



13 March 2020

Committee on Children and Young People

Inquiry into the support for the children of imprisoned parents in New South Wales

By email: childrenyoungpeople@parliament.nsw.gov.au

Submission to the Inquiry into Support for Children of Imprisoned Parents in New South Wales

Dear Committee Members,

Community Legal Centres NSW welcomes the opportunity to make this submission to the Inquiry into Support for Children of Imprisoned Parents in New South Wales.

This submission addresses each of the inquiry's Terms of Reference. It focuses on the work community legal centres already do to support children of imprisoned parents in NSW, and the critical need to expand successful initiatives. In particular, we highlight:

- the value of the Legal Education and Advice in Prison (LEAP) program run through three community legal centres to support people in prisons, including parents, to address outstanding legal issues, remain connected to community and family, and get the tools they need to successfully transition out of imprisonment
- examples of community legal centres successfully delivering youth law services, including through targeted outreach to vulnerable groups of children and young people (many of whom have experienced parental imprisonment) and the need for dedicated, ongoing funding for these services in NSW.

If you have questions or need further input, please contact our Acting Advocacy & Communications Manager, Emily Hamilton, via emily.hamilton@clcnsw.org.au or (02) 9212 7333.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Tim Leach".

Tim Leach

Executive Director

Community Legal Centres NSW

CONTENTS:

1. ABOUT COMMUNITY LEGAL CENTRES NSW:.....	2
2. SUMMARY OF RECOMMENDATIONS:.....	3
3. PRISONS HARM CHILDREN, FAMILIES AND COMMUNITIES	5
3.1 <i>Impact on children of parental imprisonment</i>	5
3.2 <i>Failures of imprisonment as a solution to crime</i>	5
3.3 <i>Justice Reinvestment</i>	10
4. EXISTING POLICIES AND SERVICES TO SUPPORT CHILDREN OF IMPRISONED PARENTS	11
4.1 <i>Legal Education and Advice in Prison (LEAP) Program</i>	11
4.2 <i>Mothers and Children’s Program at Jacaranda Cottages</i>	13
5. AREAS OF IMPROVEMENT TO BETTER SUPPORT CHILDREN OF IMPRISONED PARENTS	14
5.1 <i>Accurate data collection</i>	14
5.2 <i>Overcoming barriers to contact between children and imprisoned parents</i>	15
5.3 <i>Lack of after-release support leads to recidivism</i>	19
5.4 <i>Self-determination for children of imprisoned parents</i>	20
5.6 <i>Children of imprisoned parents are more likely to experience poverty, other disadvantages and a multiplicity of legal problems</i>	21
5.7 <i>Community legal centre youth law services</i>	21
6. MORE INFORMATION	23

1. ABOUT COMMUNITY LEGAL CENTRES NSW:

Community Legal Centres NSW is the peak representative body for almost 40 community legal centres in NSW. Community legal centres are independent, non-government organisations that provide free legal services to people and communities facing economic hardship, at times when that help is needed most.

Community Legal Centres NSW represents the views of community legal centres to government and the broader community, advocates on key law reform and policy issues, and supports community legal centres to improve the efficiency and quality of services they deliver to the community, with the aim of increasing access to justice for people in NSW.

We are advised on matters relating to support for children of imprisoned parents by our Prisoners’ Rights Working Group and Care and Protection Network, including several of our member centres who have particular specialist expertise like Wirringa Baiya Aboriginal Women’s Legal Service and Women’s Legal Service NSW. Community legal centres across NSW work regularly with imprisoned people, many of whom are parents, on a wide range of legal matters including care and protection, and sexual and family violence. Many centres also work directly with young people, including those who have experienced parental imprisonment, to provide support on their civil and family legal matters.

The recommendations put forth in this submission are informed by extensive consultation with member centres, networks and working groups in the community legal sector in NSW.

2. SUMMARY OF RECOMMENDATIONS:

1. Imprisonment should always be the sentencing option of absolute last-resort, and only for violent offenders.
2. Savings generated from reduced rates of imprisonment should be reinvested into communities following the principles of justice reinvestment.
3. The government should reduce the number of people in prison on remand, particularly Aboriginal and Torres Strait Islander mothers.
4. There should be no new private prisons. Existing private prisons should be closed or transferred to government control.
5. The government should fund the Legal Education and Advice for Prisoners (LEAP) program for additional legal and social work positions at the Warringa Baiya Aboriginal Women's Legal Service, Women's Legal Service NSW and Western Sydney Community Legal Centre.
6. The government should expand mothers' and children's programs, by introducing them at more correctional centres and increasing the capacity of existing programs. Information about mothers' and children's programs should be made available to all women in prison, including on remand.
7. Courts should never use the existence of mothers' and children's programs as a reason to imprison women they otherwise would not.
8. The government should collect and regularly update comprehensive data on the number of people in prison who are parents.
9. The government should collect and regularly update comprehensive data on the number and demographics of children who have experienced or are experiencing parental imprisonment.
10. The government should make available specific financial support for transport and where appropriate, accommodation, to children and families of people who are imprisoned to enable prison visits to occur regularly.
11. Where a person is sent to a prison far away from their home and community, the government should make available specific financial support for relocation to the person's children and family if they choose to relocate to be close to the prison.
12. Prison staff, child welfare agencies and caseworkers should be made accountable to ensure families are kept well-informed of an imprisoned person's whereabouts and of any planned transfers.
13. Child welfare agencies should be made accountable to actively facilitate ongoing contact between a child and an imprisoned parent, including one-on-one support for a child to visit a parent in prison, where this is desired by the child.
14. Where the police take out an Apprehended Violence Order (AVO) to protect one parent from the other, children should not be automatically placed on the order. The police should assess orders on a case-by-case basis and consult with affected parties (including children where appropriate) to reach an outcome that is safe and does not unduly harm children's relationships with their parents.

15. Corrective Services NSW policies and budgets should be amended to allow people in prison far greater telephone access to make personal and legal calls.
16. The government should put in place and prioritise post-release family reunification services to support former inmates to reach out to their children and develop familial connections, where children consent to this.
17. The government should develop and implement training for judicial officers, prison staff and child welfare agencies to address negative attitudes towards and stigma surrounding children visiting their parents in prison.
18. The government should develop protocols to empower children to make decisions (where appropriate and within reason) about their contact with a parent in prison.
19. All social welfare services, including health, education and income support, should ask all children and young people they service whether they have had a parent go to prison and should develop targeted programs for outreach to support them.
20. The government should invest in comprehensive, free, independent youth law services to be administered through community legal centres and Aboriginal community-controlled organisations. Services should include targeted programs for identified vulnerable cohorts, including children with imprisoned parents.

3. PRISONS HARM CHILDREN, FAMILIES AND COMMUNITIES

3.1 Impact on children of parental imprisonment

The needs of children with imprisoned parents have been neglected by legal, prison, welfare and education systems.¹ Ideally, children should never experience their parent(s) being imprisoned. There are many potential short-term and long-term impacts on children from having one or both of their parents imprisoned, including:

- Financial disruption or insecurity
- Social isolation related to stigma and shame
- Displacement from schools, communities and networks if a family moves to follow an imprisoned family member who is transferred between prisons
- Relational changes which can impact future stability
- Increased likelihood of developing mental illness, including drug and alcohol addiction, attachment disorders and post-traumatic stress disorder (PTSD) due to trauma arising from:
 - watching a parent's arrest
 - being removed from parents, family or community
 - regular relocation or removal from Country for Aboriginal and Torres Strait Islander young people
 - shame and guilt associated with their parent's imprisonment
 - racism, systemic discrimination and intergenerational trauma
 - concurrent factors like poverty, disability, disrupted education and experience of out of home care (OOHC)
- Increased likelihood of future contact with the criminal justice and prison systems.

