



Ms Fiona Patten  
Chair, Legislative Council Legal and Social Issues Committee  
By email: [cipinquiry@parliament.vic.gov.au](mailto:cipinquiry@parliament.vic.gov.au)

Dear Ms Patten

### **Inquiry into children affected by parental incarceration**

The Commission for Children and Young People (the Commission) is pleased to provide the enclosed submission to the Inquiry into children affected by parental incarceration.

The Commission is an independent statutory body that promotes improvement in policies and practices affecting the safety and wellbeing of Victorian children and young people. Our statutory functions include:

- providing independent oversight of Victoria's child protection, out-of-home care and youth justice systems including monitoring reports of serious incidents
- conducting inquiries into services provided to any child or young person who has died and who was involved with child protection in the 12 months before their death
- conducting individual, group and systemic inquiries into services provided to children and young people
- regulating and supporting organisations that work with children and young people to prevent abuse, respond appropriately to allegations of child abuse and make sure organisations have child-safe practices, including by administering the Child Safe Standards and Reportable Conduct Scheme.

These functions give the Commission some opportunities to understand the impacts of parental incarceration on children and young people, and the improvements that could be made to better support this vulnerable cohort.

However, we note that we have little visibility of responses to children when their parents are incarcerated and have not, to date, had capacity to conduct a systemic inquiry into these responses. For these reasons and in light of the concerns set out in this submission, we welcome the Inquiry into children affected by parental incarceration.

Please note that page 8 of this submission includes confidential case studies. The Commission requests that the case studies be redacted before the Commission's submission is published on the Committee's website, to protect the identities of the young people involved.

If you would like to discuss our submission, please contact [REDACTED]

Yours sincerely

Liana Buchanan  
**Principal Commissioner**

5 May 2022

Meena Singh  
**Commissioner for Aboriginal  
Children and Young People**

5 May 2022

# Commission for Children and Young People

## Submission to the Inquiry into children affected by parental incarceration

### Overview

Children and young people affected by parental incarceration are a vulnerable group who can often suffer significant adverse consequences linked to their parents' incarceration. Limited data is collected about this cohort to understand their experiences and inform the service system response. Currently, services to this group are largely ad hoc and uncoordinated. Rather than applying a holistic approach to support this group, services are generally provided at points where their needs intersect with the functions of existing service systems, such as child protection, education and health.

In this submission, the Commission for Children and Young People (the Commission) recommends that the Victorian Government establish a coordinated service system framework to ensure children and young people affected by parental incarceration are identified and receive targeted support. A lead agency should have overarching responsibility for coordinating services to this group, and services should be subject to independent oversight.

The service system response should be founded on a child-focused, rights-based framework. Specifically, it should promote children and young people's right to connection with family and should empower them to be heard and participate in decisions that affect their lives.

It is critical that decision-makers consult with children, young people and families with lived experience of parental incarceration to ensure their voices are heard, shape reforms and guide implementation. The service system should also be culturally safe, tailored to respond to specific vulnerabilities and complement existing services, like out-of-home care and youth justice.

### Scope of submission

The Commission is an independent statutory body that promotes improvement in policies and practices affecting the safety and wellbeing of Victorian children and young people. In performing our oversight and regulatory functions, the Commission has knowledge and expertise regarding specific groups, including children and young people involved in child protection, out-of-home care and youth justice, and Aboriginal children and young people.<sup>1</sup> This submission highlights the impact of parental incarceration on these children and young people.

In accordance with the Inquiry's terms of reference, this submission focuses on the rights and needs of children and young people affected by parental incarceration. The Commission notes that the number of children and young people impacted could be reduced through:

- additional early intervention supports to families at risk of involvement in the criminal justice system, to address, for example, the impact of family violence, substance misuse, and disrupted educational engagement
- legislative reforms to bail and sentencing laws, noting that more than half (55 per cent) of women prisoners in Victoria are on remand,<sup>2</sup> many of whom will not receive a custodial sentence.

In relation to bail laws, there is a clear need for monitoring of the laws' impact in terms of their impact on adults who are primary carers, and the children affected as a result.

## A rights-based framework to protect children and young people affected by parental incarceration

When a person is incarcerated in Victoria, the primary focus is on them, as an individual, from the point of arrest to release.<sup>3</sup> As an individual, they are afforded various rights that regulate the criminal justice process, such as the right to a fair hearing.<sup>4</sup> However, their status as a parent may not be ascertained.

Children and young people have the right to be safe, well and reach their full potential. Internationally, the rights of children and young people are recognised in the United Nations Convention on the Rights of the Child 1989 (the UN Convention), to which Australia is a signatory. In Victoria, the *Charter of Human Rights and Responsibilities Act 2006* (the Charter) protects families and children.

Broadly, two areas of children's rights are particularly relevant to children and young people affected by parental incarceration:

- First, the right to connection to family. For Aboriginal children and young people and children and young people in out-of-home care, this right is reinforced by specific rights to protect and enhance these connections.
- Second, the right to be heard and participate in decisions that affect their lives. In Victoria, this right is reinforced by the Child Safe Standards that, among other things, require children's empowerment and participation. This right also overlaps with Aboriginal children and young people's right to self-determination.

As outlined below, consideration of these rights when a parent is incarcerated is at best ad hoc and generally only occurs at points where other service systems, such as child protection, intersect with the needs of children affected by parental incarceration. These rights should form the basis for a service framework to support all children and young people affected by parental incarceration.

### The right to connection to family

Maintaining a connection between children and their parents, provided it is in the child or young person's best interests, is recognised as a human right across international, national and state instruments.

