

**Submission
No 13**

INQUIRY INTO CHILDREN AFFECTED BY PARENTAL INCARCERATION

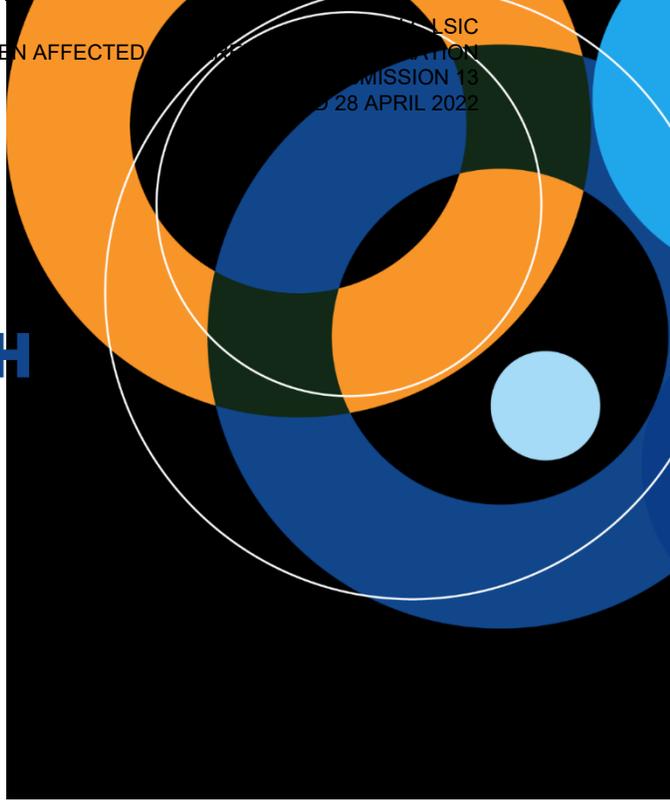
Organisation: South-East Monash Legal Service Inc.

Date Received: 28 April 2022



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SUBMISSION

Prepared by South-East Monash Legal Service Inc for the
PARLIAMENT OF VICTORIA
LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE
Inquiry into Children of Imprisoned Parents

Date submitted: 28 April 2022

Our organisation

Established in 1973, South-East Monash Legal Service ('**SMLS**') is a community legal centre that provides free legal advice, assistance, information and education to people experiencing disadvantage in our community within the City of Greater Dandenong, the City of Casey and the Shire of Cardinia.

SMLS operates a duty lawyer service at various courts in Victoria, including Dandenong Magistrates Court, the Children's Court and provides legal representation at courts and tribunals such as the Victorian Civil and Administrative Tribunal, Fair Work Commission, Federal Circuit Court, Family Court and Victims of Crime Assistance Tribunal.

For most of the 40 years in operation, SMLS has been running a clinical legal education program in conjunction with Monash University's Faculty of Law, whereby law students undertake a practical placement at the legal service as part of their undergraduate degree.

SMLS has an extensive community legal education program that is developed in response to feedback from the range of community engagement and community development activities that we are and have been involved in.

SMLS also has a significant policy, advocacy, and law reform program, contributing to reforms in family violence laws and practices, access to civil procedure reforms, employment law, sexual assault and victims of crime, youth law, gambling and electronic gaming machines and other legal topics relevant to our service delivery and the needs of our community.

Acknowledgement of Country

SMLS wishes to acknowledge the traditional custodians of this lands upon which our offices are located, the Wurundjeri and the Boon Wurrung peoples. We pay our respects to the Elders past, present and emerging.

Terms of Reference

The adequacy of policies and services to assist the children of imprisoned parents in Victoria, with particular reference to:

- (a) the social, emotional and health impacts on affected children;
- (b) what policies exist and what services are available, including consideration of those in other jurisdiction;
- (c) how effective these services are, including -
 - (i) consideration of evaluation of work already done in this area; and
 - (ii) identifying areas for improvement.

Scope of submission

Many of the questions are outside of the scope of SMLS services. We have only provided comments where we were confident that our expertise was a valuable contribution to the subjects raised.

Summary of Recommendations

- 1) We recommend higher quality of training for support workers and essential workers.
- 2) We recommend a stronger focus on prevention and early intervention with more support in homes to reduce separation of families.
- 3) We recommend higher quality training of police and judges on the impacts of parental imprisonment and how to mitigate the detrimental impacts on children.
- 4) We recommend a holistic integrated approach to caring for the wellbeing of a child with an imprisoned parent/s (with the parent, caregivers, psychologists, community, volunteer groups, sports and art groups, the school etc.)
- 5) We recommend further funding and meaningful, tailored and accessible support for kinship carers, foster parents and out-of-home carers.
- 6) We recommend a commitment of State Government funding of an extensive research and analysis project to:
 - a. obtain data critical to understanding the extent of the issue, namely the number of children with parents in prison;
 - b. the impacts on these children; and
 - c. Assessing and reporting on the best response to this issue.
- 7) We recommend the State Government prioritise breaking down the systemic and structural racism and bias in the criminal justice system.
- 8) We recommend that State Government prioritise investment in research to explore what reforms may be needed to ensure the criminal justice system adequately accounts for and responds to matters where the accused is a victim-survivor of family violence.
- 9) We recommend a review of the current Personal Safety Intervention Order system and Family Violence Intervention System to ensure the best interests of a child are considered.
- 10) To reduce the number of parents in prison, we recommend criminal law reform, in particular, a focus on drug reform.
- 11) We recommend the Government make further inquiries into:
 - a. The lived experiences of children of imprisoned parents to determine what additional support services are required.
 - b. Inquiries across schools, specialist support services, child, youth and family services, justice and corrections systems to identify gaps in support and training.
- 12) We recommend a state-wide plan to minimise the detrimental impacts on children of imprisoned parents, focussing on both the short term and long-term impacts and ensuring that at first contact the needs of the individual child are ascertained and a care plan is formed.
- 13) We recommend further funding and the expansion of the work of VACRO and Shine for Kids and their invaluable work in mentoring, parenting and child support, transport, visitations across all Victorian Correctional Centres.
- 14) We recommend ensuring that transport to and from all correctional centres is fully funded and that arrangements for transport from a child's residence to their parent's correctional centre is guaranteed and where appropriate a parent is held in a close correctional centre to the child to facilitate visits.

- 15) We recommend the funding of community legal centres in providing legal advice in prisons including in criminal, family law, domestic violence, housing, employment, fines, and debt matters.
- 16) We recommend a review of the Victorian, Australian and international parenting in prison programs and further inquiries and research into implementing a statewide cohesive, transparent 'best practice' approach. We recommend looking into:
 - a. Off-site Childcare options, development programs for mothers, teaching parenting and life skills, social workers in place assisting mothers and children with all their needs including post-imprisonment housing and finances, fulltime counselling, and psychologists available, drug and alcohol rehabilitation programs, community legal education, duty lawyers to assist with other legal issues the mother may face.
- 17) We recommend reform towards alternative sentencing options and a move towards imprisonment as the last option considered in sentencing. See Recommendations 22-24.
- 18) We recommend strengthening the existing support programmes including extending contact visits and supplementing them with video contact visits. We recommend further funding into programmes connecting children and parents including in person visits and supplementary (not as a replacement) video conferences.
- 19) We recommend funding into having specialised, well-trained prison and social welfare teams coordinating and working on individualised care plans to nurture parent child bonds - taking into consideration the views of the child, parent and caregivers (if applicable).
- 20) We recommend further research into the best interests of the child and the frequency of visits as best practice.
- 21) We recommend increased funding of holistic family specialist support services including community legal centres to provide necessary specialist support to provide adequate imprisonment and release care and support to reduce the risk of recidivism and to reduce the trauma and impacts on children. We see a need for increased services such as alcohol and drug rehabilitation, childcare, legal advice and assistance, community legal education, secure housing, financial support and job placement assistance, education assistance.
- 22) SMLS recommends further inquiries into the appropriateness of alternative sentencing options to keep primary carers together with their children, including options such as Community based sentencing, 'half-way' housing sentencing, decriminalisation and the extension of the diversion program.
- 23) For non-violent crimes SMLS recommends that imprisonment of parents who are the primary carers and pregnant women should only be used as an option of last resort.
- 24) We recommend investment into restorative justice options and law reform away from a strict punitive approach. Redirecting resources towards prevention, support and rehabilitation will have a greater economic impact for the Government than the raising imprisonment rates.
- 25) We recommend that the Committee consider the urgent need for drug law reform in light of the harms associated with prohibition that are impacting our community in Victoria.
- 26) In the development and monitoring of legal policies regulating cannabis in Victoria, SMLS recommends all changes to be rights based, in that consideration of human rights obligations is given central importance. We recommend a shift towards a health-based framework which is forward-thinking and more sustainable than a justice-based framework.

