research on the specific drivers of incarceration for women,¹ and holds deep knowledge of the specific ways in which legal processes disadvantage people with complex and multiple health conditions (inclusive of substance dependence), socio-economic deprivation, and severe trauma both first-hand and intergenerational. As such, FLS was able to contribute in its capacity as a legal service with unique long-term harm reduction expertise in the justice system.

Within our harm reduction mandate, we felt it was critical to share our knowledge and expertise on intersectional discrimination and stigma, stigma against people who use drugs (PWUD), the contextual drivers of criminalisation for PWUD, and the cumulative harms imposed by criminal justice processes, from policing, through to the courts, and into the prison environment. FLS undertook from the outset a framing and use of language that was respectful of PWUD, seeking to integrate and share an overtly de-stigmatising framework through our participation in the proceeding.

FLS was at all times deeply driven by our internal data, which showed the gross over-representation of first nations people and refugees in the prison population (survivors of war) – often on remand because of the 'reverse onus' bail laws and procedural breaches – in the context of homelessness, low-level offending, and highly complex health issues.

FLS briefed a range of experts that included lived peer experience, long-term front-line workers, and Aboriginal elders with a lengthy lived engagement in harm reduction, health, and human rights. These were:

- **Aunty Vickie Roach** – Yuin elder, poet, author, scholar, and lived-experience expert in the areas of prisons, drug dependence, health care in prisons, intersectional stigma and discrimination, specific processes and impacts of criminalisation on Aboriginal women

- **Aunty Marjorie Thorpe** – Kurnai elder, Djab Wurrung and Gunditjmara woman, previous worker at the Victorian Aboriginal Health Service and Victorian Aboriginal Legal Service, Commissioner for Victoria in the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from the Families, Aboriginal activist, with expertise in the areas of intergenerational trauma, health, and substance dependence
- **Adjunct Professor Ted Wilkes OA** – Noongar elder, long-term director of the Aboriginal Health Service in Perth, champion of Justice Reinvestment, Harm Reduction Australia, previous chair of the National Indigenous Drug and Alcohol Committee, previous board member, Australian National Council on Drugs, member of the National Aboriginal Health Strategy Working Party on behalf of Western Australia, which published its findings and recommendations inclusive of a comprehensive harm reduction framework for Aboriginal communities in 1989
- **Scientia Professor Carla Treloar, UNSW Sydney** – Director, Centre for Social Research in Health, Director, Social Policy Research Centre, Associate, Australian Human Rights Institute, Adjunct Professor, Australian Research Centre in Sex, Health and Society, La Trobe, Deputy Dean, Faculty of Arts and Social Sciences (2019); leading expert in the field of stigma and discrimination experienced by people who use drugs in the health care and justice settings
- **Nico Clark MD MPH, MB.BS, GradDipClinEpi, FACHAM** – Head of Addiction Medicine at Melbourne Health, Medical Director of the Medically Supervised Injecting Centre, North Richmond Community Health, Melbourne Associate Professor (University of Adelaide), previous Director World Health Organisation Collaborating Centre for Research on the Treatment of Drug and Alcohol Problems, Clinical Director – Drug and Alcohol Services South Australia (DASSA), Medical Officer – World Health Organisation
- **Adam Willson** – Senior Drug Outreach Lawyer at FLS (6+ years of service with people who use drugs ‘PWUD’), accredited criminal law specialist, and executive committee member of the Yarra Drug and Health Forum

FLS is profoundly indebted to the courage and generosity of these witnesses, and our pro bono counsel, Julian McMahon SC, Megan Fitzgerald, Alyse Mobrici, who gave their time and energy in a highly respectful, focussed, and impactful way.

Findings of the Court

The Court heard from over 50 witnesses. The scope of inquiry included analysis of multiple systems and systemic failures, underpinned, and enabled by laws and policies, and a comprehensive review of the cumulative, compounding nature of discrimination and stigma experienced by people facing multiple barriers to equality before the law.

Coroner McGregor’s findings identified that the markers of identity under consideration – gender as a woman, Aboriginal identity, criminal history, and substance dependence - radically increase the likelihood of engagement with criminal justice systems and compound harms at each stage, rather than proffering protection for those affected, in this case with fatal consequences.

Stigma & human rights violations

For the first time in a legal proceeding, the Court, adopted the experience of ‘stigma’ as a conceptual tool for the inquest.

‘Stigma is the result of social power relations, that drive four processes: (a) distinguishing and labelling differences; (b) associating negative attributes to those identified differences; (c) separating and distancing of ‘us’ and ‘them’; (d) culminating in status loss and discrimination. Stigma occurs when elements of labelling, stereotyping, status loss and discrimination occur together in a power situation that allows them.’²

On behalf of the Medical Conclave, Professor Treloar expanded the definition of stigma, stating: *‘stigma is a multi-level phenomenon that can be embedded in organisational structures and policies, and in laws and media representations (structural stigma); manifest during interactions between people (interpersonal stigma); and individuals can internalise social messages about them or people like them, resulting in feelings of lower self-worth (internalised stigma); stigma towards people with multiple stigmatised identities (intersectional stigma) results in multiple and severe disadvantage; intersectional stigma in relation to people who inject drugs (especially women who inject drugs) and First Nations people is well-described; and stigma has been accepted as a fundamental cause of population health inequalities.’³*

Coroner McGregor acknowledged that ‘[t]he World Health Organisation has described people who use injectable drugs as the most stigmatised community on the basis of their health condition.’⁴ Findings were made that Veronica’s treatment – including the failure to provide treatment – both by medical and corrections staff was negatively influenced by stigma, that stigma was inherent in the Justice Health policies governing her treatment, and that drug use stigma casually contributed to Veronica’s passing.

