

**Submission
No 37**

INQUIRY INTO CHILDREN AFFECTED BY PARENTAL INCARCERATION

Organisation: Smart Justice for Women

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Inquiry into Children affected by Parental Incarceration – Submission on behalf of Smart Justice for Women

Background

On 20 December 2021 the Legislative Council of Victoria’s Legal and Social Issues Committee (Committee) self-referred an inquiry into 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 jurisdictions;
- (c) how effective these services are, including –
 - (i) consideration of evaluation of work already done in this area; and
 - (ii) identifying areas for improvement.

About Smart Justice for Women

Smart Justice for Women (SJFW) is a subcommittee under the broader Smart Justice Coalition coordinated by the Federation of Community Legal Centres Victoria Inc.

SJFW includes members from the Community Legal Sector, Aboriginal Community Controlled Organisations, Community Services Sector, Legal Assistance Sector, academia and other organisations with an interest in reducing the criminalisation of women in Victoria.

The role of SJFW is to reduce the criminalisation of women in Victoria by:

- Advocating for law reform, policy change and structural change;
- Influencing community attitudes and promoting social change;

- Providing leadership and expertise on issues impacting on women’s criminalisation;
- Establishing a consultative body on issues impacting on women’s criminalisation;
- Promoting information, knowledge, evidence and resource sharing between members; and
- Fostering a collaborative approach to service delivery within the legal assistance sector and across a range of sectors.

Approach

SJFW takes an inclusive approach in recognition of the ongoing discrimination and disadvantage experienced by gender diverse people in the justice system, to include people who identify as women, as trans or non-binary, or do not identify with any gender.

SJFW also recognises that women in all their diversity experience discrimination as a result of intersecting and compounding factors – such as race, culture, language, disability, age, geography, homelessness and income. This intersectionality impacts on women’s experiences with the justice system and SJFW acknowledges that these structural marginalisations (in addition to gender) contribute to criminalisation.

SJFW advocates for approaches that impose the least restrictions on a person’s liberty when in contact with the criminal legal system.

Acknowledgements

SJFW pays our deepest respect to traditional owners across Victoria, in particular, to all Elders past and present. We also acknowledge all Aboriginal and Torres Strait Islander people in Victoria and pay respect to the knowledge, cultures and continued history of all Aboriginal and Torres Strait Islander Nations.

SJFW acknowledges that responses to the criminalisation of women will be most effective and safe for women if they are informed and developed in partnership with women with lived experience of the criminal legal system.

About this Submission

A number of SJFW members are making submissions to this inquiry on behalf of their organisations, or in collaboration with others. SJFW does not propose to replicate the submissions that have already been made by its members. Rather, this submission is intended to highlight the primary areas for concern and improvement as they relate to women who are in contact with the criminal legal system and their children.

To this end, we urge the inquiry to consider the following:

Considerations of gender must be central to this inquiry

When considering the adequacy of policies and services to assist the children of imprisoned parents in Victoria, it is crucial to recognise the central role that the gender of the child's parent is likely to play in the way in which these policies and services are delivered. It is estimated that more than half of women in prison are the primary carers of children,¹ and 80 per cent of Aboriginal and Torres Strait Islander women in prisons are mothers.²

There is a paucity of research regarding the number of children impacted by having a mother in prison in Victoria. Nonetheless, research does show that children whose mothers are in prison are more likely to have disrupted education, poor health and unstable housing, all of which are factors that heighten the risk of a child or young person entering child protection or the criminal legal system.⁴

The higher incidents of mothers in prison being the primary carer of children, and/or being single parents, also means that while fathers in prison may have visits facilitated by a child's mother as the primary carer, the children of mothers in prison are more likely to be in state care. They are far more reliant on workers from the Department of Families, Fairness and Housing (DFFH) to arrange visits and maintain contact. The lack of in-reach services for mothers in prison who are reliant on DFFH to maintain this contact is damaging for mothers and their children. Further, it renders many mothers in prison invisible, particularly where legal proceedings in relation to child protection matters are concerned.

¹ Rachel Carbonell 'When mum goes to prison' ABC, 23 June 2017.

² Juanita Sherwood and Sacha Kendall, 'Reframing Space by Building Relationships: Community Collaborative Participatory Action Research with Aboriginal Mothers in Prison' (2013) 46 Contemporary Nurse: A Journal for the Australian Nursing Profession 83, 85.

Family and parenting support services have been bolstered in women's prisons, which is welcomed. However, this in itself is premised on gendered assumptions. Other than Triple P, men have no parenting support available to them at a time when many are most motivated to work on their relationships in family (which, if well supported, in turn can help mothers/other women primary carers in the community).

Women's criminalisation and rates of imprisonment must be reduced

For a number of years, women have been the fastest growing cohort in Australian prisons. Between 2009 and 2019, the female prison population in Australia increased by 64 per cent, compared with 45 per cent for males.⁵ Aboriginal and Torres Strait Islander women are grossly over-represented in these figures, with 33 per cent of women in Australian prisons identifying as Aboriginal or Torres Strait Islander.⁶ In Victoria, the number of women in prison almost doubled between June 2007 and June 2019.⁷ The imprisonment rate for Aboriginal women almost tripled during the same period.⁸ These figures represent a significant failing in terms of reaching the National Closing the Gap target of reducing the rate of Aboriginal and Torres Strait Islander people in custody by at least 15 per cent by 2031.

The majority of women in Australian prisons are parents, with 85 per cent having been pregnant at some point in their lives, and 54 per cent having at least one dependent child.³ The inter-generational impacts of this are immense, with children of parents who have been imprisoned much more likely to be involved in the criminal legal system themselves. Accordingly, issues around the criminalisation and imprisonment of women also concern the rights of children, the obligations of governments to act in the best interest of children, and the cultural rights of women and children.