- 27) That the Victorian Government prioritise supporting community legal centres to deliver tailored community legal education, engagement and legal advice to young people and children of imprisoned parents, in order to:
 - a. Empower young people with increased knowledge of their legal rights and responsibilities,
 - b. Empower young people to make more informed choices, and
 - c. Increase young people's knowledge of where to go to get help if needed.
 - d. Providing access to justice via a school lawyer
- 28) We would recommend a Victoria-wide expansion of the cautioning program whereby police issue cautions to young people even if a young person does not admit the offence, provide a no-comment interview or have a prior criminal history.
- 29) We recommend law reform that prioritises a health-based approach to dealing with young people's offending behaviour, to prioritise initiatives which divert young people from the criminal justice system and avoid imprisonment.
- 30) We recommend complaints against police be investigated by a body independent of Victoria Police such as a resourced and expanded Independent Broad-based Anti-Corruption Commission.
- 31) We recommend increased accountability and transparency on police to ensure police are tailoring the exercise of their broad discretion appropriate to the young person's age and stage of development.
- 32) We recommend the development of greater police transparency and accountability.
- 33) We recommend support for organisations including CLCs to continue engaging in advocacy and law reform on behalf of and in collaboration with young people.

Acronyms

SMLS: South-East Monash Legal Service

CLCs: Community Legal Centres

NGOs: Non-Governmental Organisations

VACRO: Victorian Association for the Care and Resettlement of Offenders

FVIO: Family Violence Intervention Orders

We acknowledge that there is diversity in terms of the preferred way that First Nations People identify themselves and that for the sake of consistency we will use 'Aboriginal and Torres Strait Islander peoples' throughout.

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INTRODUCTION

We thank the Legislative Council Legal and Social Issues Committee of the Parliament of Victoria, for the opportunity to make a submission to the Inquiry into Children of Imprisoned Parents.

These submissions are based on our Centre's long history of providing legal assistance, community legal education and community development work to those experiencing disadvantage.

Established in 1973, South-East Monash Legal Service ('SMLS') is a community legal centre that provides free legal advice, assistance, information and education to people experiencing disadvantage in our community. We are located in South East Melbourne, with offices and outreach locations across the City of Greater Dandenong, the City of Casey, and the Shire of Cardinia. The City of Greater Dandenong is the second most culturally diverse municipality in Australia, and the most diverse in Victoria. People from over 150 different countries reside in Greater Dandenong and 60% of the residents were born overseas. It also has the highest number of resettlements from newly arrived migrants, refugees and asylum seekers in Victoria. Data from the 2016 Census revealed that Greater Dandenong was the second most disadvantaged LGA in Socio-Economic Indexes for Areas ('SEIFA') ratings. The City of Casey has one of the largest populations of Aboriginal and Torres Strait Islander residents in metropolitan Melbourne, as well as a high number of residents from refugee or asylum seeker backgrounds. Residents speak over 140 different languages and belong to over 120 faiths.

SMLS operates a duty lawyer service at various courts in Victoria, including Dandenong Magistrates Court and the Children's Court. These submissions are also based on our experience providing a duty lawyer service to young people in intervention order matters at the Children's Court. Additionally, we see clients who experience mental health issues; alcohol and other drug ('AOD') issues; have experienced trauma as victim-survivors of sexual assault and/or family violence or as a refugee or asylum seeker.

Children are the unintended victims of a harsh and failing criminal justice system. South-East Monash Legal Service Inc ('SMLS') supports a long-term vision for addressing the growing prison population and rates of recidivism, one which treats people with compassion and dignity, takes a human-rights centred approach and acknowledges that the drivers of offending behaviour are often a result of broader social and systemic failures and inequalities. Overarchingly, our submissions support initiatives that expand opportunities to divert persons away from the criminal justice system. We support a redirecting of investment away from the prison system and into primary prevention so people may have timely access to tailored and high-quality support.

Research shows that there is a high chance that Australian prisoners have underlying co-complexities to their offending, such as childhood trauma, disability, substance abuse, have been involved in family violence and have higher levels of mental health problems.¹ Between March 2021 and September 2021, out of approximately 398 clients we assisted in relation to a criminal law matter, approximately:

¹ Australian Government, Australian Institute of Health and Welfare, *The Health of Australia's prisoners 2018* (2019) <<https://www.aihw.gov.au/getmedia/2e92f007-453d-48a1-9c6b-4c9531cf0371/aihw-phe-246.pdf.aspx?inline=true>> .

- 17% indicated to have experienced family violence
- 29% indicated they had dependent children
- 19% were under the age of 25 years
- 19% indicated they had a disability
- 37% indicated they were unemployed
- 9% indicated they had no income
- 12% indicated they were at risk of homelessness

There is no replacement for a parent child relationship, and in most cases, maintaining and strengthening these bonds is imperative. By reducing the numbers in prison, we reduce the number of children who are left without a parent.

Imprisonment of parents serves to punish children rather than punish the parents for their actions. It reduces the financial contribution to the family unit, it acts in breaking family ties, prison visits are traumatic. We have generations of children growing up not knowing their parents and there are increasing children in foster care and out of home care as not all children have an alternative arrangements/family members to care for them.

Given the need for further research and data in this area, and the broad Terms of Reference, this submission serves as an overview of a very complex issue. We urge the Government to invest in research and data collection and further consultations into how to address the issues faced by children with parents in prison, in particular listening to Aboriginal and Torres Strait Islander voices. There is a need for an independent committee tasked with this research and reporting. There is also a need for specialised support, including specialised social workers and care teams to support and assist the families and children, community legal education and free legal advice and assistance for parents and their children. We also recommend a move away from the punitive criminal justice system towards decriminalizing and community-based alternatives to imprisonment.

Responses and Recommendations

1. Impacts of Parental Imprisonment

From 30 June 2020 to 30 June 2021, Australian prisoners increased by 5% (1,910) to 42,970. The imprisonment rate also increased by 5% from 205 to 214 prisoners per 100,000 adult population.² Many of those imprisoned are parents leaving children who will become the victims of a harsh criminal justice system facing many impacts on all elements of their lives. These impacts spread across every aspect of a child's life, during and after parental imprisonment.³ Some of the impacts of parental imprisonment are identified immediately and are short term and others emerge in the years to follow.⁴ The impact on a child can be dependent on the relationship between the child and their parent prior to the imprisonment and the specific family dynamics including any disadvantages the family already face. If the imprisoned parent was the main caregiver, this will naturally have a much greater impact on the child compared to a parent who may be estranged prior to imprisonment. Data is lacking in this area as there is no attempt at capturing this information.

Research into the subject seems to primarily be undertaken by not for profits and charities rather than the Government imprisoning and separating these families. Some of the impacts on children include but are not limited to:

- Stigma and shame, including:
 - o Bullying in school
 - o Inability to trust others and to talk about their personal circumstances with teachers or friends (which prevents children accessing help and support)
- Loss of jobs
- Loss of relationships
- Being placed in foster care or kinship care
- Detrimental impacts on their physical and emotional wellbeing
- Mental health and psychological impacts including:
 - o emotional distress, feelings of anxiety and depression
 - o Feelings of grief, hopelessness, anger, anxiety, loss and low self-esteem
- Education challenges including disruption in education
 - o Difficulties in school, difficulties in concentrating, behavioural problems, difficulty processing the personal and academic stress
- Financial challenges and disadvantages
- Disrupted and fractured familial connection and relationships

² Australian Bureau of Statistics, *Prisoners In Australia* (09/12/2021)

<<https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/2021>>

³ VACRO, *Families and Prisons in Victoria* <<https://www.vacro.org.au/information-about-families-and-prisons-in-victoria>> .

