



Legislative Council, Legal and Social Issues Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002
justiceinquiry@parliament.vic.gov.au

23 September, 2021

Dear Chair and Review Members,

Re: Parliamentary Inquiry into Victoria's Criminal Justice System

Council of Single Mothers and their Children Inc. (CSMC) is a non-profit organisation founded in 1969 by single mothers to secure a better life for women parenting alone and their children. We have a membership base of 4,300 and achieve change by championing the agency, rights and needs of single mothers and their children and by providing specialist information, support and referral services to single mothers.

We have read and strongly endorse the submission by Smart Justice for Women.

While CSMC is not an agency specifically set up to deal either with justice issues specifically or with women being released from prison, with calls from over 2200 women per year we have considerable understanding of the intertwined challenges many women face before, during and after incarceration. We draw on our expertise in dealing with complex issues in writing this submission and rely on the submission by Smart Justice for Women for the formalising of recommendations.

We are delighted the Victorian government is taking such a committed approach to this challenging issue and would be happy to provide any further comment. We wish the Panel members well with your deliberations.

Yours sincerely,



Jenny Davidson
Chief Executive Officer



'Wicked' problems

CSMC, like many other agencies working in the social/ community/ health/ justice interface, is regularly confronted by the need to accept there are unlikely to be simple solutions to the very challenging issues many people and systems face. Working with single mother families across the cultural, economic, educational, health and justice spectrums, we see factors that can make a profound difference in some situations, and almost no difference in others.

In this submission, we focus on our experience with single mothers who are grappling with multiple challenges including and not limited to: childhood violence; family and inter-partner violence and sometimes their own violence; experiences of living in out-of-home care and/or dislocation from any supportive family; various forms of disability including neurological, physical and mental; poverty and financial hardship; unsafe housing and/or homelessness. We see women who sink' under these challenges, sometimes becoming heavy substance users and having their children removed from their care. And equally, we sometimes see women who are dealing with such issues or have been overwhelmed by them, turn their situation around and move themselves and their children forward in entirely positive ways.

In every instance where women have found some hope and ways forward, there have been people (friends, family and workers from some service or another) who have helped them find or hold onto their lifeline. **This is what we ultimately want to see happen for women in the criminal justice system – that women who are struggling to keep their heads above water or who are sinking are recognised early and connected with services that can assist them.**

It is a big ask, but sometimes with wicked problems, evidence shows holistic and compassionate approaches combined with pragmatic service responses will provide far better solutions than the draconian step of incarceration which, evidence shows, compounds and exacerbates the problems.

Examples of this include:

- If police who arrested Ms Day had taken her home or to a hospital or service that would have cared for her as she recovered from inebriation, there would have been one less Indigenous death in Victorian custody.
- If the criminal justice system were to adopt from first contact to incarceration and release, some form of triage or traffic light system, then:
 - Emphasis will be placed on identifying those who are vulnerable and least dangerous and connecting them with community supports which may include systems of accountability but does not leave them dealing with such systems alone.
 - Significant investments can be made in:
 - Integrating or building bridges between police and support services
 - Training police to respond more compassionately to women committing lower level offences
 - Altering the law to make low-level offences summary and include a presumption of bail for lower-level offending.
- Recognising some key triggers for vulnerability and offending by women and ensuring all levels of the system can deal appropriately with them.

We nominate four such significant factors - poverty, experience of violence, unstable housing, and dependent children - and outline below the significance of these factors.

Poverty

CSMC's policy and advocacy work, supported by constant contact with single mothers from a range of backgrounds, has shown us the heartbreaking realities of increasing poverty in female headed sole parent families since 2006. Along with other State-based agencies, we have urged State and Territory governments to lobby the Federal government about this "government induced poverty" that we see having quite dramatic effects at local levels. Mental health issues, housing insecurity and homelessness, children being taken into care, and increased alienation from civil society are all issues which cost the States even though they are caused or exacerbated at the Federal level.

We could speak to detailed changes in the social security system but in summary, those of greatest import are:

