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LAW & ADVOCACY
CENTRE FOR WOMEN

Inquiry into Australia's youth justice and incarceration system

SUBMISSION ON BEHALF OF THE LAW AND ADVOCACY CENTRE FOR WOMEN LTD
OCTOBER 2024

Inquiry into Australia's youth justice and incarceration system

Submission on behalf of the Law and Advocacy Centre for Women Ltd

Background

On 11 September 2024, the Senate referred the following matter to the Legal and Constitutional Affairs References Committee, for inquiry and report by 26 November 2024:

Australia's youth justice and incarceration system, with particular reference to:

- a) the outcomes and impacts of youth incarceration in jurisdictions across Australia;
- b) the over-incarceration of First Nations children;
- c) the degree of compliance and non-compliance by state, territory and federal prisons and detention centres with the human rights of children and young people in detention;
- d) the Commonwealth's international obligations in regards to youth justice including the rights of the child, freedom from torture and civil rights;
- e) the benefits and need for enforceable national minimum standards for youth;
- f) justice consistent with our international obligations; and
- g) any related matters.

Introduction

The Law and Advocacy Centre for Women (LACW) is a community legal centre located in Carlton and operating across Victoria. It is the only legal service in Victoria whose primary focus is to provide a gender-specific approach to assisting women who are in, or at risk of entering, the criminal justice system. LACW was established in 2016, specifically in response to the rising rates of imprisonment and criminalisation for women. Its mandate is to combat these trends by providing a holistic approach to women in the justice system, providing a wraparound service that combines legal advice and representation alongside case management to address the underlying causes of women's criminalisation and imprisonment. The majority of LACW's legal work is in the provision of criminal defence advocacy. Other areas of practice include infringements and fines, victims of crime assistance, family violence intervention orders, and until recently, child protection. Approximately 30% of LACW's clients identify as First Nations women.

In this submission we will not seek to address every dot point set out in the Inquiry's terms of reference. Rather, we will provide submissions regarding particular areas of concern to our client cohort and their children – namely, the link between child protection and youth justice involvement; the impact of early interaction with the criminal justice system; the need to raise the age of criminal responsibility; and implementation of the Convention against Torture and the Optional Protocol to the Convention against Torture. We note that, alongside a large number of other organisations in Victoria, we have recently made submissions to the Yoorrook Justice Commission in relation to similar issues, and we urge the Committee to take into consideration the findings and recommendations of that Commission in undertaking this inquiry.

Acknowledgement

LACW acknowledges that we operate on Aboriginal land, and that our office is located on the stolen land of the Wurundjeri people of the Kulin Nation. We pay our respects to Elders past and present. Sovereignty over this land was never ceded and it always was, and always will be, Aboriginal land.

We acknowledge also that First Nations people experience disproportionate adverse impacts across the whole spectrum of the justice and child protection systems – including as a result of discriminatory and racist policing practices, inter-generational trauma, ongoing rates of disproportionate child removal, and systemic failures leading to their gross over-representation in the prison system. We also recognise the resilience and strength of First Nations communities, and the leadership they have shown and continue to show in advocating for and implementing reforms to these systems.

We encourage the Inquiry to centre the voices of people with lived experience of Australia's youth justice, youth detention, and child protection systems – particularly those from First Nations communities – in identifying the problems with the current system and developing proposed reforms.

Link between child protection and youth justice involvement

In examining Australia's youth justice and incarceration system, it is crucial to have regard to its intersections with both child protection involvement and parental incarceration.

The strong correlation between child protection intervention and youth justice involvement is well documented. In Victoria, the Government's *Youth Justice Strategic Plan 2020-2030* found that over 40 per cent of children and young people in contact with the youth justice system are the subject of current or previous child protection intervention.¹ The majority of young people under youth justice supervision in Victoria (60.4 per cent) also received a child protection service over a recent 4-year period.² This is over ten times the rate of child protection involvement among the general Victorian youth population.³ For First Nations children the percentage is higher, with 69 per cent of children under youth justice supervision having also received child protection services.⁴

Data provided to the Yoorrook Justice Commission confirms that residential care is the most common placement type for children who have contact with both the child protection and the youth justice systems in Victoria (referred to as 'crossover children'), where a staggering 67 per cent of First Nations children and 66 per cent of non-First Nations children aged 10 to 14 in residential care will have subsequent contact with the criminal justice system.⁵ This issue is also documented by the Commission for Children and Young People in the *Our Youth, Our Way* report.⁶

Unsurprisingly, there is also a correlation between parental incarceration and the placement of children in out-of-home care. Most women in Australian prisons have children, with 85 per cent having been pregnant at some point in their lives, and 54 per cent having at least one dependent

¹ Victorian Government, *Youth Justice Strategic Plan 2020-2030* (Report, May 2020) 9.

² Australian Institute of Health and Welfare, *Young people in child protection and under youth justice supervision: 1 July 2013 to 30 June 2017* (Report, 16 October 2018) 11.

³ Ibid.

⁴ Ibid 12, Table S4.

⁵ Yoorrook Justice Commission, *Yoorrook for Justice* (Report, August 2023) 195 – 200.

