



Victorian Aboriginal Child Care Agency

**Response to the Inquiry into Children of
Imprisoned Parents**

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INTRODUCTION

The Victorian Aboriginal Child Care Agency (VACCA) is the lead Aboriginal child welfare organisation and the largest provider of Aboriginal family violence and youth justice services in Victoria. We work holistically with children, young people, women, men, and families to ensure they have the necessary supports to heal and thrive.

VACCA welcomes the opportunity to provide feedback to the Inquiry into Children of Imprisoned Parents. Our expertise in promoting, advocating for, and achieving positive change in the lives of Aboriginal children, families, and communities comes from delivering a suite of supports across Victoria including, child and family welfare, family violence, housing and homelessness, alcohol and drugs, early years, education, justice, emergency relief and cultural strengthening. This means that we are well placed to provide input on the needs of children of imprisoned parents.

VACCA's submission outlines the following observations and recommendations as they pertain to the children, young people and families with whom we work. We provide services to over 3,000 children and young people, and over 500 families, with strong connections not only to clients, but across community. In our experience, high numbers of children with an imprisoned parent end up in out-of-home care (OOHC) and many of these parents have their own childhood history of having spent time in care as well as their own trauma. The overrepresentation of Aboriginal people across both the criminal justice and child protection systems means that they disproportionately bear the consequences of parental imprisonment.

Whilst improving policy and program responses to better address the specific needs of children with imprisoned parents is an important priority, VACCA notes that if we are to truly stop the overrepresentation of Aboriginal peoples involved in the child protection and justice systems this must be accompanied by broader, systemic measures, including addressing institutional and systemic racism. Aboriginal children have the right to grow up safe and connected to family, community, culture and Country.

In this submission, we address four key themes which we encourage government to focus on when looking at interventions for working with our children of incarcerated parents, **Communities, Evidence, Coordination and Voice**. Firstly, we need long-term investment in Aboriginal communities to support our children and families. Secondly, we need evidence. We need to build a greater Aboriginal evidence base to improve our understanding of the effectiveness of responses and to inform new strategies. Thirdly, coordination is critical. We need systems that talk to each other and work for community, not against it. A system of policy and law reform efforts to build authorising environments for change. And the fourth area is voice. We must create opportunities to hear the voices of children and young people, consider their experiences and understand their lives in order to support professional practice. It is important to note the significant lack of data on the prevalence of parental imprisonment, meaning that the number of children affected is currently unknown.

KEY POINTS

- There is an urgent need for child protection intake systems and processes to be reformed in order to capture parental incarceration (current, past, on remand or on bail).
- Criminal justice systems are not attuned to the needs of children from the time of their parent's arrest through to their release. The voice of Aboriginal children and young people must be heard, and their experiences considered so we can better support them to live prosperous lives.
- Parental imprisonment places Aboriginal children at risk of losing their connections to family, community, culture and Country due to the well-established link between parental imprisonment, child removal, and criminal justice involvement.
- Aboriginal women are the fastest growing prison population, with a high proportion of these



women having dependent children. Significant policy reform and investment across the justice continuum is needed to address the intersectional discrimination they face. Incarceration should be seen as a last resort. Diversion and non-custodial penalties options should be exhausted prior.

- Children need strong male role models in their lives and too often we see Aboriginal children and young people with fathers who are imprisoned. This has long lasting implications that can and must be addressed with responses specific to men and their experiences.
- Whilst policies and programs to support the children of imprisoned parents are vital, further efforts need to be directed to reducing the number of Aboriginal people imprisoned so that children have every opportunity to grow up with family and connected to culture.
- Greater investment is needed in Aboriginal Community Controlled Organisations (ACCOs) to deliver and expand culturally appropriate prevention, early intervention, diversionary programs and community-based sentencing options that respond to risk factors driving contact with the system.
- Efforts need to be directed to building the evidence base and evaluating programs to better understand interventions that sufficiently address the needs of children with imprisoned parents.
- There must be a coordinated, multi system approach to meeting the needs of Aboriginal children, young people and families. This will require a system of policy and law reform efforts
- There needs to be greater accountability by Government and across the system. This Inquiry will herald a new understanding of the prevalence and impact of children with imprisoned parents, and they must not turn a blind eye to their experiences. If Government is truly committed to prevention and disrupting the intergenerational cycle of Aboriginal imprisonment, then they must act on the critical reforms required to ensure families stay connected.

VACCA RECOMMENDATIONS

- 1) In line with the Victorian government's commitment to advancing Aboriginal self-determination, greater investment in ACCOs is required to deliver and expand Aboriginal-led, delivered and evaluated prevention, early intervention, diversionary programs and community-based sentencing options to address the risk factors that contribute to parental imprisonment.
 - a. Funding ACCOs to deliver child-centred responses, helping to ensure the unique needs and views of children and young people guide the supports and services provided to families impacted by imprisonment.
 - b. Funding models must be long term, flexible and sustainable and include budget allocation for evaluation.
 - c. Government must invest in developing an Aboriginal workforce strategy, including necessary infrastructure for ACCOs, that will prioritise education pathways so that we build and maintain a skilled workforce that understands the needs of community.
 - d. Programs must adopt a holistic, whole of system response incorporating education, health, housing, welfare, education and justice systems.
 - e. Expansion of ACCO delivered, culturally appropriate family support services, family counselling, parenting programs and men's specific programs such as VACCA's Koorie FACES and Beyond Survival programs that are targeted pre, during and post release. programs such as VACCA's program.
- 2) Stronger recognition of a child's best interests in judicial decision-making processes, and throughout all aspects of the criminal justice system.
 - a. Amend the *Sentencing Act 1991* (Vic) so that judicial decision-makers are required to consider the impacts that parental imprisonment has on Aboriginal children in sentencing in all cases not just in exceptional circumstances.
 - b. Amend the *Bail Act 1997* (Vic) so that the reverse onus provisions of the *Bail Act* are repealed and instead a presumption in favour of bail for all offences to be inserted.