The severity of the impact on a child will be different depending on whether the parent imprisoned is their primary carer. Children whose fathers are incarcerated will often stay with their mother. Children whose mothers are imprisoned will more often be cared for by grandparents and other family members, or placed in OOHC, which can be more disruptive and worsen the negative impacts on the child of their parent's imprisonment.² Children who are removed from family entirely and placed into the OOHC system as a result of parental imprisonment are particularly harmed. OOHC is a recognised driver of entry into the criminal justice system: In 2010, young people placed in OOHC were found to be 16 times more likely than the general population to be placed under youth justice supervision in the same year.³

3.2 Failures of imprisonment as a solution to crime

A wealth of cost-benefit data shows that prisons are an investment failure: they destabilise communities, individuals and families, exacerbate mental illness and substance abuse, and

¹ Rosemary Woodward, "Families of prisoners: literature review on issues and difficulties", *Australian Government Department of Family and Community Services*, page 6
https://www.dss.gov.au/sites/default/files/documents/05_2012/op10.pdf

² Ann Cunningham, "Forgotten Families: The impacts of imprisonment" *Australian Institute of Family Studies*, 2001, page 36 https://aifs.gov.au/sites/default/files/ac_0.pdf.

³ Australian Law Reform Commission, *Pathways to Justice-Inquiry Into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Ch. 15. Child Protection and Adult Incarceration, <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/15-child-protection-and-adult-incarceration/crossover-out-of-home-care-into-detention/>

largely fail to rehabilitate people or provide them with the skills they need to reintegrate into the community.⁴ This money would be better invested in enhancing communities' capacity to identify and tackle their own challenges.

Far too many people in NSW are sentenced to imprisonment for non-violent offences like non-payment of fines, traffic violations or drug offences, which are often linked to poverty and systemic discrimination. Imprisoning these people, many of whom are parents, for very minor crimes is unnecessary and extremely harmful – to the person in question as well as their children, families and broader communities.

According to the latest Corrective Services NSW Inmate Census, in June 2018 almost 1 in 5 women and over 1 in 6 men who had been sentenced to a term of imprisonment, had non-violent drug charges as their most serious offence. The same census showed that over a third of people in full-time custody in NSW were unsentenced. The rates of Aboriginal and Torres Strait Islander women on remand are particularly concerning. As at June 2018, 42% of Aboriginal and Torres Strait Islander women being held full-time in prison were unsentenced.⁵

Rates of recidivism and inter-generational incarceration are key indicators of the failure of prisons to prevent crime. From 2011-12 to 2015-16, rates of imprisonment and recidivism in Australia both rose. In 2015-16, 44.6% of all Australian prisoners returned to jail within two years of release, compared with 39.5% in 2011-12.⁶ Children of parents who are imprisoned are themselves roughly six times more likely to end up imprisoned themselves – a statistic driven by racial and socioeconomic factors, stigma, and the OOHC system.⁷

Imprisonment is clearly failing to prevent crime – overcrowding and limited programs and services in prison are impediments to rehabilitation.⁸ Rates of intergenerational incarceration similarly show that the prison system is a failed approach to reducing or preventing crime.

Prisons harm Aboriginal and Torres Strait Islander people

Aboriginal and Torres Strait Islander people in Australia are imprisoned at the highest rate of any people in the world, and at a rate 16 times higher than non-Indigenous Australians.¹⁰ While Aboriginal and Torres Strait Islander children are 26 times more likely to be incarcerated than

⁴ Baillie Aaron, "Prisons are failing. It's time to find an alternative", *World Economic Forum*, 9 January 2019, <https://www.weforum.org/agenda/2019/01/prisons-are-failing-time-for-alternative-sparkinside/>

⁵ Corrective Services NSW, *NSW Inmate Census 2018*, <https://www.correctiveservices.justice.nsw.gov.au/Documents/research-and-statistics/sp47-nsw-inmate-census-2018.pdf>

⁶ Productivity Commission, *Report on Government Services 2017*, Volume C: Justice, <https://www.pc.gov.au/research/ongoing/report-on-government-services/2017/justice/rogs-2017-volumec.pdf>

⁷ Rebecca Opie, "Children of prisoners six times more likely to end up in jail; SA judge calls for better support", *ABC News*, <https://www.abc.net.au/news/2017-02-18/more-support-needed-for-children-of-prisoners/8282936>

⁸ Christopher Knaus, "Prisons at breaking point but Australia is still addicted to incarceration", *The Guardian*, 29 December 2017, <https://www.theguardian.com/australia-news/2017/dec/29/prisons-at-breaking-point-but-australia-is-still-addicted-to-incarceration>

⁹ Penal Reform International, *Overcrowding*, <https://www.penalreform.org/issues/prison-conditions/key-facts/overcrowding/>

¹⁰ Thalia Anthony and Eileen Baldry, "FactCheck Q&A: are Indigenous Australians the most incarcerated people on Earth?", *The Conversation*, 6 June 2017, <https://theconversation.com/factcheck-qanda-are-indigenous-australians-the-most-incarcerated-people-on-earth-78528>

non-Indigenous children.¹¹¹²¹³ In 2018, a quarter of the people in full-time custody in NSW identified as Aboriginal or Torres Strait Islander,¹⁴ despite making up just 2.9% of the NSW population.¹⁵

The Royal Commission into Aboriginal Deaths in Custody tabled its final report in April 1991, which detailed investigative accounts of 99 deaths in custody, put forth 339 recommendations, and was intended to be a blueprint for reducing the disproportionate incarceration of Aboriginal and Torres Strait Islander people and deaths in custody. The commission found that the over-incarceration of Aboriginal and Torres Strait Islander people and their deaths in custody were driven by prejudice at every stage of the criminal justice system, including:

- Prejudicial policing, particularly for minor crimes, and the tendency to charge and arrest Aboriginal and Torres Strait Islander people rather than issue warnings or court attendance notices
- Police and courts not granting bail to Aboriginal and Torres Strait Islander people
- Courts being more likely to sentence Aboriginal and Torres Strait Islander people to prison rather than non-custodial terms.

