
Submission to Legal and Social Issues Committee Inquiry into Children Affected by Parental Incarceration

Centre for Innovative Justice

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Acknowledgments

The Centre for Innovative Justice (CIJ) at RMIT University acknowledges the people of the Woi wurrung and Boon wurrung language groups of the eastern Kulin Nation on whose unceded lands we conduct the business of the University. RMIT University respectfully acknowledges their Ancestors and Elders, past, present and emerging. RMIT also acknowledges the Traditional Custodians and their Ancestors of the lands and waters across Australia where we conduct our business.

In addition, the CIJ acknowledges the devastating and ongoing impacts of colonisation on Aboriginal communities, impacts which have a direct and continuing relationship with the vastly disproportionate rate at which Aboriginal people have contact with the criminal justice system, as well as their experiences of racism, discrimination – and disproportionate rates of child removal – once this contact occurs. These impacts are also directly related to the very specific and multiple impacts of intergenerational trauma which Aboriginal communities experience.

We recognise the extraordinary strength and resilience of Aboriginal communities and emphasise that any discussion of ‘needs’ throughout this paper in relation to Aboriginal women in contact with the criminal justice system is not in any way intended to equate to a discussion of ‘deficits’ but instead refers to needs created and compounded by structural inequality.

The CIJ also gratefully acknowledges the contributions to this submission from the following organisations and services:

Elizabeth Morgan House Aboriginal Women’s Service Inc. (EMH)

Elizabeth Morgan House Aboriginal Women’s Services Inc (EMH) seek to defend and advocate for the human rights of Aboriginal women and children, informed by the United Nations Declaration on the Rights of Indigenous People and rights of the child upheld through the United Nations Convention on the Rights of the Child – an international agreement on childhood.

Djirra – Aboriginal Family Violence Legal and Prevention Service

Djirra is an Aboriginal Community Controlled Organisation which works to support Aboriginal people, in particular women, who have experienced family violence. Within its broad remit of services, Djirra provides legal, casework and cultural support to Aboriginal women at DPFC.

West CASA Dame Phyllis Frost Centre (DPFC)

WestCASA provides a Specialist Trauma Service to women who are in the Dame Phyllis Frost Centre and who have experienced any kind of trauma. First established in 2006 with a focus on sexual assault counselling, this service was expanded to include counselling for any kind of trauma, including family violence, in 2016 and is the first of its kind at DPFC.

Drummond Street DPFC

Drummond Street Services is a not-for-profit community service organisation that provides support across some of the most diverse communities in Victoria. This includes a service for people in DPFC who have used force in their family relationships, many of whom are victim survivors of long-term trauma or abuse.

Lived Experience Expert

Finally, the CIJ gratefully acknowledges the contributions to this submission by our Lived Experience Expert, Dorothy Armstrong, who generously and graciously shared the story of the impacts on her and her children of her experience of incarceration. Ms Armstrong is also available to speak to the Inquiry about her experiences at a suitable time.

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Part 1. Introduction

The Centre for Innovative Justice at RMIT University (CIJ) welcomes the opportunity to contribute to this crucial Inquiry. Important to highlight from the outset, because the needs and experiences of women in the justice system are inextricably linked to the interests and needs of their children, we apply a gendered lens to the Terms of Reference; exploring the impact of maternal incarceration on children, their mothers and women's capacity to parent, stay connected and reunite with their children following incarceration. Just as importantly, we apply a child-centred lens, noting the shameful system failure that sees children not only silenced, but frequently rendered invisible when their parents are taken into custody.

In this submission, the CIJ draws together insights from work across two of its research priority areas. This includes justice responses to children and young people, particularly in the context of family violence; as well as the drivers and impacts of the dramatic growth in the incarceration rates of women and Aboriginal and Torres Strait Islander women in particular. Specifically, we draw the Committee's attention to our Issues Paper [Leaving custody behind: Foundations for safer communities and gender-informed criminal justice systems](#) which brings together evidence on women in the justice system and outlines a roadmap for gender-responsive reform.

The CIJ has sought to highlight key insights from the wider literature, as well as our work conducted in direct partnership with services supporting women and young people in the justice system. To this end, featured throughout the submission are excerpted case studies from a number of these services. Also featured are crucial insights from the CIJ's Lived Experience Expert, Dorothy Armstrong, about the devastating impacts her children experienced as a result of her own period of incarceration, as well as the abject failure of the system to identify or address their collective needs.

The CIJ's expertise

Through our work across the interrelated themes of the incarceration of women, family violence, disability and support for victims of crime, the CIJ has gained insight into the experiences and needs of women and children in the justice system. This submission is informed by the following projects:

- The Issues Paper, [Leaving custody behind: Foundations for safer communities and gender-formed criminal justice systems](#) brings together evidence on women in the justice system and outlines a roadmap for gender-responsive reform.
- An [extensive body of work](#) regarding young people using violence in the home;
- A [feasibility study](#) into a Residential Program for Aboriginal women in contact with the criminal justice system as an alternative to prison;
- An [evaluation of the Women Transforming Justice project](#), a multiagency collaboration providing legal and outreach support to women in contact with the criminal justice system;
- An [evaluation of the Court Support 4 Kids program](#), a service provided by McAuley Services to support women and children attending court in family violence matters;
- A project investigating women's experiences of bail and sentencing since COVID-19 restrictions were imposed (the [Lessons from COVID-19](#) project, pending);
- A project delivered in partnership with the Law and Advocacy Centre for Women which links women in contact with the justice system with community football clubs (the [Community SupPORT Pathways for women](#) project, pending);
- A [submission to the Parliamentary Inquiry into Homelessness](#) regarding the impact of homelessness on women's incarceration rates;
- A [submission to the Royal Commission into Family Violence](#), focusing on the intersection of family violence and women's incarceration rates;
- A [review of government funded services responding to victims of crime in Victoria](#).

International obligations and human rights



(P)arents ...do not know their rights about child access and visitation, do not know who to contact about their children...and lack access to a lawyer... whilst incarcerated.

Elizabeth Morgan House Aboriginal Women's Service

Policymakers at an international level have long acknowledged the need for a differentiated response for women in the justice system, as well as the need for mechanisms to protect the rights of children. Australia has obligations under the UN Convention on the Rights of the Child to ensure that the best interests of the child is the primary consideration "in all actions concerning children."¹ It is therefore crucial to situate Victoria's response to children affected by parental incarceration within this context.