⁴ Vicky Saunders and Erin Barry, 'Research to Practice Series Four: Children with Parents in Prison' (December 2013) Institute of Child Protection Studies.

- Poor communication with parents in prison and limited or no visits
- Incarcerated parents have few opportunities to use their parenting skills or feel like a parent
- Additional caring responsibilities for other siblings/family members
- When a child witnesses an arrest, they tend to lose trust in authority
- Expectations around a parent's release from prison
- Instability and homelessness (due to lack of secure adults in their lives)
- Greater risk of entering the criminal justice system and being imprisoned, resulting in intergenerational criminal involvement. 5

Our staff who have experience working with young people in out-of-home care have observed that it is very difficult for a young person to have the knowledge and bravery to break the cycle once they are removed from their parents. There is always a chance for reunification until a parent is incarcerated, then it becomes incredibly difficult. By this time a young person has usually experienced a multitude of trauma and Child Protection will usually declare the parent/s as "unsafe". Having parent/s labeled as unsafe labels a child with it. This has a wide range of impacts to the child including on their emotional and physical wellbeing. A child will feel isolated from their peers and therefore will usually disengage from education in fear of being judged and bullied. Once a child goes into Secure Welfare Services, being told they are there to keep them safe, they are exposed to unsafe and criminalised young people. This can create a new narrative for young people where they no longer feel "normal" or part of society. Once disconnected from family and peers it is usual for young people to fall into a life of crime and substance abuse. This furthers the narrative they are outsiders and do not belong in society, they often feel hopeless with no future in sight. They can often feel they are inevitably going to go down the same path as their parents and don't fight it. Young people often must become parentified once their parents are gone and will usually have to take a carer's role for any younger siblings. This has been researched to impact all aspects of a young person's life, including emotional and physical health as far as carer's burn out. Again, usually resulting in disengagement from school or work which impacts future access to work opportunities and creates a financial stress, especially if placed in kinship care with no adequate resources.

Our staff who have experience working with young people in out-of-home care have also observed that funding is spread across a multitude of young people as beds are always full and safe matching is not possible. Young people in out-of-home care have a bed, food and a clothing allowance but at the same time are exposed to incredibly unsafe situations, complex disorders and behaviours that adult carers are not qualified and trained in supporting. Young people are exposed to a lot more harm and are often labelled "a resi kid" to their peers again resulting in disengagement from school and other support networks. They are exposed to substance users and violence. Having no parents to look to for guidance and feeling abandoned and neglected also has huge impacts on their self-worth and mental health. Out-of-home care is not a viable service, there are too many young people to one house, not enough carers and huge burnout rates with a lack of adequate training. Each house usually has four young people, two carers, only one at night and only one car. This means many young people are left alone at night as carers have a lack of staffing and resources to pick them up. Young people will seek older friends to be driven around, this is usually a costly relationship which can lead

to criminal or anti-social behaviour. Also, in out of home care young people get moved from home to home often for no or little reason; this continues to create a sense of abandonment and lack of safety and security in a young person's life. Kinship care can have access to certain supports, but it is usually only for short to medium term and funding closes. Housing is another issue faced by kinship carers; children are being placed in kinship care, but they may not even have a bedroom or enough space to house them. Aboriginal and Torres Strait Islander young people are usually placed with non-Aboriginal carers and disconnected from their culture and identity, which can have major impacts on their sense of self. Kinship and foster care funding is usually only short to medium term and can put a lot of pressure on a family. Foster carers usually struggle when a child turns into an adolescent and their trauma usually starts to come up or is triggered and can create very complex and challenging behaviours resulting in family breakdown and the young person being placed in out-of-home care, even if the young person lived with the family for most of their life. This is again due to the lack of support for foster or kinship carers.

Our staff that have worked in out of home care have also observed police failing to follow up on welfare checks leaving young people in dangerous situations and having them feeling as no one cares for them, damaging their self-worth and continuing the narrative of abandonment and neglect. They have also observed that Child Protection are over worked and underfunded, they are usually set up to fail and they never have adequate resources to support a family long term. Child Protection will sometimes trick kids to coming with them and will not be returned to their families, this is incredibly harmful and disorientating for the young person, they are normally taken with only the clothes on their back and never get any of their belonging's again, this also breaks the trust of any service workers which means any support worker coming into the child life will have an extremely difficult time trying to build rapport to appropriately and adequately support the young person. Many Child Protection workers have never met their young person client in out-of-home care, this again leaves the young person with a huge sense of abandonment and hopelessness. These situations have much bigger consequences when a parent is wrongfully convicted and discriminated against and incarcerated with no real cause. This causes mistrust in police, the justice system and child protection. A young person will usually disengage from the general norms of society all together as they feel they will inevitably be labelled or discriminated against. There needs to be more respite options for young people or victims, while perpetrators receive more support and behavior modification courses. Child protection can often hinder the relationship between families, and in our staff's experience, families are usually more supported with an outside service case manager.

We recommend a stronger focus on prevention and early intervention with more support in homes to reduce separation of families. We highlight that this recommendation is consistent with the Victorian Government's Early Intervention Investment Framework. Every child is unique and therefore the impacts are unique and should be attended to on a case by case or child by child basis. Government responsibility must be taken for the wellbeing of these children. The state has a role in contributing to the wellbeing of these children by investing in tailored, culturally safe and trauma-informed services and support. We recommend a coordinating role (rather than interventionist role) whereby the Government would coordinate specialised and appropriate services (funded by Government) to care for the wellbeing of these children and mitigate the impacts of parental

imprisonment. There is an urgent need for reform in this area to prevent the intergenerational cycle of imprisonment from continuing. There must be safeguards for the social, political and judicial inclusion of children with an imprisoned parent to prevent intergenerational imprisonment.

The immediate risks and impacts to children must immediately be acted on by Government services including ensuring stable housing and finances and that their education, health and social wellbeing is not impacted.

Recommendations:

1. We recommend higher quality of training for support workers and essential workers.
2. We recommend a stronger focus on prevention and early intervention with more support in homes to reduce separation of families.
3. We recommend higher quality training of police and judges on the impacts of parental imprisonment and how to mitigate the detrimental effects on children.
4. We recommend a holistic integrated approach to caring for the wellbeing of a child with an imprisoned parent/s (with the parent, caregivers, psychologists, community, volunteer groups, sports and art groups, the school etc.)
5. We recommend further funding and meaningful, tailored and accessible support for kinship carers, foster parents and out-of-home carers.

2. Number of Children Impacted by Parental Imprisonment

The number of those in Australian and Victorian prisoners are increasing and “Nearly two in five people in Australia’s prisons are parents. 38% of people in prison have a child in the community who depends on them for basic needs”.⁵ There are approximately 43,000 children in Australia with at least one parent in prison.⁶ It is *estimated* that there are 3000 parents in Victoria who are in prison.⁷ It is an estimate as we do not have accurate data. A VACRO report shows that research has estimated that 5% of children in Australia will have a parent go to prison, which is approximately 235,000 children with 45,000 of those children living in Victoria.⁸ Disproportionately, more than 20% of Indigenous Australians will have a parent imprisoned.⁹

⁵ VACRO, *Families and Prisons in Victoria* <<https://www.vacro.org.au/information-about-families-and-prisons-in-victoria>> .

⁶ Catherine Flynn, *The Conversation, About 43,000 Australian kids have a parent in jail but there is no formal system to support them* (24/02/2022) <<https://theconversation.com/about-43-000-australian-kids-have-a-parent-in-jail-but-there-is-no-formal-system-to-support-the-m-176039>>.

⁷ VACRO, *Families and Prisons in Victoria* <<https://www.vacro.org.au/information-about-families-and-prisons-in-victoria>> .

⁸ VACRO, *Families and Prisons in Victoria* <<https://www.vacro.org.au/information-about-families-and-prisons-in-victoria>> .

⁹ *Ibid.*

There is a concerning lack of data into how many children have parents in prison, how they are impacted, what support they currently have and what support is lacking. There is no formal process, no specialised support or teams to care for these parents or their children, no government departments in charge of monitoring and reporting. Without knowledge of the numbers of children being impacted and their lived experiences, it is difficult to make comprehensive recommendations in our submission.