In the almost three decades since the Royal Commission, the state of Aboriginal and Torres Strait Islander incarceration and deaths in custody has actually worsened, and many of the commission's recommendations have still not been implemented. Over 400 Aboriginal and Torres Strait Islander people have died in custody since the end of the royal commission.¹⁶

Minor public order offences, such as offensive language and public drunkenness continue to be harshly punished. Police powers in relation to public drunkenness and arrest have actually been extended. At the same time, the right to bail has been undermined, and maximum prison penalties and mandatory prison sentences have increased. Services for Aboriginal and Torres Strait Islander people have been mainstreamed or defunded, Aboriginal and Torres Strait Islander children are removed from their families at staggering rates, and vulnerable Aboriginal and Torres Strait Islander people are increasingly targeted and criminalised, particularly young people, women experiencing family violence and people experiencing mental illness.¹⁷

¹¹ Dr Mike Roettger, Krystal Lockwood, Prof Susan Dennison, "Indigenous people in Australia and New Zealand and the intergenerational effects of incarceration" *Indigenous Justice Clearinghouse*, Research Brief 26, December 2019, <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/intergenerational-effects-of-incarceration-fa.pdf>

¹² Australian Bureau of Statistics. *Prisoners in Australia*, 2018, <https://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0>

¹³ Australian Institute of Health and Welfare, "Youth detention population in Australia 2018", Bulletin 145, December 2018, <https://www.aihw.gov.au/getmedia/55f8ff82-9091-420d-a75e-37799af96943/aihw-juv-128-youth-detention-population-in-Australia-2018-bulletin-145-dec-2018.pdf.aspx?inline=true>

¹⁴ Corrective Services NSW, *NSW Inmate Census 2018*.

¹⁵ Australian Bureau of Statistics, *2016 Census QuickStats*, https://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/1

¹⁶ The Guardian, *Deaths inside: Indigenous Australian deaths in custody 2019*, <https://www.theguardian.com/australia-news/ng-interactive/2018/aug/28/deaths-inside-indigenous-australian-deaths-in-custody>

¹⁷ Thalia Anthony, "Deaths in custody: 25 years after the royal commission, we've gone backwards", *The Conversation*, April 13 2016, <https://theconversation.com/deaths-in-custody-25-years-after-the-royal-commission-weve-gone-backwards-57109>

Aboriginal and Torres Strait Islander women are the fastest growing prison population in Australia.¹⁸ Eighty per cent are mothers.¹⁹ This disproportionate criminalisation of Aboriginal and Torres Strait Islander mothers is a significant contributor to the high rates of Aboriginal child removal, which in turn is a key driver of intergenerational imprisonment due to the well-established links between child removal, OOHC, and criminalisation of young people.

According to the Indigenous Justice Clearinghouse, in NSW roughly 1 in 5 Indigenous children experience parental imprisonment.²⁰ The consequences are significant and often intergenerational:

“Experience of parental incarceration compounds existing adversities in the lives of many children whose parents offend and is associated with an increased risk of antisocial behaviour and imprisonment, mental and physical health issues, substance use, academic difficulties, and social marginalisation or exclusion in offspring. These impacts hold true for Indigenous children who are also more likely to experience residential instability, abuse and neglect, and poverty. The effects of parental imprisonment may extend from birth to death, and across multiple generations and kinship networks.”²¹

On release from prison, if a parent is not permitted to return to their community or granted custody of their child, this can further disrupt families and entire communities – perpetuating the detrimental impacts of parental imprisonment on children and young people.²²

Prisons harm people with intellectual disability

People with an intellectual disability are overrepresented in Australia’s justice system: between nine and ten per cent of people in prison in Australia have an intellectual disability, despite just three per cent of the general population having an intellectual disability. Recidivism among people with intellectual disability who are imprisoned is also particularly high: more than twice the rate of people who have been imprisoned who do not have an intellectual disability.²³

A 2018 Human Rights Watch report highlighted that people with disabilities in prisons in Australia are disproportionately victims of sexual and physical violence while imprisoned. Due to lack of support and reasonable accommodation, people with intellectual disabilities can also find it challenging to understand prison rules and follow instructions. As such they are more

¹⁸ Australian Bureau of Statistics, 4517.0 – *Prisoners in Australia*, 2019, <https://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0>

¹⁹ Lorana Bartels, “Painting the Picture of Indigenous Women in Custody in Australia”, *QUT Law Review*, vol. 1, no. 2, October 2012.

²⁰ Dr Mike Roettger, Krystal Lockwood, Prof Susan Dennison, “Indigenous people in Australia and New Zealand and the intergenerational effects of incarceration” *Indigenous Justice Clearinghouse*, Research Brief 26, December 2019, <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/intergenerational-effects-of-incarceration-fa.pdf>

²¹ *Ibid.*

²² SHINE for KIDS, *Putting Your Child First: A survival guide for carers of children of prisoners, their families and workers*, page 12, https://www.shineforkids.org.au/documents/putting_your_child_first_dec13.pdf

²³ Jesse T Young, Kate van Dooren, Fernanda Claudio, Craig Cumming and Nick Lennox, “Transition from prison for people with intellectual disability: a qualitative study of service professionals”, *Australian Institute of Criminology: Trends & issues in crime and criminal justice*, no. 528, December 2016.

likely to inadvertently violate rules and face harsh punishment, including solitary confinement and sentence extension.²⁴

There are multiple reported instances of people with intellectual disabilities who have been arrested being found ‘unfit to plead’ due to their disability. They are then held in indefinite detention or under supervision despite the fact that they have not been found guilty, as authorities claim there is simply nowhere else to put them.^{25,26}

Children of people with intellectual disabilities are disproportionately vulnerable to being removed from their parents – particularly so when the parent is imprisoned. As of 2012, intellectually disabled parents made up just 1 per cent of the general parenting population but represented 10 per cent of parents before the courts in NSW fighting to have their children returned to them.²⁷ As discussed above, child removal and placement into OOHC increases a child’s vulnerability to future criminalisation.

Private Prisons

Almost one in five people in prison in Australia are held in private prisons: a rate more than twice that of the United States.^{28,29} While prisons on the whole are harmful – especially to vulnerable people and communities – the profit motive of private prisons makes them particularly damaging. Where profit is to be made from longer sentences and larger prison populations, there is no incentive for private prisons to prioritise programs and services for rehabilitation or prisoner well-being.

A 2016 report prepared by the University of Sydney Business School, found that in NSW:

- private prisons suffer from a lack of accountability, due in part to the operation of commercial in-confidence legislation
- very limited information about private prisons is publicly available: information supplied to oversight bodies over a decade amounted to fewer than 50 pages of text
- compliance issues, including low staff numbers and inadequate training, have caused several lock-downs in private prisons
- rates of prisoner complaints are significantly higher in private prisons

²⁴ Human Rights Watch, “I Needed Help, Instead I Was Punished’: Abuse and Neglect of Prisoners with Disabilities in Australia”, 2018, <https://www.hrw.org/report/2018/02/06/i-needed-help-instead-i-was-punished/abuse-and-neglect-prisoners-disabilities>

²⁵ Bernadette McSherry, “People with cognitive disability shouldn’t be in prison because they’re ‘unfit to plead’. There are alternatives”, *The Conversation*, <https://theconversation.com/people-with-cognitive-disability-shouldnt-be-in-prison-because-theyre-unfit-to-plead-there-are-alternatives-131295>

²⁶ Victorian Ombudsman, *Investigation into the imprisonment of a woman found unfit to stand trial*, October 2018, <https://assets.ombudsman.vic.gov.au/assets/Reports/Parliamentary-Reports/1-PDF-Report-Files/Investigation-into-the-imprisonment-of-a-woman-found-unfit-to-stand-trial.pdf?mtime=20191216132510>

