



New Beginnings,  
Stronger Communities

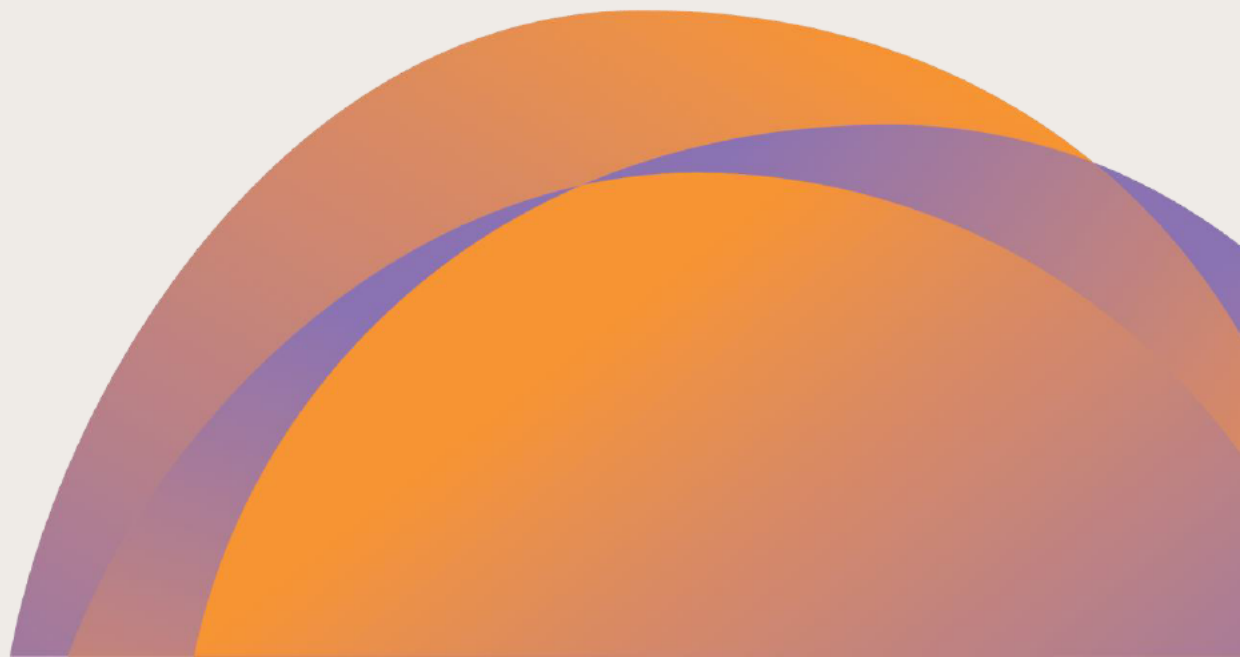
# Youth Justice and Child Wellbeing Reform across Australia

Vacro submission to the National Children's Commissioner

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## About Vacro

Vacro is an independent, non-profit organisation created in 1872. We support people in contact with the criminal justice system and their families to create new beginnings and stronger communities.

Our work provides the support people need to get their lives back on track and recognises the role all members of a community play in successful reintegration.

We provide programs in three broad categories:

- Returning to community: we deliver tailored pre-release support to adults in prison and provide a case manager to support people post-release.
- Strengthening family connection: we support family visits in prison, provide family counselling and provide specific assistance to Aboriginal families visiting their loved ones.
- Returning to work: we run two social enterprises to build job skills and connect Aboriginal people with employment pathways after prison.

Vacro's services provide practical support driven by long-term thinking. Our research, policy and advocacy work imagines a fairer future through systemic change. Vacro's work benefits individuals, their families, and whole communities.

Vacro welcomes the opportunity to submit to the National Children's Commissioner's project investigating opportunities for the reform of youth justice and related systems across Australia. Although Vacro does not work in the youth justice space specifically, we do provide specialised family services to families who are involved with the adult justice system in Victoria. This means we can provide a unique insight into how providing more coordinated and comprehensive support to these families can reduce children's involvement in crime through prevention and early intervention.