The UN Convention provides that a child 'shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.'<sup>5</sup> It further provides that children who are separated from their parents have the right 'to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.'<sup>6</sup> The Convention also protects 'the responsibilities, rights and duties of parents ... to provide ... appropriate direction and guidance in the exercise by the child of the rights recognized in the ... Convention'.<sup>7</sup>

In Victoria, the Charter recognises that: '[f]amilies are the fundamental group unit of society and are entitled to be protected by society and the State.'<sup>8</sup> Further, the Charter provides that: '[e]very child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child.'<sup>9</sup>

### Children in out-of-home care: connection to family

The United Nations' *Guidelines for alternative care* define specific rights for children and young people in out-of-home care. These guidelines provide that when a child or young person is placed in out-of-home care 'contact with his/her family ... should be encouraged and facilitated, in keeping with the child's protection and best interests.'<sup>10</sup>

Similarly, the Victorian *Children, Youth and Families Act 2005* provides that in relation to decisions made within the child protection system, ‘the best interests of the child must always be paramount’.<sup>11</sup> In applying this principle, decision makers must consider where relevant ‘the need to strengthen, preserve and promote positive relationships between the child and the child’s parent, family members and persons significant to the child’. In relation to an Aboriginal child, decision makers are required ‘to protect and promote his or her Aboriginal cultural and spiritual identity and development by, wherever possible, maintaining and building their connections to their Aboriginal family and community’.<sup>12</sup>

### ***Aboriginal children and young people: connection to family and self-determination***

Specific rights reinforce Aboriginal children and young people’s connection with family and community. The United Nations Declaration of the Rights of Indigenous Peoples 2007, that Australia endorsed in 2009, recognises ‘the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child.’<sup>13</sup> The Victorian Charter recognises that Aboriginal people hold distinct cultural rights, and provides that, among other things, they must not be denied the right ‘to maintain their kinship ties.’<sup>14</sup>

The right to connection to family is linked to Aboriginal children and young people’s right to self-determination. The Declaration of the Rights of Indigenous Peoples provides that ‘Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.’<sup>15</sup> The recent *Family Matters Report 2021* describes self-determination as ‘a collective right of Aboriginal and Torres Strait Islander peoples to determine and control their own destiny by exercising autonomy in their own affairs and maintaining distinct political, legal, economic, social and cultural institutions.’<sup>16</sup>

Self-determination is a policy priority in Victoria, recognised in key policy frameworks and initiatives, including the *Victorian Aboriginal Affairs Framework 2018-2023*, *Burra Lotjpa Dungaludja: Aboriginal Justice Agreement Phase 4*, *Wungurilwil Gapgapduir Aboriginal Children and Families Agreement* and the Yoorrook Justice Commission.<sup>17</sup>

As discussed below, for Aboriginal children and young people, separation from family can disrupt their connection to culture, community and Country, which impedes their right to self-determination. Aboriginal children and young people’s right to self-determination also overlaps with the right to be heard and participate in decisions.

### **The right to be heard and to participate in decisions**

Children and young people have the right to participate in decisions affecting their lives. Clearly, the decision to incarcerate a parent significantly affects a child’s life, from the point of arrest through to the post-release period. It is critical that children and young people are listened to, provided with relevant information, and empowered to participate in relevant decision-making if they wish to, in an age-appropriate manner.

The UN Convention provides that children and young people capable of expressing their views have ‘the right to express those views freely in all matters affecting their lives’, and those views must be given weight ‘in accordance with the[ir] age and maturity.’<sup>18</sup>

In Victoria, the *Children, Youth and Families Act* requires that when applying the best interests principle, the child’s ‘views and wishes ... should be given such weight as is appropriate in the circumstances’.<sup>19</sup>

### **Child Safe Standards: empowerment and participation**

In Victoria, organisations that provide services to children are subject to the Victorian Child Safe Standards.<sup>20</sup> Many children and young people affected by parental incarceration access

services delivered by organisations covered by the Child Safe Standards, including health, educational, community and correctional services.

The purpose of Victoria's Child Safe Standards is to promote child safety, to prevent child abuse and respond appropriately to allegations of child abuse.<sup>21</sup> The Commission's role is to educate, support and regulate organisations that work with children and young people to prevent child abuse.

On 1 July 2022, new Child Safe Standards will come into force (replacing the current seven Standards).<sup>22</sup> These will include new Child Safe Standard 3, that provides: 'Children and young people are empowered about their rights, participate in decisions affecting them and are taken seriously'.<sup>23</sup> Key elements of new Standard 3 include:

- 3.1 Children and young people are informed about all of their rights, including to safety, information and participation.
- ...
- 3.5 Organisations have strategies in place to develop a culture that facilitates participation and is responsive to the input of children and young people.
- 3.6 Organisations provide opportunities for children and young people to participate and are responsive to their contributions, thereby strengthening confidence and engagement.<sup>24</sup>

Standard 3 will require organisations who work with children to uphold and promote children and young people's right to participate in decisions that affect their lives, including those that relate to the parental incarceration.

### What is known about this group of children and young people?

Understanding the impact of parental incarceration on children and young people, and developing evidenced-based policy responses, requires comprehensive, reliable, and accessible data collection and reporting. It also requires regular consultation with the children and young people affected by parental incarceration, their families and service providers.

Currently, only limited data is collected about this group of children and young people. No government agency in Victoria is responsible for regularly monitoring or reporting on this cohort. Reported government data is not specific to Victoria.

Nationally, data collected by the Australian Institute of Health and Welfare (AIHW) in 2018 found that 38 per cent of prison entrants had children who were dependent on them for their basic needs.<sup>25</sup> The proportion was higher for Aboriginal prison entrants (47 per cent), compared to non-Aboriginal prison entrants (33 per cent).<sup>26</sup> Women were also more likely to have dependent children than men, at 54 per cent compared to 36 per cent.<sup>27</sup> On average, there were almost two children per prison entrant.<sup>28</sup>

The AIHW report defined 'dependent children' as being either under the age of 15 or dependent students. Consequently, the AIHW does not include all children of incarcerated parents, as it excludes those aged 15 to 17 who are not students.

