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LAW & ADVOCACY
CENTRE FOR WOMEN

Inquiry into the Children of Imprisoned Parents

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

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Inquiry into the Children of Imprisoned Parents

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

Background

On 20 December 2021 the Legislative Council of Victoria's Legal and Social Issues Committee (Committee) self-referred an inquiry into the adequacy of policies and services to assist the children of imprisoned parents in Victoria, with particular reference to:

- (a) the social, emotional and health impacts on affected children;
- (b) what policies exist and what services are available, including consideration of those in other jurisdictions;
- (c) how effective these services are, including —
 - (i) consideration of evaluation of work already done in this area; and
 - (ii) identifying areas for improvement

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; and family violence intervention orders.

In June 2021, in recognition of the significant gap in service provision for women with criminal justice involvement who were also subject to intervention from child protection, LACW created a specialist child protection practice within its service. Since that date, LACW has assisted over 50 women with child protection matters. A majority of these women have concurrent criminal, family violence intervention order and/or VOCAT matters. We have also assisted a smaller cohort of women who are the subject of in-patient treatment orders, who have corresponding child protection matters.

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 Aboriginal and Torres Strait Islander 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 Aboriginal and Torres Strait Islander 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 women and children with lived experience of the child protection and criminal justice systems – in particular, Aboriginal and Torres Strait Islander women and children – in identifying the problems with the current system and developing proposed reforms.

Women in the criminal justice system

The support needs of criminalised women are interrelated and complex.

Many of the support needs with which criminalised women present are gender specific, and this is particularly relevant in the context of their status as mothers and primary carers of children. There is often a direct relationship between women’s trauma and personal relationships and their contact with the justice system; between complex health needs - including mental health and chronic illness – and criminalisation; and between substance abuse, past trauma and victimisation – all of which place a woman at greater risk of child protection intervention.

Criminalised women are more likely than men to have experienced childhood victimisation (particularly sexual abuse), as well as subsequent victimisation as adolescents and adults, including sexual assault and family violence.¹ Evidence suggests that between 77 per cent to 90 per cent of incarcerated women have been exposed to traumatic events.² A 2004 Australian Institute of Criminology study found that 87 per cent of women in custody were victims of sexual, physical or emotional abuse.³

The experiences of criminalised women are not universal. Aboriginal and Torres Strait Islander women, and women from culturally and linguistically diverse backgrounds experience over policing and other forms of systemic racism, which include disproportionately high rates of child removal. Women with disability face increased social and economic marginalisation, as well as experiences of victimisation and trauma.⁴ The discrimination faced by trans and gender diverse people in the community is linked to criminalisation,⁵ and transphobic stigma, discrimination and assault make carceral settings especially damaging for them.⁶

¹ Stathopoulos, Mary and Antonia Quadara, *Women as offenders, women as victims: The role of Corrections in supporting women with histories of sexual abuse* (Report for the Women’s Advisory Council of Corrective Services NSW, 2014) 25-26.

² Green, Bonnie, Jeanne, Miranda, Daroowalla, Anahita and Juned Siddique, ‘Trauma exposure, mental health functioning and program needs of women in jail’ (2005) 51 (1) *Crime & Delinquency* 133-151, 134.

³ Johnson, Holly, ‘Drugs and crime: A study of incarcerated female offenders’ (Australian Institute of Criminology: Research and public policy series, 2004) xiv.

⁴ Winford, Stan, Howard, Anna and Jessica Richter, *Recognition, respect and support. Enabling justice for people with an acquired brain injury* (Centre for Innovative Justice Report, RMIT University, 2018).

⁵ Lenning, Emily and Carrie Buist, ‘Social, psychological, and economic challenges faced by transgender individuals and their significant others: Gaining insight through personal narratives’ (2012) 15 (1) *Journal of Culture, Health, and Sexuality*, 45-57.

⁶ Ministry of Justice United Kingdom, *Review of the care and management of transgender offenders* (Report, 2016).