Lack of data in relation to the impacts of parental imprisonment is not uniquely an Australian issue. In the Netherlands, the number of children with incarcerated parents is also estimated, “That we are obliged to estimate the number of children impacted by parental imprisonment is an example of a ‘system’ which inadequately considers the best interests of the child. To better support children with imprisoned parents, there is a need for information about who and where these children are. Such data should be accurate and readily available to key stakeholders.”¹⁰ Whilst Dutch police have a Child Check procedure for police to follow when making an arrest, “[to coordinate] police, municipalities and penal institutions to ensure that alternative care is arranged for children who have been left without caretakers due to the arrest or detention of a parent....In practice, it is evident that there is minimal to no coordination within the criminal justice system to ensure that the care and best interests of the child(ren) are adequately served. For this to occur, there is a need for a centralised care and registration system, coordination among all parties and a shared vision regarding children who have incarcerated parents.”

We recommend a commitment of state Government funding of an extensive research and analysis project to obtain data critical to understanding the extent of the issue, namely the number of children with parents in prison; the impacts on these children; and assessing and reporting on the best response to this issue. The establishment of an independent State committee could be tasked with monitoring and capturing data into children of imprisoned parents and providing reports and recommendations on how to best support these children. Research should also consider if there is a need for a specialised Minister or Children’s Ombudsman tasked with the welfare of children of imprisoned parents. Their role could also include ensuring there is specialised judicial and police education and training, ensuring the relevant bodies and agencies (including police, judges, child protection, social workers, prison officers, schools, healthcare providers and other specialised service providers) are coordinating efforts to minimise the impact of parental imprisonment and promoting the child’s wellbeing.

¹⁰ Angela Verhagen, Bart Claes & Elsbeth Kamphuis ‘Children and incarcerated parents: A Dutch perspective on recovery-focused work’ (Vol 8, 2019) *European Journal of Parental Imprisonment The child’s best interests: From theory to practice when a parent is in conflict with the law*, 10.

¹¹ *Ibid.*

Recommendation:

6. We recommend a commitment of state Government funding of an extensive research and analysis project to:
 - a. obtain data critical to understanding the extent of the issue, namely the number of children with parents in prison;
 - b. the impacts on these children; and
 - c. Assessing and reporting on the best response to this issue.

3. Overrepresentation of Aboriginal and Torres Strait Islander Peoples in Prison

The overrepresentation of Aboriginal people in prison is well known, they are “imprisoned at the highest rate in the world (Antohny, 2017) and at a rate of 16 times higher than non-indigenous Australian (Australian Bureau of Statistics, 2018).¹² Aboriginal and Torres Strait Islander peoples are also 17 times more likely to be arrested than non-Aboriginal people.³ As of 30 June 2021 Aboriginal and Torres Strait Islander prisoners made up 30% of all prisoners in Australia.¹⁴ The intergenerational problem of imprisonment is greater for Aboriginal and Torres Strait Islander peoples with 31% of Aboriginal and Torres Strait Islander peoples in prison having had a parent or carer in prison during childhood, compared to 11% of non-Aboriginal people.¹⁵

The disproportionate rates of imprisonment lead to disproportional impacts on Aboriginal and Torres Strait Islander children. The impact of parental imprisonment on Aboriginal and Torres Strait Islander children can be seen from birth and across generations and kinship networks and is exemplified due to the adversities they are more likely to face such as unstable housing situations, poverty and abuse.¹⁶ Hardships are exemplified when a parent is imprisoned and can increase the risk of

¹² Dr Mike Roettger, Krystal Lockwood, Prof Susan Dennison 'Indigenous people in Australia and New Zealand and the intergenerational effects of incarceration' (Research Brief 26, December 2019), *Indigenous Justice Clearinghouse*.

¹³ Australian Human Rights Commission, *Indigenous Deaths in Custody: Arrest, Imprisonment and Most Serious Offence*, <<https://humanrights.gov.au/our-work/indigenous-deaths-custody-arrest-imprisonment-and-most-serious-offence>> .

¹⁴ Australian Bureau of Statistics, *Prisoners In Australia* (09/12/2021) <<https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/2021>> .

¹⁵ VACRO, *Families and Prisons in Victoria* <<https://www.vacro.org.au/information-about-families-and-prisons-in-victoria>> .

¹⁶ Dr Mike Roettger, Krystal Lockwood, Prof Susan Dennison 'Indigenous people in Australia and New Zealand and the intergenerational effects of incarceration' (Research Brief 26, December 2019), *Indigenous Justice Clearinghouse*.

“antisocial behaviour and imprisonment, mental and physical health issues, substance use, academic difficulties, and social marginalisation or exclusion in offspring”.¹⁷

Victoria could be a leader in breaking down the systemic and structural racism and bias in the criminal justice system. “Today, Indigenous researchers argue the focus should be on working with Indigenous people who hold the knowledge and expertise of their circumstances past and present, and on positive change”.¹⁸ The Indigenous Justice Clearinghouse has made a series of recommendations to break the intergeneration cycle of imprisonment, which includes working with Aboriginal and Torres Strait Islander, reducing imprisonments, minimising trauma from separation, parenting interventions and better wrap around services.¹⁹

Recommendation:

7. We recommend the State Government prioritise breaking down the systemic and structural racism and bias in the criminal justice system.

4. Intersectionality of Imprisonment of Mothers with Family Violence

At least one in two women in prison have a history of child abuse and or a history of mental illness.²⁰ We urge the committee to recognise and examine the interplay of the imprisonment of mothers with family violence. Mothers are often faced with their children being leveraged against them, with the threat of their children being removed and a deliberate threat of family violence in committing crime. This is exasperated by the other issues mothers face during episodes of family violence for example unstable housing and financial instability.

It seems the criminal justice system may be predicated on a false dichotomy between victim-survivors and perpetrators of family violence. In the context of our work at the Children's Court, there are indeed instances where a victim-survivor themselves commits family violence. We have seen victim-survivor clients facing family violence related charges, who speak of the impact of the family violence they themselves have experienced as creating the tense and high-stress environment leading up to their own offending behaviour. These clients may also experience evidentiary difficulties if they have not reported their past experiences of family violence to police.

We have observed that there appears to be a widespread reluctance by the informant, prosecution and the Court to place clients charged with assault-related offences on a diversion program,

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Jane Rosemary Walker, Eileen Baldry, Elizabeth Sullivan, The Conversation, *Babies and toddlers are living with their mums in prison. We need to look after them better* (17 May 2019) <<https://theconversation.com/babies-and-toddlers-are-living-with-their-mums-in-prison-we-need-to-look-after-them-better-117170>>.

including where the assault may have occurred in the context of family violence. This may be in circumstances where, notwithstanding the nature of the offence, diversion may otherwise be appropriate.

We have also observed full no contact intervention orders being granted to a partner against a victim-survivor respondent, and their child being misidentified and added as an affected family member when there was no just cause. This then unfairly restricts the respondent parent and child from contacting each other unless the applicant parent agrees to a mediation. In these situations, where appropriate, we recommend a limited order being made so that the Respondent parent may still contact the child to continue the familial bond.

The impact of criminalising the victim-survivor of family violence may be immense, particularly where the person has child dependents. We have encountered clients who have reported the overwhelmingly spiralling effect of being charged with family violence related charges. The victim survivor may quickly become vulnerable to facing other legal issues including issues relating to child protection, FVIO proceedings, debts and housing insecurity. We see an urgent need to further explore and research the extent that the criminal justice system, at all stages, is able to adequately account for and respond to family violence-related offences where the perpetrator is at the same time a victim-survivor of family violence; whether any legislative reforms are needed; and what related training may be needed for police, the prosecution, the legal profession, judges and magistrates.

To reduce the number of parents in prison, we recommend a criminal law reform in particular with a focus on drug reform. We have extensively written on the areas of Cannabis, drug reform and gambling and the criminal justice system.²¹

We also see opportunity in exploring holistic approaches to responding to crisis, particularly in the context of family violence. We would support further research to explore for example, the option of having support services such as social workers, youth workers, health practitioners and/or AOD workers to accompany police when responding to family violence calls for assistance.