The Commission understands that, currently, there is no source of detailed government data recording the demographics of children and young people affected by parental incarceration such as their location, educational engagement, living arrangements, age or disability status. Nor is there publicly reported data on children and young people in this cohort who are also involved in child protection, out-of-home care, or youth justice. Significantly there is no available data on how many children enter out-of-home care as a result of their parent's incarceration.

In addition to a lack of comprehensive data collection and reporting on children and young people affected by parental incarceration, there is also a lack of consultation with this group and their families.

### What is the impact of parental incarceration on children and young people?

Parental incarceration has a wide range of significant short- and long-term adverse effects on children and young people. The impact is individualised depending on the child or young person's circumstances, including age, relationship with the parent, living arrangements, length/frequency of incarceration, and any specific needs and vulnerabilities.

A key impact is the increased prospect that Child Protection may become involved with a child or young person, and that they may be placed in out-of-home care (although, as noted, data is not available to quantify the extent to which this occurs). Placement in out-of-home care exposes a child or young person to a range of potential detrimental effects, as the Legal and Social Issues Committee recently explored, in its report on the *Inquiry into Victoria's criminal justice system*.<sup>29</sup>

The Commission's own inquiries have similarly found that the out-of-home care system often struggles to meet children and young people's needs, and that their experience of care, particularly residential care, can place them at risk of significant further harm, compounding the impact of experiences that brought them into care.<sup>30</sup>

These potential impacts are exacerbated by a system that is significantly overstretched, characterised by high caseloads, staff vacancies and staff turnover, as detailed in the Commission's inquiries.<sup>31</sup> This can mean that even if a child can be placed in kinship care, for example, support for and liaison with the child and carer may be severely compromised.

The Commission sees some of the impacts of parental incarceration on children and young people in care, through its monitoring of the out-of-home care system, as outlined in the next section overleaf.

Other common impacts of parental incarceration on children and young people include:

- exposure to traumatic events, such as being present at a parent's arrest
- disruption and uncertainty regarding care arrangements and place of residence
- disruption to schooling and friendships, particularly if the child or young person's place of residence changes
- distress at separation from parents, that may be exacerbated by barriers to visiting or regular contact
- disruption to relationships with other family members
- a sense of shame associated with parental incarceration, and in some instances, media exposure
- feelings of grief, anger, loss, anxiety, isolation, guilt, and powerlessness
- financial challenges due to loss of parental income and reliance on family members for support, especially grandparents
- disruption and uncertainty at the point of a parent's sentencing and/or release.<sup>32</sup>

Parental incarceration is also linked to a high rate of intergenerational incarceration. The AIHW report found that 18 per cent of prison entrants reported that one or more of their parents or carers had been in prison during their childhood, with higher rates reported for young prison entrants and Aboriginal people.<sup>33</sup>

In addition to these effects, parental incarceration can also mean children lose contact with their parent during incarceration.

Parents may be imprisoned at a location far from the child or young person's home. For in-person visits, children and young people are generally reliant on others to arrange and pay for

transport and to take the time to accompany them. Visiting hours may be only during school hours, that may disrupt their education or create a barrier to visiting.

The Commission understands that virtual contact through video-conferencing has improved over the past few years. However, for babies and young children virtual contact is of limited utility, and for older children and young people, exclusive use of video-conferencing cannot be effective.

### **Impacts on children and young people identified through the Commission's functions**

The impact of parental incarceration on children and young people can be compounded by the families' additional vulnerabilities and service needs. The Commission does not have a direct role in overseeing services specifically provided to children and young affected by parental incarceration and has limited visibility of responses to children when their parent or parents are incarcerated. However, a number of the Commission's functions provide insights into the experience of children and young people in particular cohorts who are affected by parental incarceration:

- overseeing out-of-home care services
- conducting child death inquiries
- coordinating the youth justice Independent Visitor Program.

### **Children and young people in out-of-home care**

In 2019, the Commission tabled the report, *In our own words: Systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system*.<sup>34</sup> The inquiry considered children and young people's connection to family, stating in the report:

*Our parents, siblings and extended family help tell the story of who we are and where we fit into the world. They hold our histories, shared memories and culture, and we turn to them for support during times of challenge as we make our way through life. The people and young people we spoke to for this inquiry told us they deeply value these connections, but sometimes struggle to maintain them through the upheaval of constantly changing placements, separated siblings, living far from home and complex, and sometimes fraught, family relationships.*<sup>35</sup>

When a child or young person in out-of-home care is affected by parental incarceration, the challenges to maintaining contact with a parent can be exacerbated by the factors outlined in *In our own words*. For example, for children and young people in kinship placements, their carers may have limited resources to facilitate contact with an incarcerated parent or may be reluctant to do so due to fractured relationships with, or resentment towards, the parent. Similarly, children and young people in residential care are reliant on case workers to obtain approval for and facilitate visits, that can lead to delays and frustration.

Many children and young people in out-of-home care have a history of trauma that may be linked to, or compounded by, the experience of parental incarceration. As part of the Commission's role overseeing Victoria's out-of-home care system, we monitor incident reports about harm to children and young people in out-of-home care.<sup>36</sup>

For the period October 2018 to March 2022, we identified several examples of children and young people in out-of-home care suffering harm linked to their experience of parental incarceration. Themes arising from the incidents considered by the Commission include:

- the trauma of their parent being incarcerated for serious offences
- stress relating to their parent's court hearings and potential release from prison
- feeling isolated and unwanted when their parent was taken into custody
- not having face-to-face contact with their parents due to operational lockdowns in prison
- the death of parents in prison.

The incident reports outline a variety of responses to these incidents, including reviews of supports in place, amended case plans and the engagement of additional services.

### ***Children and young people in youth justice centres***

Children and young people in youth justice centres can be affected by parental incarceration. They may have a child themselves and/or a parent who is incarcerated. As noted above, rates of intergenerational incarceration are high, particularly among younger prison entrants.

Through the Commission's Independent Visitor Program in youth justice centres, the Commission has observed examples of barriers to maintaining connection between children and their incarcerated parents.