Intersections between the criminal justice and child protection systems

Women are overwhelmingly the primary carers of children, as well as carers for the sick and elderly in their community. When women are imprisoned, even for short periods, this impacts families and communities and can have long term effects. The Australian Human Rights Commission noted that ‘mothers that are prisoners can impact family relationships and can lead to their children suffering from emotional and behavioural problems’.⁷ It is estimated that more than half of women in prison are the primary carers of children,⁸ and 80 per cent of Aboriginal and Torres Strait Islander women in prisons are mothers.⁹

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 young person entering child protection or justice systems.¹⁰ For instance, the Australian Institute of Health and Welfare indicates that young people on child protection orders are 27 times more likely to be under a youth justice supervision order in the same year.¹¹

Regardless of whether or not they were classified as “primary carers” of children when entering custody, incarceration clearly disrupts opportunities for incarcerated mothers and carers to maintain contact with children. Concerns about children’s wellbeing feature strongly amongst incarcerated women,¹² concerns which are likely to be heightened where children are in the care of the state or a violent partner.¹³

A study by the Victorian Department of Justice and Regulation found that women who had been separated from their children were more likely to return to custody than women whose connection with their children had been supported. Other studies have shown that even short periods of separation can have profoundly devastating impacts on the mother-child bond, with custody functioning as a “double punishment”.¹⁴ When in prison, women who have lost custody of their children are usually at higher risk of self-harm.¹⁵

This brings with it increased risk that the children of incarcerated women will be taken into state care. Given women’s wider caring responsibilities, including Aboriginal women’s cultural

⁷ Australian Human Rights Commission, *Human Rights and Prisoners* (2009).

⁸ Rachel Carbonell ‘When mum goes to prison’ ABC, 23 June 2017.

⁹ Juanita Sherwood and Sacha Kendall, ‘Reframing Space by Building Relationships: Community Collaborative Participatory Action Research with Aboriginal Mothers in Prison’ (2013) 46 *Contemporary Nurse: A Journal for the Australian Nursing Profession* 83, 85.

¹⁰ Juanita Sherwood and Sacha Kendall, ‘Reframing Space by Building Relationships: Community Collaborative Participatory Action Research with Aboriginal Mothers in Prison’ (2013) 46 *Contemporary Nurse: A Journal for the Australian Nursing Profession* 83, 85.

¹¹ Australian Institute of Health and Welfare, ‘Young People in Child Protection and Under Youth Justice Supervision 2013-14’ (Data Linkage Series No 21, 2016) vi.

¹² Goulding, D. (2004) *Severed connections: An exploration of the impact of imprisonment on women’s familial and social connectedness*, Centre for Social and Community Research, Murdoch University.

¹³ Centre for Innovative Justice (n 22) 31.

¹⁴ Moloney, K.P. & Moller, L.F. (2009) ‘Good Practice for Mental Health programming for women in prison: Reframing the Parameters,’ 123(6) *Journal of Public Health* 431-433.

¹⁵ Mitchell, B.K. & Howells, K. (2002) ‘The Psychological Needs of Women Prisoners: Implications for Rehabilitation and Management’ 9(1) *Psychiatry, Psychology and Law* 34-43; Hooper, C.A. (2003) ‘Abuse, interventions and women in prison: A literature review’, Literature Review, London: HM Prison Service, Women’s Estate Policy Unit.

responsibility for the care of non-biological children, the incarceration of women clearly has significant down-stream implications for child welfare and family cohesion.¹⁶

Child removal in Aboriginal and Torres Strait Islander communities

Research with Aboriginal women in custody indicates that a significant majority will be biological mothers with care of children prior to their experience of incarceration.¹⁷ In addition, Aboriginal cultural expectations involve caring for children in extended family and kinship structures.¹⁸ This means that a majority of Aboriginal women in custody are likely to have biological children, as well as caring responsibilities for additional children.¹⁹

Aboriginal and Torres Strait Islander women are more likely than non-Aboriginal women to have experienced serious family violence, and to sustain physical injuries as a result of violence.²⁰ In addition, Aboriginal and Torres Strait Islander women may be fearful of reporting family violence due to specific fears of having children removed, in addition to a general underlying mistrust of authorities and police, which is a product of generational child removal.²¹ As a result, they are disproportionately faced with enduring family violence within a system that does not provide culturally safe processes for their protection.