## Introduction

All children and young people in Australia have rights that must be protected, including those children that are involved with the justice system. Children and young people can become justice-involved in several ways: they can interact with the youth justice system themselves, or they can interact with the adult justice system as a child or family member of an adult who is incarcerated or otherwise justice-involved. The way in which children and young people interact with both justice systems is inconsistent across Australia and practices that do not serve the best interests of the child remain widespread in these systems. For these reasons, we welcome the National Children's Commissioner's investigation into opportunities for reform of youth justice and related systems across Australia, including the possibility of a national approach.

In this submission, we argue that we do need a national approach to youth justice in Australia, but we argue further that this approach must take the needs of children with incarcerated parents into consideration. The children and families of people who are incarcerated are an often-overlooked client group who are rarely able to access the support services they need. Not quite justice clients and not quite family service clients, these families fall through the gaps of siloed state and territory government departments, with harmful consequences for the parent, the child, the family, and the community. Although parental incarceration is just one factor that contributes to children's and young people's involvement in youth justice systems, it is an important one. Improving the support we offer to these families can simultaneously help the parent desist from crime and protect the child from the trauma associated with parental incarceration, thereby also reducing their risk of interaction with the youth or adult justice systems in the future. This makes such interventions clear examples of effective early intervention work.

## Submission questions

### What factors contribute to children's and young people's involvement in youth justice systems in Australia?

Myriad factors contribute to children's and young people's involvement in youth justice systems across Australia, and it is beyond the scope of this submission – and our expertise – to address them all. Vacro's expertise lies in the adult justice system and in parental incarceration in particular, so in response to this question, this submission will focus on the ways in which having a parent in the prison system contributes to children's and young people's own involvement in the justice system.

The association between parental incarceration and intergenerational offending is commonly cited. In 2018, 18% of people entering prison in Australia reported that one or more of their parents or carers had been in prison when they were a child.<sup>1</sup> This figure rose to 27% for people aged 18-24 and 31% of Aboriginal and Torres Strait Islander peoples entering prison. The Australian Institute of Criminology reports that "the intergenerational pattern of antisocial behaviour and criminality" is a "well-established phenomenon" backed by "extensive research".<sup>2</sup>

It is important to stress that, despite these statistics, intergenerational offending is by no means inevitable. Most children with an incarcerated parent do not themselves end up incarcerated and their risk of interaction with the justice system is associated with the trauma imposed upon them by the justice system and by society's response to the incarceration of their parent, not with any kind of inherent familial criminality. By changing our response, we can alleviate the adverse impacts of parental incarceration and support families to overcome the risk of intergenerational offending.

Parental incarceration is one of ten experiences listed in the CDC-Kaiser Permanente Adverse Childhood Experience study and is thus formally considered an Adverse Childhood Experience that can contribute to poorer health outcomes and socio-emotional wellbeing.<sup>3</sup> The Parliament of Victoria's *Inquiry into Children affected by Parental Incarceration* found that parental incarceration is a traumatic experience that has a "significant impact on psychological and physical wellbeing".<sup>4</sup> This trauma can be compounded or mitigated by the child's exposure to criminal activity before the period of incarceration, whether or not they were present at the arrest and the manner in which the arrest was carried out, the extent to which they experience stability and quality of care during incarceration, and the nature of their visitation and contact with their parent in prison. This kind of

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<sup>1</sup> <https://www.aihw.gov.au/reports/prisoners/health-australia-prisoners-2018/summary>

<sup>2</sup> <https://www.aic.gov.au/sites/default/files/2020-05/19-1415-FinalReport.pdf>; see also Halsey, M. (2018). "Everyone is in damage control": The Meanings and Performance of Family for Second and third Generation Prisoners', in eds. R. Condry & P. S. Smith, *Prisons, Punishment, and the Family: Towards a New Sociology of Punishment?* Oxford University Press, pp. 213-229.

<sup>3</sup> <https://www.cdc.gov/violenceprevention/aces/about.html>

<sup>4</sup> <https://new.parliament.vic.gov.au/get-involved/inquiries/inquiry-into-children-with-imprisoned-parents/>

trauma is associated with physical and mental health outcomes that can also be associated with behavioural problems including anti-social and risk-taking behaviours.

However, the Inquiry also found that the negative effects of adverse childhood experiences and of the trauma of parental incarceration can be reduced if there is care, therapeutic support, and help to maintain or develop stronger family relationships in place. Unfortunately, in Victoria and in most other Australian jurisdictions, there is no formal support available to the families and children of people who are incarcerated. In Victoria, there is no government body or agency with mandated responsibility for this cohort, no organised data collection on their needs or outcomes, and very few targeted services they can access. Vacro provides some of what little is available, including supported video visitation (the Vacro Family Visits program) and therapeutic family counselling in some of Victoria's prisons. Most families, and especially those families where it is the father who is incarcerated, are not able to access any specialised support.