- Where there are breaches of bail conditions particularly those that involve technical breaches or low-level offending, consideration must be given to the circumstances in which these occurred and alternatives to a punitive response employed.
- 3) Improve coordination between criminal justice, child protection systems and ACCOs to ensure Aboriginal children and parents have appropriate, regular, and safe contact whilst a parent is imprisoned.
 - a. Develop a specific service role focussed on parenting skills to support imprisoned parents develop and strengthen their relationship with their children.
 - b. The Department of Families, Fairness and Housing (DFFH) and the Department of Justice and Community Safety (DJCS) co-develop guidelines on working collaboratively to ensure that children are provided regular contact with their imprisoned parent in a child friendly and culturally safe way.
 - c. Improve the safety, inclusivity and awareness of the needs and experiences of LGBTIQ+ Aboriginal children, young people and adults across police and custodial settings with training and policy reform.
 - 4) Improve the safety, inclusivity and assessment of disabled Aboriginal children and/or parents in the child protection and justice systems
 - a. Police, courts and custodial settings to undertake training and policy reform in the identification and treatment of disabled children, young people and adults
 - b. Funding for assessment and early intervention in Acquired Brain Injuries (ABI) amongst at risk Aboriginal children, young people and parents
 - c. Funding to increase access to neuropsychological assessments, diagnosis and case management across the child protection and criminal justice systems.
 - 5) Establish a post release, transitional accommodation and support service in the western region, with a particular focus on Aboriginal women leaving prison and their children.
 - 6) Raise the age of criminal responsibility to at least 14 years of age.
 - 7) Improve collection and accessibility of data on the prevalence and experiences of children with imprisoned parents.
 - a. Family Service and Child Protection client information management systems be amended to require that families are asked whether the child has an imprisoned parent at the point of intake.
 - b. Greater investment in developing an Aboriginal evidence base to improve understandings and effective responses to the needs of children of imprisoned parents.
 - 8) Through Burra Lotjpa Dunguludja, the Victorian Aboriginal Justice Agreement Phase 4, establish a centre for excellence in the justice system for innovative justice programs and for the development of a strong Aboriginal justice model. All policy reform must align with the new Victorian Closing the Gap Implementation Plan, specifically the commitment to reduce the numbers of Aboriginal peoples entering the criminal justice and child protection systems.
 - a. Legislative reform including to the Bail Act, sentencing legislation, must require consideration of the impact of systemic racism, intergenerational trauma and disadvantage.
 - 9) For Government to take immediate action to meaningfully implement all recommendations of the Royal Commission into Aboriginal Deaths in Custody.

BACKGROUND

Research suggests that approximately 5% of children will experience parental imprisonment, this figure rises to 20% for Aboriginal and Torres Strait Islander children.¹ Yet, there is no official data on the number of children with an imprisoned parent, nor is there any formalised support provided by the justice system to maintain and strengthen familial relationships.²

The experiences of children of imprisoned parents must be understood within the context of the overrepresentation of Aboriginal peoples across criminal justice and child protection systems. Aboriginal people coming into contact with the justice system have survived intergenerational trauma and historic forced removal, and are also overrepresented in rates of violence, trauma and imprisonment. The current response is to treat Aboriginal peoples as perpetrators, rather than prioritising healing and addressing the multiple and complex sources of trauma.

Whilst policy and program responses to address the needs of children with imprisoned parents are vital, governments must urgently address the crisis of Aboriginal incarceration. The key drivers of overrepresentation cannot be resolved through a single initiative or program. Instead, whole of system solutions are required across education, health, welfare and justice, and this must be accompanied by legal reforms to address laws that disproportionately impact Aboriginal people, such as the *Bail Act 1977* (Vic). The Aboriginal Justice Caucus, the self-determining body that provides Aboriginal representation and leadership on justice matters and of which VACCA is a member, has noted its particular concern over the impact that bail laws have on Aboriginal women, with many of these women "...on remand for low level, non-violent offences that do not carry a custodial sentence."³ The Aboriginal Justice Caucus has called upon the Victorian Government to reform the *Bail Act* in order to reduce the number of Aboriginal people on remand in Victoria.

The interconnection between the imprisonment of Aboriginal peoples and their overrepresentation in child protection systems has long been recognised. In its 2012 concluding observations, the Committee on the Rights of the Child raised serious concerns over the overrepresentation of Aboriginal and Torres Strait Islander peoples, particularly women, in Australian prisons and the fact that this often resulted in their children being placed in OOHC.⁴ What we know:

- At 30 June 2021, Aboriginal men were 14 times more likely to be imprisoned than non-Indigenous men⁵
- At 30 June 2021, Aboriginal women were 16 times more likely to be imprisoned than non-Indigenous women and are the fastest growing prison population in Victoria⁶
- On an average day in 2021, Aboriginal children and young people were detained at a rate 9 times that of their non-Indigenous peers⁷

¹ Quilty, S. (2005). The magnitude of experience of parental incarceration in Australia. *Psychiatry, Psychology and Law*, 12(1), 256–257.

² VACRO. (2021). *Inquiry into Victoria's Criminal Justice System: VACRO Submission*. Available at: <https://www.vacro.org.au/Handlers/Download.ashx?IDMF=aac57802-5f28-4a04-b68b-e646a91f0b51>

³ Aboriginal Justice Caucus. (2021). *Aboriginal Justice Caucus submission on the Legislative Council Legal and Social Issues Committee Inquiry into Victoria's Justice System*, p. 10.

⁴ Committee on the Rights of the Child. (2012). *Concluding observations: Australia*. Available at: [CRC/C/AUS/CO/4](https://www.ohchr.org/en/hqdoc/huridocda/huridoca12/crc/crc.aus/co/4) (ohchr.org)

⁵ Productivity Commission. (2022). *Closing the Gap Data Dashboard: Socioeconomic Outcome Area 10*. Available at <https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area10>

⁶ Ibid.