²⁷ Emma Renwick, “Child removals from intellectually disabled parents ‘inhuman’”, *ABC News*, 24 October 2012, <https://www.abc.net.au/news/2012-10-23/calls-for-changes-to-child-removals-from-disabled-parents/4329772>

²⁸ *Productivity Commission – Report on Government Services, Volume C: Justice*. (Excel Attachment Tables), 2014, <https://www.pc.gov.au/research/ongoing/report-on-government-services/2014/justice>

²⁹ Elise Potaka, “Inside Parklea: The Deadly Consequences of Australia’s Private Prison Boom”, *SBS The Feed*, 20 November 2018, <https://www.sbs.com.au/news/the-feed/inside-parklea-the-deadly-consequences-of-australia-s-private-prison-boom>

- private prisons are no lower in cost to government than public prisons and there is no evidence to suggest private providers are more efficient or better performing.³⁰

In our experience, private prisons put up significantly higher bureaucratic barriers to contact between children and their imprisoned parents than public prisons, and so cause more harm to children of imprisoned parents. We hold significant concerns about the programs, services, suitability, accountability and contact arrangements in private prisons. We are particularly concerned about the new private 1600-bed super-prison due to open in Grafton on 1 July 2020.

3.3 Justice Reinvestment

Community Legal Centres NSW supports and promotes a justice reinvestment approach to criminal justice reform. Justice reinvestment is ‘a data-driven approach to improve public safety, reduce corrections and related criminal justice spending, and reinvest savings in place-based, community-led strategies that can reduce crime and strengthen communities.’³¹

As set out by Just Reinvest NSW:

*The underlying causes of crime are varied and complex. Research demonstrates that individuals who come into contact with the criminal justice system are highly likely to experience multiple and severe social and economic disadvantage including poverty and inter-generational trauma. Justice reinvestment provides communities with the power and resources to support people tackling challenging circumstances through long-term measures tailored to local needs that address the underlying drivers of crime.*³²

A 2018 KPMG Impact Assessment of the Maranguka Justice Reinvestment Project in Bourke estimated that improvements in family strength, youth development and adult empowerment as a result of the project had an economic impact of \$3.1 million on NSW government spending in 2017. Empowering the community to identify and implement early support services on the ground has kept people out of court and prison. This is not only a positive outcome for the community but has also saved the government from spending money on criminal justice.³³

In our view, the best way to reduce the harms caused by imprisonment is to sharply reduce imprisonment rates in NSW: imprisonment must be an absolute last-resort option, only ever imposed for violent offences. The government must also work to swiftly reduce the number of people being held in prison on remand, in particular, Aboriginal and Torres Strait Islander mothers. The savings gained from a significant reduction in imprisonment rates should be reinvested into community-led, place-based initiatives to strengthen communities and address the underlying disadvantages that drive crime.

³⁰ Associate Professor Jane Andrew, Dr Max Baker and Dr Phillip Roberts, “Prison Privatisation in Australia: The State of the Nation”, *The University of Sydney Business School*, 2016, https://business.sydney.edu.au/_data/assets/pdf_file/0008/269972/Prison_Privatisation_in_Australia-The_State_of_the_Nation_June_2016.pdf

³¹ Just Reinvest NSW, *What is justice reinvestment?* <http://www.justreinvest.org.au/what-is-justice-reinvestment/>

³² Just Reinvest NSW.

³³ KPMG, *Maranguka Justice Reinvestment Project: Impact Assessment*, 27 November 2018, <http://www.justreinvest.org.au/wp-content/uploads/2018/11/Maranguka-Justice-Reinvestment-Project-KPMG-Impact-Assessment-FINAL-REPORT.pdf>

RECOMMENDATIONS

1. Imprisonment should always be the sentencing option of absolute last-resort, and only for violent offenders.
2. Savings generated from reduced rates of imprisonment should be reinvested into community programs following the principles of justice reinvestment.
3. The government should reduce the number of people in prison on remand, particularly Aboriginal and Torres Strait Islander mothers.
4. There should be no new private prisons. Existing private prisons should be closed or transferred to government control.

4. EXISTING POLICIES AND SERVICES TO SUPPORT CHILDREN OF IMPRISONED PARENTS

4.1 Legal Education and Advice in Prison (LEAP) Program

Warringa Baiya Aboriginal Women's Legal Centre, Women's Legal Service NSW and Western Sydney Community Legal Centre provide services through the Legal Education and Advice in Prison (LEAP) program in recognition of the high levels of unmet civil and family law needs amongst women who are imprisoned.

The LEAP program assists prisoners to realise and enforce their human rights, in particular their rights in accessing justice. Through LEAP, women in prison are supported to address outstanding legal issues, to remain connected to community and family (including through negotiating contact with children in the OOH system with Department of Communities and Justice caseworkers and child welfare agencies), and to successfully transition out of imprisonment. The support provided through the LEAP program delivers significant benefits to the children of imprisoned parents, as it reduces the likelihood that the imprisoned parent will return to prison, and strengthens the parent's ability to care for their child after release.

The LEAP program partners provide regular, free legal advice clinics and some community legal education services for women at the three women's correctional centres in metropolitan Sydney:

- Dillwynia Correctional Centre, Berkshire Park
- Emu Plains Correctional Centre
- Silverwater Women's.³⁴

As the case studies below demonstrate, Warringa Baiya Aboriginal Women's Legal Centre provides crucial support to imprisoned mothers at Emu Plains Correctional Centre through the LEAP program.

CASE STUDY: LIAM³⁵ AND HIS MOTHER, JESSICA

Warringa Baiya Aboriginal Women's Legal Service first met Jessica, an Aboriginal woman and mother, in custody at Emu Plains Correctional Centre. Jessica's baby son, Liam, had been

³⁴ Women's Legal Service NSW, *LEAP for Women*, <https://www.wlsnsw.org.au/legal-services/legal-advice-and-casework/leap-for-women/>

³⁵ The case studies throughout this submission are factual scenarios informed by the experiences of community legal centre clients. Identifying information including names, ages of children and periods of incarceration has been amended so as to ensure the anonymity of our clients and their families.

removed from her care due to her past substance abuse. The Department of Family and Community Services (FACS) had assumed parental responsibility of Liam and placed him in the care of Jessica's brother and his partner.

Jessica had supervised contact with Liam in prison twice in 7 months and wanted more frequent contact with him. Jessica had not been using any drugs for some time.

Wirringa Baiya assisted Jessica by negotiating with FACS and arranged monthly supervised contact for Jessica and her baby. Subsequently, Jessica's brother and his partner filed a section 90 Application in the Children's Court seeking a Court Order for guardianship of Liam.

As Jessica and her brother's partner did not have a good relationship, Jessica was very concerned that if they were granted guardianship of Liam, they may stop facilitating her contact with him. Wirringa Baiya assisted Jessica to apply for Legal Aid for legal representation in relation to the Children's Court Application but her application was declined.

Wirringa Baiya then urgently drafted an Affidavit for Jessica in response to the section 90 Application, seeking defined Court Orders for her to have regular contact with Liam. The prison assisted Jessica to affirm and file the Affidavit. Jessica was granted Children's Court Orders to have monthly contact with Liam while she was in prison and also for that contact to continue once she was released from prison.