In addition to the instruments which impose obligations on Australian governments to respect and protect the rights of prisoners,² other international instruments contain provisions specifically relevant to criminalised women.³ Of further note is the emphasis at international law on prisoners being treated with dignity and respect, and on custody's 'essential aim' as being 'reformation and social rehabilitation'.⁴ The Victorian Charter of Human Rights and Responsibilities Act 2006 echoes these provisions.⁵

In 2010 the United Nations established international standards for the treatment of women in the justice system.⁶ The *United Nations Rules for the Treatment of Women Prisoners and Noncustodial Measures for Women Offenders* ('the Bangkok Rules'⁷) require governments to respond more effectively to women's needs and to make laws and policies that divert women from prison wherever possible and set standards for the treatment of women where custody cannot be avoided.

The Bangkok Rules highlight the importance of providing gender-specific, non-custodial measures and penalties. A significant focus of the Bangkok Rules, particularly when read in conjunction with other United Nations international rules,⁸ is the imperative to find non-custodial alternatives to prison for women. The rules relating to this objective, emphasise the need:

- to avoid detention on remand of women who are primary carers of children;
- for treatment programs to address the underlying conditions with which women present and to reduce re-offending;
- to maximise use of post-sentencing supports to assist re-entry into the community; and

¹ United Nations, Office of the High Commissioner. See Article 3(1).

² See the International Covenant on Civil and Political Rights (ICCPR), ratified by Australia in November 1980; the United Nations Basic Principles for the Treatment of Prisoners, a resolution passed by the United Nations (UN) General Assembly in December 1990; the Optional Protocol to the Convention against Torture and Other Cruel Inhuman or Degrading Punishment or Treatment (or OPCAT, ratified by Australia December 2017).

³ See the Convention on the Elimination of All Forms of Violence Against Women (ratified by Australia August 1983); the Convention on the Rights of Persons with Disabilities (ratified March 2007); and the UN Declaration of the Rights of Indigenous Peoples, a non-legally binding resolution passed by the UN in 2007 and supported by Australia.

⁴ See Articles 7 and 10 ICCPR; Article 10.3 ICCPR; Article 10 also includes the requirement that people on remand be held separately from those who are sentenced.

⁵ Victorian Charter of Human Rights and Responsibilities Act 2006, including rights to protection from torture and cruel, inhuman or degrading treatment (s 10), and humane treatment when deprived of liberty (s 22).

⁶ Centre for Innovative Justice (2021) *Submission to Legal and Social Issues Committee Inquiry into Victoria's Criminal Justice System* RMIT University, p.6

⁷ United Nations Office on Drugs and Crime (UNODC), (2010) 'United Nations rules for the treatment of women prisoners and non-custodial measures for women offenders (The Bangkok Rules).'

⁸ UN General Assembly, *United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules): resolution / adopted by the General Assembly, 2 April 1991, A/RES/45/110, available at: <https://www.refworld.org/docid/3b00f22117.html> [accessed 4 May 2022]*

- to consider the use of restorative approaches.⁹

Most relevant for the purposes of this Inquiry, the Bangkok Rules place a requirement on decision makers to consider the best interests of any children impacted by a woman's incarceration.¹⁰ Some of the rules most relevant to children's best interests, including those related to their contact with their incarcerated mother, are listed below.

Bangkok Rules as they relate to children:

- Non-custodial sentences preferred for pregnant women and those who are the primary caregiver of children (Rule 64).
- Punishment by close confinement or segregation shall not be applied to pregnant women, women with infants and breastfeeding mothers in prison (Rule 22).
- Women prisoners shall not be discouraged from breastfeeding their children unless there are specific health reasons to do so (Rule 48).
- Suspension of family visits, especially of children, should never be imposed as a disciplinary sanction (Rule 23).
- Contact of a woman with family and children should be encouraged and facilitated by all reasonable means (Rule 26).
- Visits involving children shall take place in a child-friendly environment, allowing open contact between mother and extended contact where possible (Rule 28).
- Appropriate programs should be provided for pregnant women, nursing mothers and women with children in prison and childcare facilities should be provided (Rule 42).
- Children in custody with their mother are never to be treated as prisoners (Rule 49).
- Women whose children are in prison with them shall be provided with the maximum possible opportunities to spend time with their children (Rule 50).
- Children living with their mothers in prison shall be provided with ongoing health care services and their development shall be monitored by specialists, in collaboration with community health services. The environment provided for such children's upbringing shall be as close as possible to that of a child outside prison (Rule 51).
- Decisions about separating a child in prison from their mother are to be made with consideration of the best interests of the child... (Rule 52).

As will be discussed below, the rapid increase in women's incarceration rates in Victoria reflects the state's failure to meet the fundamental premise of these international standards, being to divert women from custody wherever possible. Current rates of Aboriginal child removal in Victoria have, concerningly, also increased.¹¹ As will also be explored, the impacts of the last two years of COVID-19 related restrictions

⁹ Caruana, C., Campbell, E., Bissett, T & Ogilvie, K. (2021) *Leaving custody behind: Foundations for safer communities and a gender-informed criminal justice systems* Centre for Innovative Justice, RMIT University, Melbourne. p. 16

¹⁰ Guidance Document on the Bangkok Rules: Implementing the United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, Penal Reform International, 2021, p.8

¹¹ S Deery, 30 May 2021, "Victoria has more Indigenous kids in child protection than any other state or territory", *Herald-Sun*

that were particularly acute in Victoria combine with systemic drivers to create an urgent imperative for this state to turn its attention to the urgent imperative of supporting children of incarcerated parents.

My children, their lives were completely devastated. And they did nothing wrong.

- Dorothy Armstrong, CIJ Lived Experience Expert

Part 2. What the evidence tells us

The rate at which women are being imprisoned in Victoria, especially Aboriginal women, has risen sharply in recent years and is increasing at a faster rate than for men. This is in part the result of recent legislative reforms, such as restrictive bail and parole laws that were primarily designed to respond to violent offending by men, are instead having disproportionate and devastating impacts on women.¹²

While the CIJ directs the Committee to its Issues Paper, [Leaving custody behind: Foundations for safer communities and gender-formed criminal justice systems](#) for a comprehensive summary, some key facts about the profile of women who come into contact with the criminal justice system, including in Victoria are featured below.

Profile of women in custody:

- Women enter prison for less serious offences than men and spend short periods in custody which can disrupt connection to children, employment, healthcare and housing.
- Women are more likely than men to be a primary carer of children when imprisoned.
- The majority of women in prison are themselves victims of violent crime. Trauma from sexual assault and family violence push women into poverty, homelessness, substance use and contact with the justice system.
- A Victorian Parliamentary Inquiry identified housing as 'the most overwhelming problem' facing criminalised women, closely linked to women's offending and reoffending.¹³
- By cutting women's access to housing, services, medication and family contact, incarceration then *increases* the likelihood of further contact with police and prisons down the track.¹⁴
- Aboriginal women, in particular, are generally incarcerated for minor offences commonly associated with extreme poverty and homelessness.¹⁵ Aboriginal women are 15.7 times more likely to be in prison on remand than non-Indigenous women.¹⁶
- The overrepresentation of Aboriginal women in criminal justice systems is linked to individual and collective trauma from 'dispossession of land, disruption of culture and kinship systems, removal of children, racism, social exclusion, institutionalisation and entrenched poverty,'¹⁷

¹² Caruana, C (2020) *COVID-19 and incarcerated women: a call to action in two parts – Part One*, Centre for Innovative Justice, RMIT University.