### **What needs to be changed so that youth justice and related systems protect the rights and wellbeing of children and young people? What are the barriers to change, and how can these be overcome?**

To protect the rights and wellbeing of children and young people, relevant systems must overcome government siloes and work together to support families interacting with the justice system.

In the Victorian context, Vacro advocates for the implementation of its *Comprehensive Vision for Families in Contact with the Criminal Justice System*.<sup>5</sup> The vision, which is reproduced as a graphic overleaf, proposes a holistic network of supports for families from the point of arrest, through the court and prison systems, and back into the community. It also identifies the whole-of-system changes needed to support this vision.

**System change:** The children and families of parents who are incarcerated should be formally recognised as a client group and, in each state or territory, there should be a government body or agency within the relevant family services department with mandated responsibility for the needs of this cohort. Once this agency has been established, it would become the central point of contact for families and for the coordination of the services available to them.

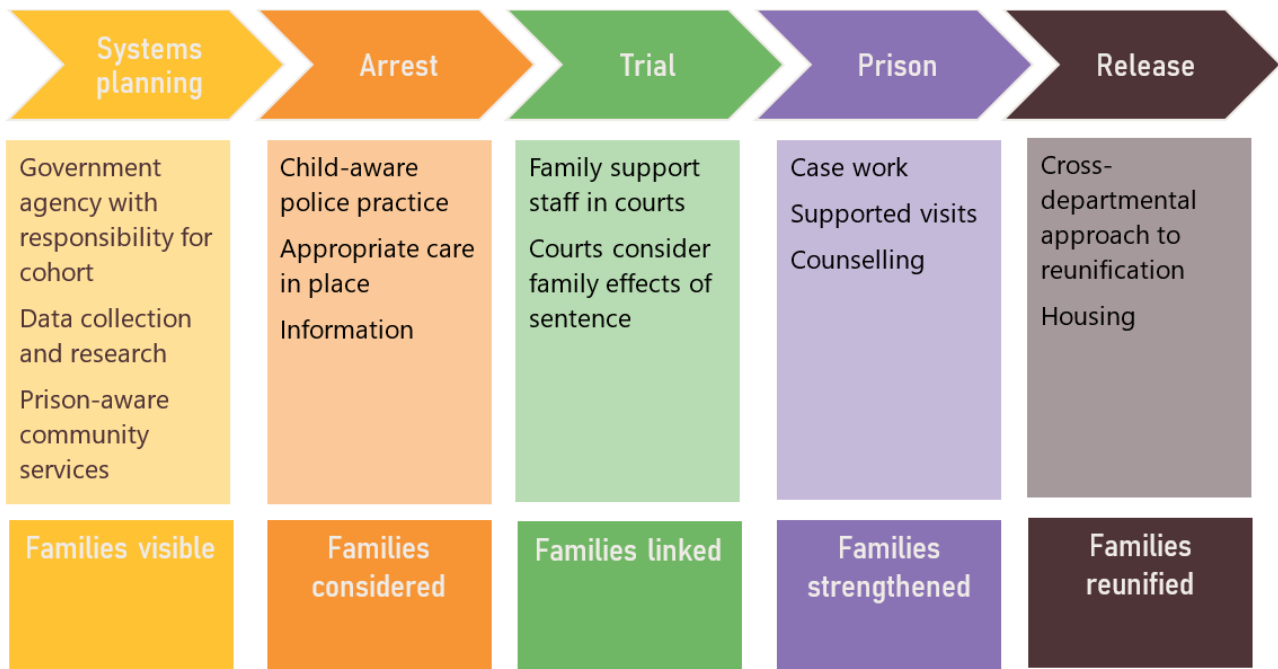
**Arrest:** The body would work with the relevant state or territory police force to ensure that they implemented child-aware procedures at the point of arrest, including by avoiding forceful arrests in children's presence and by establishing carer responsibilities at the point of arrest, putting the carer in contact with the relevant service to support them with information about the justice system, and allowing arrestees to take part in the planning process for their children's care.