⁷ Productivity Commission. (2022). *Closing the Gap Data Dashboard: Socioeconomic Outcome Area 11*. Available at <https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area11>

- That the overrepresentation of Aboriginal people in the criminal justice system is contributing to the growth in the number of children in OOHC, with the rates of Aboriginal children in OOHC in Victoria being the highest in the country.⁸

RESPONSE TO THE INQUIRY'S TERMS OF REFERENCE

THE SOCIAL, EMOTIONAL AND HEALTH IMPACTS ON AFFECTED CHILDREN

The effects of parental imprisonment can extend from birth to death, across generations and impact not only children but their broader kinship networks and community. These effects cannot be understated. The Aboriginal Legal Services (NSW/ACT), in their submission to the equivalent Inquiry in NSW, referred to children being the hidden or invisible victims of parental imprisonment, and the trauma they experience.⁹ In VACCA's experience, it creates for both the parent and child a sense of stigma, shame, grief, and hopelessness. It creates feelings of anger, anxiety, loss and low self-esteem. What this demonstrates firstly is the need for supports in place to support children from the time of their parent's arrest through to and after their parent's release. These should be aimed at minimising the impacts that parental imprisonment has on the child and to support the child's ongoing connection to their imprisoned parent and broader familial network. Evidence shows that culturally appropriate supports and interventions are important for improving the social and emotional well-being of Aboriginal peoples, and thus needed to address the impacts of parental imprisonment.¹⁰

Parental imprisonment as an adverse child experience

Firstly, it is important to acknowledge that parental imprisonment can compound pre-existing adversities experienced by children. A 2006 study of children with imprisoned parents in Victoria found that many children had experienced the impacts of parental substance misuse, poor mental health, and family violence prior to their parent's imprisonment.¹¹ Indeed, parents are often imprisoned for family violence or drug and alcohol related incidents, and children often have trauma because of these experiences. We know that many of these children come from families with multiple and complex needs, including experiences of homelessness and housing insecurity, high unemployment, family violence and histories of intergenerational trauma.

The impact of pre-existing adversities, coupled with the trauma of parental imprisonment, are evident in the increased likelihood of children developing social, psychological and developmental issues across the life span.¹² Emotional dysregulation, anger and violence, disengagement with school or social activities, withdrawal from peer interactions, depression and anxiety, substance misuse and engagement in risk-taking behaviours are all examples of the challenges facing the children of imprisoned parents.^{13,14}

⁸ Steering Committee for the Review of Government Service Provision, Productivity Commission, Report on Government Services – Chapter 16 – Child Protection, 2022, Table16A.2

⁹ Aboriginal Legal Services (NSW/ACT) Limited, Submission to the Inquiry into Support for Children of Imprisoned Parents in New South Wales, 2020, 4.

¹⁰ Hallett, D., Chandler, M.J., & Lalonde, C.E. (2007). Aboriginal language and youth suicide. *Cognitive Development*, 22, 392-399.

Chandler, M.J., & Lalonde, C. (1998). Cultural continuity as a hedge against suicide in Canada's First Nations. *Transcultural Psychiatry*, 35(2), 191-219.

¹¹ Sheehan, R. (2010). Parental imprisonment and child protection: A study of children presented to the Melbourne Children's Court. *Australian Social Work*, 63(2), 164-178.

¹² Turney, K. (2018). Adverse childhood experiences among children of incarcerated parents. *Children and Youth Services Review*, 89, 218-225.

¹³ Bell, M.F., Bayliss, D.M., Glauert, R., & Ohan, J.L. (2018). Using linked data to investigate developmental vulnerabilities in children of convicted parents. *Developmental Psychology*, 54(7), 1291-1231.

¹⁴ Tzoumakis, S., Burton, M., Carr, V.J., Dean, K., Laurens, K.R., & Green, M.J. *The intergenerational transmission*

According to the Australian Law Reform Commission, imprisonment has a “compounding effect” on the multiple forms of adversity that Aboriginal peoples experience.¹⁵ This means that parental imprisonment is only likely to further entrench the disadvantage already experienced by Aboriginal children and young people. In sentencing, all Australian jurisdictions allow magistrates to consider the potential hardship to an individual’s family and dependents. However, in Victoria the *Sentencing Act 1991* (Vic) does not explicitly acknowledge the effects that imprisonment have on children or other dependants as is the case in the Australian Capital Territory and South Australia.¹⁶ Instead, these impacts can theoretically be considered under section 5 of the Act which requires courts to consider mitigating factors or other relevant circumstances, but courts have deemed that these must be considered exceptional.¹⁷

We know that unsentenced women make up over 60 per cent of Aboriginal women in prison, if bail reform was undertaken this would significantly impact women and children given that 80 per cent of Aboriginal women in prison are mothers¹⁸. Where Aboriginal people are held on remand for any length of time there will be significant consequences particularly where they have children as well as housing, employment, all before a conviction is even recorded. Given the inherent presumption of innocence, bail legislation should better support maintaining connections with family and community. VACCA contends that the *Bail Act 1977* (Vic) must be amended to repeal the reverse onus provisions, in particular the requirement for compelling reasons and exceptional circumstances as detailed in ss4AA, 4A, 4C, d4 and Schedules 1 and 2 of the Act) and instead a presumption in favour of bail for all offences to be inserted, with provisions to ensure protections against further harm being caused to the individual or others. Additional support services must be funded and provided by Aboriginal services to offer bail support including provision of suitable accommodation options for Aboriginal people, particularly women and children so they can meet relevant conditions of bail. Where there are breaches of bail conditions particularly those that involve technical breaches or low-level offending, consideration must be given to the circumstances in which these occurred with alternatives to a punitive response available¹⁹.

VACCA urges the inquiry to look strongly at the impact of imprisonment of Aboriginal men who are fathers. Children thrive with safe, nurturing parents, and whilst there is a clear need to support maternal connection with children, too often the role of men and fathers is ignored. We must better understand the impact of institutionalisation on the capacity to parent, how can we expect Aboriginal women and men to learn how to parent when their parent has been the state? At VACCA we work with generations of families who have experienced institutionalisation and the trauma associated with

of criminal offending behaviours. Canberra: Australia Institute of Criminology. Available at <https://www.aic.gov.au/crg/reports/crg-1914-15>

¹⁵ Australian Law Reform Commission. (2017). *Pathways to justice: An inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples*, p. 81.