¹³ Leaving Custody Behind Fact Sheet p. 3. Citing - Drug and Crime Prevention Committee.

¹⁴ Caruana et al, above n 9.

¹⁵ Cunneen, C, Baldry, E, Brown, D, Brown, M, Schwartz, M, & Steel, A. (2013). *Penal Culture and Hyperincarceration: The Revival of the Prison*. Taylor & Francis Group.

¹⁶ Centre for Policy Development. (2020). *Partners in Crime: the relationship between disadvantage and Australia's criminal justice systems*. Available at: <https://cpd.org.au/wp-content/uploads/2020/12/CPD-Report-Partners-in-Crime.pdf>

¹⁷ Caruana et al, above n 9 p. 39 Citing - Victorian Government, (2018) Burra Lotjpa Dunguludja. Victorian Aboriginal Justice Agreement: Phase 4. A partnership between the Victorian Government and Aboriginal community, 18; See also Parker, R. & Milroy, H. (2014) 'Aboriginal and Torres Strait Islander Mental Health: An Overview' in Dudgeon, P., Milroy H., & Walker, R. (eds) Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice Commonwealth Government.

‘Double punishment’: Incarcerated mothers



[our] clients have been incarcerated simply for stealing food because they were hungry....(T)he impacts of parental incarceration are [then] far reaching and profound...

Elizabeth Morgan House Aboriginal Women's Service

Crucial to understanding many women's experiences of criminal justice system contact – and conversely their children's experiences of parental incarceration as well – is women's status as parents. This is because women in prison are more likely than men to be the primary carer of dependent children or other family members. For example, in 2018, around 65 per cent of un-sentenced women and 70 per cent of sentenced women reported having children.¹⁸

Critically in this context, research with Aboriginal women in custody indicates that a significant majority are biological mothers with primary care of children prior to their experience of incarceration.¹⁹ Further, cultural imperatives across extended kinship structures also mean that Aboriginal women are likely to have caring responsibilities for additional children as well.²⁰

The Australian Institute of Health and Welfare (AIHW)²¹ found that women already in or entering custody are far more likely to have been pregnant at a young age and to have had multiple pregnancies. The AIHW also found that women who are pregnant either before or during incarceration are more likely to have poorer birth outcomes – including low birth-weight babies and children placed in out-of-home care by age two.²²

Further, the AIHW study indicates that almost one in five people entering prison reported that one or more parents or caregivers had been in prison when they were a child, with Aboriginal and Torres Strait Islander peoples 31% more likely for this to be the case, than non-Indigenous Australians.²³

Despite the high likelihood that women entering custody are likely to be mothers, however – presumably with decisions about care and responsibility for children immediately becoming relevant as a result – little data is collected about women's status as primary carers or mothers more generally. Of the data that is collected, the proportion of women in custody recorded as having primary responsibility for dependent children dropped from 26 per cent of un-sentenced women in 2012, to 12 per cent in 2018, and from 34 per cent of sentenced women to 25 per cent over the same timeframe.²⁴ As noted by the CIJ in its Issues Paper, this potentially points to the increasing rates of child removal in Aboriginal communities, as well as the introduction of time limited restrictions on women regaining custody of their children.²⁵

The intergenerational impact of incarceration on women's parental roles²⁶ is often referred to as “double punishment,”²⁷ whereby women are punished through the deprivation of their liberty and then punished

¹⁸ Walker, S., Sutherland, P. & Millsted, M. (2019), Characteristics and offending of women in prison in Victoria 2012-2018 (Crime Statistics Agency, Melbourne, p. 15

¹⁹ Caruana et al, above n 9, p 39, citing Bartels, L. (2010) 'Indigenous women's offending patterns: A literature review', *Australian Institute of Criminology*.

²⁰ Ibid, p 39.

²¹ Australian Institute of Health and Welfare (2019) The health of Australia's prisoners 2018, Canberra.

<<https://www.aihw.gov.au/reports/prisoners/health-australia-prisoners-2018/summary>>

²² Ibid, p 72

²³ Ibid.

²⁴ Ibid, p 15

²⁵ Caruana et al, above n 9, citing O'Donnell, M., Taplin S., Marriott, R., Lima, F., & Stanley, F. (2019). 'Infant removals: The need to address the over-representation of Aboriginal infants and community concerns of another 'stolen generation'', 90 *Child Abuse & Neglect*, 88-98.

²⁶ Centre for Innovative Justice, above n 6, p.5

²⁷ Easteal, P. (2001) 'Women in Australian prisons: Cycles of abuse and dysfunctional environments', 81 (1) *The Prison Journal*, 87; Kilroy, D. (2005) 'The Prison Merry-go-Round: No Way Off', 6 (13) *Indigenous Law Bulletin* 25; Wybron, D. & Dicker, K. (2009) *Invisible Bars: The Stories behind the Stats* Women's Centre for Health Matters, Canberra; Richie, B.E., (2001) 'Challenges incarcerated women face as they return to their communities: Findings from life history interviews' 47 (3) *Crime and Delinquency* 368-389.

again – arguably most devastatingly – through the deprivation of contact with and care for their children. Certainly, even short periods of detention can have devastating impacts for a mother and her children, particularly if her children are taken into care of the state or where the placement of children in wider kinship networks immediately sets a mother an onerous task of regaining care of her children once she is released.

Further, even short periods of separation can also have profoundly devastating impacts on the mother-child bond,²⁸ with research indicating that concerns about children’s wellbeing feature strongly amongst incarcerated women,²⁹ concerns which are likely to be heightened where children are in the care of the state or an estranged or violent partner.³⁰

As a result, when in prison, women who have lost custody of their children are usually at higher risk of self-harm.³¹ In fact, a Victorian study found that **women who had been separated from their children were more likely to return to custody as a result of reoffending** than women whose connection with their children had been supported,³² an indication of the despair and helplessness that so many women feel when they do not have ongoing contact with their children.

Further, custody offers little chance for mothers to prepare for re-entry into a family environment.³³ This presents substantial barriers to women and their children re-establishing successful relationships post-release, or recovering from the collective harm that they have experienced, both as a result of the mother’s incarceration, but also the trauma and poverty that invariably predated it.