**Court:** At the point of trial, courts should formally consider caring responsibilities when sentencing, and a court-based family support service should be available to families, delivered by a specialist community organisation.

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<sup>5</sup> <https://www.vacro.org.au/Handlers/Download.ashx?IDMF=6755f27c-1639-4a5a-9bd3-0742b63f1ab4>

Figure 1: Vacro's Comprehensive Vision for Families in Contact with the Criminal Justice System



Vacro ran such a service at the Geelong Magistrates' Court from 2013 to 2015, which was formally evaluated to be "a means of reducing risk to families and children that is of national and even international significance".<sup>6</sup> Unfortunately, the program was not funded to continue at Geelong or to be expanded across Victoria.

**Prison:** The rights of the child also need to be protected once the parent is incarcerated. The most relevant of these rights is children's right to contact with their parents, as stipulated in Article 9(3) of the Convention on the Rights of the Child. The exercise of this right is severely impeded by the existing arrangements for in-person, video, and phone contact in the adult prison system. These arrangements must be changed so that in-person visitation is accessible and child-friendly, and both video and phone calls are provided at no cost to the family. The maximum allowed length of phone calls must also be extended to that parents can have a meaningful conversation with their child and with their child's carer.

A comprehensive suite of specialist family services should be available in each prison so that parents can access support. These services should include support with visitation (for in-person and video visits), therapeutic family counselling, family case management and other parenting support.

**Release:** Working with families regularly during a period of incarceration will also support family involvement in release, parole, and reunification planning. When family relationships are strong, and a parent is released home to a family that is well-prepared and well-supported to help them create new beginnings and thrive in their community post-release, we know that outcomes are better for the whole family, including children.

<sup>6</sup> Hastrich, R. (2015). Family Links Geelong Pilot Project: Final Evaluation Report. Melbourne, Victoria: VACRO, p. 5.

In-prison programs that support families should adhere to the principle of throughcare wherever possible, meaning that the services should provide coordinated support that starts before a person is released from prison and continue that support through the transition back to community. One example is providing therapy to families while their loved one is in prison, and continuing that therapy during the first year post-release, when reintegration can present challenges.

### **Can you identify reforms that show evidence of positive outcomes, including reductions in children's and young people's involvement in youth justice and child protection systems, either in Australia or internationally?**

In response to the previous question, we listed a range of interventions that show evidence of positive outcomes. In this section, we focus on legal reforms that would also have a strong positive benefit for children and young people.

#### **Arrest**

There are few jurisdictions that have established best-practice alternatives for arrests where children are present or where the individual arrested has dependent children. One such jurisdiction is Sweden, where police have a formal responsibility to inquire after – and follow up on – the long-term care arrangements of the children of people they arrest. This takes the form of an interview at the police station which includes questions about care arrangements for children. The police then have a duty to inform Children's Services if there are no long-term arrangements in place.<sup>7</sup>

Some local jurisdictions in California in the United States have adopted formal joint protocols or working arrangements to safeguard children during and after parental arrest. Some of the measures employed under these protocols include the placement of a social worker in every police station, other co-location of social work services with law enforcement, changes to police arrest and reporting procedures, and joint training of both child welfare and law enforcement officers.<sup>8</sup> In response to the promising results from the implementation of these protocols, the International Association of Chiefs of Police (IACP) in the United States produced a Model Policy for safeguarding children of arrested parents. Under the Model Policy, officers should be trained to "identify and respond effectively to a child...whose parent is arrested" whether or not that child is present at the time of arrest, and to minimise trauma and promote safety for the child following

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<sup>7</sup> Mulready-Jones, A. (2011). Hidden children: a study into services for children of incarcerated parents in Sweden and the United States. *Winston Churchill Memorial Trust*.

<sup>8</sup> Puddefoot, G, & Foster, L. (2007). Keeping children safe when their parents are arrested: local approaches that work. *California Research Bureau*.



the arrest.<sup>9</sup> The IACP now offers no-cost training and resources for law enforcement on mitigating the trauma experienced by children whose parents are involved with the police.<sup>10</sup>

## Trial

There are other jurisdictions where children and families are given more consideration at trial and sentencing. In England, Wales, and Scotland, judges have a discretionary right to request pre-sentence reports on the impact of a prison sentence on the individual's children and to take this impact into consideration.<sup>11</sup> In the Australian Capital Territory (ACT), the *Crimes (Sentencing) Act 2005* mandates that the courts take the probable effect any sentence or order would have on the individual's family or dependents.<sup>12</sup>

In international law, the African Charter on the Rights and Welfare of the Child is an example of a human rights treaty that explicitly provides for the children of incarcerated parents at the point of trial and sentencing. It provides a five-point test for ensuring that the best interests of the child are assessed when sentencing their caregiver, as per Article 12(2) of the Convention on the Rights of the Child.