¹⁶ Walsh, T., & Douglas, H. (2016). Sentencing parents: The consideration of dependent children. *Adelaide Law Review*, 37, 135-161.

¹⁷ Ibid.

¹⁸ 2020-21 Corrections and Justice Services Data Report to the Aboriginal Justice Forum, November 2021; Senate Standing Committees on Legal and Constitutional Affairs, Parliament of Australia, Value of a Justice Reinvestment Approach to Criminal Justice in Australia (2013) 21.

¹⁹ These recommendations are broadly reflective of the recommendations put forward by the Aboriginal Justice Caucus. (2021). *Aboriginal Justice Caucus submission on the Legislative Council Legal and Social Issues Committee Inquiry into Victoria’s Justice System*, p. 10 and the NSW Aboriginal Legal Service, the NSW Coalition of Aboriginal Regional Alliances, and Deadly Connections Community Justice Services for the equivalent inquiry in NSW. These submissions can be accessed via the NSW Parliament’s Committee on Children and Young People’s Inquiry for the Support for Children of Imprisoned Parents in New South Wales:

<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2572#tab-submissions>

disconnected from their culture, community and family. We work holistically with families through Aboriginal led parenting programs like our Koorie FACES program. It is a strengths-based program with a cultural lens developed by Aboriginal people for Aboriginal families and communities in Victoria. It has been delivered both in prisons and in community settings. The program aims to celebrate, promote and strengthen Aboriginal communities and families so they thrive and are strong in culture. Participants learn Aboriginal ways of raising children, Aboriginal values, principles and culture. One of the sessions of this program speaks to the impact of colonisation on parenting. A counsellor present at a session in Sale reflected that in all her years of working with Aboriginal men in prisons she had never seen Aboriginal men engage and develop their understanding in such a profound way. Koorie FACES provides opportunities for healing for families as a whole.

Despite the well-known impacts of parental imprisonment, in VACCA's experience, the best interests of the child are rarely centred in criminal justice decision-making processes, as well as in public policy and practice in this space. From the perspective of the best interests of the child, the risks of intergenerational offending and loss of cultural and familial connection for dependent children are exceptional circumstances.

Intersection of child protection, youth justice and adult imprisonment

Many Aboriginal parents currently imprisoned carry with them the trauma of separation from parents and family during their childhood by either or both the child protection or criminal justice systems. As noted by the Australian Law Reform Commission, the links between child protection, juvenile justice and adult imprisonment are "so strong that child removal into out-of-home care and juvenile detention could be considered as key drivers of adult imprisonment."²⁰

Children of imprisoned parents who are living in OOHC experience a double disadvantage due to the profoundly destabilising effects caused by both removal and parental imprisonment²¹. Particularly where placement with their kin and extended family is not possible, children are often required to move far from home, their family and friends, and their regular school. The loss of regular contact with a parent is coupled with the introduction of new people, including carers, the courts, child protection and prison personnel. For older children it can also mean increased caring responsibilities and familial responsibilities, which brings with it additional emotional and financial stress. Despite the particular circumstances of these children, Victoria's child protection system does not have in place a specific policy or practice approach for responding to their unique needs.

VACCA's own data shows, for example, that 27% of Aboriginal children in contact with the child protection system across the Outer and Inner Gippsland Region have at least one imprisoned parent. Other regions in which VACCA works also anecdotally report high rates of parental imprisonment, although exact figures are not available. Despite the recognised link between parental imprisonment and child protection involvement, this is not currently a question that is required through the Child Protection and Family Services intake system. When the question is not asked, it is difficult to provide the right therapeutic supports needed by the child or young person and by the remaining parent or carer. This has devastating, long lasting impacts on the individual and the family, evident by the poorer developmental and life outcomes experienced by children with an imprisoned parent²². As a result, we are failing our children. We need to improve collection and accessibility of data on the prevalence and experiences of children with imprisoned parents. Including amending Family Service and Child

²⁰ Australian Law Reform Commission. (2017). *Pathways to justice: An inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples*, p. 485.

²¹ Sheehan, R. (2010). Parental imprisonment and child protection: A study of children presented to the Melbourne Children's Court. *Australian Social Work*, 63(2), 164-178.

²² Roettger, M., Lockwood, K., & Dennison, S. (2019). *Indigenous people in Australia and New Zealand and the intergenerational effects of incarceration*, Indigenous Justice Clearinghouse (research brief 26).

Protection client information management systems to require that families are asked whether the child has an imprisoned parent at the point of intake.

VACCA contends that the child protection system has a duty of care to Aboriginal children that have an imprisoned parent, to foster healthy child-parent relationships. DFFH and DJCS should co-develop guidelines on working collaboratively to implement this duty of care and ensure that children are provided regular contact with their imprisoned parent in a way that is culturally safe and child friendly.

Given the link between child removal and future criminal justice involvement, there is a significant risk that many Aboriginal children with an imprisoned parent will themselves become involved with the justice system at some stage. For example, *Our Youth, Our Way* final report, which undertook a review of the experiences of Aboriginal children and young people in Victoria's youth justice system, found that 61% had at least one immediate family member with current or past involvement in the criminal justice system.²³

Parental imprisonment, particularly within the context of the overrepresentation of Aboriginal peoples across all aspects of the criminal justice system, contributes to a situation in which institutionalisation becomes normalised, placing young people at risk of youth justice involvement. In addition, VACCA notes that children and young people often experience discrimination as a result of their parent being imprisoned and are labelled as 'bad kids'. In some cases, children may glorify their parents' behaviour and engage in high-risk behaviour themselves. This intersection reinforces the need for policy and practice responses tailored to specific experiences and circumstances that support the children of imprisoned parents to heal and can address potential risk factors that might lead to their involvement in the youth justice system.