The abuse that I’ve suffered all my life, I was quite nonverbal when I got to prison. I wasn’t able to communicate with anybody, I was terrified of being hit again... I was thinking I could die...especially seeing all the concrete and steel.

- Dorothy Armstrong, CIJ Lived Experience Expert

²⁸ Women’s Centre for Health Matters (2019) *The stories of ACT women in prison: 10 years after the opening of the AMC*, Canberra, ACT.

²⁹ Goulding, D. (2004) *Severed connections: An exploration of the impact of imprisonment on women’s familial and social connectedness*, Centre for Social and Community Research, Murdoch University.

³⁰ Stone, U.B (2013) *I’m still your Mum: Mothering inside and outside prison*, Masters of Arts thesis, RMIT University.

³¹ Mitchell, B.K., & Howells, K. (2002) ‘The Psychological needs of women prisoners: Implications for rehabilitation and management’ 9 (1) *Psychiatry, Psychology and Law* 34-43; Hooper, C.A. (2003) ‘Abuse, interventions and women in prison: A literature review’, London: HM Prison Service, Women’s Estate Policy Unit.

³² Shlonsky A., Rose, D., Harris, J., Albers, B., Mildon, R., Wilson, S., Norvell, J., & Kissinger, L. (2016) *Literature review of prison-based mothers and children programs: Final report*.

³³ Easteal, P. (2001) ‘Women in Australian prisons: Cycles of abuse and dysfunctional environments’, 81 (1) *The Prison Journal*, 87; Kilroy, D. (2005) ‘The Prison Merry-go-Round: No Way Off’, 6 (13) *Indigenous Law Bulletin* 25; Wybron, D. & Dicker, K. (2009) *Invisible Bars: The Stories behind the Stats* Women’s Centre for Health Matters, Canberra; Richie, B.E., (2001) ‘Challenges incarcerated women face as they return to their communities: Findings from life history interviews’ 47 (3) *Crime and Delinquency* 368-389.

‘Voice of children’: Why a child-centred approach is needed



The self-determination of children who want to have contact with a parent who has used violence is often denied. If age appropriate, children’s views on the relationship they want to have with an incarcerated parent needs to be considered.

Elizabeth Morgan House Aboriginal Women’s Service

As the Bangkok Rules argue, addressing the rights of women incarcerated is not just about additional ‘resources’ as much as it is also about a “change in awareness, attitude and practice.”³⁴ This change in awareness should also apply to identifying the existence and needs of children whose mothers are incarcerated³⁵ and adopting what the CIJ argues must be a child-centred approach.

No consistent identification, follow up or oversight

It is difficult to implement a child-centred approach, however, without an accurate idea of the number of children impacted by parental incarceration and an understanding of their needs. In a Victorian and New South Wales study, for example, researchers highlighted the failure to take children into account in the adult justice system dating from the time of their parent’s arrest, through to the parent’s release from prison.³⁶ Damningly, this study found that there are “no processes or protocols to consider or support children, and professional staff are not guided or obliged to respond”³⁷

The findings of this Australian study suggest that the children most impacted by parental incarceration are young, with no choice but to be moved to alternative care when their primary caregiver is taken into custody. Stark figures from the United Kingdom, meanwhile, show that, of the children separated from their mothers due to incarceration “only 5 per cent remain in their homes ... and only one in ten children will be cared for by their father.”³⁸ Further, the Victorian and NSW study referred to above also observed that,

Nobody asked me about my kids. If I had kids, where were they? My kids didn’t know what had happened to me. For a while they thought I was dead. Where’s Mum, like she’s just disappeared off the face of the earth.

Then they’re thinking that I’ve left them, that I’ve abandoned them...Police ought to notify children and explain when their parents are in custody...how can you do it yourself when you’re locked up in a cell?

– Dorothy Armstrong,
CIJ Lived Experience Expert

“[w]hile contact between the incarcerated parent and the child is generally maintained, there is often no specific follow up or support for children or their carers and they often do not feature in pre-release planning.”³⁹

Consistent with a lack of follow up or considerations of necessary support, Victoria also lacks specific guidelines or policy to assist schools or staff in responding to the needs of children with parents in contact with the justice system.⁴⁰ As recently as 2015, research indicated that no communication pathway existed between Corrections Victoria or relevant government departments to inform schools when parents are imprisoned.⁴¹

³⁴ UN Bangkok Rules on women offenders and prisoners: short guide, Penal Reform International, 2013, p.10.

³⁵ Trotter, C., Flynn, C. Naylor, B. Collier, P. Baker, D., McCauley, K. & Eriksson, A. (2015) *The Impact of Incarceration on Children’s Care: A Strategic Framework for Good Care Planning* Monash University. p. 5

³⁶ Ibid, p. 5 & p.9

³⁷ Flynn, C. (February 2022) “About 43,000 Australian kids have a parent in jail but there is no formal system to support them”, *The Conversation*.

³⁸ The Prison Reform Trust, (2017), *Why focus on reducing women’s imprisonment?* p. 5

³⁹ Trotter, et al., above n 35 p. 4

⁴⁰ Department of Education and Early Childhood Development, 2014b

⁴¹ Trotter et al., above n 35 p. 24 Citing - Department of Education and Early Childhood Development, 2014a: Para. 3

Overall, existing evidence suggests that “... **children are typically not seen or responded to as their parent moves into, through and out of the criminal justice system**, including at key crisis points...”,⁴² with no systemic or coordinated response and “**a generalised sense that children are someone else’s responsibility**.”⁴³

Social, emotional and health impacts for children



The lack of formal support systems, inadequate parent-child contact, intergenerational hyper-incarceration and disconnection from culture have serious impacts on the social, emotional and physical wellbeing of Aboriginal children.

Elizabeth Morgan House Aboriginal Women’s Service

The disruption of care that children experience when their primary caregiver is taken into custody can result in “reduced economic circumstances, displacement of living arrangements and schooling, fragmentation of family relationships, social stigma and isolation.”⁴⁴ Western Australian research has also found that “children whose parent had either served a community order or been incarcerated were at risk of poor development across all developmental domains, even after adjusting for sociodemographic factors. Further, children of incarcerated parents had higher odds of developmental vulnerability on multiple domains compared to children of parents who had served community orders only”.⁴⁵

Just as crucial to recognise, where women who are taken into custody have experienced family violence, it is highly likely that any children in their care have also been exposed to or directly experienced violence from an adult perpetrator.

My children got no support at all while I was in prison. They suffered bullying at school, they worried all the time that I might have died if I wasn’t able to call. They stopped doing things, they stayed at home so that they wouldn’t miss my call.