Jessica was very happy with the outcome, which enabled her to spend regular time with her baby son and to be a part of his life. Without legal assistance from Wirringa Baiya, Liam's ongoing relationship with his Aboriginal mother may have been cut off. This may have had a very damaging psychological impact on the child and also affected his cultural identity.

Source: Wirringa Baiya Aboriginal Women's Legal Service

CASE STUDY: ROSIE AND HER MOTHER, ANGELA

Wirringa Baiya Aboriginal Women's Legal Service acted for Angela, a young Aboriginal mother at Emu Plains Correctional Centre. Shortly after Wirringa Baiya met her, Angela was released from custody into residential drug rehabilitation through the Drug Court.

Angela had been having frequent telephone contact with her 9-year-old daughter Rosie, including while she was in custody, but she wanted to commence face to face contact. Rosie lived with her non-Aboriginal father and paternal grandmother. An application for contact was already in the Family Court, as Angela's sister had started proceedings for Rosie to spend time with her Aboriginal family. However, Angela had not been able to participate in these proceedings due to her long history of drug abuse and spells in custody.

Wirringa Baiya drafted the legal documents for Angela so that she could tell her story to the Court. As Rosie had lived with Angela for the first 4 years of her life, she still had a strong attachment to Angela and wanted to spend time with her, which the father opposed. The Expert Report from a psychiatrist also supported Rosie having supervised time with Angela.

On the Court hearing date, Angela was brought to the Court from prison (as she had been sent back) and was represented by a Legal Aid solicitor and barrister organised by Wirringa Baiya. Consent Orders were made that Angela and her sister engage with a therapist in order for the therapist to facilitate face to face contact with Rosie.

Without Wirringa Baiya providing extensive support to Angela to engage in the Court case, it is unlikely that Angela could have participated at all. This would have had a serious impact on

Rosie's welfare as she was desperate to renew her relationship with her mother and her extended Aboriginal family.

Source: Wirringa Baiya Aboriginal Women's Legal Service

The LEAP Program is a crucial service that significantly benefits children who are experiencing or have experienced parental imprisonment. Despite the necessity of this service, it receives no additional funding. As such, the Community Legal Centres NSW Budget Submission 2020-21 recommended an additional \$1.8 million be injected into the LEAP program to fund additional legal and social work positions at the three community legal centres that deliver LEAP services: Wirringa Baiya Aboriginal Women's Legal Service, Women's Legal Service NSW and Western Sydney Community Legal Centre.

4.2 Mothers and Children's Program at Jacaranda Cottages

The Mothers and Children's Program at the Jacaranda Cottages at Emu Plains Correctional Centre is a minimum-security arrangement that allows prisoners who are mothers to continue to parent their child(ren) while they are imprisoned through either the full-time residential program (which enables children up to age six to live full-time at the facility) or the occasional residential program (which enables children up to age 12 to stay with their mother on weekends and during school holidays). The program's primary focus is the child's best interest. It supports mothers in their parenting role and to acquire or retain caregiver skills. It is open to women who have been sentenced to prison terms and to those on remand.

The program has the capacity to house 24 women and 32 children. Between 2010 and 2017, 145 women and 229 children completed the program. The program has not seen a single child harmed since its inception in 1996, and has one of the lowest recidivism rates of all prison programs across NSW.³⁶

As of 2009, 49% of women in prison are mothers of children aged 16 or under. Given its proven success, the Mothers and Children's Program should be expanded so that all imprisoned mothers (where appropriate) can have contact with, and care for, their children. This means expanding the program to every correctional centre that imprisons women and expanding the capacity of all existing programs to meet need.

It is positive that women can apply for the Mothers and Children's Program while on remand: this fact should be made known to all women on remand who are mothers.

The Select Committee into Increasing Prisoner Populations 2000-2001 found that some courts had incarcerated women who were mothers *because* of the existence of the Mothers and Children's Program. It is vital that despite the existence of Mothers and Children's Programs, imprisonment must always remain an absolute last resort.³⁷

³⁶ Australian Human Rights Commission, National Children's Commissioner, *Children's Rights Report 2017*, page 100,

https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_CRR_2017.pdf

³⁷ University of New South Wales, "Vulnerable Groups in prison: Women in NSW – A Statistical and Policy Account 1970-2010", *UNSW Comparative Youth Penalty Project*, <https://www.cypp.unsw.edu.au/node/120>

RECOMMENDATIONS

5. The government should fund the Legal Education and Advice for Prisoners (LEAP) program for additional legal and social work positions at the Warringa Baiya Aboriginal Women's Legal Service, Women's Legal Service NSW and Western Sydney Community Legal Centre.
6. The government should expand mothers' and children's programs, by introducing them at more correctional centres, and increasing the capacity of existing programs. Information about mothers' and children's programs should be made available to all women in prison, including on remand.
7. Courts should never use the existence of mothers' and children's programs as a reason to imprison women they otherwise would not.

5. AREAS OF IMPROVEMENT TO BETTER SUPPORT CHILDREN OF IMPRISONED PARENTS

5.1 Accurate data collection

There is a lack of data in NSW on the number of people in prison (including young people) who are parents, with the most recent *Inmate Health Survey* carried out in 2009. The fact that there is no updated statistical data limits the government's capacity to develop and implement appropriate policies and programs to meet the needs of incarcerated parents and their children.³⁸

In NSW, the Collaborative Legal Service Delivery (CLSD) Program uses demographic and other data to target legal service delivery to at risk and high needs group within defined geographic regions. CLSD Program partnerships are coalitions of legal and non-legal services including Legal Aid NSW, community legal centres, the Aboriginal Legal Service NSW/ACT, family violence prevention legal services, local court services and staff, women's domestic violence court advocacy services and a range of related community and human services.³⁹

The data currently provided to CLSDs does not include data on the number of families or young people with a parent, guardian or relative currently imprisoned. It is critical that this data is regularly collected and reported so that service providers can plan an effective service strategy for and appropriately target resources to children and young people experiencing parental imprisonment.

RECOMMENDATIONS

8. The government should collect and regularly update comprehensive data on the number of people in prison who are parents.

³⁸ Australian Human Rights Commission, National Children's Commissioner, *Children's Rights Report 2017*, page 98,

https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_CRR_2017.pdf

³⁹ Legal Aid NSW, *Cooperative Legal Service Delivery Program (CLSD)*,

<https://www.legalaid.nsw.gov.au/what-we-do/community-partnerships/cooperative-legal-services-delivery-clsd-program>

9. The government should collect and regularly update comprehensive data on the number and demographics of children who have experienced or are experiencing parental imprisonment.

5.2. Overcoming barriers to contact between children and imprisoned parents

Children should not be limited from seeing their parents while they are in prison. It is beneficial to children to know what is happening to their parent, where their parent is and why they are there. Children are adaptable and can often cope better with this information than many adults think: visiting a parent in prison can in fact settle children's initial fears. Children of imprisoned parents can often blame themselves, so it is important to be transparent with them about what is happening, to check in with the child and to answer any questions they might have about the process.⁴⁰

Restrictive prison environments can also make imprisoned parents feel disconnected and powerless, including through being unable to regularly contact or care for their children.⁴¹ Imprisoned parents who are able to maintain regular contact with their children are less likely to reoffend upon release, often have improved parole prospects and generally have better mental health, relationships and family ties, than parents who are unable to maintain regular contact with their children while they are in prison. These improved outcomes for parents in turn create better outcomes for their children.⁴²

Children should be able to continue to have contact with imprisoned parents, where appropriate and wanted by the child. It is important that supports are implemented to safeguard this contact. Child welfare agencies should be accountable for actively facilitating meaningful relationships between children and imprisoned parents where appropriate, pursuant to family law principles.