Recommendation:

8. We recommend that State Government prioritise investment in research to explore what reforms may be needed to ensure the criminal justice system adequately accounts for and responds to matters where the accused is a victim-survivor of family violence.

²¹ For copies of our submissions, please contact us or see the following links:

<https://www.smls.com.au/wp-content/uploads/2021/04/SMLS-Cannabis-submission-.pdf>

<https://www.smls.com.au/wp-content/uploads/2021/04/Submission-for-the-Inquiry-into-Drug-Law-Reform.pdf>

https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System/_Submissions/146_Springvale_Monash_Legal_Service_Inc_Redacted.pdf

9. We recommend a review of the current Personal Safety Intervention Order system and Family Violence Intervention System to ensure the best interests of a child are considered.
10. To reduce the number of parents in prison, we recommend a criminal law reform in particular with a focus on drug reform.

5. Victorian Government Responsibility

“There are key crisis points during a parent’s journey through the criminal justice system – arrest, remand, sentencing, imprisonment and release – with little formal attention paid to children at each of these stages. A lack of formal protocols and guidelines concerning children, along with limited inter-agency communication, means responsibility for children is poorly placed and coordinated, with children typically not recognised or seen.”²² The Government must take responsibility for those children who are impacted by their harsh sentencing laws and imprisonment rates. This responsibility needs to then inform policies and procedures for the role that schools, specialist support services, child, youth and family services, justice and corrections systems play in caring for children affected by parental imprisonment. Reports into the Government’s responsibility has shown that:

In both Victoria and NSW, the distinct needs of children and young people are recognised. Each state has a Commissioner/Advocate for Children and Young People; each have also sought to bring together key decision-makers to better coordinate cross-government policies and programs which impact on the wellbeing and safety of children and young people. In Victoria, this is the Children’s Services Coordination Board, while in NSW, this has been under the umbrella of the ‘Keep Them Safe...’ action plan, although the latter focuses more specifically on child protection. To affect change, strong leadership and a commitment to collaboration is vital. To ensure that the distinctive needs of children whose primary carers are imprisoned are prioritised and responded to adequately, this research highlights the need in each state for: an overarching policy which locates responsibility for cross-sectoral cooperation with a relevant agency or board, the creation of an interagency working group, with representation from relevant government departments (adult and youth correctional services, child and family support services, education, police) and the judiciary. This body would provide ongoing advice and oversight, and the development of policy guidelines and operating procedures, to cover information to be gathered, best-practice responses, as well as appropriate information sharing.²³

In addition to reforming the criminal justice system to ensure fewer people are incarcerated, the Institute of Child Protection Studies Research has identified the following areas where reform and support is required:

- Support with education: Young people highlighted the need for extra support within schools, to create more understanding and flexible environments that do not stigmatise children and young people. They identified the importance of community awareness programs and education for teachers and students about the impact of parental incarceration.

²² Catherine Flynn, Christopher Trotter; Bronwyn Naylor, Paul Collier, David Baker, Kay McAuley et al. ‘The Impact of Incarceration on Children’s Care A Strategic Framework for Good Care Planning’ (July 2015) *Monash University, Criminal Justice Research Consortium*.

²³ *Ibid.*

- Support with parental relationships: Most young people wanted to maintain contact with their incarcerated parent but experienced difficulties doing so, if they did not have transport to the prison, were unable to visit during visiting hours, or needed an accompanying adult. Supports should assist child-parent relationships and have a ‘family-focused’ perspective, facilitating opportunities for families to raise and resolve issues.
- Providing information to children and young people: Many children and young people felt insecure, scared and anxious, because they did not receive information regarding their parents’ arrest, court appearances, sentencing or release. Information provided should recognise children and young people’s developmental and emotional needs, and respond to children’s interests and wishes.
- Listening and talking to children and young people: Children and young people identified that workers need to recognise that a ‘one size fits all’ response is not always appropriate. Sometimes children want to know specifically what is happening, and sometimes they only want to know that things ‘will be okay’. Workers and services should take their cues from the child, whilst also providing them with opportunities and appropriate spaces to express their needs.
- Supporting parents and siblings: Some young people were unable to engage fully in education, social activities with peers and employment opportunities, because of their caring responsibilities. They were fearful of obtaining support from outside of the family, or from mainstream systems such as schools or general practitioners, in case they upset their parent or because they feared services might intervene in a way that put the family at risk. They highlighted the need to make connections with workers they could trust and talk to, within services they were already accessing.
- Non-stigmatising referrals and linking to services: Children and young people identified that support must be free from stigma and embarrassment, and that families do not be singled out by services in a stigmatising way. Parents suggested promoting services and supports directly through the prison or Centrelink, and said programs would be considered more credible if people who had experienced similar situations were involved in the planning and management.
- Stable and secure living arrangements: Identifying families and young people at risk of homelessness, and planning for safe, secure and stable accommodation should be made as early as possible - when a parent is incarcerated - pointing to the need for services to work with families in a more integrated way.
- Building on strengths: The views of children and young people reflected a strengths perspective, focusing on what their parents could do (rather than what they didn’t), reflecting on how their families did their best to ensure their safety and wellbeing, and discussing the coping strategies they used as individuals. They reported that services often framed their work around the deficits in their lives, and that services should assume that they could, with opportunities, support and information; make decisions to ensure the safety and wellbeing of their families.²⁶

Recommendation:

11. We recommend the Government make further inquiries into:
 - a. The lived experiences of children of imprisoned parents to determine what additional support services are required.
 - b. Inquiries across schools, specialist support services, child, youth and family services, justice and corrections systems to identify gaps in support and training.
12. With this further research and inquiries, we recommend a state-wide plan to minimise the detrimental impacts on children of imprisoned parents, focussing on both the short term and long-term impacts and ensuring that at first contact the needs of the individual child are ascertained and a care plan is formed.

6. Community Support Services

It is often left to community organisations such as VACRO and Shine for Kids to support families impacted by parental imprisonment and keep families connected. Their support work includes counselling, organising transport to and from prisons, which are often remote and inaccessible to families, organising family days, coordinating and organising video conferences, assisting with the required prison paperwork and other child related paperwork. There is a need for further Government funding and support of these organisations who are left to care for the wellbeing of the children of imprisoned parents. We also recommend further research into other specialised Community Support Services that may be required or lack funding to support the wellbeing of children of imprisoned parents, such as services and support for Aboriginal and Torres Strait Islander children.

We also recommend ensuring that transport to and from all correctional centres is fully funded and that arrangements for transport from a child's residence to their parent's correctional centre is guaranteed. In order to facilitate and ensure the visitation rights of the child, consideration should be made when determining which correctional centre a parent is to be imprisoned in. Where the parent/s are being held far away from the child, additional funding and support should be given to the child and their family/carers to facilitate these visits.

We recommend the funding of community legal centres in providing legal advice in prisons, not just in relation to criminal matters, but in relation to family, domestic violence, housing, employment matters, fines and debt matters. Where a parent leaves prison and is faced with a bombardment of existing or new legal issues (such as family law matters, housing or tenancy issues, fines and debts or other criminal matters) the risk of recidivism is higher and the stress on the emotional and financial wellbeing of the parent and in turn the child is increased. By providing free legal advice in prisons, it will assist in lessening the disadvantages experienced by the parent in and out of prison and in turn their children.

Recommendation:

13. We recommend further funding and the expansion of the work of VACRO and Shine for Kids and their invaluable work in mentoring, parenting and child support, transport, visitations across all Victorian Correctional Centres.
14. We recommend ensuring that transport to and from all correctional centres is fully funded and that arrangements for transport from a child's residence to their parent's correctional centre is guaranteed and where appropriate a parent is held in a close correctional centre to the child to facilitate visits.
15. We recommend the funding of community legal centres in providing legal advice in prisons including in criminal, family law, domestic violence, housing, employment, fines and debt matters.

