



THE LAW SOCIETY  
OF NEW SOUTH WALES

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28 February 2020

The Hon. Matthew Mason-Cox MLC  
Chair, Committee on Children and Young People  
Parliament of NSW  
Macquarie Street  
SYDNEY NSW 2000

By email: [childrenyoungpeople@parliament.nsw.gov.au](mailto:childrenyoungpeople@parliament.nsw.gov.au)

Dear Mr Mason-Cox,

### **Inquiry into the support for the children of imprisoned parents in New South Wales**

Thank you for the opportunity to provide a submission to the Committee on Children and Young People inquiry into the support for children of imprisoned parents in NSW.

The Law Society's submission is informed by our Children's Legal Issues and Indigenous Issues Committees.

#### **1. General observations**

##### *1.1. The impact of incarceration on children and parents*

The Law Society could not identify recent NSW-specific data on the number of children experiencing parental incarceration, however a 2018 report from the Australian Institute of Health and Wellbeing found that on a national basis 38% of adult prison entrants have children in the community who are dependent on them for their basic needs, with an average of almost two children per prison entrant.<sup>1</sup> The same report found that women (54%) were more likely than men (36%) to have dependent children, and almost half (47%) of Indigenous prison entrants had dependent children, compared with one-third (33%) of non-Indigenous entrants.<sup>2</sup> In addition to adult prisoners with children, there are a number of children in custodial facilities in NSW who are parents. Of the 227 participants in the 2015 NSW Young People in Custody Health Survey (YPICHS), 22 males and 1 female were a parent prior to entering youth custody. In the majority (75%) of cases, participants had one child only.<sup>3</sup>

There is a significant body of evidence illustrating the negative impact that parental incarceration has on a child. It creates a less stable and predictable home life, which increases the likelihood of the child offending in the future.<sup>4</sup> This flow-on effect can be seen in figures from the 2015 YPICHS. 54% of the young people surveyed reported that at least one of their parents (i.e. mother, father or step-parent) had been incarcerated in the past, and 7% stated

<sup>1</sup> Australian Institute of Health and Welfare, *The Health of Australia's Prisoners* (Report, 2018) 14.

<sup>2</sup> Ibid.

<sup>3</sup> Justice Health & Forensic Mental Health Network, *2015 Young People in Custody Health Survey: Full Report* (Report, 2015) 18.

<sup>4</sup> Australian Parliament, Legal and Constitutional Affairs Reference Committee, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (Report, 20 June 2013) 21.

that both parents had been incarcerated. Aboriginal participants were more likely than non-Aboriginal participants to have a parent that had been in prison (68% vs 37%).<sup>5</sup> Incarceration of a parent can also increase the risk of the young person being placed in out-of-home care. Over one in five of the young people surveyed in the 2015 YPICHS (21%) reported that they had been placed in care before the age of 16 years.<sup>6</sup>

Research from outside Australia has further demonstrated the negative impacts of parental incarceration on children. A 2019 study informed by observations of 1420 children aged 9-16 from North Carolina found that parental incarceration was associated with young adults' increased odds of having an anxiety disorder, having a felony charge, spending time in jail, not completing high school, becoming a parent when younger than 18 years, and being socially isolated.<sup>7</sup> A 2015 discussion paper from the Prison Reform Trust noted that, in the UK context, parental imprisonment trebles the risk of antisocial behaviour in children, and increases the likelihood of a child not being in education, employment or training.<sup>8</sup>

## 1.2. Impacts of Indigenous incarceration

Studies suggest that 80% of female Aboriginal and Torres Strait Islander prisoners are mothers, with 20% of Aboriginal and Torres Strait Islander children nationally experiencing parental incarceration.<sup>9</sup> The Australian Law Reform Commission 2018 *Pathways to Justice* report noted that the incarceration of Aboriginal and Torres Strait Islander women has a "disproportionate but largely hidden adverse outcome for their children" and can contribute to "gaps in parenting, income, child care, role models and leadership in their communities, entrenching future disadvantage".<sup>10</sup> A 2013 report from the Legal and Constitutional Affairs Reference Committee, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia*, quoted Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, who stated that "the social costs of imprisonment on Aboriginal and Torres Strait Islander people is heightened because our identities are often shaped by our connection with our country, our culture and our families".<sup>11</sup> Studies also show that Aboriginal and Torres Strait Islander children who are removed from their mother are themselves more likely to enter the criminal justice system, highlighting the flow-on, intergenerational effects of Aboriginal and Torres Strait Islander incarceration.<sup>12</sup>

## 2. Current policies and services available for children of imprisoned parents

There are clear benefits in facilitating an ongoing relationship between incarcerated parents and their children. Children who maintain contact with their incarcerated parents have been found to have enhanced coping skills and reduced problematic behavior, and incarcerated parents who maintain a relationship with their children while in prison consider this to be an important contributing factor to reducing recidivism.<sup>13</sup>

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<sup>5</sup> Justice Health and Forensic Mental Health Network (n 3) 17-18.