CASE STUDY: DAVID AND HIS CHILDREN

David is incarcerated at the Wellington Correctional Centre in relation to non-violent drug charges. His earliest release date is in 2026. He has two children, aged 3 and 6 (who will be 9 and 12 upon his release). David last saw the children 15 months ago.

In light of David's period of incarceration, the Family Court has granted the children's mother, Julie, sole parental responsibility, with any contact with David to be at Julie's sole discretion. David is happy for Julie to raise the children and recognises that he "stuffed-up" by getting involved in drugs. However, David wants his children to know that he loves them and to keep open the option of having a relationship with them in the future. He has written various letters to his children over a 6-month period, asking how they are and telling them that he misses them and loves them.

⁴⁰ Gloria Larman, from SHINE, in "Women in prison: The hidden story", Law Society of NSW Journal, November 2015, <https://shineforkids.org.au/law-society-journal-looks-at-the-plight-of-women-in-prison/>

⁴¹ Ann Cunningham, "Forgotten Families: The impacts of imprisonment" *Australian Institute of Family Studies*, 2001, page 37 https://aifs.gov.au/sites/default/files/ac_0.pdf.

⁴² Corrective Services NSW, *Families Handbooks*, 2018, page 41 <https://www.crcnsw.org.au/wp-content/uploads/2018/11/Families-Handbook-2018.pdf>

David is yet to receive a response and under the current family law orders, there is no obligation on Julie to acknowledge receipt of, or pass on, the letters to the children as any contact is at her sole discretion.

Source: Western NSW Community Legal Centre

Physical location of prisons

Many prisons are geographically isolated, meaning that it can be costly, impractical or even impossible for children to visit their parents in prison.

Some families may relocate to be closer to a family member who is imprisoned, and while this means contact can be maintained, this can cause disruption to children's schooling and support networks. Relocating can also result in economic hardship from moving costs and a loss of stable employment for the child's other parent or caregiver.⁴³

Children and families living in regional, rural and remote (RRR) areas are disproportionately impacted by the hardship of physical distance from their parent or family member (particularly as access to public transport in many RRR areas in NSW is poor to non-existent) or of having to uproot from their community and relocate to be close to their imprisoned family member.

Making matters more difficult, prisoners may be transferred between prisons many times: this can disrupt the contact between a child and their parent or, in cases where a child does move to follow the imprisoned parent between prisons, disrupts their schooling and networks every time the parent is relocated.

Prisoners may also be transferred without any communication to their family of the transfer. This can be due to oversight, or the fact that prison caseworkers are often too busy to contact the family every time a prisoner is moved. Community legal centre workers have regularly seen cases where a family has travelled to visit a child's parent in a geographically isolated prison, only to find out on arrival that the person has been transferred elsewhere without notice. This is not only a waste of time and money but can also be upsetting or traumatic to the child.

Prisons and caseworkers should be made accountable to notify families of prisoner whereabouts and planned transfers. If staffing is inadequate to guarantee reliable communication, caseworker numbers must be increased in order to safeguard the right of children and families to be kept aware of their imprisoned family member's whereabouts.

Bureaucratic barriers to visiting

There are two layers of rules and obstacles for children and young people when it comes to visiting their parents in prison: court orders from various jurisdictions (e.g. the Family Court, local courts), as well as prison-imposed rules and regulations. This can make the process of arranging a visit a bureaucratic impossibility.

Regularly, the police will take out a no-contact Apprehended Violence Order (AVO) against one parent (who may also be in prison), for the protection of the other. We have often seen in these cases that children are automatically included on that AVO by the police. This means that even where the child and the imprisoned parent want to stay in contact and arrange visits, and where the other parent agrees that the imprisoned parent is not a danger to the child, it is not legal for

⁴³ Ann Cunningham, "Forgotten Families: The impacts of imprisonment" *Australian Institute of Family Studies*, 2001, https://aifs.gov.au/sites/default/files/ac_0.pdf.

any contact to occur. This has the potential to significantly damage a child's relationship with both parents.

Where the police take out an AVO for the protection of one parent from the other, children should not be automatically placed on the AVO. The police should have an obligation to assess matters on a case-by-case basis and to consult with affected parties (particularly, where appropriate, the child) to reach an outcome that is both safe and does not unduly harm children's relationships with their parents.

CASE STUDY: SOPHIE AND HER FATHER, JAMES

James is incarcerated for 11 months in Macquarie Correctional Centre for a breach of an AVO while on parole. There is a no-contact AVO in place, taken out by police, for the protection of James' partner, Naomi. James' and Naomi's 14-year-old daughter, Sophie, is named on the AVO. Naomi wants James to have a relationship with Sophie. James is a loving Dad, who has had contact with Sophie throughout her life. There is no evidence that he has ever been violent towards Sophie.

James' mother has offered to take Sophie to the prison for visits with James, however as Sophie is named on the AVO, facilitating such a visit will be in breach of the AVO. Naomi has asked police to vary the AVO to allow contact, however the police have refused. To have contact, James must now make a court application for the AVO to be varied. Naomi has told police that she would never have reported the violence if she knew that Sophie wouldn't be able to see James. Sophie blames her mum for stopping her from seeing her Dad and there is now significant tension in the family.

Source: Western NSW Community Legal Centre

Even where there are no legal restrictions placed on a child visiting their parent in prison, prison bureaucracies can make visiting difficult or impossible. Many prisons have rigid visiting hours, very unreliable communication channels, and visiting area environments that are unsuitable for children. For instance, in most cases, children are not allowed to bring toys to entertain themselves during visits, and visiting areas can be loud, busy and intimidating to children. These factors can make visits unpleasant and difficult for children to connect and engage with their parent.⁴⁴ Depending on a prisoner's classification or the correctional centre they are in, there may be restrictions on the number of visits a prisoner may have. This can mean that children can miss out on visits if a prisoner's visitor allocation is taken up by other members of the family. In the experience of community legal sector workers, private prisons are much more difficult to visit than public prisons, due to prison rules and regulations and unreliable communication channels.

CASE STUDY: LUKE & LILY AND THEIR MOTHER, KERRY

Wirringa Baiya Aboriginal Women's Legal Centre assisted Kerry, an Aboriginal mother of 2-year-old Lily and 8-month-old Luke, who was in custody at Berrima Correctional Centre.

Prior to her imprisonment there had been a domestic violence incident between Kerry and the father of her children. The father obtained an AVO against Kerry, even though she had been

⁴⁴ SHINE for Kids *Prison Invisits Program* <https://shineforkids.org.au/prison-invisits-program/>

the victim of violence from him. When police applied for the AVO, they didn't tell Kerry that Lily and Luke were named on the AVO or that it prevented all contact.