Considering the grossly disproportionate rate at which children are removed by the State from Aboriginal and Torres Strait Islander women and families, and the contextual history of the Stolen Generations in Australia, child removal must be understood as an ongoing act of colonial violence, perpetrated against Aboriginal women and their families. Child removal is particularly prevalent amongst women who are criminalised. Child removal is also linked to incarceration later in life amongst Aboriginal women. It is therefore unsurprising that Aboriginal women in custody describe removal of children as the most significant injury to their health and social and emotional wellbeing, as it reinforces pre-existing, as well as introducing new trauma.²²

¹⁶ Centre for Innovative Justice, *Leaving Custody Behind: Foundations for safer communities & gender-informed criminal justice systems* Issues Paper (July 2021) 27.

¹⁷ Bartels, L. (2010). Indigenous women's offending patterns: A literature review. Research and public policy series no. 107. Canberra: Australian Institute of Criminology; Lawrie, R. (2003) 'Speak Out Speak Strong – Researching the Needs of Aboriginal Women in Custody.' 8 Australian Indigenous Law Report, 81– 4.

¹⁸ Jones, J., Wilson, M., Sullivan, E., Atkinson, L., Gilles, M., Simpson, P.L., Baldry, E. & Butler, T (2018), 'Australian Aboriginal Women Prisoners' Experiences of Being a Mother: A Review' 14(4) International Journal of Prisoner Health 221.

¹⁹ Centre for Innovative Justice (n 22) 32.

²⁰ Centre for Innovative Justice (n 22) 38; 4 Lawrie, above n 100; Stubbs, J. & Tolmie J.,(2008) 'Battered women charged with homicide: advancing the interests of Indigenous women' 41(1) Australian & New Zealand Journal of Criminology 138-161; Blagg, H., Morgan, N., Cunneen, C. & Ferrante, A. (2005) Systemic Racism as a Factor in the Overrepresentation of Aboriginal People in the Victorian Criminal Justice System, Equal Opportunity Commission of Victoria; Jackson et al, above n 127 'Acquired Brain Injury in the Victorian Prison System' (Research Paper Series No 04, Corrections Victoria, April 2011) 6; Kendall, S., Lighton, S., Sherwood, J., Baldry, E. & Sullivan, E. (2019), 'Holistic Conceptualizations of Health by Incarcerated Aboriginal Women in New South Wales, Australia' 29(11) Qualitative Health Research, 103.

²¹ Centre for Innovative Justice (n 22) 25; Flynn, C. (2011) 'Responding to the Children of women in prison: Making the invisible visible', Family Relationships

²² Centre for Innovative Justice (n 22) 32; 3 Kendall, S., Lighton, S., Sherwood, J., Baldry, E. & Sullivan, E. (2019), 'Holistic Conceptualizations of Health by Incarcerated Aboriginal Women in New South Wales, Australia' 29(11) Qualitative Health Research, 1549-1565.

Children in contact with child protection who have mothers in prison

There is a paucity of research examining the potential vulnerability to adverse outcomes of children in contact with child protection who have mothers in prison. As such, there is little Australian research to inform policy and practice. Compounding matters, there is no data available confirming the number of women in Victorian prisons with children in contact with the child protection system.

The absence of research and data is emblematic of the sense of invisibility experienced by many mothers in prison and the impact this lack of visibility has on their children.

LACW delivers state-wide child protection legal services, including for women in prison or recently released. Our client cohort have typically had children removed from their care prior to our involvement, most commonly in the context of intersecting contact with the criminal justice and family violence systems. Almost half of the clients we represent in child protection proceedings are Aboriginal. Around 40 per cent will have spent time in prison during our period of representation. Many have not had the benefit of legal assistance for an extended period and consequently, have had no contact with their children for some time.

Our service has identified several major barriers to mothers in prison staying connected to their children:

- Lack of visibility and exclusion from decision making processes concerning children.
- Stigma and shame associated with prisoner/offender status.
- A lack of assistance to support the resumption of contact with children following their release from prison.

For mothers in prison, their ability to access legal services and participate in decision making processes regarding their children, remains significantly impeded. There are substantial barriers to arranging contact with children in a prison setting, particularly where contact is to be facilitated by Child Protection. There remains high levels of stigma and shame associated with women's status as a prisoner or offender and contact within a prison setting is still perceived negatively.