⁶ 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* (Report, 9 June 2021).

child.⁷ Children removed from their mothers when they are incarcerated are placed in the care of family members, kinship carers or into state care. This is traumatic for mothers and children alike – and for many, sets in motion a complex trajectory. 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 the child protection or criminal legal system.⁸ The correlation between parental incarceration during childhood and later incarceration of the child has also been documented.⁹

Impact of early interaction with the criminal justice system

Research shows that early interaction with the criminal legal system significantly increases the likelihood of further offending and life-long involvement with the justice system.¹⁰ Conversely, the Royal Commission into the Protection and Detention of Children in the Northern Territory noted that most children who are dealt with outside the formal criminal justice system do not reoffend and are more likely to grow up into an environment that promotes their healthy development and education.¹¹

LACW calls for opportunities for young people to engage in pre-charge programs and diversionary programs to be increased. By addressing the underlying issues that are causing interactions with police, diversionary programs offer a pathway away from further criminalisation, instead of a pathway to imprisonment. However, the limited opportunities for young people to engage in these programs undermine their effectiveness and serve to entrench young women in the criminal justice system. There is an urgent need for diversionary programs to include gender-informed and culturally appropriate programs that consider the different pathways towards criminalisation for women and girls and the barriers to access they may face.

Raising the age of criminal responsibility

The age of criminal responsibility in Victoria will soon be raised to 12 years old, but this remains well out of step with international standards. LACW supports the growing number of Aboriginal and Torres Strait Islander organisations, expert United Nations bodies, human rights organisations, medical and legal bodies, and academics calling for the age of criminal responsibility to be raised to 14 years of age. Given the well-documented links between out-of-home care, parental incarceration and the youth justice system, this will have direct benefits for children and the community, allowing greater time and space for engagement with rehabilitation and support services, in place of the current trajectory from out-of-home care into the criminal justice system.

⁷ Australian Institute of Health and Welfare, *The health and welfare of women in Australia's prisons* (17 November 2020).

⁸ J Sherwood et al, 'Reframing Space by Building Relationships: Community Collaborative Participatory Action Research with Aboriginal Mothers in Prison' (2013) 46(1) *Contemporary Nurse* 83, 85.

⁹ V Troy et al, 'The feasibility, appropriateness, meaningfulness, and effectiveness of parenting and family support programs delivered in the criminal justice system: a systematic review' (2018) *Journal of Child and Family Studies* 27, 1732–47.

¹⁰ Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria* (Report, December 2016) 26.

¹¹ Royal Commission into The Protection and Detention of Children in the Northern Territory, *Findings and Recommendations* (Report, 17 November 2017).

Case Example | Raising the age of criminal responsibility

While LACW does not represent clients with criminal matters in the Children's Court, many of our clients had their first involvement with the criminal justice system at a young age. For example:

LACW acted for one First Nations woman who was raised in out of home care due to neglect and drug use by her parents. She was housed between group home settings and in foster care placements. She was the victim of childhood sexual assault and family violence in her childhood and had her first contact with the criminal justice system when she was 11 years old. Her history of institutionalisation, complex trauma, drug use and mental illness all contribute to her ongoing criminalisation.

Implementation of the Convention against Torture and the Optional Protocol to the Convention against Torture (OPCAT)

The federal government ratified OPCAT in December 2017. It is yet to be implemented, notwithstanding an implementation deadline of January 2023 which is now long passed.

LACW supports Change the Record, the Human Rights Law Centre and the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) and many other human rights and community organisations in calling for the full and proper implementation of OPCAT in relation to the treatment and conditions of children and adults in custody. This includes the establishment of a National Preventive Mechanism whose operations, policies, frameworks, and governance are culturally appropriate and safe for First Nations people.

We draw the Inquiry's attention to the work of Change the Record, the Human Rights Law Centre and NATSILS¹² in highlighting the degree of non-compliance by Australian prisons and detention centres with the human rights of children and young people in detention, including the use of adult facilities to detain children. We also draw the Inquiry's attention to the *Yoorrook for Justice* report¹³ and the *Our Youth, Our Way* report,¹⁴ which present compelling evidence about the experience of First Nations adults and young people in Victoria's prisons and youth justice centres.

¹² See Change the Record, Human Rights Law Centre, National Aboriginal and Torres Strait Islander Legal Services, 'Submission to the United Nations Subcommittee on the Prevention of Torture – Australia' (July 2022) <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/633669ae0f86ab73e365f4ff/1664510383501/b-change-the-record-spt-submission-pdf-47d907.pdf>; Human Rights Law Centre, National Aboriginal and Torres Strait Islander Legal Services, 'Ending Human Rights Abuses Behind Bars' (3 October 2022) < <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/63489310f03a1c41c07345fe/1665700626053/CTR+HRLC+NATSILS+-+CAT+submission+-+Final%5B85%5D.pdf>>.

¹³ Yoorrook Justice Commission (n 5) 360 – 391.

¹⁴ Commission for Children and Young People (n 6).

Submission made on behalf of the Law and Advocacy Centre for Women Ltd.

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