At the time of the violence, Kerry did not disclose the father's violence to the police as she was concerned that FACS may remove Lily and Luke from her care. Instead, Kerry left the children in the temporary care of their paternal grandmother for one week while she tried to sort the matter out. When Kerry later attempted to pick her children up, the children's grandmother would not let her see them. Kerry was then charged with breach of the AVO when she repeatedly tried to contact the children's paternal grandmother about access.

Kerry was later imprisoned for an unrelated matter and Wurringa Baiya began to assist her. When the Wurringa Baiya solicitor explained the effect of the AVO to Kerry she was shocked and very upset about it. Kerry said: *"That's not what police told me about the AVO. They didn't tell me my kids would be on there and I can't see them"*.

Kerry told Wurringa Baiya police convinced her to agree to the AVO and did not tell her the truth. Kerry was served with the AVO over Facebook messenger and the police sent it with smiley face emojis. Kerry didn't look at the AVO and didn't understand what was in it. Kerry said: *"I just want to have contact with my kids and be a mother to them."*

Kerry was also worried that her baby son, Luke, would form a primary attachment to his grandmother while she was in jail, as she was not allowed any contact with him. Kerry had asked the paternal grandmother for a photo of Luke and Lily while she was in custody, but she was not given anything. Wurringa Baiya wrote a letter to the paternal grandmother asking for photos of the children, which were received and forwarded on to Kerry in custody.

Wurringa Baiya then commenced negotiations with the paternal grandmother's solicitor and it was agreed that the grandmother would attend mediation with Kerry. Wurringa Baiya also assisted Kerry to make plans for after her release from custody which would allow her the best opportunity to spend regular time with her children. Once Kerry was released, she moved to a rural area to be close to Lily and Luke and Wurringa Baiya referred her to a community legal centre closer to where she lived to assist her with Family Dispute Resolution.

Without this legal assistance while in prison, Kerry may not have been able to reconnect with her children for some time. This delay would have disadvantaged her family law case and would have damaged Lily's and Luke's chance of maintaining a close relationship with their mother.

Source: Wurringa Baiya Aboriginal Women's Legal Service

Phone calls

The costs for contact between a child and their imprisoned parent through phone calls and letters can be prohibitive. Some inmates may have access to a telephone, but no financial means to make a call to their child.

At present, calls placed to numbers listed on the Common Auto Dial List are covered by Corrective Services NSW (CSNSW), and beyond this:

- unconvicted inmates can have three personal local phone calls and all legal telephone calls per week covered by CSNSW
- convicted inmates can have one personal local phone call per week covered by CSNSW but must cover the cost of all legal and other personal phone calls themselves.

All personal phone calls are restricted to 6 minutes, and legal calls are restricted to 10 minutes. Inmates are not permitted to make consecutive calls and must wait 10 minutes before placing another call.

These restrictions mean that phone contact between imprisoned parents and their children is very limited. If the prison is far away from where the child lives, phone calls can be the only way for children to hear their parent's voice, and under current restrictions, this is vastly insufficient to maintain a healthy relationship between the parent and child. If the times when parents are permitted to make phone calls are restricted through a phone shortage or through prison bureaucracy, it can further harm the child. This can result in either even less phone contact with a parent, or regular disruption to the child's routine.

RECOMMENDATIONS

10. The government should make available specific financial support for transport and, where appropriate, accommodation, to children and families of people who are imprisoned, to enable prison visits to occur regularly.
11. Where a person is sent to a prison far away from their home and community, the government should make available specific financial support for relocation to the person's children and family if they choose to relocate to be close to the prison.
12. Prison staff, child welfare agencies and caseworkers should be made accountable to ensure families are kept well-informed of an imprisoned person's whereabouts and of any planned transfers.
13. Child welfare agencies should be made accountable to actively facilitate ongoing contact between a child and an imprisoned parent, where appropriate; up to and including one-on-one support for a child to visit a parent in prison.
14. Where the police take out an Apprehended Violence Order (AVO) to protect one parent from the other, children should not be automatically placed on order. The police should assess orders on a case-by-case basis and consult with affected parties (including children where appropriate) to reach an outcome that is both safe and does not unduly harm children's relationships with their parents.
15. Corrective Services NSW policies and budgets must be amended to allow people in prison far greater telephone access to make personal and legal calls.

5.3 Lack of after-release support leads to recidivism

After-release support for imprisoned people is limited and inconsistent. This means that many parents lack the support they need to remain out of the criminal justice system. The impacts on children of having a parent in prison are compounded when a parent is re-imprisoned.

Evidence shows that where parents and children maintain contact and relationships during the parent's period of imprisonment, recidivism is reduced. Strong relationships following release similarly reduces recidivism.⁴⁵

There should be structures and services in place to support the re-unification of families and development of extended familial connections following release. Former inmates should be

⁴⁵ Talina Drabsch, "Reducing the Risk of Recidivism", *NSW Parliamentary Library Research Service*, Briefing Paper No 15/06, November 2006.

supported to reach out to their children, where the children consent. This should be particularly prioritised for non-violent offenders, and would likely help rehabilitation and reduce re-offending, to the benefit of both the parent and the child.

RECOMMENDATIONS

16. The government should put in place and prioritise services to support family re-unification following a prisoner's release to support former inmates to reach out to their children and develop familial connections, where children consent to this.

5.4 Self-determination for children of imprisoned parents

Training to overcome the stigma around children seeing parents in jail

There is a dangerous stigma that 'prisoner parents are intrinsically bad parents.' In particular, imprisoned mothers are often viewed as having 'failed their role as a mother.'⁴⁶ Similarly, prisons are often viewed as places where a child should never be. These misconceptions hinder the ease with which children can have contact with their parent, often causing the child and parent more harm in the long run.

A child who is able to visit their imprisoned parent is more likely to have an understanding of the situation, and ultimately cope better than a child who is kept in the dark. Transparency is essential to ensure the child does not mistrust those around them or become further confused about the whole situation.⁴⁷ Children cope in different ways, depending on their age, developmental stage and the type of relationship they have with their parent. A child's resilience in challenging situations is also bolstered through their environmental influences and role models. Transparency, honesty and destigmatising the fact their parent is in prison goes a long way to positive long-term outcomes.⁴⁸

When problematic beliefs relating to the ability of imprisoned people to be good parents and to the supposed negative impact on children from seeing their parent in prison are held by judicial officers, prison staff, child welfare workers, caregivers and others in decision-making positions, they can negatively impact a child's ability to have contact with their parents.

It is important that judicial officers, prison staff and child welfare workers are provided with training in order to address this stigma so they can be better equipped to make decisions that are in the best interests of children of imprisoned parents.

Protocols for empowering children to make decisions themselves

Self-determination is a key right for children. It is important that consideration be given to the wishes of children and young people themselves as to the type of contact they have with a parent who is imprisoned. There should be a set of protocols for empowering children to make decisions (where applicable and within reason) about whether or not they wish to visit or otherwise contact their parent, and the nature and frequency of this contact.

⁴⁶ Ann Cunningham, Australian Institute of Family Studies, *Forgotten Families: The impacts of imprisonment* (2001), page 37 https://aifs.gov.au/sites/default/files/ac_0.pdf.

⁴⁷ *Ibid.*, page 36.