7. Parenting in Prisons

Research has shown that a child's social and emotional wellbeing and development relies upon the strength of the bond that they have with their parents. With one in two women in prison being mothers and an additional 5-10% being pregnant, the condition of women prisons and the services and support afforded to those mothers and their children is critical.²⁴ This is especially important as the number of women prisoners continues to grow at the highest rate ever in Australia. "Our tough sentencing policies sent women to prison at twice the rate of England and Wales in 2018. Indigenous women are over-represented in prisons. They make up more than one-third of Australia's female prisoner population, but only 3% of our female population as a whole. As we imprison more adults, what's happening to the children? We don't have much information on how spending time in an adult prison affects a child's later development."²⁵

Only approximately 13 prisons in Australia have mother and child programs allowing children up to the age of five to stay with their mother, but data and research in this area is limited.²⁶ The children unable to stay with their mothers are left to be cared for by their other parent, grandparents or family members and where there is no other option, left to foster care. These mothers are thankful to have their children with them, to maintain the mother/child bond and to continue to provide care for their child, who may otherwise end up in foster care, a fate that many of the mothers themselves had to face as a child.²⁷ These mother and children programs lack the policies and training required to ensure they run smoothly, with well trained and objective officers supervising. As it is considered a 'privilege' many mothers live in fear of losing their children if they make a mistake in prison. Often this is for a failed urine test or one too many behavior warnings. There are no clear guidelines on how and when these children are taken away from their mothers, which may result in the child being taken and placed with a family member or in foster care. Officers in these units often feel a sense of responsibility for the children and thus, "set boundaries using their own parenting values and ideas about risk."²⁸ Children are being used as a reward and instead of punishing the mother they are also punishing the child. Concerningly, there is no data capturing this process.

For those parents who are parenting in prison (and alternative sentencing options have been considered and deemed inappropriate) we recommend further inquiries to be made in the 'best practice' for parenting in prison. There are international approaches that may be examined. For example, In Costa Rica, those children that live with their parent in prison are sent to an off-site day care each day for several hours whilst NGOs teach the parent parenting skills and skills for personal

²⁴ Jane Rosemary Walker, Eileen Baldry, Elizabeth Sullivan, The Conversation, *Babies and toddlers are living with their mums in prison. We need to look after them better* (17 May 2019) <<https://theconversation.com/babies-and-toddlers-are-living-with-their-mums-in-prison-we-need-to-look-after-them-better-117170>>.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

development.²⁹ In the UK rooms are set aside in prison with shared living areas, private bedrooms, and the women in these units have to work together to clean and cook.

Whilst these programs are certainly a way to keep family relationships and bonds strong, prisons are not a suitable environment for children. Care in these settings is not as idealistic, there is a lack of research into the impacts of parenting in prison. The focus should be on keeping mothers out of prison. We strongly recommend alternative sentencing options for parents, particularly primary carers and in particular those of young children.

Recommendation:

16. We recommend a review of the Victorian, Australian and international parenting in prison programs and further inquiries and research into implementing a statewide cohesive, transparent 'best practice' approach.
 - a. Off-site Childcare options, development programs for mothers teaching parenting and life skills, social workers in place assisting mothers and children with all their needs including post-imprisonment housing and finances, fulltime counselling and psychologists available, drug and alcohol rehabilitation programs, community legal education, duty lawyers to assist with other legal issues the mother may face.
17. We recommend reform towards alternative sentencing options and a move towards imprisonment as the last option considered in sentencing. See Recommendations 22-24.

8. Contact in Prison- Communication and Connection

Research has shown that children's mental health suffers when they are separated from a parent is in prison, and this has been exemplified during covid.³⁰ Covid has exasperated the problem with visiting restrictions in place preventing children from visiting their parents. When a person misbehaves, has a dirty urine test or a mental health episode in prison, they are punished with restricted visiting rights. Again, as is in the parenting in prison scenarios where children are used as a reward and are unfairly punished, restricted visitation rights unfairly punish children along with punishing their parents. Children are left not knowing what they did wrong and why a longed-for visit has been cancelled. It is now more imperative than ever to consider reforms in parental contact and the rates of imprisonments.

²⁹ Whitney Eulich, *Half the countries in the world allow children to live with their mothers in prison — and it's generating a debate about the rights of kids* (17 March 2018), Insider, <<https://www.businessinsider.com/50-of-countries-allow-children-to-live-with-their-mothers-in-prison-2018-3>>.

³⁰ Catherine Flynn, *The Conversation, About 43,000 Australian kids have a parent in jail but there is no formal system to support them* (24/02/2022) <<https://theconversation.com/about-43-000-australian-kids-have-a-parent-in-jail-but-there-is-no-formal-system-to-support-the-m-176039>>.

Research has also shown that prisoners who maintain contact with their families are less likely to re-offend after release.³¹ Where appropriate, contact between children and their imprisoned parents is imperative to prevent fractured relationships and to maintain and strengthen familial bonds. Flexibility and quality contact is important. Prisons should allow flexibility on a case-by-case basis for how children see their parents. Video calls should be used to supplement the option of regular face to face visits. Video calls have an added benefit of allowing children to show their parents around their rooms/homes and from the comfort of their own homes. This also will allow parents to still feel connected to their child which will assist in maintaining bonds which will reduce the risk recidivism. However, regular in person visits (which allow children to physically touch their parent and have hugs) are imperative and should only be supplemented not replaced by video calls. More research is needed to determine the frequency of visits (e.g., weekly/fortnightly) which best serve the best interests of the child.

Recommendation:

18. We recommend strengthening the existing support programmes including extending contact visits and supplementing them with video contact visits. We recommend further funding into programmes connecting children and parents including in person visits and supplementary (not as a replacement) video conferences.
19. We recommend funding into having specialised, well-trained prison and social welfare teams coordinating and working on individualised care plans to nurture parent child bonds, taking into consideration the views of the child, parent and caregivers (if applicable).
20. We recommend further research into the best interests of the child and the frequency of visits as best practice.

9. Imprisonment and Post-Release Support

To reduce the rates of recidivism, which in turn continues to separate children from their parents, proper support systems need to be in place for parents and children during a term of imprisonment and after a parent is released from prison. There is a lack of clarity in law and policy on how to best support children with parents incarcerated during and after imprisonment. There is also a lack of funding in Victoria resulting in ad hoc service provision.

Currently after release support is limited. Anecdotally we can report that clients struggle with being able to access the right support when released from prison and had trouble with accessing housing and social support services. Transition out of prison is often difficult enough, without the added complexities of children to care for and to bond with. Planning and connection should already be in place and consideration should be made for other support services that may be require such as family mediation and counselling. Many prisoners in the state of Victoria have limited education and

³¹ Ann Cunningham, 'Forgotten Families- The Impact of Imprisonment' (Family Matters No.59 Winter 2001) *Australian Institute of Family Studies*, 35.

have not recently participated in the workforce.³² They also experience added disadvantages such as mental health issues, disabilities, unstable housing situations, domestic violence, and financial insecurities. During and post imprisonment we recommend additional funding and services to provide parent and child specific and customised support including alcohol and drug rehabilitation, childcare, legal advice and assistance (for example for housing and tenancy issues, family violence, property, debt and employment issues), secure housing, financial support and job placement assistance and education assistance. This additional funding in support will assist in reducing the rates of recidivism and intergenerational imprisonment, thus decreasing the cost of locking up Victorians.

Recommendation:

21. We recommend increased funding of holistic family specialist support services including community legal centres to provide necessary specialist support to provide adequate imprisonment and release care and support to reduce the risk of recidivism and to reduce the trauma and impacts on children. We see a need for increased services such as alcohol and drug rehabilitation, childcare, legal advice and assistance, community legal education, secure housing, financial support and job placement assistance, education assistance)

10. Alternative Sentencing Options

Australia has harsh sentencing policies; reform is needed, and imprisonment should be an option of last resort, particularly for primary carers and pregnant women where the crime is not serious and non-violent. There is little to no preventative support for parents in low socioeconomic areas, or those in family violence situations. We recommend moving away from punitive sentencing options towards alternative restorative options to reduce the rates of imprisonment and recidivism which in turn reduces the impacts on children, including intergenerational imprisonment and trauma.³³

As mentioned above, children are the silent victims of the criminal justice system. Further, their views are not captured by research as there is no substantial or adequate data on this cohort. When considering sentencing, where the offender is a primary carer we would like to see more emphasis given by the Courts to the International Convention on the Rights of the Child (which Australia ratified in 1990) in particular Article 9 which deals with separation of a child from their parents, having their views heard, and respecting the rights to maintain personal relations and direct contact on a regular basis (unless contrary to the child's best interests). Of note is also Article 12 of the Convention which

³² Ann Cunningham, 'Forgotten Families- The Impact of Imprisonment' (Family Matters No.59 Winter 2001) *Australian Institute of Family Studies*, 35.

