

## Submission:

### *Inquiry into Victoria's criminal justice system*

The Centre for Excellence in Child and Family Welfare (the Centre) welcomes the opportunity to provide a submission to the *Inquiry into Victoria's criminal justice system for consideration by the Legislative Council's Legal and Social Issues Committee*.

The Centre is the peak body for child and family services in Victoria. We represent over 150 community service organisations, students and individuals throughout Victoria working across the continuum of child and family services, from prevention and early intervention to the provision of out-of-home care.

Our interest in this submission stems from two key concerns:

- The number of women who end up in the criminal justice system, including mothers who are primary carers
- The number of young people who enter, or are at risk of entering, the criminal justice system via child protection and/or youth justice pathways.

Our submission looks at the drivers of each, strategies to reduce entry and recidivism, and what could be done in the court system to prevent or divert entry.

We have chosen to respond to three of the specified Terms of Reference.

#### **1. An analysis of factors influencing Victoria's growing remand and prison populations**

This section of our submission looks at the factors associated with the growing numbers of women on remand and in prison and at factors associated with children and young people's trajectories into the criminal justice system.

##### **Women in the criminal justice system**

Through its representation on the Women's Correctional Services Advisory Committee, and through the work of its members, the Centre has an excellent understanding of the prevalence and drivers of women's incarceration and of the actions that need to be implemented to prevent, divert and support imprisoned women and their families.

There has been a significant increase in the number of women in Victoria's prison system (from 340 women on 30 June 2012 to 507 on 30 June 2017), largely a reflection of more women being held on remand than previously, with the main offences relating to drug use, assaults and property.<sup>1</sup> Many of

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<sup>1</sup> Corrections Victoria, 2019, Women in the Victorian prison system, Department of Justice and Community Safety.

the women on remand for short periods of time are subsequently released on bail or to a non-custodial sentence.<sup>2</sup>

Women are a particularly vulnerable group in prison.<sup>3</sup> Data from a survey of nearly 2,000 women entering prison on remand at the Dame Phyllis Frost Centre in 2015 and 2016 highlights housing instability (26%), drug use (61%) and family violence (65%) as key characteristics of these women's lives prior to remand. Nationally, at least one in two imprisoned women has a history of mental illness, and/or abuse as a child, one in two imprisoned women are mothers, and 5-10% are pregnant.<sup>4</sup>

Given that around 69% of female prisoners in 2017 had children, with 21% of these women being primary carers, there are clearly significant consequences for children as well as their mothers when women are placed on short term remand, including having children placed in care.<sup>5</sup>

Around 65% of women spent under one month on remand before being released with another 24% on remand for between 1-3 months. 'Overall, only 17 per cent of women who were initially remanded and then bailed were sentenced to a term of imprisonment longer than the time they had already served on remand'.<sup>6</sup> Research suggests a longer term in prison may be less traumatising on children than repeated short periods of time in and out of prison.<sup>7</sup>

The Bail Act 1977 (Vic) was amended in 2017 to require defendants to supply a 'compelling reason' or demonstrate 'exceptional circumstances' in order to be granted bail.<sup>8</sup> These tougher bail laws have disproportionately affected women and contributed to an increase in the number of women on remand; in 2019, 46 per cent of the women prison population were on unsentenced remand compared to 25 per cent in 2007.<sup>9</sup> This is a concerning trajectory given women in remand often have their children removed from their care and children of incarcerated parents often experience challenges relating to education, health and unstable housing.<sup>10</sup> Children of imprisoned parents also face a disproportionate number of risk factors for becoming involved in the criminal justice system themselves,<sup>11</sup> with some research suggesting this could be worse for maternal than for paternal incarceration given the primary attachment is generally to the mother.<sup>12</sup>

Many of the Centre's members provide home-based and/or residential care services and while children experience maternal incarceration differently depending on a range of variables, our agencies have

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<sup>2</sup> Ibid.

<sup>3</sup> Australian Institute of Health and Welfare, 2018, *The health of Australia's prisoners*, Cat. no. PHE 246. Canberra: AIHW.