For young people in youth justice centres who have a child, their child is likely to be very young. The relationship between the parents may be fraught, and may, for example, involve intervention orders which impede contact. The other parent may be in out-of-home care, which may further complicate contact between the child and incarcerated parent.

#### **Confidential case studies: young parents incarcerated in youth justice centres<sup>37</sup>**

**'Luke'**

[Redacted text for Luke's case study]

**'Harry'**

[Redacted text for Harry's case study]

The Commission has observed children and young people in youth justice centres who experience barriers to maintaining connections with parents (and other family members) incarcerated in adult facilities. In some instances, these barriers are greater due to their parents being imprisoned in other states and territories. Unsurprisingly, this lack of connection or communication with family members can cause significant distress and a sense of isolation for children and young people in custody.

Children and young people may also experience delays in re-establishing contact with incarcerated parents, as the process often requires confirmation of the parent's location,

followed by approval by both facilities, and sometimes Child Protection, for contact to occur. In some instances, establishing contact may take a few weeks, but in others it may take longer. If release is imminent, contact may not be established before either the child or parent is released from custody.

### **Aboriginal children and young people**

The impact of parental incarceration on the Aboriginal community is greater than on the non-Aboriginal community due to the significant over-representation of Aboriginal people in both the adult and youth criminal justice systems:

- In the adult criminal justice system, in 2020 more than a quarter of the adult prison population in Australia were Aboriginal (29 per cent) yet Aboriginal people comprise just 3.3 percent of the general adult population.<sup>38</sup>
- In youth justice, in 2019-2020, Aboriginal children and young people aged 10 to 17 years accounted for 15 per cent of children and young people under youth justice supervision in Victoria (in the community and in custody), despite comprising only 1.5 per cent of Victorian children and young people aged 10 to 23 years.<sup>39</sup>

The over-representation of Aboriginal people in the adult and youth justice systems compounds the impact of parental incarceration. As noted above, 47 per cent for Aboriginal prison entrants surveyed in 2018 for the AIHW report had dependent children, compared to 33 per cent of non-Aboriginal prison entrants.<sup>40</sup> The AIHW also reported that: 'Indigenous [prison] entrants (31%) were more likely than non-Indigenous entrants (11%) to report having had parents or carers in prison during childhood.'<sup>41</sup>

For the purposes of this submission, the Commission identified seven reports from 2017–2022 made to our Independent Visitor Program by young people who had a parent who was also incarcerated. Of the seven reports identified, most (five of the seven) concerned Aboriginal young people. While this sample is not statistically significant, it is indicative of the high level of intergenerational incarceration.<sup>42</sup>

The additional vulnerabilities of children and young people involved with Child Protection and out-of-home care outlined above are compounded by the over-representation of Aboriginal children and young people in those systems. In Victoria, the rate of over-representation is even higher, at more than 17 times that of non-Aboriginal children and young people, second only to Western Australia.<sup>43</sup>

Separation from family often leads to disruption of Aboriginal children and young people's connection to culture. Connection to culture is a protective factor in the lives of Aboriginal children and young people that enhances their health, wellbeing and identity.<sup>44</sup> As stated in the Commission's 2021 inquiry report, *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*: 'Aboriginal family, community and culture are inextricably intertwined.'<sup>45</sup> Incarceration of a parent is likely to make maintaining a connection to culture even more challenging, particularly if culturally safe and specific services are not provided.

Aboriginal children and young people may also be affected by incarceration of extended family members, particularly when those family members have caring responsibilities for the child or young person. *Our youth, our way* emphasised the importance of extended family in Aboriginal children and young people's lives:<sup>46</sup>

*Every child needs family and community to thrive. For Aboriginal children and young people, connection with family provides the foundations for identity, culture, Country and Aboriginal community. These connections are widely recognised as fundamental to effective, culturally safe practice for working with Aboriginal children and young people...<sup>47</sup>*

Consequently, the incarceration of an aunt, uncle, grandparent or other extended family member can have a significant impact on Aboriginal children and young people's kinship ties and connection to culture and Country.

As noted above, Aboriginal children and young people's rights concerning kinship, culture and self-determination are recognised internationally, and in the Victorian Charter. Services that respond to the impact of parental incarceration should consider the child or young person's family context and be available when extended family members are incarcerated if those family members have caring responsibilities.

### **Impact of COVID-19 restrictions**

For lengthy periods in 2020 and 2021, in-person visits to prisons were suspended as a safety measure to limit the spread of COVID-19. The Commission understands that during this time, video-conference visits were made widely available by Corrections Victoria. In-person visits resumed on 12 March 2022.<sup>48</sup>

The Commission recognises the benefits of video-conference visits in reducing costs, travel-time, and enabling contact within a safe and familiar environment. However, physical connection is also critical to building familial bonds, particularly with infants and young children. The availability of video-conference visits should be maintained, while also ensuring services are provided to overcome barriers to in-person visits.

We note with concern, Corrections Victoria's current requirement that visitors aged five and over are vaccinated against COVID-19 is a potential barrier to in-person visits.<sup>49</sup> The Commission understands the public health concerns that underpin this requirement however, it is also important to recognise that children and young people generally do not have control over the choice to be vaccinated. This requirement may prevent these children and young people maintaining a physical connection with an incarcerated parent, potentially contrary to the child, or the incarcerated parent's wishes.

### **What supports and services are currently provided to children and young people affected by parental incarceration?**

Currently, supports and services provided to children and young people affected by parental incarceration are ad hoc, without centralised government coordination and oversight. There is no overarching service system that identifies, monitors and provides support at each point of the incarceration process from a parent's arrest through to the post-release period.