Case Example: Lack of access to legal services

LACW acts for several clients who have had limited or no access to legal advice and representation prior to our involvement:

- An Aboriginal mother had no contact with her children for several years. Orders made years ago did not provide for contact. The mother had a history of mental health issues, prison time, transience, and substance misuse. She had been self-advocating unsuccessfully with Child Protection on and off for two years. Despite Child Protection knowing the mother was in prison, she was not invited to participate in case planning, an Aboriginal Family-Led Decision Making Meeting or cultural support planning for her children.
- A mother gave birth to her baby while on remand. Child Protection intervened and shortly after birth, the baby was removed and placed on interim orders with a family member. Because the mother was in prison, she didn't receive a Children's Court Duty Lawyer and so orders were made in her absence. We were referred the mother several weeks later, at which point she had not seen her newborn child in five weeks.

Characterising contact in prison as ‘unhealthy’ or ‘negative’ denies the importance of maintaining the relationship between a child and their mother.

Notwithstanding recent COVID-19 restrictions, there is a longstanding unwillingness on the part of Child Protection to facilitate contact occurring in prison. There is currently no ability for children to video call their mother in prison, children aren’t able to email their mothers and telephone calls are costed at \$1.00 per minute (to mobiles). It is imperative that these barriers to contact be removed, and in particular that phone calls to children be provided for free.

Mothers in prison are, as a result, disproportionately impacted by strict time-lines for the making of child protection orders, specifically in relation to demonstrating ongoing contact and connection with children. Where barriers exist to contact with mothers in prison, including due to visits not being facilitated by caregivers, this can make it extremely difficult for mothers to maintain and demonstrate this ongoing connection.

For mothers responding to applications brought by Child Protection to the Children’s Court, their participation from prison extends only to audio link. So, for example, an application listed for a Conciliation Conference, a two-hour mediation hearing will feature all parties online (with videos) except the mother in prison who is only able to hear participants and not see them.

Case example: Court proceedings

An Aboriginal mother with an intellectual disability participated in a Conciliation Conference from prison via audio link. She had asked to be able to participate by video link but was advised the technology wouldn’t allow that to happen. She was not offered the option of attending in person. The conference proceeded but the mother found it very distressing that she was the only person unable to see the other parties. She found it hard to understand who was speaking and found the process confusing.

The need for decarceration measures to protect the best interests of children

The growing numbers of women being held in Victorian prisons should be a cause of alarm, especially when considering the impacts this has on children. More women in prison means more mothers in prison, with consequential deleterious impacts on their children.

The number of women held in Victorian prisons has more than doubled over the past decade, growing from 248 in 2008 to 581 in 2018.²³ For several years, women have been the fastest growing cohort in Australian prisons. Between 2009 and 2019, the female prison population in Australia increased by 64 per cent, compared with 45 per cent for males.²⁴

²³ Note that this number has reduced due to the COVID-19 pandemic. Crime Statistics Agency, *Characteristics and offending of women in prison in Victoria, 2012-2018*, November 2019.

²⁴ Australian Institute of Health and Welfare, *The health and welfare of women in Australia’s prisons*, November 2020.

Aboriginal and Torres Strait Islander women are grossly over-represented in these figures. The number of Aboriginal women in prison has more than tripled, growing from 42 in 2012 to 147 in 2018.²⁵

There are, in our submission, three key factors that have driven this unprecedented growth in the number of women on remand and in prison, which each require reform in order to stem this growth: recent reforms to the *Bail Act 1977* (Vic), Victoria's sentencing regime, and increasing rates of homelessness and housing insecurity.

Bail reform

A significant driver of the increase in prisoner numbers has been the sharp increase in the number of people being held on remand (ie unsentenced). As at 31 May 2021, 55 per cent of women in custody in Victoria were on remand.²⁶

Spending time on remand – even short periods – is extremely damaging for women and their children: children are removed; community supports, including mental health intervention is interrupted; stable housing is generally put at risk; and employment or job readiness programs are paused. This leads to increasing numbers of women being released into the community in circumstances where they are more likely to re-enter the justice system.²⁷ Delays in processing matters through the court, combined with harsh bail laws that mean more women are spending time on remand, can lead to perverse legal outcomes where women plead guilty to charges that are not legally made out just so they can be released from custody.