<sup>4</sup> Walker, J., Baldry, E., & Sullivan, E. 2019, Babies and toddlers are living with their mums in prison, *The Conversation*, 17 March, <https://theconversation.com/babies-and-toddlers-are-living-with-their-mums-in-prison-we-need-to-look-after-them-better-117170> (accessed 16 September 2021).

<sup>5</sup> AIHW 2018.

<sup>6</sup> Corrections Victoria, p.15.

<sup>7</sup> Davies, E., Brazzell, D., La Vigne, D., & Shollenberger, T. 2008. *Understanding the experiences and needs of incarcerated parents*, Urban Institute, Justice Policy Center, Washington.

<sup>8</sup> [https://www.aic.gov.au/sites/default/files/2020-10/ti610\\_bail\\_practices\\_and\\_policy\\_alternatives\\_in\\_australia.pdf](https://www.aic.gov.au/sites/default/files/2020-10/ti610_bail_practices_and_policy_alternatives_in_australia.pdf)

<sup>9</sup> See Corrections Victoria 2019, *Annual Prisoner Statistical Profile*.

<sup>10</sup> Sherwood, J and Kendall, S, 'Reframing Space by Building Relationships: Community Collaborative Participatory Action Research with Aboriginal Mothers in Prison', *Contemporary Nurse* 46, (2013): 83, 85.

<sup>11</sup> Cox, M. 2009. *The Relationships Between Episodes of Parental Incarceration and Students' Psycho-Social and Educational Outcomes: An Analysis of Risk Factors* Philadelphia: Temple University.

<sup>12</sup> Martin, E. 2017, Hidden consequences: The impact of incarceration on dependent children, *NIJ Journal* 278.

seen first-hand the impact that removal into care can have on a range of child wellbeing and developmental indicators.

## Young people in the criminal justice system

While only a small proportion of young offenders go on to offend as adults – generally children who offend at an earlier age and engage in more serious offending<sup>13</sup> – a child or young person's involvement in the youth justice system greatly increases the likelihood of exposure to the criminal justice system in adulthood.<sup>14</sup> It is concerning that so many children and young people are in contact with Victoria's youth justice system. In 2019-20, an average of 925 young people a day were under youth justice supervision.<sup>15</sup>

Analysis of the characteristics of children and young people in youth justice reveals that:

- 53% were a victim of abuse, trauma or neglect as a child
- 52% have a history of alcohol and drug use
- 49% present with mental health issues
- 42% have been witness to family violence
- 41% either have a current child protection case or were previously subject to a child protection order.<sup>16</sup>

Aboriginal children are over-represented in the youth justice system<sup>17</sup> and children and young people of Maori, Pacific Islander and South Sudanese descent are increasingly featuring in the groups most represented in Victoria's youth justice system.<sup>18</sup> While more research is needed to fully understand the drivers for offending of culturally and linguistically diverse young people, insights could be gained from the experiences of Aboriginal young people in relation to intergenerational trauma, disconnection to community and country, over policing, and exclusion from mainstream culture.<sup>19</sup>

## 2. Strategies to reduce rates of criminal recidivism

### Women in the criminal justice system

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<sup>13</sup> <https://www.justice.vic.gov.au/justice-system/youth-justice/youth-justice-strategic-plan-2020-2030-the-challenges-and-the-opportunities>. Accessed 15 September 2021.

<sup>14</sup> Armytage, P & Ogloff, J 2017, *Youth justice review and strategy. Meeting needs and reducing offending - Executive summary*, Department of Justice and Community Safety, Melbourne, p. 8.

<sup>15</sup> Australian Institute of Health and Welfare (AIHW) 2021, *Youth Justice in Australia 2019-20*, AIHW, Canberra, 6.

<sup>16</sup> See

<sup>17</sup> Commission for Children and Young People, *Our youth, our way: inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2021.