The absence of an overarching service system framework to identify and respond to the needs of children and young people affected by parental incarceration in Victoria means that service provision is driven by the functions, priorities and responsibilities of existing service systems. This approach has the following consequences:

- data collection, monitoring and reporting about this vulnerable cohort is limited (as outlined above)
- identification of children and young people who may need support is inconsistent
- development and evaluation of policy and practice is impeded by the lack of a strong evidence base
- the views and wishes of the child and young person and their families are frequently not sought, and pathways to participate in decision-making are limited
- responses to 'common clients' across systems lack coordination and integration
- information-sharing across agencies is limited so the needs of children and young people may be overlooked, and assessment of risks or needs may be based on incomplete information

- no agency is responsible for independent oversight of the service system response, meaning there is a lack of accountability and oversight to drive system improvements.

In performing our oversight functions, the Commission has observed a range of practice by different service systems to respond to the needs of children and young people affected by parental incarceration. For example, in one Child Death Inquiry completed, the Commission found that Child Protection, Corrections Victoria and health services proactively shared information and engaged with the parents of an unborn child through pregnancy, birth and the post-natal period, though one parent was incarcerated at the time.

The Commission has also observed instances of services within these systems assuming that the needs of incarcerated parents and their children had been, or would be addressed by other service systems, and consequently opportunities to provide support and build connection between parents and children have been missed or delayed.

We have also observed barriers to young parents accessing services. For example, our Independent Visitor Program was told about a young person in youth justice custody who wished to access a parenting program in anticipation of the birth of his first child. Unfortunately, the parenting program was no longer available, and it was unclear if, or when, a program would be provided in future.

These observations, while limited, indicate that government services to this cohort are generally provided through existing service systems such as child protection, education, health, and corrections. The support needs of children, and parents in prison, appear to be addressed only when they intersect with the responsibilities and functions of these existing systems. Where these needs cut across service systems, the service response frequently lacks coordination, integration and oversight.

For children and young people involved in the child protection system, the Commission is unaware of advice or guidance for Child Protection practitioners to proactively identify and respond to the impact of parental incarceration.

Rather, Child Protection has established protocols and advice to respond where the child or young person's needs or their parent's rights intersect with Child Protection functions. For example, the Child Protection Manual advice to care teams of children and young people in out-of-home care notes:

*Some parents may not be able to participate in face-to-face care team discussion because of geographic separation, mental illness or being in prison. Assist them to participate by mail, email, telephone or video conferencing or by passing on information individually through one member of the care team.<sup>50</sup>*

Similarly, the Child Protection Manual outlines the procedure for practitioners to seek a gaol order to allow a parent who is incarcerated and who is a party to Children's Court proceedings to attend. The procedure notes:

*Parents in prison have the right to attend and participate in court process on matters relating to their children. If a person is legally represented it is the responsibility of their lawyer to organise a gaol order.<sup>51</sup>*

In these and other instances, the Commission finds that the focus appears to be predominantly aligned to the parent's right to participate, rather than responding to a child or young person's needs.<sup>52</sup>

## **Adult corrections**

Corrections Victoria provides visiting programs to support children and young people's contact with incarcerated parents, such as residential visits, family visits and school holiday programs.<sup>53</sup>

These are important initiatives. However, there is no specific policy that articulates Corrections Victoria's approach to supporting contact between parents and children, where that contact is in the child or young person's best interests.

Further, these programs rely on families and other services such as the Victorian Association for the Care and Resettlement of Offenders (VACRO) and SHINE for Kids, to enable children and young people to participate, as outlined below. These programs do not operate across all prisons, consequently participation in the program depends on the prison in which a parent is incarcerated.

In Victoria, infants and pre-school aged children of women who are imprisoned may live with their mother in prison provided she is the primary carer and meets other eligibility requirements.<sup>54</sup> The Living with Mum program operates in Victoria's two women's prisons and is run by Corrections Victoria. According to the Commissioner's Requirements for the Living with Mum program:

*The overarching aim of the Program is to diminish the impact of the mother's imprisonment on her dependent child/children. It is also recognised that the Program supports the family ties that are essential to the effective rehabilitation of mothers and their successful reintegration into the community upon release.*<sup>55</sup>

The onus for the child's safety and wellbeing while they live with the parent in custody is on the imprisoned parent,<sup>56</sup> with Corrections Victoria responsible for putting measures in place to promote children's safety and wellbeing and to take steps to prevent harm to children in the program.<sup>57</sup> The program is subject to Child Safe Standards.<sup>58</sup>

As part of the application assessment process for the Living with Mum program, Corrections Victoria may request relevant information from Child Protection under the *Living with Mum Protocol*.<sup>59</sup> In relation to child safety, the Protocol acknowledges that: 'Reception of ... [mothers and pregnant women] into custody does not in itself constitute significant concern for the safety and wellbeing of an unborn child, and [Corrections Victoria] does not routinely make reports about women in custody solely because they are pregnant or have dependent children.'<sup>60</sup> If an applicant is pregnant, the Protocol sets out a process for Corrections Victoria to determine whether to make an 'unborn report' to Child Protection. If a mother or child involved in the program has active involvement with Child Protection, the Protocol provides for Corrections Victoria to provide regular feedback to Child Protection on request.

The Protocol is an example of a mechanism developed at the point of intersection between two systems, rather than forming part of an overarching policy response to support the needs, rights and wishes of children and young people affected by parental incarceration.

The Commission is concerned that, despite the inherent vulnerability of young children living with parents in prison, there is not a specific independent monitoring mechanism to provide oversight of the safety and wellbeing of children participating in this program. This issue may become particularly relevant in an upcoming coronial inquiry into the death of a very young child in Dame Phyllis Frost Centre in 2018.<sup>61</sup>

Services targeted specifically at children and young people affected by parental incarceration are largely reliant on community service initiatives, by not-for-profit organisations such as VACRO, Flat Out and SHINE for Kids.<sup>62</sup> These organisations provide a range of programs and resources to support children and young people to establish and maintain connections with incarcerated parents, some of which are funded by Corrections Victoria.<sup>63</sup>

The scope and reach of the programs are limited by funding, location, and poor and inaccessible data collection. Consequently, the services available to a child or young person depend on where they live in Victoria, the location of the prison in which the parent is held and

whether these services have been able to identify or reach the children and young people in need of their services.