⁴⁸ Stephanie Heinecke Thulstrup and Leena Eklund Karlsson, "Children of Imprisoned Parents and Their Coping Strategies: A Systematic Review", *Unit for Health Promotion Research, University of Southern Denmark*, 24 May 2017.

In order to properly adopt and enact such protocols, judicial officers and court workers must have an understanding of the right of a child to know the whereabouts of their parent and to have a say in contact with that parent.

Section 9(2) of the *Children & Young Persons (Care and Protection) Act (1998)* states that ‘wherever a child... is able to form his or her own views on a matter concerning his or her safety, welfare and well-being, he or she must be given an opportunity to express those views freely and those views are to be given weight in accordance with the developmental capacity of the child... and the circumstances.’ While this Act relates to child protection matters, sections concerning children’s rights to self-determination (amongst others) are applicable here.

Protocols must be developed to empower children to make their own decisions about their level of contact with a parent who is imprisoned, setting out how the child’s wishes should factor into or guide the decision-making of adults regarding that child’s contact with their parent.

RECOMMENDATIONS

17. The government should develop and implement training for Judicial officers, prison staff and child welfare agencies to address negative attitudes towards and stigma surrounding children visiting their parents in prison.
18. The government should develop protocols to empower children to make decisions (where appropriate and within reason) about their contact with a parent in prison.

5.6 Children of imprisoned parents are more likely to experience poverty, other disadvantages and a multiplicity of legal problems

As outlined in section 3.1 above, children of imprisoned parents are more likely to experience poverty and other disadvantages than the general population. This can be as a result of stigma, the potential loss of an income that would otherwise have been earned by the parent now imprisoned, and many other factors.

In recognition of this, there should be specific programs to work with families of imprisoned people and sufficient funding to ensure that mainstream support services, like health, education, income support and financial counselling are adequate and as accessible to this population as to any member of society. Given the compounded disadvantage experienced by this cohort, additional targeted outreach services are critical to ensure their access to services. Targeted programs should be holistic and include linking up children and young people with legal support as needed.

In the experience of our member centres with expertise in working with children and young people, children of imprisoned parents are also more likely to experience a multiplicity of legal problems than the general population. These legal problems include discrimination, homelessness, problems at work, online harassment and more. It is important to adequately address this greater potential for legal problems through dedicated funding for a program for legal support for this cohort.

5.7 Community legal centre youth law services

There is a significant gap in free, independent legal services funded to support children and young people. Youth Law Australia is a community legal service that is dedicated to helping children and young people find legal solutions and is Australia’s only national, technology-based community legal service. However, Youth Law Australia’s funding (from the

Commonwealth Government) will not be renewed at 30 June 2020 and the organisation receives no State Government funding, despite providing services in NSW. This will significantly exacerbate the service capacity shortfall for legal help for children and young people.

Beyond the work of Youth Law Australia, several generalist community legal centres deliver successful youth law services, such as Marrickville Legal Centre's state-wide dedicated youth legal service, and Mid North Coast Community Legal Centre's work with young people transitioning out of OOHC within their geographic catchments.

One example of a community legal centre engaging in effective, targeted outreach to a vulnerable group of children and young people to address a key area of unmet legal need is the Hunter Youth Law Service.

The Hunter Youth Law Service provides legal advice and assistance for non-criminal (civil and family law) matters at the Broadmeadow Children's Court. During 2019 the Hunter Youth Law Service was also provided at three Hunter Valley Children's Courts: Maitland, Raymond Terrace and Muswellbrook. By providing legal assistance in a venue that young people are already attending, the project aims to identify and provide early assistance for civil and family law problems that are often ignored and allowed to escalate. The youth solicitor attends Court on the Children's criminal list day to talk to young people aged 15 to 24. The solicitor offers interested young people a legal health check to identify outstanding civil and family law issues. They provide immediate advice and assistance on the day and, if there are more complex matters, can offer ongoing assistance.

In 2019 the youth solicitor completed over 200 legal health checks with young people at 28 outreach visits to the Hunter Children's Courts. Legal advice was provided on 98 occasions and 78 matters required ongoing assistance. A total of 118 referrals were made to external services. 89% of clients were under 18 years old and 43% identified as Aboriginal or Torres Strait Islander. 48% identified as having a disability or mental illness. These statistics highlight the significant unmet need for civil and family law services amongst children and young people.

An evaluation of the Hunter Youth Law Service conducted in 2019 revealed that the service successfully increased Hunter Community Legal Centre's service delivery to young people aged 0-24 by 40%. 82% of clients that participated in the evaluation survey had not received assistance with their legal issues before engaging with the Hunter Youth Law Service, with 75% unaware that their matter was a legal issue a lawyer could assist with. This highlights not only a lack of understanding of civil legal issues, but also the fact that young people are unlikely to seek assistance with these types of issues.

CASE STUDY: EMILY

The Hunter Youth Law Service met Emily at the Children's Court. Emily was at risk of homelessness and had been couch surfing for a couple of weeks at the time. Emily had unpaid fines, police complaints and had lost important identification documents. The lack of ID meant that Emily was unable to access community support services. Emily also could not return home due to her AVO. The Hunter Youth Law Service was able to advocate on Emily's behalf and assist her in paying off her fines. They were also able to assist in Emily's application to receive new identification documents. After reviewing the evidence provided by Emily, the Service's Youth Lawyer was able to advise and assist Emily in making a formal police complaint. As a result, the police officers involved have been suspended from their duties. Emily is now relocating to a safe and stable home with family and has a job waiting for her.

Source: Hunter Youth Law Service, Hunter Community Legal Centre

The work of community legal centres is unique, community-based, holistic and unable to be replicated by other service providers. There is a significant funding shortfall for specialist, targeted legal support to children and young people, particularly to vulnerable cohorts of children young people, including those experiencing parental imprisonment.

The government must adequately fund free, independent youth law services to address this shortfall. These youth law services should include targeted funding for identified vulnerable cohorts, including:

- children and young people with disabilities
- Aboriginal and Torres Strait Islander children and young people
- homeless children and young people
- LGBTI+ children and young people
- children and young people in out of home care
- children and young people in contact with the criminal justice system
- children and young people who have experienced or are experiencing parental imprisonment.

This specialist targeted funding for youth law services should be administered through community legal centres and Aboriginal community-controlled organisations (including community legal centres that are Aboriginal-controlled such as Wirringa Baiya Aboriginal Women's Legal Service and Thiyama-li Family Violence Service Indigenous Corporation).

RECOMMENDATIONS

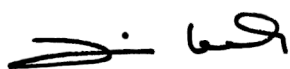
19. All social welfare services, including health, education and income support should ask all children and young people they service whether they have had a parent go to prison and should develop targeted programs for outreach to support.
20. The government should invest in comprehensive, free, independent youth law services to be administered through community legal centres and Aboriginal community-controlled organisations. Services should include targeted programs for identified vulnerable cohorts, including children with imprisoned parents.

6. MORE INFORMATION

Thank you for taking the time to consider our submission.

If you have questions or need further input, please contact our Acting Advocacy & Communications Manager, Emily Hamilton, via emily.hamilton@clcnsw.org.au or (02) 9212 7333.

Yours sincerely,



Tim Leach
Executive Director
Community Legal Centres NSW