– Dorothy Armstrong,
CIJ Lived Experience Expert

As the CIJ previously noted in a submission to the Victorian Royal Commission into Family Violence, “[t]he effects of this exposure can be damaging enough, but where their mother has functioned as a protective influence, separation puts these children at additional risk. Some studies report, for example, that inmates’ daughters had been sexually assaulted since [the mothers] had been in prison, other daughters had become pregnant, while inmates also believed that their children were being neglected and ... abused in the custody of their father, but felt unable to protect them from within custody.”⁴⁶

⁴² Ibid, p 59

⁴³ Ibid. p. 59

⁴⁴ Flat Out & VACRO (2006), *Children: Unintended victims of legal process – a review of policies and legislation affecting children with incarcerated parents*, p. 8

⁴⁵ Bell et al. (2018) ‘Using Linked Data to Investigate Developmental Vulnerabilities in Children of Convicted Parents’ *Journal of Developmental Psychology* 54(7), 1219-1231. p. 3

⁴⁶ Mental Health Legal Centre, Inside Access and Centre for Innovative Justice, (2015) *Submission to the Victorian Royal Commission into Family Violence*.

In terms of educational outcomes, studies have also found that children of incarcerated parents “have a higher probability of experiencing school problems, such as under achievement, social difficulties, poor attendance, and out of school suspensions.⁴⁷ Research shows that “children of prisoners experience anxiety, shame, grief, loneliness, regressive behaviours, danger and guilt, delinquency and truancy.”⁴⁸

Further, children of imprisoned women are shown to be at an increased risk of criminalisation themselves, especially if they are taken into care of the state,⁴⁹ with **out of home care, “a well-recognised pathway to the youth justice system”**.⁵⁰

As the CIJ has previously argued, therefore, the “use of custody as a proxy for care and support for women who have multiple and interrelated needs means that Victoria is inadvertently positioning itself for further demands on the service system down the track. This includes where children have been separated from their mothers and placed in out of home care – a well-recognised pathway to the youth justice system and a lifetime of dependence on the justice and social service systems more broadly.”⁵¹

Important to highlight, no specialised services operate specifically to support Aboriginal children of incarcerated parents. Aboriginal children need culturally safe services that consider the intergenerational incarceration of Aboriginal families and the ongoing impacts of colonisation, with evidence noting that the “conveyor belt” from parental incarceration through out of home care to criminal justice system contact is particularly acute for Aboriginal children.⁵²

Aboriginal Community Controlled Organisations note that this cycle is undermining the strength and resilience of Aboriginal people, parents and families, emphasising the way in which the ‘hyper-incarceration’ of Aboriginal people is undermining connection to culture, language, family and Country for Aboriginal children – all of which are central to Aboriginal identity and wellbeing.⁵³

This is particularly relevant for children who are placed out of kinship care, with a different mob or non-Indigenous carers. Services also note that “Aboriginal children in out of home care are [frequently] not told that their parent is in prison, or they do not understand what this means. The impact of this is considerable distress”.⁵⁴

Mother/child contact

When a mother enters prison, their child may be looked after informally by relatives or formally placed in out-of-home care. Under the *Children, Youth and Families Act 2005 (Vic)* s 13, Aboriginal children will be placed as a priority with their extended family or relatives. The purpose of this principle is to “assist children to maintain contact with family, culture and community – which is positive. However, this can place an additional burden on disadvantaged families and communities.”⁵⁵

⁴⁷ Hagan, J & Foster, H. (2013) ‘Intergenerational educational effects of mass imprisonment in America’ *Sociology of Education* 85(3), 259-286.

⁴⁸ Flat Out, 2006 p. 8;

⁴⁹ Kilroy, D., 2016. *Women in Prison, Australia: Current Issues in Sentencing Conference*, p. 5

⁵⁰ Sentencing Advisory Council, (2019) ‘Crossover Kids’: *Vulnerable Children in the Youth Justice System Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children’s Court*, Victorian Government; Victoria Legal Aid, (2016) *Care not custody. A new approach to keep kids in residential care out of the criminal justice system*.

⁵¹ Caruana, C, above n 9 citing Sentencing Advisory Council, (2019a) ‘Crossover Kids’: *Vulnerable Children in the Youth Justice System Report 1: Children who are known to child protection among sentenced and diverted children in the Victorian Children’s Court*.)AND Sentencing Advisory Council, (2019a) ‘Crossover Kids’: *Vulnerable Children in the Youth Justice System Report 1: Children who are known to child protection among sentenced and diverted children in the Victorian Children’s Court*. See also: Victoria Legal Aid, (2016) *Care not custody. A new approach to keep kids in residential care out of the criminal justice system*.

⁵² Centre for Policy Development. (2020). *Partners in Crime: the relationship between disadvantage and Australia’s criminal justice systems*. Available at: <https://cpd.org.au/wp-content/uploads/2020/12/CPD-Report-Partners-in-Crime.pdf>

⁵³ Elizabeth Morgan House Aboriginal Women’s Service, Submission Contribution

⁵⁴ Elizabeth Morgan House Aboriginal Women’s Service, Submission Contribution

⁵⁵ Victorian Equal Opportunity and Human Rights Commission (VEOHRC) (2013) *Unfinished business – Koori women and the justice system* <https://www.humanrights.vic.gov.au/static/58264865b86dcc9da395eccfc9b767cd/Resource-Unfinished_business-report.pdf> p.91

The broader impact on community is evident when other relatives are required to take care of children while their mother is in custody. As the Victorian Equal Opportunity and Human Rights Commission notes, “[g]randparents are caring for grandchildren and are often struggling to make ends meet” and “(t)his is placing a heavy burden on Koori families who may already be struggling with health, financial and other pressures.”⁵⁶

The distance between prison and where the child is residing is also an important factor. Due to the geographic location of prisons, long distances required can make regular visits with children difficult. Further to this, phone contact is not an option if the mothers cannot afford to use the phones,⁵⁷ while a meaningful relationship is clearly unable to be maintained with young children or infants via phone.

Also crucial to recognise is the ongoing impact of family violence on the capacity of women to maintain contact with their children. This can include the impacts of trauma experienced by women, as well as where perpetrators who have children residing with them withhold or undermine contact as a means of furthering control and abuse.

My ex-partner would decide when I could speak to the kids. Unbeknownst to me, he'd be standing right beside them, listening. He'd hang the phone up when he felt like it. He'd change the number when he felt like it.