SJFW has made several recommendations to the recent Parliamentary Inquiry into the Criminal Justice System in relation to women's decarceration. While we won't restate these recommendations here in full, we note the following key areas for reform:

1. Bail reform is urgently needed to remove the reverse onus provisions of the *Bail Act 1977* (Vic) that have triggered the huge surge in women being held on remand.
2. Sentencing reform is needed to increase the availability of non-custodial options.

3. It is crucial to include a person's caring responsibilities as a specific consideration in sentencing, requiring decision-makers to consider the impact of a sentence on dependent children.
4. Reforms to the parole system are required to make parole more accessible to women in prison and remove barriers to accessing required programs and housing.
5. Reforms to policing are crucial in order to reduce the over-policing of Aboriginal and Torres Strait Islander communities and CALD communities, and increase opportunities for women to engage in pre-charge and diversionary programs.
6. The growing problem of the mis-identification of women as primary aggressors in family violence incidents must be addressed. Any flow-on effects that mis-identification has in relation to the care of children, in particular where Child Protection becomes involved, must be urgently addressed.

The needs of Aboriginal and Torres Strait Islander children and their parents must be prioritised

Aboriginal mothers and their children are grossly over-represented in the criminal legal system and in the child protection system. Aboriginal children are being removed from their families at unacceptably high rates. In Victoria almost 20 percent of children in out-of-home care are Aboriginal. Many of these children are placed away from their families and communities, often in non-Aboriginal households, where their ability to remain connected to their culture is compromised.

SJFW recognises the leadership of Aboriginal and Torres Strait Islander communities and organisations in advocating for reform to address these issues, and the importance of Aboriginal self-determination in determining and implementing reforms that will impact their communities. Aboriginal Community Controlled Organisations that are working against the criminalisation of women and the separation of children from their families, and that support parents to maintain contact with their children, must be adequately resourced and funded. The voices of Aboriginal families and children must be made central not only to this inquiry, but to forming recommendations and solutions to address the systemic racism that fuels the unacceptably high rates of child removal.

The data and information available regarding the numbers of children impacted by having a parent in custody must be improved

At present, the official data gathered in relation to the parenting or carer status of individuals when arrested, sentenced, or entering and exiting prison is limited. While there is some academic research on what happens to children when a primary carer becomes justice involved or imprisoned, the frequency, nature and impact on children affected by parental incarceration is not well understood at a systems level.

It is crucial that systems level data is collected to ensure that appropriate interventions for children's care and family wellbeing are designed and implemented in the most targeted and effective way.

Agencies interacting with criminalised women must have regard to their parenting/carer status

It crucial that government agencies interacting with criminalised women, including Vicotira Police, Corrections and the courts, make enquiries about parenting/care status. Once inquiries are made, appropriate accommodations should be made that enable parents to make the necessary arrangements to ensure the best interests of the child are able to be met, including through making appropriate referrals to supportive agencies.

Barriers that prevent mothers in prison from connecting with their children must be minimised

As noted above, women in prison are more likely to be dependent on DFFH in relation to having access to their children. The location of the Dame Phyllis Frost Centre – some 30kms from the CBD and with extremely poor public transport links – in itself creates a significant barrier to access for children wanting to visit their mothers in prison.

In line with the best interest principles of the *Children Youth and Families Act 2005* (Vic), ongoing and consistent contact with parents is critical to the best interests of the child and to a child's development and recovery. In particular for Aboriginal and Torres Strait Islander children, this is crucial in order to maintain connections to their family, culture and histories.

Technology that was utilised during COVID-19 provides some means through which this can be addressed. However, remote visits using video conferencing technology are meaningless for younger children and can never replace the importance of retaining face to face contact.

Accordingly, we advocate for the retention of remote video conferencing as a way to increase the access that mothers in prison can have to their children. However, it is vital that this does not in any way replace the availability in person visits.

Similarly, the cost of telephone calls for people in prison is prohibitively expensive. Phone calls to children from parents in prison should be provided free of charge.

Timelines for permanent care orders must be reviewed

The current prescribed time-limits for Family Reunification Orders have a disproportionately harmful impact on mothers in prison and their children.

Parents are required to demonstrate their interest in maintaining contact with their children in order to meet the requirements of Child Protection. However, women in prison face huge barriers in doing so, as noted above. When the services or individual carers who can support contact between children and their mothers in prison are unavailable or unwilling to facilitate contact, this can make it extremely difficult for women in prison to maintain this connection.

Systemic issues that prevent vulnerable people – in particular women in prison and women with involvement in the criminal legal system – from accessing appropriate supports to enable them to meet reunification requirements must be addressed.

The relationship between out of home care and youth justice system involvement must be urgently addressed

The Australian Institute of Health and Welfare indicates that young people on child protection orders are 27 times more likely to be under a youth justice supervision order in the same year.³

³ Australian Institute of Health and Welfare, 'Young People in Child Protection and Under Youth Justice Supervision 2013-14' (Data Linkage Series No 21, 2016) vi.



It is a sad indictment on Victoria's child protection system that children placed in state care are so grossly over-represented in the youth justice system.

With child protection orders a likely consequence of women's imprisonment, it is crucial that strategies for women's decarceration are prioritised as a means through which the trajectory from out of home care into the youth justice system can be interrupted.

Likewise, the age of criminal responsibility must be raised to 14, in line with recommendations from several legal, health and policy experts. Funneling vulnerable children into the criminal legal system at a young age sets up a damaging trajectory that will likely result in their further criminalisation as adults, and repeat damaging cycles of criminal justice involvement across generations.

12 May 2022