### **Lack of policies and coordinating body to identify and support children and young people affected by parental incarceration**

As the Committee will be aware, research published in 2015 identified that there are few policies or guidance materials that articulate how children of incarcerated parents will be identified and supported.<sup>64</sup> Key findings included:

- While the protocol between Victoria Police and (then) Department of Human Services gave some guidance about when police should refer a child to Child Protection, the protocol did not refer directly to parental arrest and what should occur, or be considered by arresting police, when a parent is first taken into custody.<sup>65</sup>
- Sentencing law and guidelines in both Victoria and New South Wales indicated limited consideration of children of offenders before the court, unless the situation could be shown to be 'exceptional'.
- There was an overall lack of guidelines, protocols or policy directing agencies on how to respond to a child whose parent is incarcerated, how the agencies should work together, and their respective roles in supporting those children's needs and rights.
- There was no single agency with clear coordinating responsibility with the result that children 'fall through the gaps'.

The report stated:

*The findings of the study suggest 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.<sup>66</sup>*

To the best of the Commission's knowledge, little has changed since that report.

### **Recommended reforms to support children and young people affected by parental incarceration**

#### **Establish a coordinated service system framework with a lead agency and independent oversight**

To ensure children and young people affected by parental incarceration are identified and receive targeted and sustained support from the point of parental arrest onwards, the Victorian Government should establish a coordinated service system framework. The Government should allocate overarching responsibility for services to this group to a lead agency.

Currently, there is no Victorian agency or departmental unit or area that has general responsibility for children and young people. Different government agencies and service systems are responsible for providing discrete services.

Parts of the Department of Families, Fairness and Housing provide specific services such as Child Protection, that is 'specifically targeted to those children and young people at risk of harm or where families are unable or unwilling to protect them.'<sup>67</sup>

While children and young people affected by parental incarceration are vulnerable, they are not necessarily at 'risk of harm' for the purposes of Child Protection and often have family who are able and willing to protect them. Further, their families may be from marginalised or disadvantaged communities, may be wary of Child Protection involvement and reluctant to have

contact with services offered through Child Protection. These considerations should be taken into account in determining the appropriate agency.

The lead agency should be responsible for:

- coordination of responses to children whose parent is incarcerated across departments and agencies, including Victoria Police, Corrections Victoria, the Department of Education and Training and schools, Child Protection, child and family services, out-of-home care services, and the Department of Health
- development of interagency guidance and protocols, and evaluation of evidence-based policy and practice responses in consultation with children and young people and their families, together with relevant departments and agencies
- collection, monitoring and reporting of data on children and young people affected by parental incarceration
- facilitation of information sharing across relevant agencies, including via use of the existing Child Information Sharing Scheme.

In addition, an independent body should be responsible for oversight of services provided to children and young people affected by parental incarceration.

It is critical that the service system for children and young people affected by parental incarceration is responsive to their individual needs and informed by their views. To this end, the coordinated service system should:

- be founded on a **rights-based framework** that protects and promotes the rights of children and young people
- promote and meet **Child Safe Standards** at every point in the system, supporting organisations subject to the Standards to create a child safe environment
- empower children and young people to **exercise their rights and participate in decisions** that affect their lives, informed by age-appropriate information regarding processes, options, and decision-making
- be informed at all points by **consultation with children, young people and families with lived experience** of parental incarceration, including policy development, implementation and evaluation
- target children and young people's rights and support needs at different points of their parent's incarceration process including arrest, bail, remand, court appearance, sentencing, imprisonment, release, parole/post release
- provide services **based on a child and young person's needs rather than being tied to their parent's formal involvement in the justice system**, as children and young people's needs do not necessarily cease at the end of their parent's custodial or parole period
- provide service responses that are **individualised to the needs and wishes** of the child or young person and their family, that may change over time and with age
- provide tailored responses to specific vulnerabilities such as placement in out-of-home care or Youth Justice, and complement and be integrated with existing services
- be **culturally safe for Aboriginal children and young people**, community-led, reflect self-determination, and reconnect or strengthen the connection for Aboriginal children and young people to family, community and Country<sup>68</sup>
- **consider the family context of children and young people affected by incarceration of extended family members**, particularly for Aboriginal children and young people, so that services support kinship ties with incarcerated family members who have caring responsibilities
- include **trauma-informed workforce training** to ensure the system does not compound the trauma that vulnerable children and young people may have already experienced.

