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LAW & ADVOCACY  
CENTRE FOR WOMEN

# **Yoorrook Justice Commission – Systemic Injustice in the Child Protection System**

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

November 2022

*LACW acknowledges that we operate on First Nations 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. We recognise that sovereignty over this land was never ceded, and it always was, and always will be Aboriginal land.*

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

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## About the Law and Advocacy Centre for Women

The Law and Advocacy Centre for Women Ltd ('LACW') is a community legal centre operating across the state of Victoria, Australia. 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 criminalisation and imprisonment 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 with 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 family violence intervention orders; infringements and fines and victims of crime assistance. 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 70 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. Aboriginal and Torres Strait Islander women comprise almost half of the clients we represent in child protection proceedings and approximately 30 per cent of LACW's entire client base.

## Background

The Yoorrook Justice Commission (Yoorrook) has been established as a Royal Commission to formalise a truth telling process into the historical and ongoing injustices experienced by First Peoples in Victoria. Yoorrook will deliver a Critical Issues report on June 2023 regarding the systemic injustices faced by First Peoples in the child protection and criminal justice systems.

LACW has prepared these submissions in relation to the following key issues identified by Yoorrook:

- The connection between colonisation and contemporary systemic injustice experienced by First Peoples in the child protection system
- Rates of First Peoples child removal
- Rates of criminalisation of First Peoples children in care
- Disconnection from community and culture for First Peoples children on child protection orders
- Adequacy of programs and funding to support prevention and early intervention
- Impact of family violence, homelessness or housing insecurity of caregivers as drivers for involvement with system and rates of child removal
- Examples of good practice to prevent First Peoples children and families at early stages from contact with or escalation into the child protection system

These submissions will focus on the experience of Aboriginal and Torres Strait Islander women and girls who have had involvement with the child protection system and the criminal justice system, whether as a parent or a child

## Colonisation, criminalisation and child removal

LACW has specialist knowledge and experience in working with mothers at the nexus of the child protection and criminal legal systems. A significant proportion of our clients are First Nations women. We note, however, that we are not an Aboriginal Community Controlled Organisation, and we recognise and respect the significant work of ACCOs such as Elizabeth Morgan House, Djirra and the Victorian Aboriginal Legal Service who have been advocating for reform and driving systemic change in this area for many years.

### *Criminalisation and child removal as manifestations of colonialism*

The unacceptable increase in the number of First Nations women in custody in Victoria, and the persistently high rates of child removal in First Nations communities, both have their roots in racist and discriminatory colonial practices that serve to criminalise First Nations people, deny their self-determination and undermine their family structures.

Considering the grossly disproportionate rate at which children are removed by the State from First Nations 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 First Nations women, communities and families. Child removal is particularly prevalent amongst women who are criminalised. Child removal is also linked to incarceration later in life amongst First Nations women. It is therefore unsurprising that First Nations 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 trauma, as well as introducing new trauma.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup> First Nations 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.<sup>4</sup> First Nations mothers and carers in prison

Research with First Nations women in custody indicates that a significant majority will be mothers will care of their children prior to their experience of incarceration,<sup>5</sup> and that up to 80 per cent of First Nations women in prisons are mothers.<sup>6</sup>

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<sup>1</sup> Centre for Innovative Justice, *Leaving Custody Behind: Foundations for safer communities & gender-informed criminal justice systems* Issues Paper (July 2021) 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.

<sup>2</sup> 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.

<sup>3</sup> Australian Institute of Health and Welfare, *The health and welfare of women in Australia's prisons*, November 2020.

<sup>4</sup> Australian Human Rights Commission, *Human Rights and Prisoners* (2009) (n 7).

<sup>5</sup> 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.

<sup>6</sup> 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.

In addition, cultural expectations involving caring for children in extended family and kinship structures<sup>7</sup> mean that a significant proportion of First Nations women in custody are likely to have caring responsibilities for additional children.<sup>8</sup>

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,<sup>9</sup> concerns which are likely to be heightened where children are in the care of the state or a violent partner.<sup>10</sup>

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 people entering the child protection or justice systems.<sup>11</sup>

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'.<sup>12</sup> When in prison, women who have lost custody of their children are usually at higher risk of self-harm.<sup>13</sup>

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 First Nations women's cultural responsibility for the care of non-biological children, the incarceration of women clearly has significant down-stream implications for child welfare, family cohesion and child protection involvement.<sup>14</sup>

### *Child removal and family violence*

First Nations women are more likely than non-First Nations women to have experienced serious family violence, and to sustain physical injuries as a result of violence.<sup>15</sup> In addition,

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<sup>7</sup> 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.