<sup>6</sup> Ibid xx.

<sup>7</sup> Elizabeth Gifford et al, 'Association of Parental Incarceration with Psychiatric and Functional Outcomes of Young Adults' (2019) 2(8) *JAMA Network Open* 1.

<sup>8</sup> Prison Reform Trust, *Sentencing of mothers: Improving the sentencing process and outcomes for women with dependent children* (Discussion Paper, November 2015) 8.

<sup>9</sup> Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Final Report No 133, December 2017) 11.100.

<sup>10</sup> Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples: Discussion Paper* (July 2017), Discussion Paper 84 (DP 84), 11.102.

<sup>11</sup> Australian Parliament (n 4) 22.

<sup>12</sup> Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples: Discussion Paper* (July 2017), Discussion Paper 84 (DP 84), 11.102.

<sup>13</sup> Julie-Anne Toohey, 'Children and Their Incarcerated Parents: Maintaining Connections – How Kids' Days at Tasmania's Risdon Prison Contribute to Imprisoned Parent-Child Relationships,' *Changing the Way We Think About Change*, The Australian and New Zealand Critical Criminology Conference 2012 at 33.

Law Society members have identified SHINE for Kids as an organisation that plays a valuable role in supporting the children of incarcerated parents in NSW. SHINE for Kids services include: a supported transport service for children with no other way of visiting their imprisoned parent; the Ride By Your Side program, which involves transporting and mentoring a child or young person for a 12-month period while their mother is in prison; the Prison Invisits Program, which provides activities to occupy children between times spent talking to their parent; an education program to support the academic performance of children with a parent or relative involved in the criminal justice system; and an arts therapy program to support Aboriginal and Torres Strait Islander children with a parent at Junee Correctional Centre.<sup>14</sup>

With regard to girls and young women in youth detention who are currently – or expecting to be – parents, we note that Youth Justice NSW provides funding to Karitane to deliver Family Matters, a program that aims to assist young women to build positive parenting relationships with their children, and reduce the risk of intergenerational contact with the criminal justice system.<sup>15</sup>

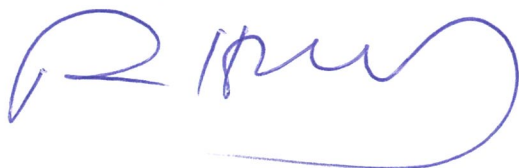
### 3. The efficacy of current policies and services and areas for improvements

The Law Society is of the view that in cases of parental incarceration, the best interests of the child are paramount, and an individual assessment of each child's circumstances is necessary. The opportunity for a child to visit a parent should not be seen as a privilege of the parent but assessed according to the child's needs and best interests. Any assessment of a child's best interests should consider the importance of the child maintaining a sense of identity, and enabling the parent-child relationship to be as healthy as possible when the parent is released. As noted above, in most cases there appear to be clear benefits for both children and parents in maintaining contact during a period of incarceration. In some cases, however, the child's best interests will not be served by facilitating contact with their parent, for example where parent has inflicted serious trauma on the child, or they have been a witness to the abuse of others.

The Law Society notes the importance of having correctional centres available in regional areas, so that inmates can stay connected with their families and communities. As prison visits can be a traumatic, confusing and upsetting time for children, suitable contact environments are needed, with play equipment and outdoor space. In circumstances where in-person visits are not possible, contact should be supported through phone or audio-visual facilities.

Thank you for the opportunity to provide a submission on this issue. Should you have any questions or require further information about this submission, please contact Andrew Small, Policy Lawyer, on (02) 9926 0252 or email [andrew.small@lawsociety.com.au](mailto:andrew.small@lawsociety.com.au).

Yours sincerely,



Richard Harvey  
**President**

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<sup>14</sup> 'Prison-based services', *SHINE for Kids* (webpage) <<https://shineforkids.org.au/about-us/what-we-do/prison-based-services/>>.

<sup>15</sup> NSW Government, *Government Response to NSW Juvenile Justice System Review* (Report, 2010) 44.