## Endnotes

- <sup>1</sup> The term 'Aboriginal people' in this report refers to Aboriginal and Torres Strait Islander peoples. The term 'Indigenous' is retained when it is part of the title of a program, report or quotation. The term 'Koori' refers to Aboriginal people from south-east Australia.
- <sup>2</sup> As at 31 March 2022: 'Monthly time series prisoner and offender data' *Corrections, Prisons and Parole website* <https://www.corrections.vic.gov.au/monthly-time-series-prisoner-and-offender-data> accessed on 20 April 2022
- <sup>3</sup> See the discussion in Flynn C, Naylor B & Fernandez Arias P (May 2015) 'Responding to the needs of children of parents arrested in Victoria, Australia: The role of the adult criminal justice system, *Australian & New Zealand Journal of Criminology*, 1-19
- <sup>4</sup> See *Charter of Human Rights and Responsibilities Act 2006* (Vic), ss 21 to 27
- <sup>5</sup> *Convention on the Rights of the Child* (CRC) 1989, Article 9(1)
- <sup>6</sup> CRC, Article 9(3)
- <sup>7</sup> CRC, Article 5
- <sup>8</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) (Charter), s 17(1)
- <sup>9</sup> Charter, s 17(2)
- <sup>10</sup> UN General Assembly 2010, *Guidelines for the alternative care of children*, [81]
- <sup>11</sup> *Children, Youth and Families Act 2005* (Vic), s 10(1)
- <sup>12</sup> *Children, Youth and Families Act*, 10(3)(b) and (c)
- <sup>13</sup> *United Nations Declaration of the Rights of Indigenous Peoples* (UNDRIP) 2007, Preamble
- <sup>14</sup> Charter, s 19(2)
- <sup>15</sup> UNDRIP Article 3
- <sup>16</sup> Family Matters (2021), *The Family Matters Report 2021: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care*, (Family Matters, Melbourne) p 16
- <sup>17</sup> For an outline of the Victorian Aboriginal Affairs Framework, see Commission for Children and Young People (CCYP) (2021) *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, (CCYP, Melbourne) p 93
- <sup>18</sup> CRC, Article 12(1)
- <sup>19</sup> *Children, Youth and Families Act 2005* (Vic), s 10(3)(d)
- <sup>20</sup> The Standards are made by the Minister under section 17(1) of the *Child Safety and Wellbeing Act 2005* (Vic). For a list of organisations that need to comply with the Child Safe Standards, see Schedules 1 and 2 of the Act.
- <sup>21</sup> *Child Safety and Wellbeing Act 2005*, s 17(1)
- <sup>22</sup> For further information and resources, see: 'New Child Safe Standards resources for organisations' *CCYP website* <https://ccyp.vic.gov.au/news/new-child-safe-standards-resources-for-organisations/>
- <sup>23</sup> CCYP (2022) *Victoria's new Child Safe Standards: What's new?* (CCYP, Melbourne) <https://ccyp.vic.gov.au/assets/resources/New-CSS/Whats-new-overview-of-the-new-Child-Safe-Standards.pdf> accessed on 11 April 2022. New Standard 3 replaces the current Child Safe Standard 7, which states that '[c]hildren have the right to be heard and have their concerns and ideas taken seriously' and requires organisations to implement 'strategies to promote the participation and empowerment of children'. See Child Safe Standard 7: 'empowering children', *CCYP website*, <https://ccyp.vic.gov.au/child-safe-standards/the-seven-standards-and-the-child-safe-principles-2/standard-7-empowering-children/> accessed on 11 April 2022
- <sup>24</sup> CCYP (2022) *Victoria's new Child Safe Standards: What's new?* (CCYP, Melbourne) <https://ccyp.vic.gov.au/assets/resources/New-CSS/Whats-new-overview-of-the-new-Child-Safe-Standards.pdf> accessed on 11 April 2022
- <sup>25</sup> Australian Institute of Health and Welfare (AIHW) (2019) *The health of Australia's prisoners 2018*, Cat no PHE 246, (AIHW, Canberra), p 14 at <https://www.aihw.gov.au/getmedia/2e92f007-453d-48a1-9c6b-4c9531cf0371/aihw-phe-246.pdf.aspx?inline=true> accessed on 11 April 2022. This report presents the results of the 5<sup>th</sup> National Prisoner Health Data Collection (NPHDC) which was conducted in 2018. The NPHDC defined dependent children as being either under the age of 15, or dependent students.
- <sup>26</sup> AIHW, *The health of Australia's prisoners 2018*, Cat no PHE 246, (AIHW, Canberra), p 14
- <sup>27</sup> AIHW, *The health of Australia's prisoners 2018*, Cat no PHE 246, (AIHW, Canberra), p 14
- <sup>28</sup> AIHW, *The health of Australia's prisoners 2018*, Cat no PHE 246, (AIHW, Canberra), p 14
- <sup>29</sup> Volume 1, p 113-123.
- <sup>30</sup> See, for example, CCYP (2021) *Out of sight: systemic inquiry into children and young people who are absent or missing from residential care* (CCYP, Melbourne), p 44; CCYP (2019) *In our own words: Systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system* (CCYP, Melbourne), p 3, 25, 28, Finding 24.
- <sup>31</sup> *In our own words*, p 3.
- <sup>32</sup> See, eg: Trotter C, Flynn C, Naylor B, Collier P, Baker D, McCauley K & Eriksson A (2015) *The impact of incarceration on children's care: A Strategic framework for good care planning*, Monash University Criminal Justice Consortium (Monash University, Melbourne); Flynn C, Naylor B & Fernandez Arias P (May 2015) 'Responding to the needs of children of parents arrested in Victoria, Australia: The role of the adult criminal justice system, *Australian & New Zealand Journal of Criminology*, 1-19; Bartlett T, Flynn C & Trotter C (2018) 24(2) "They didn't even let me say goodbye": A study of imprisoned primary carer fathers' care planning for children at the point of arising in Victoria, Australia' *Child Care in Practice*; Bell M, Bayliss D & Ohan J (April 2018) 'Using linked data to investigate

developmental vulnerabilities in children of convicted parents' *Developmental Psychology*; Flat Out Inc. & the Victorian Association for the Care and Resettlement of Offenders (VACRO) (June 2006) *Children: Unintended victims of legal process – A review of policies and legislation affecting children with incarcerated parents, Discussion paper* (Flat Out & VACRO: Melbourne); Martin E (March 2017), 'Hidden Consequences: The Impact of Incarceration on Dependent Children' *National Institute of Justice Journal* 278. For a list of further resources, see: 'Prisoners and their families' *Australian Institute of Family Studies website* <https://aifs.gov.au/cfca/bibliography/prisoners-and-their-families>

<sup>33</sup> AIHW (2019), *The health of Australia's prisoners 2018*, p 14

<sup>34</sup> CCYP (2019) *In our own words: Systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system* (CCYP, Melbourne)

<sup>35</sup> *In our own words*, p 183

<sup>36</sup> For further information on the Client Incident Management System, see: 'Client Incident Management System' *Department of Families, Fairness and Housing website* <https://providers.dffh.vic.gov.au/cims> accessed on 13 April 2022

<sup>37</sup> The young people's names and ages have been changed to protect their identities.