<sup>8</sup> Centre for Innovative Justice, Leaving Custody Behind: Foundations for safer communities & gender-informed criminal justice systems Issues Paper (July 2021) 32.

<sup>9</sup> 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.

<sup>10</sup> Centre for Innovative Justice, Leaving Custody Behind: Foundations for safer communities & gender-informed criminal justice systems Issues Paper (July 2021) 31.

<sup>11</sup> 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.

<sup>12</sup> 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.

<sup>13</sup> 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.

<sup>14</sup> Centre for Innovative Justice, Leaving Custody Behind: Foundations for safer communities & gender-informed criminal justice systems Issues Paper (July 2021) 27.

<sup>15</sup> Centre for Innovative Justice, Leaving Custody Behind: Foundations for safer communities & gender-informed criminal justice systems Issues Paper (July 2021) 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.,

First Nations 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 and an ongoing legacy of racist colonial practices.<sup>16</sup> As a result, they are disproportionately faced with enduring family violence within a system that does not provide culturally safe processes for their protection.

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 disproportionately impacts First Nations women due to the over-policing of Aboriginal communities and the mistrust of police and authority figures that follows from ongoing police practices that have their origins in racist, colonial practices.

Misidentification is harmful for First Nations women and 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.

#### **Case Examples | Police responses to family violence**

LACW has represented several First Nations women who have been mis-identified as the primary aggressor in family violence incidents. For example:

A First Nations client had 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. Our client 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.

#### *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.

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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.

<sup>16</sup> Centre for Innovative Justice (n 22) 25; Flynn, C. (2011) 'Responding to the Children of women in prison: Making the invisible visible', Family Relationships

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 First Nations women. 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, including:

- 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 advice**

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

A First Nations mother had no contact with her children for several years prior to LACW's involvement. 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.

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**

A First Nations 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 cause for 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.

LACW has made a related submission to Yoorrook's Inquiry into Systemic Injustice in the Criminal Justice System, and we refer to the analysis and recommendations in that submission relating to the urgent need for decarceration measures to reduce the number of women, in particular First Nations women, in custody, in order to protect the best interests of children.

## The child protection system's links to criminalisation

This section focuses on the link between child protection involvement and subsequent criminalisation for children in the system, including failures of the services system to provide adequate, culturally competent support at multiple touchpoints.

A significant proportion of First Nations women LACW has represented in criminal matters have been the subject child protection orders and removal from their family home as children. The proportion is even higher for clients of both our criminal and child protection practices who are now themselves seeking to reunify or have more meaningful involvement with their children. Commonly our clients have experienced family violence and sexual abuse as children and have continued to be victimised into adulthood, leading to mental health challenges and substance use as a means of coping with unresolved trauma. They face numerous barriers to accessing support services, including practical barriers such as not being able to afford a phone and inconsistent addresses, and systemic barriers including homelessness and a distrust of services that may make reports to child protection or fail to deliver services in a culturally safe and understanding way. Sadly, the result is often removal of our client's children in a seemingly self-perpetuating cycle.

### Case Examples | The inter-generational cycle of child removal

Most of LACW's child protection clients and many of our criminal practice clients who are First Nations women were the subject of child protection notifications and orders when they were young. Their interactions with the child protection system in relation to their own children is often connected to the trauma caused by these experiences. For example:

LACW acted for an Aboriginal woman in her criminal and child protection matters who grew up across many different family homes, commonly experiencing family violence in these settings, including sexual abuse. She began to use alcohol and other drugs as a way of coping with her traumas. She also came into contact with the youth justice system in relation to minor charges, which resulted in her spending time in custody.

Our client now has children of her own who were removed from her care at a very young age due to our client's mental illnesses, drug use and an acquired brain injury, all linked to her experiences as a child. The children have been placed in the care of non-First Nations families, and our client feels deeply distressed that they do not have a means of staying connected with their culture.

The child protection system failed to protect our client as a young person and now the same system has perpetuated further trauma through the removal of her children. Given this history, our client has understandably developed a deep mistrust of government services. She feels she cannot be open with workers from most support organisations due to their reporting requirements. Given her brain injuries, her homelessness and transience, and an ongoing fear of government authorities based on their treatment of other First Nations people in her community, our client has been struggling to work with child protection workers to stay in contact with her children. This mistrust of government services has also meant that our client is reluctant to accept NDIS support despite an intense need for these services and an existing plan in place.