The test directs sentencing courts in member states to find out whether a convicted person is a primary caregiver, to ascertain the effect on the children of any custodial sentence, to use the principle of the best interests of the child to decide what sentence to impose, and to take steps to ensure that the children will be adequately cared for during any period of incarceration.<sup>13</sup>

## Prison

In the United States, the state of Connecticut legislated to fully fund all phone calls from prison in 2021.<sup>14</sup> People incarcerated in Connecticut were previously charged USD \$5 for a 15-minute call and can now make 90 minutes of phone calls each day at no cost. Proponents of the legislation argued that a private corporation should not be allowed to profit from the right of incarcerated people to contact their families; we note that in Victoria, phone calls are similarly provided via a for-profit private contractor. The legislation also includes video calls and email services. Since the enactment of Connecticut's legislation, three more states have followed suit.

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<sup>9</sup> International Association of Chiefs of Police. (2014). Safeguarding children of arrested parents. Available at: <https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/IACP-SafeguardingChildren.pdf>

<sup>10</sup> <https://www.theiacp.org/resources/safeguarding-children-of-arrested-parents-toolkit>

<sup>11</sup> Lisa Ward Consulting. (2009).

<sup>12</sup> Hannon, T. (2006).

<sup>13</sup> The African Committee of Experts on the Rights and Welfare of the Child, General Comment on Article 30 of the African Charter on the Rights and Welfare of the Child, ACERWC/GC/01 (2013), adopted by the Committee at its twenty-second Ordinary Session (04 - 08 November, 201), para. 36.

<sup>14</sup> <https://www.usatoday.com/story/news/nation/2021/06/22/connecticut-first-state-make-prison-phone-calls-free/5302390001/>

In 2018, the Council of Europe published a recommendation providing detailed guidelines to member states for the treatment of children with incarcerated parents. This included thorough guidance on visitation arrangements.<sup>15</sup> The Council directed states to authorise visits at least once a week, at times of the day that work around a child's school attendance. Visits should take place away from the prison or even in the home where possible, but otherwise in a child-friendly environment at the prison where children feel safe and can play and interact with their parent. Throughout a visit, parents should be treated with dignity by prison staff in front of their families.

## **From your perspective, are there benefits in taking a national approach to youth justice and child wellbeing reform in Australia? If so, what are the next steps?**

It is the federal government's responsibility to ensure Australia meets its obligations under international treaties, including the Convention on the Rights of the Child. As far as we know, there is no state or territory government department that takes responsibility for protecting the rights of children with an incarcerated parent in that jurisdiction. A national approach to youth justice would help to resolve some of the glaring inconsistencies in our treatment of children and young people who are involved with the justice system; for example, varying ages of criminal responsibility, varying responses to youth offending, and varying arrangements for the children of incarcerated parents. If a national approach is to be taken, we strongly urge that the federal government include the children of incarcerated parents in its remit and ensure that funding and coordination is provided for services to support them and their families.

## **Conclusion**

One of the many factors that can increase a child or young person's chances of involvement with the justice system is the trauma caused by the incarceration of a parent. To reduce this risk, we must work to alleviate this trauma and ensure that families where a parent is incarcerated are supported. At present, no state or territory government in Australia assigns responsibility for this cohort to any agency, body, or department. If a national approach were taken to youth justice that included consideration of the rights and wellbeing of children with incarcerated parents, it could provide much-needed momentum to spur state and territory governments into acting to ensure that Australia meets its obligations under the Convention on the Rights of the Child.

As such, we recommend that the National Children's Commissioner include consideration of this cohort in its project, in recognition of two facts: first, that intergenerational offending contributes to children's involvement in the youth justice system; and second, that we can tackle the problem by ensuring we adequately support families involved in the adult justice system.

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<sup>15</sup> Council of Europe, Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents (4 April 2018) paras. 16-31.