Challenges in maintaining contact and connection with an imprisoned parent

The lack of a specific approach to addressing the needs of children of imprisoned parents creates challenges in ensuring that children have regular, safe contact with their parent. Research shows that contact can have positive impacts for both children and parents, although few studies included direct observations from children.²⁴ Whilst beneficial, within the Victorian context, neither the criminal justice nor child protection systems are well adept in supporting contact between children and their parents as integral to the case planning process for either party.²⁵ This is borne out by the significant variation that VACCA sees in levels of contact amongst children of imprisoned parents.

A key concern with fragmented, or irregular contact, is that it can limit prospects for children to be reunified with their imprisoned parent upon their release. Currently, the *Children, Youth and Families Act 2005* (Vic) places a rigid two-year timeframe for reunifying children with their families. Still, given that many Aboriginal parents are imprisoned for short-term, non-violent offences, reunification is a reasonable prospect for some families, and they must be provided with the culturally appropriate, wrap around supports and services to enable this.

VACCA has been involved in a number of cases in which mothers with a history of imprisonment have been successful in regaining and maintaining custody of their children. Yet, VACCA finds that in many cases, the capacity for imprisoned parents to regain custody of their children is not seriously

²³ Commission for Children and Young People. (2021). *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, p. 273. Available at <https://ccyp.vic.gov.au/inquiries/systemic-inquiries/our-youth-our-way/>

²⁴ Poehlmann, J., Dallaire, D., Booker Loper, A., & Sheader, L.A. (2010). Children's contact with their incarcerated parents. *American Psychologist*, 65(6), 575-598.

²⁵ Sheehan, R., & Levine, G. (2010). *Parents as prisoners: Maintaining the parent-child relationship*. Canberra, ACT: Criminology Research Council.

considered, and little effort is made to provide the culturally safe supports to help facilitate this. Given that a large proportion of the Aboriginal prison population in Victoria are on remand and could effectively be released at any time, this is a significant concern and a missed opportunity. For example, in 2018-19, 58% of Aboriginal women and 43% of Aboriginal men in prison in Victoria were on remand.²⁶ 32% of women on remand spend between 1 and 6 months imprisoned, with the majority leaving before spending any time under sentence.²⁷ As the fastest growing prison population in Victoria, Aboriginal women are left without culturally safe services that recognise their specific experiences and stories. Furthermore, separation from their children leads to a greater risk of recidivism due to trauma and weakened family and community ties which concurrently contributes to the permanent removal of Aboriginal children into OOHHC.

From VACCA's experience, there are several factors that must be considered to ensure that contact is positive and strengthens connections between the child and parent. Firstly, addressing the lack of child-friendly spaces within Victorian prisons. Prisons have not been designed for children, parents or visitation with family. It is an environment that is hostile, intimidating and lacks child-friendly facilities especially where a child has a disability. Nor do they allow for opportunities to practice parenting skills whilst imprisoned. This has an impact on family connectedness and affects a parents' ability to parent or remain connected with their child during and post release.

Opportunities for regular, meaningful contact must be available for children and parents, with flexibility of what this may look like depending on circumstances. In some instances, a child or parent may benefit and choose to participate in family support programs, family counselling, or parenting programs, whilst in other cases access to books and toys in spaces that are brightly painted or decorated can help facilitate positive experiences for child and parent.

In addition to in-person contact, children and young people benefit from telephone and video calling with an imprisoned parent. VACCA has found that one benefit of the COVID-19 pandemic, has been that access to video calling facilities is more readily available in Victorian prisons. In some cases, this has meant that children have more regular contact with their parent and can be beneficial because it means less travel time and can be less traumatic for some children. Making changes based on these learnings and experiences will help strengthen connections to family and assist the parent's ability to parent or remain involved with their child during and after prison. It is important for case workers and care team members to be informed on how contact can be maintained to ensure they can efficiently and effectively facilitate the process including supports to minimise any further trauma.

The potential loss of cultural connection and identity

Parental imprisonment places Aboriginal children at risk of disconnection from family, community, culture and Country, particularly when the Aboriginal parent is imprisoned. International law, including the Convention on the Rights of the Child and the United Nations Declaration on the Rights of Indigenous Peoples recognise that considering the collective cultural rights of the child is part of determining a child's best interests.²⁸ For Aboriginal children, their sense of identity and lifelong social

²⁶ Victorian Government. (2021). *Goal 15: Aboriginal over-representation in the criminal justice system is eliminated*. Available at <https://www.firstpeoplesrelations.vic.gov.au/justice-safety/151-decrease-number-and-eliminate-over-representation-aboriginal-children-and-young>

²⁷ Russell, E. (2021, August 9). Number of women on remand in Victoria soars due to outdated bail laws. *The Conversation*. Available at <https://theconversation.com/number-of-women-on-remand-in-victoria-soars-due-to-outdated-bail-laws-165301#:~:text=Unfortunately%2C%20Victoria%20is%20not%20an,up%20from%2022%25%20in%202010>.

²⁸ Committee on the Rights of the Child. (2009). *Committee on the Rights of the Child General Comment No. 11 (2009) Indigenous children and their rights under the Convention*. Available at https://www.un.org/esa/socdev/unpfii/documents/GC_11_indigenous.pdf

and emotional wellbeing is connected to a “broader communal sense of belonging; ...where they are from, and their place in relation to mob, community, land and culture.”²⁹ It is now well established that culture is an important protective factor for Aboriginal children and young people, and key to healing. The potential for both parental imprisonment and placement in OOHC to sever these connections is thus a significant risk for their immediate and long-term wellbeing.³⁰

Aboriginal self-determination, trauma-informed approaches and connection to culture and community are widely recognised as protective factors and central to any approach when working with Aboriginal children, young people and their families.³¹ The service system, including the criminal justice system, has a responsibility to consider the impact that parental imprisonment can have on a child’s cultural connection and identity. Whilst the child protection system has undertaken significant reforms to move toward Aboriginal self-determination in the child and family welfare space, community control over justice remains more elusive. As a result, criminal justice responses to Aboriginal prisoners, and by extension their children, remain punitive and criminalising, and fail to provide the family-centred, healing and trauma-informed responses that will improve justice and wellbeing outcomes for incarcerated parents and their children.