### *Systems for family 'support' entrench social and economic disadvantage*

LACW clients who have had contact with the child protection system as young people continue to face an enormous degree of disadvantage due to their experiences of

maltreatment both in and out of care, and the lack of ongoing support once they leave the system. Young people who are in child protection are more likely to be from a low socioeconomic background, have lower levels of education outcomes and poorer health. Families living in regional areas are more susceptible to the impact of these issues as services are likely to be less accessible. For First Nations children, the issues are compounded by the impact of intergenerational trauma. Unfortunately, interactions with the child protection system often reinforce and exacerbate disadvantage and trauma instead of breaking the cycle.<sup>17</sup>

In 2021 Approximately 10 in every 100 First Nations children and young people in Victoria were in care. This rate has increased by 16 per cent in five years.<sup>18</sup> The child protection system is growing increasingly reliant on kinship carers and out of home care.<sup>19</sup> Government expenditure on these options far outstrips spending on family support services that aim to keep children with their parents.<sup>20</sup> In essence, there is a systemic preference for removal of First Nations children over providing the required level of support for keeping families together.

The number of families seeking support is increasing along with the proportion of families navigating complex and interrelated issues including homelessness, mental illness, alcohol and other drug dependency, disability and family violence.<sup>21</sup> It is more important than ever for LACW's clients and their children that family services are equipped to meet their needs, with an increased focus on prevention and early intervention.

#### **Case Examples | Services failing to meet the needs of families**

Support services often cannot accommodate the needs of LACW's clients due to high demand or lack of capacity to accommodate the specific needs of women. For example:

A First Nations client was unable to access a residential rehabilitation facility despite requiring acute support with substance dependency because she was the primary carer for her children. There are currently a very limited number of residential rehabilitation facilities that accommodate children in Victoria. As a result, carers, primarily women, are forced to choose between receiving treatment and looking after their children and families. For our client, the risk of removal of her children has been heightened by this gap in the service system.

There are opportunities for family and other support services to connect with women who may have children at risk when they are pregnant. Currently, child protection services do not commonly connect with women during pregnancy. However, providing support to mothers

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<sup>17</sup> Commission for Children and Young People, In our own words - Systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system (2019)

<sup>18</sup> Report on Government Services 2022 16A Child protection services (2022)

<sup>19</sup> Commission for Children and Young People, In our own words - Systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system (2019)

<sup>20</sup> Commission for Children and Young People, In our own words - Systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system (2019)

<sup>21</sup> Commission for Children and Young People, Lost, Not Forgotten: Inquiry into Children Who Died by Suicide and Were Known to Child Protection (2019) 13. Reports to the Child Protection Service have tripled in the last 10 years. Further, in 2017–18, more than 80% of families who presented to the Child Family Information and Referral Support Team and more than 50% who received help from a family service were identified to have two or more complex issues. Ten years earlier, in 2007–08, those figures stood at 55% and 20%

during pregnancy is one way to build rapport with them and ensure they have access to the prevention and early intervention services they need.

### *The connection between child protection and offending*

The majority of children and young people who receive child protection services, including those in out of home care do not offend. However, there has long been an overrepresentation of child protection-involved young people in the criminal justice system.<sup>22</sup> These young people, sometimes referred to as 'crossover children', make up 41% of all young people in the youth justice system.<sup>23</sup> This proportion is even higher for First Nations young people at 61%.<sup>24</sup> As outlined above, for LACW's First Nations clients there is often a direct connection between their traumatic experiences of child protection services and their involvement with the criminal justice system. Over the years numerous reports and inquiries have confirmed this. Key points from the research are summarised in Figure 1 below.