Case Example: Bail

LACW represents women who plead guilty because bail is too difficult to obtain. The desire to finalise matters quickly to facilitate release from prison in the face of harsh bail laws is exacerbated for women with caring responsibilities. For example:

- LACW's client was subject to ongoing family violence by her partner throughout their relationship, including when she was pregnant. She fled the relationship with her two young children and was living alone as a single parent in crisis accommodation. She was struggling financially and the pressure of looking after her children alone in unstable accommodation was putting her under immense stress. She was then charged with a serious indictable offence and remanded in custody. After an unsuccessful bail application, she instructed that she wanted to plead guilty so that she could start the process of reconnecting with her children. She made this decision despite advice that there were significant weaknesses in the prosecution's case. She was sentenced to 'time served.'

Bail reform is urgently needed to reduce the number of women on remand and in prison, and reduce the flow-on impacts of these periods of incarceration on children. Such reforms include:

1. Repeal the reverse-onus and double uplift provisions of the *Bail Act* and provide a presumption in favour of bail unless there is a specific and immediate risk to the safety of another person.
2. Adopt a gendered and culturally appropriate approach to determining 'risk' to community safety that takes into account the specific disadvantage and marginalisation experienced by women.

²⁵ Crime Statistics Agency (n 7).

²⁶ Ibid.

²⁷ Stathopoulos (n 1).

3. Ensure that women are not refused bail due to homelessness or a lack of social and affordable housing. Investment is required to ensure all women have access to safe, stable and affordable housing that meet their specific needs.
4. Reclassify, as summary offences, those low-level offences that are often committed by women due to their poverty, disadvantage and marginalisation, including drug offences, theft and property offences, and public nuisance and unlawful assembly.
5. Improve police responses to women charged with low-level offending, including increased use of charging on summons, review of police decisions, and transparency around police bail decisions.

Sentencing reform

As most women in custody have been victims of violence, the prison environment serves to re-traumatise women and undermine prospects for rehabilitation and child reunification. Effective rehabilitation that is trauma-informed, culturally sensitive and gender-specific cannot occur in a carceral environment. Therefore, sentencing options must focus on community-based solutions that address these underlying issues and take into account a person's caring responsibilities, supporting reunification to the greatest extent possible. Such sentencing options will reduce the number of women in custody and interrupt cycles of reoffending and ongoing engagement with Child Protection by offering women meaningful opportunities for rehabilitation.

LACW is opposed to the planned expansion of the Dame Phyllis Frost Centre. Funds set aside for the planned expansion should be redirected to community programs, in particular public housing and rehabilitation programs, that will have long-lasting benefits for criminalised women and for the community in general. We submit that trauma-informed care is vital in addressing the underlying causes of women's criminalisation and imprisonment, in particular where they have children, and that such care cannot be effectively delivered in a carceral environment.

Caring responsibilities as a specific consideration in sentencing

The sentencing process must include a specific requirement that decision-makers consider the impact of the imposition of a term of imprisonment on dependent children. This aligns with the UN Convention on the Rights of the Child, which requires in Article 3(1) that:

'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'.

A similar requirement exists in the United Kingdom, where personal mitigation considerations specifically include whether the person is a sole or primary carer for dependant relatives. For people on the cusp of custody, sentencing principals provide that imprisonment should not be imposed where there would be an impact on dependants. Where custody is unavoidable, the impact on dependants is relevant to the length of the sentence imposed and whether the sentence is suspended. The court is also required to have all the relevant information about dependent children before deciding on sentence.

Likewise, in South Africa the Constitutional Court has ruled that the best interests of the child must be taken into account when sentencing a primary carer of minor children. In particular, the Court has held that if there is a range of appropriate sentences, then the court must use the paramountcy principle concerning the interests of the child as an important guide in deciding which sentence to impose.

Sentencing reform that can reduce the number of women in prison and provide for enhanced options for rehabilitation and family reunification include:

1. Review the sentencing hierarchy and Community Corrections Orders to provide additional options for community-based treatment and rehabilitation that is tailored to the specific needs of women.
2. Require decision-makers to consider the unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples as part of the sentencing process, and require training to be undertaken by decision-makers to ensure the appropriate implementation of these considerations.
3. Increase therapeutic sentencing practices and the use of structured sentence deferral to deliver tailored, rehabilitative outcomes.
4. Abolish short sentences whilst providing safeguards against 'sentence creep,' to ensure that women are not imprisoned for short periods of time disrupting their support system, including employment, education, caring responsibilities and housing. This should be referred to the Victorian Law Reform Commission for consideration.
5. Take into account the significant increase in numbers of women on remand in Victoria when considering reforms to sentencing.
6. Adopt a harm-reduction approach to drug-related offending that prioritises rehabilitative and community-based responses.
6. Include a person's caring responsibilities as a specific consideration in sentencing, requiring decision-makers to consider the impact of a sentence on dependent children.