- Increasing reduction of government supports for single parents since 2006 which has seen:
 - a rise in the number of children growing up in poverty to 39% of children in single parent families.
 - 37% of single mother headed households currently living below the poverty line, compared with 18% of single father headed households and 10% of couple families where the main earner is male.
- The dominance of the philosophy of mutual obligation and welfare to work in an increasingly punitive social security system that now incorporates an automated 'Targeted Compliance System'.
 - Women whose youngest child turns 8 years are shifted from the Parenting Payment Single to JobSeeker Principal Carer, losing around \$140 every pay.
 - Programs such as ParentsNext (those with pre-schoolers on Parenting Payment Single) and JobActive (parents with children over 8 receiving JobSeeker Principal Carer) are linked to the targeted compliance system such that any missed appointment, deadline or activity can result in a suspension or cessation of payment. These can be appealed, but should such a suspension occur on the same day that rent is due to be paid, the consequences for women can be at best a reduced rental performance credit and at worst, eviction. There are other consequences such as insufficient money for food, cancelled children's birthdays, a planned excursion and so on. It is particularly noteworthy that on review, a significant number of these offences are found to be the fault of the service provider or completely explicable, such as a woman missing a morning appointment because she has been up all night with a sick child or her text message was diverted to the wrong person.¹
 - Successive instances of this penalisation results in some women being so traumatized by their dealings with the system that they leave it completely. The federal government does not follow up what happens to them but along with other local agencies we know anecdotally that: they slip into opportunistic crime including stealing or handling stolen goods; take up sex work; and/or move in with a man and frequently experience resulting violence. Some share their slim resources with friends or family and make do until they can find legitimate paid work. Many are referred to child protection authorities – often as a result of becoming homeless with their children, or when they

¹ See for example the report of The Australian Senate Community Affairs Reference Committee: **ParentsNext, including its trial and subsequent broader rollout**, March 2019 Accessed at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/ParentsNext/Report

- are arrested on a minor offence. Those who have their children taken from them become ever more vulnerable to substance abuse and serious mental health issues.
- ParentsNext, a federal government program that targets the most disadvantaged women and children in Australia ((95% female, 18% Aboriginal and Torres Strait Islander, 19% culturally and linguistically diverse, and 14% are people with a disability). This program has been the subject of two parliamentary inquiries both of which recommended it should not continue in its current form. The most recent found that, largely through the application of the Targeted Compliance Framework, it is breaching participants' human rights.² While we contend that the emphasis on welfare compliance is now endemic in the Australian social security system, ParentsNext is a particularly punitive example that particularly disadvantages single mothers, many of whom are Indigenous.

In our view, this context relates to the criminal justice system in characteristically foundational ways. The Australian systems, initially adopted from the English and since amended through parliamentary amendments and applied case law, are now criminalising and incarcerating people for poverty related offences in much the way the English once criminalised and transported many to Australia for poverty related offences. We note the following point to the Committee examining the human rights implications for ParentsNext participants:

“Dr Ann Neville and Dr Katherine Curchin pointed to academic studies demonstrating the negative impacts of welfare conditionality and social welfare sanctions on mental health. They stated that research indicates that when (income) benefits sanctions are used against people with mental health issues, these lead to 'feelings of worthlessness, suicidal thoughts, episodic trauma, and the need for increased medication'. In turn, they note, research indicates that this worsening physical and mental health 'brought claimants closer to life-changing crises like eviction and homelessness, deepened poverty and caused hunger'.³

While poverty may not be an excuse, it can certainly be a powerful driver of desperation particularly for disadvantaged women with dependent children who see no other way to survive.

In Australia we have many measures of poverty that allow us to see the sections of the population living in poverty. We also have regular reports on what this actually means for those individuals, families and sometimes communities caught in the poverty trap. Most notably and accessibly, ACOSS presents such a bi-annual report⁴.

Given all this measurement and reporting, we contend there is a duty of care obligation on government systems to take note and account for the repercussions of this.

² Parliamentary Joint Committee on Human Rights Inquiry report **ParentsNext: examination of Social Security (Parenting payment participation requirements—class of persons) Instrument 2021** August 2021 Available at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/ParentsNext/Report

³ Ibid. Pg 60 point 3.104

⁴ Reports and poverty data available at: <https://povertyandinequality.acoss.org.au/poverty/>

Experiences of violence

While not a commonly used description, it is nevertheless true that a high percentage of single mother families are formed from escaping family violence.

Our 2018 research⁵, the first national survey of over 1100 single mothers in Australia, showed that of the 482 respondents involved with the Family Law system, nearly 79 per cent say they or their children had experienced family violence. At the same time and for 3 years since, 'family violence and assault' have averaged fifth place on our list of major presenting issues when single mothers call the CSMC Support Line. These figures speak to the continuation of family violence, sometimes over many years including financial abuse, vexatious litigation, and actual assault of mother and/or child.

The long term impacts of family violence CSMC witnesses include mental health issues for both mother and child, financial insecurity, chronic physical health and disabling conditions from assaults, loss of social connections and support, difficulty in maintaining paid employment and housing insecurity.

Between 70 to 90 per cent of women in prison have experienced trauma and abuse prior to entering prison, including family violence and sexual abuse. Of these, many will have experienced sexual abuse as children (estimates are upward of 17 per cent of the female population). Evidence shows that women who experienced childhood sexual abuse were three times more likely to experience sexual assault later in life, compared with women who had not been sexually abused as children (43 per cent compared with 13 per cent).⁶

Given these figures, we contend pre-existence of family violence is a factor indicating significant vulnerability and disadvantage which must be recognised by the criminal justice system and wherever possible, lead to diversion into support programs.