WHAT POLICIES EXIST AND WHAT SERVICES ARE AVAILABLE, INCLUDING CONSIDERATION OF THOSE IN OTHER JURISDICTIONS/ AND HOW EFFECTIVE THOSE SERVICES ARE, INCLUDING – CONSIDERATION OF EVALUATION OF WORK ALREADY DONE IN THIS AREA; AND IDENTIFYING AREAS FOR IMPROVEMENT

Feedback gathered during consultations with VACCA staff repeatedly reinforced a drastic gap in services for children with imprisoned parents, with no consistent response, process or pathway. These are critical issues that remain absent from public policy and practice in this space, especially responses informed by the voice of the child.

Pre and post release supports for Aboriginal parents

More supports and services are needed in prison to address the factors driving offending and recidivism to ensure that Aboriginal children have every opportunity to grow up safe and in the care of their parents and extended family. We know that Aboriginal women in prison are generally younger, have children, are more likely to have experienced family violence and be suffering from mental ill health. Often exacerbated by and associated with the separation from their children.³² VACCA also finds that police responses to family violence often misidentify women as perpetrators rather than affected family member. We believe this directly attributes to the high number of Aboriginal women in Victorian prisons and by extension the high number of children being removed from their families unnecessarily.

²⁹ SNAICC – National Voice for our Children. (2016). *Achieving stability for Aboriginal and Torres Strait Islander children in out-of-home care*, p. 7. Available at https://www.snaicc.org.au/wp-content/uploads/2016/07/SNAICC-Achieving_stability-1.pdf

³⁰ Commission for Children and Young People. (2021). *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*. Available at <https://ccyp.vic.gov.au/inquiries/systemic-inquiries/our-youth-our-way/>

³¹ Greenwood, M., & de Leeuw, S. (2012). Social determinants of health and the future well-being of Aboriginal children in Canada. *Paediatrics & Child Health*, 17(7), 381-384.

Bamblett, M., Harrison, J., & Lewis, P. (2010). Proving culture and voice works: Towards creating the evidence base for resilient Aboriginal and Torres Strait Islander children in Australia. *International Journal of Child and Family Welfare*, 13(1-2), 98-113.

³² Victorian Equal Opportunity and Human Rights Commission. (2013). *Unfinished business: Koori women and the justice system*. Available at <https://www.humanrights.vic.gov.au/resources/unfinished-business-koori-women-and-the-justice-system/>

Experiences of discrimination, marginalisation, and past trauma have intergenerational consequences that continue to impact upon the well-being of Aboriginal peoples today. Research shows that Stolen Generations Survivors and their descendants are more likely to be worse off across a range of health and socioeconomic outcomes, they are more likely to have contact with the criminal justice system, and more likely to be victims of violence.³³ In VACCA's experience, many of the men we work with through the Beyond Survival prison reintegration program are disconnected from their children and need support to establish or rebuild these relationships, we also note that many of these men are themselves children of Stolen Generations Survivors and have grown up in foster care.

In response, greater investment and focus is needed in culturally appropriate, Aboriginal led responses across the spectrum of prevention, early intervention, diversionary, community-based sentencing options and post release supports. Whole of system, holistic programs and support services are needed that incorporate education, health, housing, welfare, education, and justice systems.

ACCOs such as VACCA have a key role in this as they have the expertise and connections to children and families to help respond to the needs of community. Including delivering prevention programs such as playgroups, family counselling and parenting programs as well as post release supports such as housing and, trauma informed counselling. Culturally safe, and trauma informed post release supports will support rehabilitation and reconnection with family and community. VACCA's Aboriginal Family Preservation and Reunification program (AFPR) is also playing a key role in supporting families to remain together and to assist in regaining guardianship of their children. The AFPR program provides up to 240 hours of culturally safe support to children and families where children are at imminent risk of entering care or where safe and rapid reunification is appropriate. Currently the program is designed to work with women who are pregnant, or families with children between the ages of 5 and 10, or 10 and 15. With the appropriate funding, this program could be expanded to work specifically with families where a parent is imprisoned. We need to build on our understandings of what is needed in working with those at risk, imprisoned or in addressing recidivism and understanding factors contributing to outcomes, with a key focus on prevention and early intervention. To do this, a centre for excellence in the justice system for innovative Aboriginal justice programs should be developed by Aboriginal peoples. Currently, Western constructs of government investments are not meeting the needs of Aboriginal peoples as there are a number of innovative programs, initiatives and services that could be used to build a strong Aboriginal model. This could be done through the Aboriginal Justice Agreement and drawing on the expertise of the Victorian Aboriginal community.

VACCA currently operates two of the state's four Koorie Women's Diversion programs. The program has been designed to support women when they exit prison, helping with their transition back into community and back to family. Many of the women who access the service are mothers and survivors of family violence and need significant support in navigating the child protection system post release. A strength of the program is that it provides support that is wide-ranging and targeted to needs of each client, spanning from court support to advocacy on child protection matters through to family and cultural strengthening support. Between July and December 2021, the program assisted 23 women, of these cases, 16 women continued to be supported to achieve their goals, four completed the program and three exited at intake. Unfortunately, this program is operating above capacity and unable to meet the needs of all women who seek its support. An additional six enquiries had to be referred elsewhere

³³ AIHW and the Healing Foundation. (2018). *Aboriginal and Torres Strait Islander Stolen Generations and descendants: Numbers, demographics, characteristics and selected outcomes*. Retrieved from: <https://healingfoundation.org.au/resources/aboriginal-torres-strait-islander-stolen-generations-descendants-numbers-demographic-characteristics-selected-outcomes/>
AIHW. (2021). *Aboriginal and Torres Strait Islander Stolen Generations aged 50 and over: Updated analyses for 2018-19*. Retrieved from: <https://www.aihw.gov.au/reports/indigenous-australians/indigenous-stolen-generations-50-and-over/contents/summary>

due to limited capacity. Despite the demonstrated need for the program, VACCA continues to only receive short-term funding and is required to retender at the end of each funding cycle regardless of the program's success.