<sup>38</sup> Australian Bureau of Statistics (ABS) (2018). [Estimates of Aboriginal and Torres Strait Islander Australians, June 2016](#) ABS cat. no. 3238.0.55.001 (ABS, Canberra) and ABS (2020). [Prisoners in Australia, 2020](#) ABS cat. no. 4517.0 (ABS, Canberra) referred to in AIHW (2021) 'Adult prisoners snapshot' *Australia's welfare 2021* (Canberra: AIHW)

<sup>39</sup> Productivity Commission, *Report on Government Services 2021: 17 Youth justice services*, data tables 17A.5 and 17A.6, ABS, *National, state and territory population 2020*, ABS website, accessed 10 February 2021, and ABS, *Estimates and projections, Aboriginal and Torres Strait Islander Australians 2019*, ABS website, accessed 10 February 2021 referred to in: CCYP (2021) *Our youth, our way*, p 78

<sup>40</sup> AIHW (2019), *The health of Australia's prisoners 2018*, p 14

<sup>41</sup> AIHW (2019), *The health of Australia's prisoners 2018*, p 14

<sup>42</sup> Some reports involved the same young person.

<sup>43</sup> *The Family Matters Report 2021*, p 12

<sup>44</sup> CCYP (2019) *'In our own words'*, Finding 2

<sup>45</sup> CCYP (2021) *Our youth, our way*, p 26

<sup>46</sup> *Our youth, our way*, Chapter 7

<sup>47</sup> *Our youth, our way*, p 243, referencing V McLennan (2015), 'Family and community resilience in an Australian Indigenous community', *Australian Indigenous Health Bulletin* 15(3):1–7 and Victorian Aboriginal Child Care Agency (VACCA), *Submission to Our youth, our way inquiry*, p 4

<sup>48</sup> 'Contacting and visiting prisoners', *Corrections Victoria website* <https://www.corrections.vic.gov.au/prisons/contacting-and-visiting-prisoners> accessed on 14 April 2022

<sup>49</sup> 'Contacting and visiting prisoners', *Corrections Victoria website* <https://www.corrections.vic.gov.au/prisons/contacting-and-visiting-prisoners> accessed on 14 April 2022

<sup>50</sup> Department of Families, Fairness and Housing (DFFH) (2019) 'Care teams – advice' *Child Protection Manual* (Document ID number 2110, version 4, 20 June 2019)

<sup>51</sup> DFFH (2016) 'Gaal order' *Child Protection Manual* (Document ID number 1223, version 2, 1 March 2016)

<sup>52</sup> For examples of other Child Protection advice and protocols concerning the children and young people affected by parental incarceration, see DFFH (2018) 'Contact – advice' *Child Protection Manual* (Document ID number 2117, version 3, 18 April 2018); DFFH (2021) 'Identifying and achieving the permanency objective' *Child Protection Manual* (Document ID number 2456, version 3, 20 November 2021); DFFH (2020) 'Protection order descriptions' *Child Protection Manual* Document ID number 2231, version 4, 11 November 2020)

<sup>53</sup> For details, see Corrections Victoria Commissioner (November 2020) *Commissioner's requirements: Living with mum program*, (CR Number: 3.4.1), cl 5.1.3

<sup>54</sup> For information on the program, see: 'Pregnancy and childcare' *Corrections Victoria website* <https://www.corrections.vic.gov.au/prisons/going-to-prison/pregnancy-and-childcare> accessed on 13 April 2022

<sup>55</sup> Corrections Victoria Commissioner (November 2020) *Commissioner's requirements: Living with mum program*, (CR Number: 3.4.1), cl 5.1.2

<sup>56</sup> *Corrections Act 1986* (Vic), s 31(2)

<sup>57</sup> Corrections Victoria Commissioner (November 2020) *Commissioner's requirements: Living with mum program*, (CR Number: 3.4.1), cl 3.1.4. See also, DFFH (2015) 'Placement of children with mothers in prison – advice' *Child Protection Manual* (Document ID number 2048, version 1, 1 December 2015), p 5

<sup>58</sup> *Living with Mum Protocol between Corrections Victoria, Department of Justice and Community Safety and Child Protection, Department of Families, Fairness and Housing and Aboriginal Children in Aboriginal Care Providers* (May 2021) (Living with Mum Protocol), p 6

<sup>59</sup> Living with Mum Protocol, pp 6-9.

<sup>60</sup> Living with Mum Protocol, p 9

<sup>61</sup> [Death of newborn baby inside prison to be probed by coroner](#), *The Age*, 19 November 2019, T Cowie, accessed on 26 April 2022

<sup>62</sup> See, eg: 'Families and prisons in Victoria' *VACRO website* <https://www.vacro.org.au/information-about-families-and-prisons-in-victoria> accessed on 14 April 2022; 'SHINE for Kid is now in Victoria!' *Shine for Kids website* <https://www.shineforkids.org.au/timelines/2009/victoria.html> accessed on 14 April 2022; *Flat Out website* <http://www.flatout.org.au> accessed on 14 April 2022

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<sup>63</sup> See eg, 'Family Visits Program' VACRO website <https://www.vacro.org.au/family-visits-program>

<sup>64</sup> Trotter C, Flynn C, Naylor B, Collier P, Baker D, McCauley K & Eriksson A (2015) *The impact of incarceration on children's care: A Strategic framework for good care planning*, Monash University Criminal Justice Consortium (Monash University, Melbourne).

<sup>65</sup> Pages 20-21, 35-36.

<sup>66</sup> Page 4.

<sup>67</sup> 'Families and children: child protection' DFFH website <https://services.dffh.vic.gov.au/child-protection> accessed on 19 April 2022

<sup>68</sup> This approach aligns with clause 43 of the *National Partnership Agreement to Close the Gap*: 'The Parties acknowledge that Aboriginal and Torres Strait Islander community-controlled services are better for Aboriginal and Torres Strait Islander people, achieve better results, employ more Aboriginal and Torres Strait Islander people and are often preferred over mainstream services.' Joint Council on Closing the Gap (2020), *National Partnership Agreement to Close the Gap*, July 2020, cl 43