VOCAT

An area of concern to us is feedback from women who attend VOCAT seeking help with costs to deal with medical, psychological or other treatment or assistance for themselves and/or their children in relation to injuries received from family violence. Many of these women and/or their children now live with a diagnosed disability as the result of this violence. They describe the process of VOCAT as 'shattering', 'unexpected', and 're-traumatising'. Some have felt that they had been thrust back into the adversarial Federal Court. Others trying to represent themselves have described being grilled by the Commissioners as though they should know the law.

We are pleased to read recently that the Independent Advocate for Victims, Ms McCormack has embarked on a "deep dive" inquiry of the judicial system. **We recommend that her work is supported as part of this Review and that findings are tested and taken into account in your resolutions.**

⁵ Sebastian A and Ziv I: **One in eight families: Australian single mothers lives revealed** Published 2019 Available at: <https://www.csmc.org.au/publications/national-survey/>

⁶ ABS: **Child sexual abuse raises future risk of sexual assault** Media Release 24/08/2021. Accessed at: <https://www.abs.gov.au/media-centre/media-releases/child-sexual-abuse-raises-future-risk-sexual-assault>

Dependent children

We understand from data that 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.

Governments across Australia are showing increasing interest in issues involved in intergenerational welfare and poverty as evidence mounts that the intergenerational impacts of incarcerating mothers with a dependent child is immense. Credible, long-standing evidence shows children of parents who have been imprisoned are much more likely to be involved in the criminal justice system themselves. Furthermore, 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 justice system.

As an organisation formed specifically around the rights of single mothers and their children, CSMC fought for the rights of women to keep their children; for children to know their birth mother; and to both remove the stigma of illegitimacy from children of 'unwed mothers' and ensure they have legal status equal with those of children born to married parents. Now, and for the past five decades CSMC fights for single mothers and their children to have social and economic equality. Teenage and young adult children of single mothers who were raised in poverty (with mothers on the minimum wage or social security), tell us they experienced stigma and shame at school, find it hard to access resources, imagine a successful university or work future, or a life free from poverty. These more articulate young people worry about their less advantaged peers and particularly those who carry additional burdens. They point out that while there is recognition of difference and potential disadvantage for many groups of young people (E.g. LGBTIQ), there is little or none for children growing up in poverty. They make a powerful point as significant bodies of evidence show it is not growing up in a sole parent family that disadvantages children, but growing up in poverty.

Thus, in our view, issues around the criminalisation and imprisonment of women also impact on the rights of children, and the obligations of governments at all levels to act in the best interest of children, and the cultural rights and safety of women and children.

We have not been able to discover much about the Living With Mum (LWM) Program operating out of the Dame Phyllis Frost Centre or the Tarrengower Prison. The participant data that would be beneficial to access is; how many children are in this program, their ages and circumstances, the supports available to their mothers, the treatment of their mothers by guards and others and any impact this may have on the children, and what kinds of limitations or restrictions are placed on the children and the relationship of these to child development evidence.

Victoria cares about human rights, the protection of the family and children, and for children in the criminal system.⁷ Nevertheless there is much that can be done by and within the State to better protect both single mother family units and the wellbeing of children who have a mother

⁷ Victorian government: **The Charter of Human Rights and Responsibilities** Accessed at: <https://www.humanrights.vic.gov.au/for-individuals/human-rights/>

engaged with the criminal justice system. Finding holistic ways to do this is imperative for the long-term wellbeing of both these women and their children.

We suggest as a start:

- Advocating for the Federal government to fulfill its social security responsibilities under both the UN Covenant on Economic, Cultural and Social Rights and the Convention on the Rights of The Child.
- Ensure provision of secure and affordable housing for all single mother families with particular priorities for those fleeing violence or leaving the criminal justice system.
- Invest more in training police to respond to women and children who are subject to violence.
- Invest a great deal more in training all parts of the criminal justice system to consider 'the best interests of children' in dealing with a mother of dependent children.
- Ensure the criminal justice system is linked into various parts of community and health services with clear agreements on philosophy, policy and practice.

Moving forward

We acknowledge that not all the issues facing women in prison in Victoria are entirely within the remit of the State to remedy, but some things can be acted on as we suggest above.

The very high percentage of women being kept on remand is another area for prompt action. We understand this to be at least in part as a result of 2018 changes to the Bail Act 1977 (Vic). Whatever the reason for this change, a marked consequence is that more women are being charged with relatively minor offences and placed on remand. Waiting the outcome of their legal proceedings has been exacerbated by coronavirus restrictions creating a situation of “justice delayed is justice denied”.

The impacts on women of both short and longer periods on remand are separation from children, housing, health and community supports.