<sup>18</sup> Armytage, P & Ogloff, J 2017, *Youth justice review and strategy. Meeting needs and reducing offending - Executive summary*, Department of Justice and Community Safety, Melbourne.

<sup>19</sup> Ibid.

Analysis of the factors leading to women's increased incarceration rates highlights the critical importance of earlier help in their lives with ready access to housing, AOD and specialist family violence support services.

Long-term, the current Victorian government focus on primary prevention in relation to family violence could bring about systemic change that would benefit all women at risk of entry into the criminal justice system through predisposing factors. If already in the criminal justice system, women would benefit from more therapeutic interventions that recognise the underlying drivers of the offending.

Consistent with Victoria's *Strengthening Connections* framework, any strategies should emphasise pro-social relationships, family and community connectedness; be holistic and trauma-informed; empower and support self-efficacy; support responsivity, integration and continuity in service delivery; and respond to diversity.<sup>20</sup>

Strategies need to embed the perspectives of women and children with lived experience of maternal incarceration and to focus on the end-to-end approach that recognises and seeks to address the challenges at each point of a woman's journey through the system. This includes post release where women can experience re-victimisation, potential return to a violent partner relationship, housing insecurity and resuming parental responsibilities.<sup>21</sup>

A 2007 UK report called for a distinct, radically different, visibly-led, strategic, proportionate, holistic, woman-centred, and integrated approach to women's involvement in the criminal justice system, highlighting the importance of:

- Giving high priority to life skills within the education, training and employment pathway with women being individually assessed to ensure that their needs are met
- Reserving custodial sentences for serious and violent offenders who pose a threat to the public; if women are unlikely to receive a custodial sentence they should not be remanded.
- Requiring consideration of a probation report on the probable impact on children of having defendants who are primary carers of young children on remand
- Providing suitable training for all those involved in the care of women in prison, including gender awareness and training in relation to complex vulnerabilities
- Coordinated and holistic responses that support maintenance of family ties and links to the community, reintegration and sentences served in the community.<sup>22</sup>

Victorian strategies could similarly focus on education, training and employment services for women prisoners to facilitate successful rehabilitation and reintegration. Aboriginal and women from multicultural communities need culturally safe remand and sentence provision. The experiences of women in the criminal justice system require an intersectionality lens to make sure the needs of all cohorts of vulnerable women are met.

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<sup>20</sup> Corrections Victoria, 2017, *Strengthening Connections: Women's policy for the Victorian Corrections system*, Department of Justice and Regulation, p. 19.

<sup>21</sup> Corrections Victoria, 2017, *Strengthening Connections*, p. 19.

<sup>22</sup> Corston, J. 2007, *The Corston Report*, <https://webarchive.nationalarchives.gov.uk/ukgwa/20130128112038/http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf> (accessed 16 September 2021).

The Strengthening Connections framework offers a sound and evidence-informed approach to better supporting women in the criminal justice system. Given the growing numbers of women entering the criminal justice system, and the impact on their children and families, it is timely to review and update the framework and incorporate lessons learned from implementation of family violence and other reforms since it was developed. Current programs and policies also need to reflect what has been learned during COVID about ways of maintaining connection and embed initiatives that have led to responsive and effective service delivery for the longer term benefit of women prisoners, including evaluating and further refining the Personal Video Visits program with the support of VACRO.

Additionally, the Centre recommends that the committee consider the need for further research into the impact on children of maternal incarceration to build a more robust evidence base than currently exists, reflective of contemporary best practice.

### Young people in the criminal justice system

As with women in the prison system, young people would benefit from programs that prioritise prevention, diversion and early intervention. The focus of the Victorian youth justice system should pivot more towards addressing the criminogenic reasons for youth offending, which can include antisocial peers, history of offending behaviour, challenging family circumstances, issues at school or work, and substance abuse. Effective intervention will require the youth justice system to align itself closer with disability, education, health, vocational, family and accommodation support networks.<sup>23</sup> The Centre has long advocated for family services to be co-located in schools and other universal services to provide support at the earliest signs of concern.