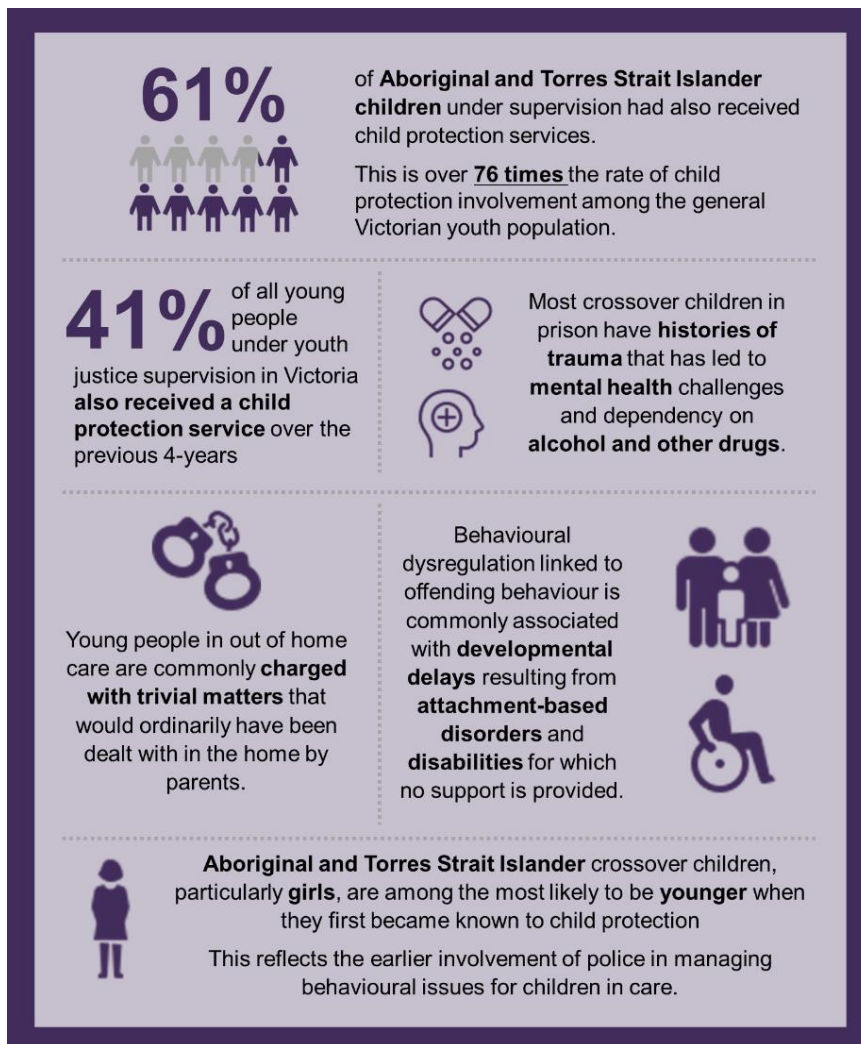
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<sup>22</sup> Child maltreatment and criminal convictions in youth: The role of gender, ethnicity and placement experiences in an Australian population Catia G Malvaso a, \*, Paul H Delfabbro a , Andrew Day b

<sup>23</sup> Victorian Government, *Youth Justice Strategic Plan 2020-2030* (p. 9).

<sup>24</sup>

Figure 1 | Summary of research about crossover children<sup>25</sup>



Despite many governmental reforms, First Nations children continue to be overrepresented in the child protection and youth justice system. As a result, First Nations children are more vulnerable to the issues across these systems. This 'care to custody pipeline' is particularly concerning because young people in the justice system are more likely to become involved in the adult justice system, which in turn is associated with a host of negative socio-economic and health impacts. Despite an increasing understanding of these issues, the pipeline from child protection to the criminal justice system persists.

It is important to note that experiences of maltreatment do not inherently increase a tendency towards criminal acts. The pathways into the criminal justice system are complex and a range of risk and protective factors have been shown to influence developmental pathways<sup>26</sup>.

<sup>25</sup> Victorian Government, Youth Justice Strategic Plan 2020-2030 (p. 9); Sentencing Advisory Council, Reoffending by Children and Young People in Victoria (2016) 6; 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

<sup>26</sup> Lansford, Jennifer E., et al. "Early physical abuse and later violent delinquency: A prospective longitudinal study." *Child maltreatment* 12.3 (2007): 233-245; Mersky, J. P., & Reynolds, A. J. (2007). *Child maltreatment and violent delinquency: Disentangling main effects and subgroup effects*. *Child*

### *The crossover of girls from the child protection to criminal justice system*

First Nations girls are more likely to be younger when they first become known to child protection, to experience higher levels of child protection intervention, spend more time in care, and to have more carers.<sup>27</sup> This cohort's intensive involvement with child protection has led them to be the most overrepresented group in youth detention today. First Nations girls in prison are the most likely (75 per cent) of any cohort to have received child protection services.<sup>28</sup> This points to the failure of our social services systems to identify and address the maltreatment, trauma and complex needs of First Nations girls in the child protection system. In this way, the crossover of girls from the child protection to criminal justice system is a gendered issue.

As mentioned in Figure 1, young people in residential care are commonly over-policed and unnecessarily criminalised in response to behaviours that would ordinarily be dealt with in the home by parents. Similarly, LACW's clients have also been penalised by the justice and child protection systems when their children run away from placement in out of home care to return home to their mother.