[The link between housing insecurity, criminalisation and child removal](#)

Increasing rates of homelessness in Victoria are directly contributing to the growth in Victoria's remand and prison populations. 115,300 clients were assisted by specialist homelessness services in Victoria in 2019-20.²⁸ The total number of clients being assisted by such services in Victoria has increased 3.7 per cent on average each year from 2011.²⁹ In 2019-20, 61 per cent of clients who sought assistance from such services in Victoria were women.³⁰ On average, 108 requests for assistance from homelessness services went unmet each day in Victoria in 2019-20.³¹

A recent report by the Australian Institute of Health and Welfare outlined that one in three people entering prison reported being homeless in the four weeks before prison,³² while over half of the people being discharged from prison expect to be homeless upon release.³³ This statistic reflects the experiences of many of LACW's clients, for whom homelessness is a key contributor to their involvement with the criminal justice system.

Options for housing are even more limited for criminalised women with children in their care, meaning it is increasingly difficult to find appropriate and safe housing options that will satisfy the requirements of Child Protection. This further exacerbates a cycle of homelessness, child removal, criminalisation and imprisonment.

²⁸ Australian Institute of Health and Welfare, *Specialist homelessness services 2019-20: Victoria* (Fact Sheet, 2020) 1.

²⁹ Australian Institute of Health and Welfare, *Specialist homelessness services historical data 2011-12 to 2019-20: Victoria* (2020) Table 1.

³⁰ Australian Institute of Health and Welfare (n 17).

³¹ Ibid.

³² Australian Institute of Health and Welfare, *The health of Australia's prisoners 2018* (Report, 2019) 22.

³³ Ibid, 24.

Case examples: Homelessness and criminalisation

For many of LACW's clients, homelessness contributes to their criminalisation. For example:

- One LACW client was subjected to family violence at the hands of her partner for many years. She was then misidentified as the perpetrator of family violence and charged with assaulting her partner. She was living in a community housing property but was evicted after she was charged with this offending and her children were removed from her care. She was homeless for three years and started using drugs to cope. During that period, she was charged with possessing cannabis and stealing petrol. The assault charges that led to her eviction were later withdrawn.

The provision of social housing is the strongest protection factor against homelessness.³⁴ In turn, stable housing is a strong protective factor against both child removal and criminalisation leading to imprisonment. Yet there is currently not enough social housing in Victoria to meet the needs of the most vulnerable people in our community. As of June 2021, the Victorian Housing Register listed 51,823 applications (many applications will have multiple people listed on the application) for social housing, with 28,427 applications in the 'priority access' category.³⁵ We know that LACW clients are waiting years for a 'Homeless with Support' highest priority housing application.

Case examples: Problems accessing private rental accommodation

LACW's clients often cannot access accommodation in the private rental market due to few affordable options and requirements of real estate agents. For example:

- A woman contacted our service when she was living in private rental accommodation. The accommodation was uninhabitable in several ways, including that it had mould and many basic amenities did not work. She had two dogs and four children so could not find suitable alternative rental accommodation for her family. She is from Melbourne but had to move to a hotel in regional Victoria for temporary accommodation.

In order to break the cycle of homelessness, criminalisation and child removal, the following reforms to the housing system must be implemented:

1. Ensure that there is adequate public housing provided to women who are in or at risk of entering the criminal justice system, including ensuring the immediate availability of housing for women who are released from prison, provided on the basis of Housing First principles.
2. Ensure that women are not criminalised due to a lack of affordable and social housing and the increased risk of entering or re-entering the criminal justice system due to homelessness.
3. Ensure that all housing provided to women – social, affordable and private housing – is aimed at ensuring that women have a home, and should meet accepted community standards of what constitutes a home.
4. Ensure that women have access to housing that is stable and secure, including security of tenure or an ongoing lease agreement and tenancy rights.