Currently, most of Victoria's youth justice system expenditure is focused on its end point; in 2016-17, 3% of youth justice investment was allocated to court-based diversion and restorative justice, and 1% was allocated to only two early intervention programs.<sup>24</sup> Instead, there needs to be a focus on early intervention and diversion 'at all points on the youth justice system continuum'.<sup>25</sup> This means preventing maltreatment, addressing trauma, and supporting educational, mental, behavioural and disability needs.<sup>26</sup> Educational difficulties, for example, is an accurate predictor of recidivism for 'crossover kids' who have been connected to both child protection and youth justice.<sup>27</sup>

One possibility is to expand diversion options to provide options with varying intensity and duration.<sup>28</sup> Another option, specifically for Koori youth, is to create a bail diversion program similar to the Wulgungoo Ngalu Learning Place.<sup>29</sup> The Central Highlands Multi-Agency Support Team (MAST) project is also showing early evidence of a strong place-based, multi-agency model of youth diversion for young people up to 17 years who have engaged in offending behaviour.<sup>30</sup> In this program young people

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<sup>23</sup> Armytage & Ogloff, *Youth Justice Review and Strategy*, 11-12.

<sup>24</sup> Armytage & Ogloff, *Youth Justice Review and Strategy*, 6.

<sup>25</sup> Commission for Children and Young People, *Our youth, our way*, 11.

<sup>26</sup> Baidawi, Sheehan and Taylor & Francis, *"Crossover" Children*, 124.

<sup>27</sup> See Leone, P & Weinberg, L 2010, *Addressing the Unmet Educational Needs of Children and Youth in the Juvenile Justice and Child Welfare Systems*, Centre for Juvenile Justice Reform, Georgetown University, Washington, DC.

<sup>28</sup> Baidawi & Sheehan, 'Offending by child protection-involved youth', 19.

<sup>29</sup> Armytage & Ogloff, *Youth Justice Review and Strategy*, 34.

<sup>30</sup> See for example <https://bchc.org.au/service/youth-crime-prevention/> (accessed 16 September 2021).

and their families receive priority access to a range of supports, from specialist therapeutic care to structured community activities, matched to their individual needs.

The Centre welcomes the reforms currently being implemented in response to Victoria's Royal Commission into Mental Health, including recommendation 37, which aims to support the mental health and wellbeing of people in contact with, or at risk of coming into contact with the criminal and youth justice systems.<sup>31</sup> Prioritising implementation of this and other child and youth focused recommendations, including the establishment of the mental health hubs, could help reduce the numbers of young people entering the youth justice and criminal justice systems.

The Centre supports the expansion of family group conferencing at the time of first caution. The Sentencing Advisory Council has highlighted the importance of youth justice family group conferencing,<sup>32</sup> an early intervention approach that seeks to address causes of offending behaviour in a way that is therapeutic, holistic and responsive to the complex needs of children and young people.

The Centre is a signatory to the *Framework to reduce the criminalisation of young people in residential care*. A key part of our role is to support residential care providers to embed the Framework into everyday practice. We are currently developing resources to this end. We are also working across sectors – including child & family services, child protection, education, youth justice, VLA and CLCs and Victoria police – to promote greater collaboration between sectors in implementing the Framework and translate and disseminate good practice at a local, regional and state level across key stakeholders. The Centre is also working on a small project to identify promising programs in diverting young people from entry into youth justice.

### **3. An examination of how to ensure that judges and magistrates have appropriate knowledge and expertise when sentencing and dealing with offenders, including an understanding of recidivism and the causes of crime**

The court system plays an integral role in promoting rehabilitation to reduce recidivism. It is important that judicial decision makers have a thorough understanding of the impact of trauma on child development and youth criminogenic risk factors and on the factors contributing to women entering the criminal justice system.