#### **Case Examples | Mothers punished for children absconding from placement**

Several of LACW's clients have faced penalties for children who have absconded back to them from their placement in out of home care. For example:

A First Nations client had her children removed from her care and placed into residential care. One of her daughters had a cognitive deficit that made it difficult for her to understand why she could not live with her mother. As a result, this child absconded back to her mother's home multiple times. Child protection made reports against our client resulting in charges of harbouring and ultimately an intervention order. Our client's daughter was sexually abused in residential care and she continued to abscond. For this, our client was charged with breaches of the intervention order resulting in her being remanded multiple times. Ultimately, the harbouring charges were withdrawn and our client was reunified with her daughter. However, the trauma of this two-year process has had a lasting impact on our client and her daughter's mental health.

### *A dearth of trauma-informed and culturally appropriate support*

The childhood and child protection-related trauma histories of LACW's First Nations clients tends to be extensive and is most often characterised by family violence and sexual abuse. These histories are often repeated in the lives of their children and continue to be perpetuated in the child protection system.

#### **Case Examples | Failure to embed trauma informed practice**

Our clients' experiences with the child protection system exemplify a need to better embed trauma-informed practice into child protection processes and policies. For example:

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maltreatment, 12(3), 246-258; Smith, Carolyn A., et al. "Long-term outcomes of young adults exposed to maltreatment: the role of educational experiences in promoting resilience to crime and violence in early adulthood." *Journal of interpersonal violence* 28.1 (2013): 121-156; Verrecchia, P. J., et al. "An examination of direct and indirect effects of maltreatment dimensions and other ecological risks on persistent youth offending." *Criminal Justice Review* 35.2 (2010): 220-243.

<sup>27</sup> Australian Institute of Health and Welfare, *Young people under youth justice supervision and in child protection 2018–19* (2020).

<sup>28</sup> Australian Institute of Health and Welfare, *Young people under youth justice supervision and in child protection 2018–19* (2020).

A client had her children removed from her care as she was medically incapacitated. Child protection services notified the children's father despite his extensive history of family violence against our client and their children together. They also started to explore a possible kinship placement with the father's family in another state to comply with the Aboriginal Placement Principles.

In making their decision about placement, child protection services need to balance conflicting factors relating to the best interest of the child. Understandably this is not easy, but the uncommunicative and unilateral way they chose to make their explorations were extremely distressing and retraumatising for our client.

There is a need for child protection decision making processes to be more consultative and transparent. In this instance, child protection services ought to have informed our client of the exploratory nature of their investigations rather than leaving her to figure this out for herself and in the meantime feeling helpless and distressed at the prospect of her children being placed in an unsafe care arrangement.

### **Case Examples | Efficacy of culturally safe practices**

The efficacy of culturally safe and informed practices is confirmed by the experiences of LACW's First Nations clients. For example:

A First Nations client was seeking to have her child returned to her care where child protection was seeking permanent out of home care arrangements. Throughout this process our client received child protection services from the Victorian Aboriginal Child Care Agency (VACCA) who had been delegated child protection authority by the Minister. The VACCA case manager was able to provide support to our client to navigate kinship care arrangements in a culturally sensitive and safe way with her family.

Additionally, our client was able to have her matter heard in the Marram-Ngala Ganbu Koori Family list at the Broadmeadows Children's Court. These hearings were conducted in a non-adversarial way where the magistrate was able to ensure that the voice of our client and her child were heard and properly considered in decision making.

### **Case Examples | Racism inherent in the child protection system**

While there are examples of culturally safe practices, there are also endless examples of the racist preconceptions and attitudes that influence the way child protection services are executed. There is immense need for improved cultural safety training for workers in the system and the embedding of this training into practice. For example:

Our client, who resides in a remote community, had her baby daughter taken from her care by a non-First Nations woman, ostensibly for medical treatment. After this point the woman took on caring responsibilities for the baby, relying on racist stereotypes about our client to justify her continuing custody of the child when corresponding with Child Protection services. The carer fabricated illnesses and disabilities to receive money from Centrelink and the NDIS. It has taken our client eight years to reunify with her child.

As these examples demonstrate, there is inadequate training in implementing trauma-informed and culturally safe practice in support services, despite extensive research and acknowledgement in policy of their efficacy. On the other hand, where LACW's First Nations clients do receive culturally safe services in the child protection, they are often more engaged with the process, underscoring the importance of the provision of culturally responsive and safe services in this area.

*Thank you for the opportunity to provide a submission. For further information, please contact Elena Pappas, CEO, at [epappas@lacw.org.au](mailto:epappas@lacw.org.au).*

*With thanks to Riya Kundu for her assistance in preparing this submission.*