Another example of a pre-release program aimed at supporting Aboriginal men in prison to heal and connect with their family, community and culture is VACCA's Beyond Survival program. The 3-day group program provides trauma informed facilitation of narrative group work for prisoners including yarning circles to support healing and strengthen connection to family, community and culture. The program also provides a point of contact upon release for men to engage with to help navigate access to local services. Programs such as this are focused on building protective factors to maximise effective reintegration into community including maintaining and strengthening connection to family, culture and community.

In our submission to the *Inquiry into Victoria's Criminal Justice System*, VACCA recommended the establishment of an Aboriginal specific accommodation and support service in the west, with a focus on Aboriginal women leaving prison and their children. We wish to reiterate that recommendation here, noting that it provides the best opportunity to set women up for success upon release through the provision of housing, family violence, family counselling and parenting support. Strengthening contact and connection for children of imprisoned parents

At present, all facets of the criminal justice system are ill equipped to support the needs of children and their imprisoned parent. It is crucial for all staff working across the criminal justice service system to be highly qualified and trained in trauma-informed care to understand how to appropriately and safely respond to the complex needs of those they support. In VACCA's experience a key barrier is the lack of coordination and communication between the criminal justice and child protection systems, which inhibits case planning and practice that is responsive to the needs of both parent and their child. The absence of a coordinated approach means that even in cases where a service might be beneficial, the family is not receiving the support required to access it or there is a lack of coordination in service delivery.

For disabled children, young people and adults, the failure of the justice and child protection systems to meet their needs is exacerbated by challenges accessing disability assessments or diagnosis and therefore unable to access NDIS supports. In particular, there is a lack of access to neuropsychological assessments pre and post sentence due a limited capacity and a lack of knowledge in court and custodial settings on acquired brain injuries (ABI), such as;

- Foetal Alcohol Syndrome Disorder (FASD)
- Traumatic Brain Injury (TBI) and the correlation to the prevalence of family violence and assault/accident rates
- Hypoxic Brain Injury (HBI) and the link to drug related overdose and juvenile chroming.

Alternatively children are deemed low functioning or diagnosed with an intellectual disability. With Aboriginal children and families involved with child protection and the justice system or over-represented in rates of disability,^[1] it means neither the child or parent is able to access the supports necessary. Adding further challenges to children maintaining connection whilst their parent is imprisoned.

Currently Corrections Victoria operates the Living With Mum Program (LVM) which supports young children to live with their imprisoned mother at the Dame Phyllis Frost Centre and Tarrengower Prison.

^[1] Create Foundation, *'Supporting children and young people with a disability living in out-of-home care in Australia,'* Brisbane (2012). CCYP. (2016), *Always was Always will be Koori Children;* AIHW. (2021). *Child protection Australia 2019-20*, Cat. no: CWS 78, Canberra: AIHW.

The aim of this program is to reduce the impact of parental imprisonment on young children, support the mother-child bond, and decrease the number of children entering OOHC. Whilst there is a lack of research on the benefits of these programs, available literature suggests that these programs lead to better outcomes for both mother and children.³⁴ Unfortunately, it is very challenging to support mums to access the LVM program, and VACCA has not seen many cases in which clients have been successful in being accepted into it. Often being blocked by child protection due to being considered too high risk for the child. It is very concerning that VACCA has heard reports of pregnant women having their newborns removed immediately after birth, or not seeing their very young infants for months at a time and having no idea when they will see them again.

Creating a more coordinated response to support the children of imprisoned parents needs to involve establishing clear lines of communication, accountability, and responsibility between child protection, the criminal justice system, and other relevant support services, including the ACCO sector. These service sectors must work together to address the complex and multifaceted needs of children, their imprisoned parent and their extended family. This should include having a dedicated service role for supporting imprisoned parents to establish and strengthen their relationship with children, through the provision of family support services all the way through to facilitating contact.

To strengthen coordination and to ensure a highly skilled workforce, Government must invest in developing an ACCO specific Aboriginal workforce strategy including necessary infrastructure. All staff working across the criminal justice systems and broader service delivery sector should be highly qualified and trauma informed in order to appropriately and safely respond to the complex needs of those they support. In particular to build the capacity of ACCOs to be able to identify, assess and meet the needs of children and/or parents with a disability.

In VACCA's experience, labour market shortages, recruitment barriers, lack of pay parity and growing sector competition continue to fuel workforce shortages. An example of this is the gap in family counselling for Aboriginal children and parents pre and post release. The ACCO workforce strategy must prioritise education pathways in order to build and maintain a skilled workforce that understands the needs of community. This reform and strategic direction is critical if Government seeks to uphold its commitment as detailed in Victoria's Implementation Plan for Closing the Gap.

Transfer care and custody of Aboriginal children and young people to ACCOs

There has been significant investment, learnings and a stronger move to Aboriginal self-determination in Aboriginal child and family welfare. There is a growing acknowledgement that Aboriginal families and communities retain the lifelong responsibility of caring for children, children invariably return to family after exiting care; and Aboriginal Community Controlled Organisations have the cultural and kinship expertise to support the most vulnerable children and families in their communities. This knowledge and experience underpins recent reforms in the child and family welfare field and should also drive reforms intended to benefit children of imprisoned parents, some of whom will be placed in OOHC.

Within child protection law and OOHC practice, the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) prioritises placement with relatives, kin or other Aboriginal carers, in recognition of their capacity to support a child's connection to family, community, culture and Country.³⁵ Underpinning the ATSICPP is an understanding of and support for Aboriginal and Torres

³⁴ Shlonsky, A., et al. (2021). *Literature review of prison-based programs mothers and children programs: Final report*. Available at https://files.corrections.vic.gov.au/2021-06/mothersandchildren_programs.pdf

³⁵ SNAICC – National Voice for our Children. (2017). *Understanding and applying the Aboriginal and Torres Strait Islander Child Placement Principle*. Author: Melbourne. Available at <https://www.snaicc.org.au/understanding-applying-aboriginal-torres-strait-islander-child-placement-principle/>

Strait Islander child rearing practices and family and kinship systems specifically, the role of kinship networks in raising children. VACCA contends that policy and practice in the justice system must follow this approach to fulfil its duty of care to parents and children separated by the justice system. Working with the family and kin can be the most effective and sustainable way of fostering healthy relationships between a child and their imprisoned parent.