– Dorothy Armstrong,
CIJ Lived Experience Expert



The client's children were residing with their father, who was the perpetrator of family violence against the client. The client had not had contact with her children for some time due to her fear of the father. Prior to her incarceration, Child Protection planned and committed to support the client having contact with the children. After incarceration, the client did not hear anything from Child Protection and received no updates regarding her children. The client was served with court documents via mail into DPFC the day prior to a court hearing of a new application brought by Child Protection, through which she learned that there had been a further violence incident. Her children had been removed from their father's care and placed with their former stepmother. The client was very distressed by this and that she had not been informed by the case worker of these significant events affecting her children. Throughout the court proceedings, Djirra advocated for better communication between Child Protection and our client and for contact to be supported. Child Protection agreed to letters from the client to the children, thereafter video calls and, finally, face to face contact to occur. Child Protection did not follow through with this. Child Protection stopped communicating with the client at DPFC after the court proceeding concluded and the client was not able to see her children until she was released months later.

Djirra

⁵⁶ Ibid, 92

⁵⁷ Ibid.

Impacts of COVID

In March 2020, across all Australian state and territory correctional centres, face-to-face contact and visits were cancelled. Noting that women in contact with the criminal justice system, particularly Aboriginal women, fare more poorly than men on a range of health determinants,⁵⁸ concerns about the transmission of COVID-19 in these environments were very real. As the COVID situation changed over time, therefore, each state/territory adopted different approach/policy to visiting.⁵⁹

Changed measures at DPFC during COVID-19 included:

- the suspension of face-to-face personal visits;
- greatly restricted access to parenting and support services and programs; and
- essential professional visits conducted remotely or from a physical distance.

As a result of these restrictions, people entering COVID-19 quarantine were likely to be spending 22 or more hours in a confined space,⁶⁰ being the threshold associated with the definition of solitary confinement.⁶¹ During suspension of all personal visits, services supporting women at DPFC reported that women were able to have access to phones as well as video contact via zoom and Skype⁶² “dependent on availability of tablets and phones, though women...were communicating with loved ones primarily by phone...”⁶³

Services contributing to this submission reported significant concerns in relation to reliance on Departmental or Corrections-based case workers to support mother/child contact, even where this has been ordered by the courts. This issue has pre-dated the pandemic – with contact offered during school hours, for example – but has been particularly acute during COVID-19.

Some services told the CIJ in 2020 that those women who had remote video contact with children enjoyed “the ‘window’ into their children’s lives and home environment that this provided.”⁶⁴ In theory, any access at all could also “counteract the widely recognised damaging effects of isolation on those in detention”.⁶⁵

A recent report on maintaining family contact during the pandemic, however, found that non-contrast prison visits (such as videoconferencing and phone calls) were “not suitable for young children; too short in length; or offered at times which were not appropriate for children.”⁶⁶ While the study found that the use of videoconferencing could support family contact when it was complemented by in-person visits,⁶⁷ ...“overall, **respondents described the negative impact of visiting restrictions on the emotional wellbeing of both children and the imprisoned family member.**”⁶⁸

⁵⁸ Caruana et al, above n 9.

⁵⁹ Flynn, C., Harrigan, S., Bartels, L., Dennison, S., (2020) ‘Maintaining family contact during COVID-19: Describing the experiences and needs of children with a family member in prison’, Monash University Criminal Justice Research Consortium, p. 7

⁶⁰ Ibid

⁶¹ United Nations Standard Minimum Rules for the Treatment of Prisoners (*Mandela Rules*), rule 44 (2015).

⁶² CIJ Blog, COVID-19 and incarcerated women: a call to action in two parts – Part Two

⁶³ Ibid

⁶⁴ Ibid

⁶⁵ Ibid.

⁶⁶ Flynn, C., Harrigan, S., Bartels, L., Dennison, S., (2020) ‘Maintaining family contact during COVID-19: Describing the experiences and needs of children with a family member in prison’, Monash University Criminal Justice Research Consortium. p. v

⁶⁷ Ibid., p. v

⁶⁸ Ibid., p. v



Client's child resides with (grandparent). Client has not been able to "see" her (child) in over two years due to (grandparent) not knowing how to use Zoom. Repeated requests [have been made] to Child Protection to ask for assistance to show (grandparent) ...[but]. mother and child have only been able to have phone contact during the COVID period.

West CASA, DPFC Specialist Counselling Service



...video teleconference, which is particularly ineffective for children under 3 years old. In-person contact for babies and young children is crucial for their development and bonding with parents. Children frequently become distressed during teleconference access. Parent-child contact needs to be flexible, appropriate and support relationships...

Elizabeth Morgan House Aboriginal Women's Service

Family Reunification orders

A further impact of reduced communication with children has been the potential to undermine a case for family reunification under the *Children, Youth and Families Act* (Vic). Current restrictions mean that, once a child is in out of home care for over two years, there is little legislative discretion for the Children's Court to order the return of a child to their birth parent(s) where protective concerns have been addressed or, alternatively, to place a child on a family reunification order.

Legal services note that the limitations on a court's discretion has created a set of inflexible and, at times, inappropriate options for the Court. As a result, court orders can be an inappropriate fit for the child and her or his family circumstances.⁶⁹ This leads services to argue that permanency amendments have frequently undermined ongoing and safe contact between children and their parents, in this way eroding an important aspect of "permanency" for children in the child protection system.⁷⁰

While these issues were already of wider concern, the lack of in-person contact and the infrequency of other forms of phone or online contact between incarcerated parents and their children only compound the impacts of reunification timelines. If incarcerated mothers are required to demonstrate their commitment to their relationship with their children, but cannot do so effectively because they have been prevented from having contact – either by Corrections and Child Protection in general, or by COVID-19 restrictions more recently – arguably this means that, **from the moment that their mothers are incarcerated, children are set on an inevitable path towards permanent out of home care.**



Clients reported difficulty maintaining connection with their children when visits were cancelled week after week. Clients also struggled to explain this to their children, and reported feeling blame and shame ...

Drummond Street, DPFC Program

⁶⁹ Victoria Legal Aid, (June 2015) Submission to the Legal and Social Issues Committee, Inquiry into the Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015; Women's Legal Service for the Commissioner for Children and Young People, (2016) Submission in response to inquiry into implementation of the *Children's Youth and Families Amendment (Permanent Care and other matters) Act 2014*

⁷⁰ Ibid

Family violence during COVID-19

Important to recognise, the dynamics of family violence and ongoing abuse by adult perpetrators can continue to impact the mother-child bond as well as expose children to ongoing abuse without the protective presence of their mother, as noted above. While this is not limited to COVID-19, given that the potential for undermining contact is a method of systems abuse at any time, **services are reporting a deliberate leveraging of COVID-19 restrictions or associated requirements as further pathways for abuse** by perpetrator fathers or their wider family.