³³ Tess Domb Sadof, *Alternatives to incarceration for moms aim to strengthen families* (10 August 2015) <<https://www.vera.org/news/gender-and-justice-in-america/alternatives-to-incarceration-for-moms-aim-to-strengthen-families>>.

deals with the voice of the child.³⁴ The rights, needs and best interests of a child must be a major consideration and focus when considering arrest, prosecution, sentencing, imprisonment and release, as is the recommendation in Europe³⁵ and the approach in many European countries.³⁶

“Children of incarcerated parents had higher odds of developmental vulnerability on multiple domains compared to children of parents who had served community orders only. The results suggest that, although children of convicted parents experience a higher incidence of sociodemographic risk, their parents’ criminal activity constitutes an independent risk factor for their development. Intervention to support the early development of children of convicted parents is therefore essential.”³⁷

We recommend further research into implementing community-based sentencing options with an examination of successful overseas policy and reform into alternative sentencing options. Options may include house arrest or ‘halfway houses’, “where mother and children reside, and day programs in which mothers attend programs in a correctional institution during the day but are permitted to return home at night.”³⁸ International research has shown that “Community sentencing programs yielded reduced recidivism and increased family preservation -- outcomes that have positive implications for children’s adjustment.”³⁹

Another alternative option to imprisonment is extending the current diversion program to those who are a primary carer. Many American states have introduced legislation to systemically divert the primary carer convicted of nonviolent offenses through community custody as an alternative by extending their diversion program with a goal to ensure continued contact between children and their primary carer. These states have boasted low recidivism rates. There are also bill proposals to replace prison time with probation and community services and counselling.⁴⁰

³⁴ *Convention on the Rights of the Child*, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49.

³⁵ Angela Verhagen, Bart Claes & Elsbeth Kamphuis ‘Children and incarcerated parents: A Dutch perspective on recovery-focused work’ (Vol 8, 2019) *European Journal of Parental Imprisonment The child’s best interests: From theory to practice when a parent is in conflict with the law*, 10.

³⁶ Heleen Lauwereys, ‘Judicial discretionary power and the role of the child’s best interests in Belgian sentencing law and practice’ (Vol 8, 2019) *European Journal of Parental Imprisonment The child’s best interests: From theory to practice when a parent is in conflict with the law*, 9.

³⁷ Megan F. Bell, Donna M. Bayliss, Rebecca Glauert, and Jeneva L. Ohan, ‘Using linked data to investigate developmental vulnerabilities in children of convicted parents’ (2018) *Developmental Psychology*, 54(7), 1219–1231.

³⁸ Ross Parke and K. Alison Clarke-Stewart ‘Effects of Parental Incarceration on Young Children’ (30-31 January 2002) *Papers prepared for the “From Prison to Home” Conference* 11-12.

³⁹ *Ibid.*

⁴⁰ Tess Domb Sadof, *Alternatives to incarceration for moms aim to strengthen families* (10 August 2015) <<https://www.vera.org/news/gender-and-justice-in-america/alternatives-to-incarceration-for-moms-aim-to-strengthen-families>>.

Drug decriminalisation is another option to be considered. Global research into drug decriminalisation has shown positive impacts on the community including:

- a reduction of demand on the criminal justice system, with overall less use of police, courts and imprisonment; and
- improved social outcomes, for example better employment prospects due to the absence of recorded criminal convictions.

The current Victorian legislative framework criminalises possession, use and trafficking of cannabis; however, it is this framework of prohibition that creates a context of 'criminal activity'.

We have noted the different approaches to drug law reform that do not rely on prohibition legalisation with and without subsequent regulation of the cannabis market, and de jure and de facto decriminalisation. Legalisation of cannabis provides a legislative mechanism for people to obtain drugs, an example being the legal availability of alcohol and cigarettes. Legalisation of cannabis would see an immediate decrease in drug related crime, and would also provide opportunities for harm reduction through community driven and state level drug education and health promotion programs. SMLS supports exploring potential models of legalisation, with a view to create a framework that has the least associated economic and social harms for the Victorian community.

Recommendation:

22. SMLS recommends further inquiries into the appropriateness of alternative sentencing options to keep primary carers together with their children, including options such as Community based sentencing, 'half-way' housing sentencing, decriminalisation and the extension of the diversion program.
23. For non-violent crimes SMLS recommends that imprisonment of parents who are the primary carers and pregnant women should only be used as an option of last resort.
24. We recommend investment into restorative justice options and law reform away from a strict punitive approach. Redirecting resources towards prevention, support and rehabilitation will have a greater economic impact for the Government than the raising imprisonment rates.

11. Visa Cancellations and Deportations

We are very concerned with the ability to deport those residents who have offended in Australia, and who have strong cultural and familial links with Australia. For example, charges related to drug use and/or possession can lead to a person's visa being cancelled. There has been a huge increase in visa cancellations in the last ten years, including for minor charges such as drug possession.

Visa cancellations cause significant harm to individuals, families and communities. People whose visa is cancelled spend an average of over 150 days in detention, separated from their families, waiting for final decisions from the Minister for Home Affairs.⁴¹

⁴¹ Refugee Council of Australia, *Visa cancellations on 'character' grounds: The Ombudsman reports (2019)*
<https://www.refugeecouncil.org.au/cancelling-visas-on-character-grounds-the-ombudsman-reports/>

In 2019, the Chief Executives Board of the United Nations made a commitment to pursuing ‘alternatives to conviction and punishment in appropriate cases, including the decriminalisation of drug possession for personal use’.⁴² This statement articulates a global momentum that recognises the need to reform drug law and policy. A group of organisations including the World Health Organisation also released the ‘International Guidelines on Human Rights and Drug Policy’ that without inventing new rights outlines what is required of policy makers in the context of drug control law and human rights laws.⁴³ SMLS believes these guidelines should inform Victorian drug policy, which in turn will mitigate the impact on children of imprisoned parents on visas at risk of de portation.

Recommendation:

25. We recommend that the Committee consider the urgent need for drug law reform in light of the harms associated with prohibition that are impacting our community in Victoria.
26. In the development and monitoring of legal policies regulating cannabis in Victoria, SMLS recommends all changes to be rights based, in that consideration of human rights obligations is given central importance. We recommend a shift towards a health-based framework which is forward-thinking and more sustainable than a justice-based framework.

12. Diverting young people from the criminal justice system and breaking the cycle of intergenerational imprisonment

There is an urgent need to focus on breaking the intergenerational problem of imprisonment. This can be done with a holistic view of supporting the children of imprisoned parents through community legal education and sport -justice and education- justice partnerships.

Through our work, we have observed that young people may experience unique disadvantages attributable to their age. Young people tend to be low-income earners, may not be well-informed of their legal rights and responsibilities, may have minimal or underdeveloped skills to self-advocate, are vulnerable to exploitation and may not readily access legal assistance. Age-based disadvantage may be compounded by other layers of disadvantage as experienced by the clients we see at SMLS. Many of the young people we see may be from migrant families where English may also be a second language; may have a disability, including mental health issues; experience drug and alcohol dependency; and have past experience of trauma. These issues are compounded when one or both parents are in prison.

⁴² Greg Chipp, Drug Policy Australia *United Nations Supports Decriminalisation of Drugs* (28 March 2019) <https://www.drugpolicy.org.au/un_supports_decriminalisation_of_drugs>

⁴³ World Health Organization, UNAIDS, UNDP and the International Centre on Human Rights and Drug Policy. *‘International Guidelines on Human Rights and Drug Policy’* (March 2019)

These experiences of disadvantage hamper opportunities for young people to fully participate in social, political, economic and civic life. Moreover, these disadvantage place young people at risk of having a negative interaction with the justice system - whether as an offender, a victim of a crime or other forms of exploitation. Young people are also at risk of allowing their legal problems to escalate if unprompted to receive legal assistance.