³⁴ Johnson, Guy; Scutella, Rosanna; Tseng, Yi-Ping and Gavin Wood, 'How do housing and labour markets affect individual homelessness?' (2018) *Housing Studies* 34 (7) 1089, 1101.

³⁵ Department of Families, Fairness and Housing (Vic), 'Victorian Housing Register,' *HousingVic* (Web Page, 15 September 2021) <<https://www.housing.vic.gov.au/victorian-housing-register>>.

5. Take into account the specific needs of women regarding safety and childcare in meeting their housing needs, including the provision of housing that is safe and free from violence, has appropriate space, is appropriate for children and is culturally appropriate.
6. Empower women to exercise control over their own lives, including by keeping the provision and management of their housing separate from their access to supports, and ensuring that no single organisation has an undue level of influence over a woman's life.
7. Empower women to make their own choices about where they live, who they live with and who comes into their home and when.
8. As per Housing First principles,³⁶ and in recognition of housing as a basic human right, access to and retention of housing should not be conditional upon engagement with supports or run through Corrections Victoria.

Family violence misidentification and child removal

Another factor leading to increased numbers of women being remanded in custody is the misidentification of women as primary aggressors in family violence incidents. From the outset, issues around misidentification have immediate flow on impacts for children, with Child Protection involvement often triggered. In turn, it takes an enormous effort to unwind the consequences that flow from misidentification in the context of child protection matters, especially when a woman has been placed in custody.

This issue can disproportionately impact Aboriginal and Torres Strait Islander women, in particular in light of the over-policing of Aboriginal communities and the mistrust of police and authority figures that follows.

Case Examples: Police responses to family violence

LACW has represented several women who have been mis-identified as the primary aggressor in family violence incidents, including:

- An Aboriginal woman with mental health issues, a history of family violence victimisation and contact with the criminal justice system. Police were called out by neighbours concerned for her welfare. The woman was intoxicated and was non-cooperative with the police. She was arrested and charged with resist arrest. She was transported to hospital for psychiatric review but discharged. Police issued a Family Violence Safety Notice against her on behalf of her partner and children. Immediately after, Child Protection intervened and placed her children with her violent partner.

Misidentification is not only harmful for women – it may place children at serious risk of harm if their primary carer is placed in custody and/or they are placed in the care of the aggressor.

Raising the age of criminal responsibility

As noted above, 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 child.³⁷ 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. The Victorian Government's *Youth Justice Strategic Plan 2020-2030*

³⁶ Padgett, Deborah; Henwood, Benjamin; and Sam Tsemberis, *Housing First: Ending Homelessness, Transforming Systems, and Changing Lives*, (Oxford Scholarship Online, November 2015).

³⁷ Australian Institute of Health and Welfare (n 8).

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.³⁸

Another report found that over 60 per cent of young people under youth justice supervision in Victoria also received a child protection service over the previous 4-years.³⁹ This is over ten times the rate of child protection involvement among the general Victorian youth population.⁴⁰ For Aboriginal and Torres Strait Islander children under supervision, 69 per cent had also received child protection services.⁴¹

Research shows that early interactions with the criminal legal system significantly increase the likelihood of further offending and life-long involvement with the justice system.⁴² 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 system do not reoffend and are more likely to grow up into an environment that promotes their healthy development and education.⁴³

Case Examples: 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 Aboriginal 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.

The age of criminal responsibility in Victoria is 10 years old. 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 obvious links between out of home care, parental incarceration and the youth justice system, this will have direct benefits for children of prisoners, allowing greater time and space for engagement with rehabilitation and support services, in place of the current trajectory from out of home care into justice system involvement from an unacceptably young age.

³⁸ Victorian Government, *Youth Justice Strategic Plan 2020-2030* (p. 9).

³⁹ Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria* (2016) 6.

⁴⁰ Australian Institute of Health and Welfare, *Young people in child protection and under youth justice supervision 1 July 2013-30 June 2017* (2018) Table S4a.

⁴¹ Ibid.

⁴² Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria* (December 2016) 26.

⁴³ *Royal Commission into The Protection and Detention of Children in the Northern Territory* (Final Report, 2017).

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

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