In the CIJ's wider work program, a current project looking at the impacts of COVID-19 on family violence highlights perpetrators deliberately exposing children to the virus as a means of perpetuating abuse or, alternatively, subjecting them to abusive 'hygiene' procedures.⁷¹ Alternatively, services consulted for this submission explained that this form of systems abuse can also include caregivers deliberately declining to have children vaccinated, thereby preventing in-person visits by children to their incarcerated mothers, even once these started to be permitted again by DPFC.



... Children can attend school and childcare without vaccine but prisons enforcing mandatory vaccines. This is a huge barrier to parents seeing their children, particularly where there's family violence involved.

Drummond Street, DPFC Program

Mothers and babies / Mother and child units in prison



Clients who give birth in prison are having their children removed and placed in care, rather than supported in the mothers and children unit. Mothers also need to have confidence in the medical care available to their children within prison.

Elizabeth Morgan House Aboriginal Women's Service

Researchers point to a lack of data about the number of young children living with their mothers in prison across Australia, but indicate that approximately 13 women's prisons can accommodate children.⁷² Importantly, researchers also note that "(w)e don't have routine data on how often a baby gets taken away from their mother in prison, but it could happen after a mother fails a drug test, experiences acute mental health problems, or following a series of disciplinary issues."⁷³

Specific to Victoria, DPFC and Tarrengower Prison offer the 'Living with Mum Program' (LWM) which enables some children aged 0 – 5 to live with their mothers in prison.⁷⁴ While programs of this kind should be supported and expanded, researchers note that "women in these settings are subject to constant surveillance and commentary on their parenting, while access to necessities otherwise taken for granted, like affordable nappies, isn't guaranteed. Women distance themselves from each other to avoid trouble."⁷⁵

⁷¹ Centre for Family Research and Evaluation, Centre for Innovative Justice and Australian Institute of Family Studies (forthcoming) *Future-proofing safety: surfacing inequality and building service capacity for crisis ready responses*.

⁷² Walker, J. R., Baldry, E. and Sullivan, E. A. (2021) 'Residential programmes for mothers and children in prison: Key themes and concepts', *Criminology & Criminal Justice*, 21(1).

⁷³ Ibid.

⁷⁴ See Corrections Victoria, (2022) *Pregnancy and Childcare* <<https://www.corrections.vic.gov.au/prisons/going-to-prison/pregnancy-and-childcare>>

⁷⁵ Ibid

Overall, however, “women are relieved and grateful their child is with them and not in the foster care system [in which] many of them grew up...”⁷⁶

Transitioning out of custody to reunite with children

In the broader context of general housing precarity, women with a criminal record and support needs face additional barriers when seeking appropriate accommodation.⁷⁷ As well as contributing to women’s contact with the criminal justice system in the first place, as noted above, accommodation is also essential for women to transition successfully from prison and to avoid reoffending, as well as to be reunited with children who were placed in care during their incarceration.⁷⁸

Specific research comparing the post-release needs of women and men indicates that housing, finances and substance abuse remain the top post-release priorities for women.⁷⁹ Research across the UK, USA and Canada continues to highlight that accommodation is the foundation for successful transition from prison into the community⁸⁰ and is critical for women to re-establish connection and access to their children, who may have been placed in care during their incarceration.

Services contributing to this submission and working with the CIJ more broadly report a particular paradox for women leaving custody who want to be reunited with their children. This is because, where access to

Everyday I would be ringing....looking for somewhere to live, but I didn't get help with anything, with accommodation, mental health, connecting with my children...You can't ... put [families] back in the community and expect everything to be fine...it doesn't work like that...

- Dorothy Armstrong,
CIJ Lived Experience Expert

housing post-release is available, women who do not have their children currently in their care generally only qualify for single accommodation. To regain primary care of their children, however, women are generally required to demonstrate that they have access to accommodation which will house their children as well. **This leaves women in a ‘Catch-22’, placing substantial pragmatic barriers in their path towards reunification** with their children beyond the damage already caused to their mother-child attachment by their incarceration and by any prior experiences of trauma that the mother and children share.

Part 3. Areas for future focus and reform

The current lack of attention directed towards the children of incarcerated parents – and the efforts to identify and address their ongoing needs – may make it difficult to know where to start in terms of making recommendations for improvement. If children are not even seen and identified, let alone heard and responded to, the challenge of stemming an inevitable trajectory into further experiences of harm – and, in many cases, contact with the criminal justice system themselves – is considerable. The following broad areas, however, present foundations for considerable improvement.

⁷⁶ Walker, J. R., Baldry, E. and Sullivan, E. A (2019) ‘Babies and toddlers are living with their mums in prison. We need to look after them better’, *The Conversation* < <https://theconversation.com/babies-and-toddlers-are-living-with-their-mums-in-prison-we-need-to-look-after-them-better-117170>>

⁷⁷ Centre for Innovative Justice, *Leaving Custody Behind* Fact Sheet, p. 3

⁷⁸ Sheehan, R. (2013) Justice and Community for Women in Transition in Victoria, Australia’ in Women Punishment and Social Justice: Human Rights and Social Work (eds.) Margaret Malloch and Gill Mclvor (Routledge).

⁷⁹ Worrall, A., & Gelsthorpe, L. (2009) ‘What works’ with women offenders: The past 30 years’ 56(4) *Probation Journal* 329; Sheehan, R. (2013) ‘Justice and Community for Women in Transition in Victoria, Australia’, in Malloch, M. and Mclvor, G. (eds) *Women, Punishment and Social Justice: Human Rights and Social Work* Routledge.

⁸⁰ Sheehan 2013, above n 79.

Divert women – and specifically mothers – from custody

In accordance with the Bangkok Rules, and with the CIJ's recommendations in its recent Issues Paper, Victoria should take more concerted steps to divert women from custody as a first and crucial step to avoiding the harm caused to their children. Where mothers are able to remain in the community and contact with their children can be maintained on a genuine and meaningful level, the outcomes for children will be improved.

Beyond reporting, policing practice, sentencing reform, and reviewing bail laws, there are particular systems responses tied to children that could improve immediate outcomes:

- The development, with relevant police departments, of child sensitive arrest procedures, incorporating the likely consequences to children of parental incarceration into Pre-Sentence Reports and prison pre-release preparation to address parenting and family issues.⁸¹
- Provide greater emphasis on a woman's status as a mother or primary caregiver as part of considerations in granting bail as part of broader reforms to bail legislation.
- Community-based orders can keep mothers with their children and additionally have the benefit of costing less, and a successful completion more likely to lead to a reduction in reoffending than custodial responses.⁸² Community-based orders are also an opportunity to provide appropriate services and programs for women and their children.
- Community-based order conditions generally do not consider women's specific needs as parents, such as to pick up children from school. Similarly, alcohol and other drugs rehabilitation services do not allow women to bring children with them. More recently, the example of COVID-19 has added to the responsibilities for women in the community by having to home-school children.
- Provide legal and other supports to assist with reunification of children.
- Recognise and account for the impacts of incarceration on family reunification timelines.