#### **Women in the criminal justice system**

A 2020 Australian Institute of Criminology report found that with appropriate information available to magistrates, and support services in place, magistrates and other bail authorities could potentially grant bail more often, thereby reducing the pressures on custodial remand populations.<sup>33</sup> Given the

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<sup>31</sup> See <https://www.cfecfw.asn.au/summary-of-recommendations-relevant-to-children-and-families-royal-commission-into-victorias-mental-health-system-final-report/>

<sup>32</sup> Sentencing Advisory Council, '[Crossover Kids: Report 3](#)', 41.

<sup>33</sup> Australian Institute of Criminology, 2020, *Bail practices and policy alternatives in Australia*, p.11, [https://www.aic.gov.au/sites/default/files/2020-10/ti610\\_bail\\_practices\\_and\\_policy\\_alternatives\\_in\\_australia.pdf](https://www.aic.gov.au/sites/default/files/2020-10/ti610_bail_practices_and_policy_alternatives_in_australia.pdf) (accessed 16 September 2020).



high percentage of women who are on remand and released after only a short period, a more effective approach could be to invest in more pre-trial services outside of custody to address the vulnerabilities.

*Strengthening Connections* highlighted the need to deliver correctional services and programs delivered in timely and effective ways 'that best target women's sentencing profile including issues related to planning, transition and reintegration. Women may move through prison environments quite quickly due to being granted bail after a short period on remand, being released to a non-custodial sentence or following a short sentence'. Magistrates, bail authorities and others responsible for the care of women in the criminal justice system need to be sensitive to the implications of placing women, including primary carers, on remand for offences that are not at the most serious end of offending, taking into account the likelihood of being given a custodial sentence and the complex life circumstances of each women.

### Young people in the criminal justice system

Section 362 of the *Child Youth and Family Act (2005)* CYFA requires a sentencing court to consider the need to strengthen the relationship between the child and child's family, and the desirability of allowing the child to live at home. However, this section is silent in relation to a child who is not safe with their family and cannot live at home.

The proposed Youth Justice Act provides an opportunity to amend section 362 to require a court to take into account the following factors when sentencing a child who is unable to live at home:

- The child's experience of abuse, trauma, neglect, loss, removal from the family home or out-of-home care and how these circumstances relate to the child's offending
- The need to ensure that the child has a safe, stable and secure place to live
- The need to protect the child from harm or the risk of harm
- The responsibility of the state to act as a good parent.

The Centre welcomes this proposed amendment to section 362.

When a child has a child protection and criminal matter before the court, the protection matter is required to be addressed first before criminal charges can be heard.<sup>34</sup> This means the protective and criminal aspects of a child's life are considered by the court separately and appropriate information may not be provided to the Criminal Division contextualising a child or young person's criminal behaviour.<sup>35</sup> This could be exacerbated once the CYFA is split and a stand-alone Youth Justice Act enacted.

To address this shortfall, the Centre recommends that the Children's Court establish a crossover children's list for young people engaged with the child protection and criminal divisions. This would ensure the court has access to sufficient information about a young person's history when sentencing.<sup>36</sup>

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<sup>34</sup> SAC, *'Crossover Kids': Report 1*, p.21.

<sup>35</sup> Ibid.

<sup>36</sup> See Fitzgerald, T 2018, 'Children in both Youth and Family Courts: New Zealand', *The Chronicle*, 15-20.  
<https://www.taylorfrancis.com/books/edit/10.4324/9780429291517/crossover-children-youth-justice-child-protection->

Crossover lists can be further augmented by having the same magistrate preside over the child protection and criminal matters of a child or young person.

The Centre also supports a previous CCYP recommendation that magistrates undertaking Children's Court work should undertake training in child and adolescent development, trauma, adolescent mental health, cognitive and communication deficits, and Aboriginal cultural safety.<sup>37</sup>

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systems-susan-baidawi-rosemary-sheehan; Farn, A & Umpierre, M 2017, *Creating an integrated continuum of care for justice-involved youth: how Sacramento County collaborates across systems*, Georgetown University, Washington DC.

<sup>37</sup> Commission for Children and Young People, *Our youth, our way: Inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2021, p.52.