“Normalisation of the suffering of women experiencing drug withdrawal results in the desensitisation of both Corrections Victoria and Correct Care Australasia staff to this presentation. Desensitisation to suffering rendered Corrections Victoria and Correct Care Australasia staff virtually unresponsive to Veronica’s pleas for assistance and blind to her clinical deterioration. They collectively and continually failed to recognise she was in need of urgent medical care. I am satisfied that this phenomenon is evidence of pervasive stigma at Dame Phyllis Frost Centre towards women who use injectable drugs.”⁵

Coroner McGregor found the failure to adequately treat Veronica’s withdrawal symptoms by medical staff, and her treatment by some prison officers, constituted cruel and inhumane treatment in breach of Veronica’s human rights protected under the Charter of Human Rights and Responsibilities Act 2006 (Vic) (the Charter).⁶ (This finding has implications in mainstream health settings.)

Coroner McGregor found that, given the greater risk of fatal overdose upon release from prison, restricting access to pharmacotherapy involves a systemic infringement of the protected right to be treated humanely while deprived of liberty and the right to life under the Charter.⁷ It was held that the failings by Correct Care Australasia and Justice Health to deliver health care equivalent to that available in the community and the public health system causally contributed to Veronica’s death.⁸ Coroner McGregor also found that the absence of a subacute medical facility in the women’s prison (which exist in men’s prisons) breached the human right to equality.⁹

Discriminatory impacts of bail laws in Victoria

Evidence was provided to the Coroner on the discriminatory impacts of the 2018 reforms to the Bail Act (designed to target violent offenders) on First Nations people, resulting in grossly

disproportionate rates of remand – the most egregious of which affect Aboriginal and/or Torres Strait Islander women.¹⁰

The Coroner found there were successive failures to give adequate consideration to Veronica’s identity as an Aboriginal woman, and to consider the specific vulnerabilities that should have influenced decision makers to grant Veronica bail, as opposed to remanding her in a prison system which was ill equipped to provide her with the culturally safe and medically appropriate care she needed.

Failures extended from the arresting police, to remand procedures, police training, legal representation, prosecutors, to the under-resourcing of the Courts to provide adequate cultural support – infringing the right to equality and cultural rights.

Coroner McGregor found that changes to the Bail Act particularly devastating to PWUD and people experiencing intersectional discrimination and marginalisation, were not compliant with the Charter.¹¹

“The criminalisation of bail offences, the reverse onus regime, and the unacceptable risk test have separate and mutually reinforcing effects that increase the likelihood that an accused will be remanded in custody. The effects of are widespread but disproportionately experienced by individuals already marginalised and vulnerable, particularly Aboriginal women. The repercussions include erosion of the presumption of innocence, indirect effects on pleas of guilty and sentencing outcomes, pressure on the legal and correctional systems and entrenchment of disadvantage.”¹²

Both Aunty Donna Nelson (Veronica’s mother) and Uncle Percy Lovett (Veronica’s partner) have asked that the repeal of these laws be called “*Pocum’s law*” in honour of Veronica.

In a clear and determinative ruling for Victoria, Coroner McGregor endorsed that: ‘[s]ubstance use disorder is a recognised diagnosable mental disorder. It is a condition that falls with the definition of ‘disability’ in s 4 of the *Equal Opportunity Act*’¹³ and noted that —

“in the criminal justice system, therapeutic interventions are often coercive, with ‘non-compliance’ having the potential to contravene court orders and attract further criminal penalties. In short, drug dependence is not universally regarded as a health condition and the correctional system becomes a proxy for appropriate social service supports in the community.”¹⁴

It is now open to advocates to argue that substance use disorder should be a factor weighed in favour of bail, as opposed to a risk factor that might contribute to further low-level offending. Advocacy for treatment within custody equivalent to that available in the community is also supported by Coroner McGregor’s findings, particularly with respect to withdrawal and access to opiate substitution therapy.

Looking forward

A range of recommendations have flowed from these findings, and it will be critical for advocates, peers, allies, and the broader community to ensure the government responds meaningfully to measures that can stem the tide of deaths in custody, in particular, black deaths in custody.

We encourage you to lend your voice and experience to the call for justice for Veronica Marie Nelson and in that way honour her life, your own, and pay respects to all those who have lost their lives to the ongoing war on first nations people and the war on drugs.

FLS and myself are grateful to Aunty Vickie Roach for sharing her lived-experience of criminalisation and incarceration as a cultural expert, an unprecedented recognition by the court of this expertise, and close with her words:

'My story can be regarded as a stereotypical story of an Aboriginal woman in prison. Including how you get there. Or maybe a stereotypical story of an Aboriginal woman during occupation colonisation and genocide. We are in jail for breaking a white man's law who has no right to be making this law anyway. Our law should have been the dominant law in this country. Which is why they plead terra nullius, so they can make their own laws and outlaw us. It's like we are refugees on our own country, on our own land. Hunted by coppers. And we remember how our ancestors must have felt as we live through it. They say history is written by the victor. But we have to make our story so big it can't be written out of history.'