Ensuring that children are seen and heard

Without an official process to identify children with incarcerated parents, and with no specific oversight responsible for them, not enough is known about the experiences of children of incarcerated parents. More data collection is therefore required, including gender-sensitive monitoring, with the data collection to be in the best interests of the child. Finding ways to engage children themselves in order to incorporate their voices is also essential. Corrections Victoria and the Department of Fairness, Families and Housing should therefore establish a formal process to identify this group of children, including for specifically recording the number of Aboriginal children with parent(s) in prison and providing supports that incorporate the Aboriginal concept of Social and Emotional Wellbeing.⁸³

⁸¹ Trotter et al, above n 35.

⁸² Picard, S., Tallon, J. & Kralstein, D. (2019) 'Court-Ordered Community Service: A National Perspective', Center for Court Innovation; Community-based sentences are also much less costly than full-time custody. Other benefits of community-based sentences include the avoidance of contaminating effects arising from imprisonment with other offenders, see NSW Law Reform Commission, Sentencing, Report No 139 (2013) [9.16]– [9.17].

⁸³ Bourke, S., Wright, A., & Guthrie, J. (2018) 'Evidence review of Indigenous culture for health and wellbeing' 8 (4) The International Journal of Health, Wellness, and Society, 12-27; Salmon, M., Doery, K., Dance, P., Chapman, J., Gilbert, R., Williams, R. & Lovett, R. (2019) 'Defining the indefinable: descriptors of Aboriginal and Torres Strait Islander people's culture and their links to health and wellbeing: A literature review', Aboriginal and Torres Strait Islander Health Team, Research School of Population Health, The Australian National University

Investment in services for children

Crucial to providing adequate services to children of incarcerated parents is a proper understanding “that adult service users are often parents (and subsequently their) dependent children are indirectly part of that adult service system.”⁸⁴ Part of providing services for children then means requiring a coordinated response between adult services and children-focused services and departments to ‘see’ children who are featuring in both.

Investment in services must also span the needs of children across their parents’ experience of custody, both pre, during and post-incarceration. Services must also accommodate and respond to the needs and development of children at different stages. For example, any custodial or community residential programs should include support for mothers and their children, both during a woman’s stay and after her return to the community, connecting her with services and stable accommodation.

Intervention to support the early development of children of convicted parents is particularly essential, A central concept to emerge from the research into children of incarcerated parents, however, is that “the factors predicting risk and resiliency for children of offenders are likely to be many and varied, and trying to disentangle direct and indirect effects of parental criminal activity may be less important than simply recognising that these children constitute a particularly vulnerable, and currently underserved, group.”⁸⁵

In terms of services offered to women in custody or, preferably, while they remain in the community – parenting programs and support for life skills development are especially relevant to and appropriate for women who have experienced unstable childhoods and/or interrupted schooling. As noted above, research has shown the particular importance of stable housing in the process of parents transitioning back into the community upon release⁸⁶ and needs investment and commitment from government.

Training for relevant workforces

Training, information and processes for relevant practitioners and workforces across the police, courts and Corrections systems – including police, court staff or decision makers, and prison staff/authorities, as well as healthcare services – are all essential if the existence and needs of children of incarcerated parents are going to be identified or met. The following international examples provide a brief snapshot of promising practices that could bring children better into view and connected to supports.

- In the US, **The Safeguarding Children of Arrested Parents Toolkit** aims to identify better ways to minimise potential harm to children during the arrest of a parent. The Toolkit comprises a training video and webinar series. The information provided gives officers an overview of issues spanning pre-arrest, arrest, documentation and “follow-up to ensure children of arrested parents are safeguarded.”⁸⁷
- A collaboration of Scandinavian countries has worked together to establish **Children’s Officers**, specially qualified prison officers who understand the needs of mothers and children in prison, with Finland officially recognising that “the welfare of an imprisoned parent also benefits their child.”⁸⁸

⁸⁴ Flynn, C. (23 February 2022) ‘About 43,000 Australian kids have a parent in jail but there is no formal system to support them’, *The Conversation*

⁸⁵ Bell, M. et al. (2018) ‘Using Linked Data to Investigate Developmental Vulnerabilities in Children of Convicted Parents’ *Journal of Developmental Psychology* 54(7), 1219-1231. p. 25

⁸⁶ Trotter et al, above n 35.

⁸⁷ International Association of Chiefs of Police, ‘Safeguarding Children of Arrested Parents Toolkit’ (<https://www.theiacp.org/resources/safeguarding-children-of-arrested-parents-toolkit>)

⁸⁸ P Scharff Smith, (2015) Children of Imprisoned Parents in Scandinavia: Their Problems, Treatment and the Role of Scandinavian Penal Culture’ 32, *Law in Context Journal*

- In the UK, the **Think Family framework** is based on cross-organisational training and inter-agency information sharing, which prioritises the wellbeing of children within the family environment. Identifying risks and support extends beyond the client to the needs of the wider family.⁸⁹
- In its recent Issues Paper, **Leaving Custody Behind: Foundations for safer communities and gender-informed criminal justice systems**, the CIJ proposes a Women’s Justice Reinvestment Strategy, with a suite of interrelated foundations for reform which we see as necessary to deliver change. Please refer for further detail on these reforms aimed at halting Victoria’s escalating female imprisonment rate, including approaches to working with Aboriginal communities in the delivery of community-led and culturally safe reforms.⁹⁰

Conclusion

This submission from the CIJ and its service partners has sought to highlight some features which are currently gaps – and which should therefore be areas for future focus and reform – in responding to the children of incarcerated parents. A primary and fundamental step in improving the experience of children is ensuring that, wherever possible, standards set by the international community are met and that women, particularly those who are mothers, are diverted from custody.

Whether mothers who come into contact with the criminal justice system are in custody, in the community on bail or on community-based orders, the existence and immediate needs of their children should be met. A long-term plan should then be set out to support them in their own development; in their relationship with their mother; and in their collective recovery from the experience of poverty and harm that has likely brought them into contact with criminal justice system in the first place.

You actually have to change the game, whatever way you’re looking at it, you need to change it radically because it doesn’t work. It doesn’t just harm the person in custody. It harms their whole family in ways you can’t even imagine.

- Dorothy Armstrong,
CIJ Lived Experience Expert

⁸⁹Trotter et al, above n 35

⁹⁰ Caruana, above n 9, p.60-112.

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