The immense disruptions to young people's education, employment and daily life brought on by COVID19 and the government restrictions has further exacerbated these risks. As Victoria emerges from months-long government restrictions, young people experience a heightened risk of disengagement at school, unemployment and poor mental health. The current economic crisis has led to a surge in youth unemployment. Victoria's youth unemployment rate was at 16.2 per cent in August 2020.

A. Diversion and the Cautioning System:

We see value in expanding opportunities for people to be diverted away from the criminal justice system, in particular children of imprisoned parents.

We are pleased to see the expansion of the youth cautioning system, which was piloted in a number of areas, including Dandenong.

B. Community Legal Education

Free legal assistance plays an important role in preventing and diverting young people from the criminal justice system. From our outreach work, we also note the importance of ensuring free legal assistance is accessible. Young people often do not have the means or confidence to reach out to a legal service at their own initiative.

C. Sport-Justice and Education-Justice programmes

By offering outreach services, integrated into locations where vulnerable young people are already accessing, young people may be encouraged to take early action in de-escalating and resolving their legal issues with the help of a lawyer.

We see value in integrated services such as our Sporting Change program where our lawyer is within easy proximity to young people at the school.

The onsite presence also allows for simpler cross-referrals and secondary consultations between our lawyer and the well-being team, paving the way for a holistic approach to dealing with the young person's issues. Similarly, our outreach services to Windana and YSAS also reaches out to the most vulnerable young people who may feel disillusioned by the justice system and may not otherwise seek legal assistance at their own initiative. 'The implementation of flexible funding models that support

innovation, nurture and extend promising practices and prioritise learning for improvement and accountability has the potential to extend the capacity and reach of services.’⁴⁴

‘The earlier a Victorian child appears in court, the more likely they are to be in the criminal justice system as an adult.’⁴⁵ The key to reducing crime is shifting focus away from punishment towards evidence-based initiatives that prevent crime before the damage is done. We support an approach which protects rather than punishes young people at risk of encountering the justice system.⁴⁶ Community legal education plays a significant role in contributing to this. Through our programs, we see value in educating young people on their legal rights and responsibilities. In some instances, young people do not even realise that their issue is legal in nature or that they can and should seek help from a lawyer.

Our community engagement work with young people not only seeks to increase knowledge of the law, but also aims to de-mystify the justice system and encourage help-seeking behaviour. In our evaluation of our Sporting Change program for example, we found that of the young people who participated in the program:

- 97% reported they knew more about their legal rights and responsibilities after participating in Sporting Change;
- 98% reported that learning about their rights and responsibilities had a positive impact on their lives;
- 94% reported that learning about the legal system has helped them feel more able to engage in their community and society; and
- 96% helped them find out more about where to get help with legal issues.⁴⁷

This indicates that the benefits of community legal education extends beyond increasing a young person’s knowledge of the law. It appears to also have a positive effect on the young person’s ability to engage more broadly with the community.

Sporting Change

Sporting Change is a preventive community development program that contributes to young people engaging constructively in their community and in society by using sport to teach young people about

⁴⁴ Delwyn Goodrick and Emma Sampson *Meeting People Where They Are Delivering Integrated Community Legal Services* (2020) Federation of Community Legal Centres, Victoria, Australia, 20.

⁴⁵ Carolyn Atkins, Victorian Council of Social Service, *Insight: Crime and Justice* (Issue 8 June 2013), 3.

⁴⁶ Federation of Community Legal Centres Vic *A Just and Equitable COVID Recovery: A Community Legal Sector Plan for Victoria* (2020), 43.

⁴⁷ Springvale Monash Legal Service Inc, *Sporting change: empowering young people. Evaluation report* (2019), 12.

the law. The program also increases access to justice for young people through a n integrated school lawyer based within the school environment.

A natural affinity exists between sport and young people and it has been used nationally and internationally as a medium to engage with youth and promote pro-social values. Sporting Change seeks to encourage positive interactions with the justice system by integrating legal education and sport-based engagement strategies. It also seeks to build an understanding among young people about the role of law in society, and how it impacts the ways in which we engage in our community.

Sporting Change takes a multi-disciplinary approach. The SMLS team delivering the program includes lawyers, community development workers and a youth worker. The program also involves a partnership between schools, our legal service and sporting clubs. The innovation is found in the collaboration of these disciplines that ordinarily sit within silo sectors.

Sporting Change also has a youth advisory committee embedded within the program to ensure ongoing input by young people of its design and development.

School Lawyer:

The integrated school lawyer provides increased access to justice, assisting young people with issues such as family violence, homelessness, employment law, consumer issues, fines, criminal law and cyber safety. Given that students study full time and largely do not drive, there are otherwise significant barriers to accessing existing legal services. Early intervention of legal problems reduces the need for more complex and intensive intervention to resolve the problem at a later stage. Facing a legal issue can also severely disrupt the young person's engagement at school. School lawyer programs report improved relationships between students with family and peers, and increased attendance at school.

Recommendation:

27. That the Victorian Government prioritise supporting community legal centres to deliver tailored community legal education, engagement and legal advice to young people and children of imprisoned parents, in order to:
 - a. empower young people with increased knowledge of their legal rights and responsibilities,
 - b. Empower young people to make more informed choices, and
 - c. Increase young people's knowledge of where to go to get help if needed.
 - d. providing access to justice via a school lawyer

SMLS recommends that the Victorian Government support sustainable funding mechanisms for integrated service delivery to ensure access to legal assistance for vulnerable and disadvantaged young people. This includes allocating funding to the development, maintenance and sustainability of the partnerships between organisations.

- Diversion and health-based approach
 - o We support prioritising a service, education and health-based response to dealing with young person's offending behaviour.

- We recommend an approach which prioritises diverting young people from the criminal justice system and ensuring any penalties imposed upon young people are not disproportionately onerous. Some examples of ways this may be achieved include:
 - Removing the requirement for police informant and/or prosecutor consent for diversion to be granted;
 - The development and retention of pre-court referrals and advice for parties to family violence matters heard at the Children’s Court⁷ ;
 - Alleviating the excessive financial impact of fines and in particular, COVID-19-related fines that have been issued to young people.
 - We echo the Federation of Community Legal Centres’ view that fining children and young people to the same degree as adults fails to recognise the lesser⁶ moral culpability children have for their actions and their lower financial capacity to pay fines, creating an unnecessary risk of pushing young people into the justice system⁸ ; and
 - Supporting any initiatives aimed at diverting young people from imprisonment, including amendments to the Bail Act 1977 to reduce the number of young people in remand and any initiatives to raise the age of criminal responsibility.

Improving confidence in our justice system

Through our community development work with young people, we see that increased youth participation in social, economic and civic life requires ongoing work on strengthening young people’s confidence in the justice system. Many young people who have a parent in prison, in particular those who have witnessed an arrest, lose confidence in our justice system. Improved confidence in the justice system among young people cannot be achieved without a robust system of police accountability. We recommend the independent monitoring and evaluation of police training on interacting with children and young people.

Through our community engagement, we consistently hear from young people of colour how negative stereotypes, largely perpetuated in the mainstream media, strongly hampers a young person of colour’s ability to fully participate in social, economic and civic life.

We urge the government to take leadership by consulting with young people of colour on what steps are needed to dismantle racism in Victoria. Given our centre’s strong emphasis on community engagement, SMLS may also contribute to improving the lives of young people through its work in law reform and advocacy. CLCs such as SMLS are well-placed for understanding the needs of young people, acting as an intermediary to advocate for their views and empowering young people to contribute to the issues that affect them.

Recommendation:

28. We would recommend a Victoria-wide expansion of the cautioning program whereby police issue cautions to young people even if a young person does not admit the offence, provide a no-comment interview or have a prior criminal history.
29. We recommend law reform that prioritises a health-based approach to dealing with young people's offending behaviour, to prioritise initiatives which divert young people from the criminal justice system and avoid imprisonment.
30. We recommend complaints against police be investigated by a body independent of Victoria Police such as a resourced and expanded Independent Broad-based Anti-Corruption Commission.
31. We recommend increased accountability and transparency on police to ensure police are tailoring the exercise of their broad discretion appropriate to the young person's age and stage of development.
32. We recommend the development of greater police transparency and accountability.
33. We recommend support for organisations including CLCs to continue engaging in advocacy and law reform on behalf of and in collaboration with young people.