Strengthening these connections creates protective factors that help to overcome adverse life events and build resilience.³⁶ It is also possible that kin carers will be more likely to support contact between children and their incarcerated parent. The Aboriginal Kinship Finding Service (AKFS), delivered by VACCA, continues as the state-wide program for identifying kinship carers early and supporting them to care for Aboriginal children.

The Aboriginal Children in Aboriginal Care (ACAC) Program is a good example of building a service response upon the community knowledge and expertise of Aboriginal Community Controlled Organisations. ACAC enables ACCOs to take on functions and powers usually undertaken by the Secretary of DFFH and assume guardianship for Aboriginal children on Children's Court protection orders.

An evaluation by Inside Policy conducted in 2019 of VACCA's ACAC program 'Nugel', reported that *"based on the actual reunification rates from 2017-2019, from an indicative sample of 100 children, the reunification rate was higher for VACCA (22%) than for [DFFH] (5%)"*. The evaluation also revealed a significant number of children and young people had increased contact with their parents and majority saw an increase in their connection to culture and community.

What the establishment of ACAC and other services to support children coming into contact with the child protection system illustrate is the importance of community control and ACCOs having the capacity to plan and implement initiatives, including sufficient funding. ACCOs are best placed to advocate for the rights of Aboriginal peoples, and reinforce the importance of connection to culture, family and community for children and young people and support children and families in healing from the trauma of imprisonment.

VACCA RECOMMENDATIONS

- 1) In line with the Victorian government's commitment to advancing Aboriginal self-determination, greater investment in ACCOs is required to deliver and expand Aboriginal-led, delivered and evaluated prevention, early intervention, diversionary programs and community-based sentencing options to address the risk factors that contribute to parental imprisonment.
 - a. Funding ACCOs to deliver child-centred responses, helping to ensure the unique needs and views of children and young people guide the supports and services provided to families impacted by imprisonment.
 - b. Funding models must be long term, flexible and sustainable and include budget allocation for evaluation.
 - c. Government must invest in developing an Aboriginal workforce strategy, including necessary infrastructure for ACCOs, that will prioritise education pathways so that we build and maintain a skilled workforce that understands the needs of community.
 - d. Programs must adopt a holistic, whole of system response incorporating education, health, housing, welfare, education and justice systems.
 - e. Expansion of ACCO delivered, culturally appropriate family support services, family

³⁶ Walker, R., & Shepherd, C. (2008). *Strengthening Aboriginal family functioning: What works and why?* Australian Institute of Family Studies: Melbourne. Available at: <https://aifs.gov.au/cfca/publications/strengthening-aboriginal-family-functioning-what-works-and>



- counselling, parenting programs and men's specific programs such as VACCA's Koorie FACES and Beyond Survival programs that are targeted pre, during and post release. programs such as VACCA's program.
- 2) Stronger recognition of a child's best interests in judicial decision-making processes, and throughout all aspects of the criminal justice system.
 - a. Amend the *Sentencing Act 1991* (Vic) so that judicial decision-makers are required to consider the impacts that parental imprisonment has on Aboriginal children in sentencing in all cases not just in exceptional circumstances.
 - b. Amend the *Bail Act 1997* (Vic) so that the reverse onus provisions of the *Bail Act* are repealed and instead a presumption in favour of bail for all offences to be inserted. Where there are breaches of bail conditions particularly those that involve technical breaches or low-level offending, consideration must be given to the circumstances in which these occurred and alternatives to a punitive response employed.
 - 3) Improve coordination between criminal justice, child protection systems and ACCOs to ensure Aboriginal children and parents have appropriate, regular, and safe contact whilst a parent is imprisoned.
 - a. Develop a specific service role focussed on parenting skills to support imprisoned parents develop and strengthen their relationship with their children.
 - b. The Department of Families, Fairness and Housing (DFFH) and the Department of Justice and Community Safety (DJCS) co-develop guidelines on working collaboratively to ensure that children are provided regular contact with their imprisoned parent in a child friendly and culturally safe way.
 - c. Improve the safety, inclusivity and awareness of the needs and experiences of LGBTIQ+ Aboriginal children, young people and adults across police and custodial settings with training and policy reform.
 - 4) Improve the safety, inclusivity and assessment of disabled Aboriginal children and/or parents in the child protection and justice systems
 - a. Police, courts and custodial settings to undertake training and policy reform in the identification and treatment of disabled children, young people and adults
 - b. Funding for assessment and early intervention in Acquired Brain Injuries (ABI) amongst at risk Aboriginal children, young people and parents
 - c. Funding to increase access to neuropsychological assessments, diagnosis and case management across the child protection and justice systems
 - 5) Establish a post release, transitional accommodation and support service in the western region, with a particular focus on Aboriginal women leaving prison and their children.
 - 6) Raise the age of criminal responsibility to at least 14 years of age.
 - 7) Improve collection and accessibility of data on the prevalence and experiences of children with imprisoned parents.
 - a. Family Service and Child Protection client information management systems be amended to require that families are asked whether the child has an imprisoned parent at the point of intake.
 - b. Greater investment in developing an Aboriginal evidence base to improve understandings and effective responses to the needs of children of imprisoned parents.
 - 8) Through Burra Lotjpa Dungaludja, the Victorian Aboriginal Justice Agreement Phase 4, establish a centre for excellence in the justice system for innovative justice programs and for the development of a strong Aboriginal justice model. All policy reform must align with the new Victorian Closing the Gap Implementation Plan, specifically the commitment to reduce the numbers of Aboriginal peoples entering the criminal justice and child protection systems.



- a. Legislative reform including to the Bail Act, sentencing legislation, must require consideration of the impact of systemic racism, intergenerational trauma and disadvantage.
- 9) For Government to take immediate action to meaningfully implement all recommendations of the Royal Commission into Aboriginal Deaths in Custody.

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