



Western NSW Community Legal Centre Inc

13 March 2020

The Honourable Mr Matthew Mason-Cox
Chair, Committee on Children and Young People
Parliament of New South Wales
6 Macquarie Street
SYDNEY NSW 2000

Dear Mr Mason-Cox

RE: SUBMISSION TO INQUIRY INTO SUPPORT FOR THE CHILDREN OF IMPRISONED PARENTS IN NEW SOUTH WALES

1. INTRODUCTION

The Western NSW Community Legal Centre (**WNSWCLC**) is grateful for the opportunity to make a submission to the Committee on Children and Young People (the **Committee**) in relation to its inquiry into support for the children of imprisoned parents in New South Wales.

WNSWCLC is a community-based, not-for-profit organisation in Dubbo that provides free legal services to people in western NSW who experience social, economic and/or geographic disadvantage. WNSWCLC provides legal advice, ongoing casework, referrals and representation, and offers outreach services to rural and remote towns, servicing an area of approximately 200,000 square kilometres. WNSWCLC also engages in community legal education, law reform and offers media comment on issues of importance. Of particular relevance to the Inquiry, WNSWCLC provides frontline legal services to imprisoned parents and legal advice and support to families engaged in the family law and care systems.

WNSWCLC calls for additional resources to be given to, and services to be provided for, imprisoned parents to maintain meaningful relationships with their family and children during periods of imprisonment. By offering additional support and services to families affected by incarceration, WNSWCLC strongly believes that the NSW government can dramatically improve the health, well-being and socio-economic prospects of prisoners, their children and future generations.

2. NEGATIVE IMPACT OF INCARCERATION ON CHILDREN AND FAMILIES

It is broadly accepted that the socio-economic prospects for children and families are significantly reduced if a parent is imprisoned. Children of imprisoned parents are more likely to experience unemployment, financial hardship, welfare dependency and unstable housing. These children are also 115% more likely to experience developmental delays and engage in antisocial behaviour.

WNSWCLC is particularly concerned that the imprisonment of a parent is a catalyst for intergenerational incarceration, with the children of imprisoned parents six times more likely to be incarcerated throughout their lifetime. In addition, where the imprisoned parent is a primary

caregiver, children are at significant risk of being placed into the care and protection system. This is of major concern as there is a strong link between the care and protection system and the criminal justice system, with approximately 14% of NSW prisoners having been placed in care before the age of 16.¹

Regular contact between a child and their imprisoned parent mitigates these risks as it alleviates emotional anxiety which is critical for the child's emotional and social development. Consistent contact is particularly important if the imprisoned parent is the child's mother, who, upon release, often returns to the primary care giver role. Regular contact reduces the likelihood of a child's need to enter the care and protection system, the very place that sharply increases a child's likelihood of involvement with the criminal justice system. In turn, a parent's risk of reoffending is reduced by 39%.²

WNSWCLC strongly advocates for:

- the provision of family friendly visitation environments, safe women and children only-spaces, overnight stay options and play areas within prisons; and
- mixed residency programs.

At Emu Plains Correctional Centre and Parramatta Transitional Centre, each located in Sydney, children up to school-age can be accommodated full-time with their mothers or primary care-givers in purpose-built, minimum-security cottages next to the centre. Children under the age of 12, who attend school, are able to be accommodated during weekends and school holidays. This allows for contact in a child-friendly and safe environment, and facilitates healthy, meaningful relationships between imprisoned parents and their children.

WNSWCLC calls for such resources to be provided to regional, rural and remote correctional centres where contact between children and their imprisoned parents can be very difficult, and at times impossible, to facilitate.

3. BARRIERS TO CONTACT BETWEEN CHILDREN AND THEIR IMPRISONED PARENTS

The restrictions to contact between a child and their imprisoned parent must be addressed in light of Australia's obligations under the Convention on the Rights of the Child (the **CRC**) and the International Covenant on Civil and Political Rights (the **ICCPR**). In particular, Article 3.1 of the CRC provides:

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.

Article 9.3 further provides that:

States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

¹ 2015 Network Patient Health Survey Report (Justice Health & Forensic Mental Health Network, May 2017)

² The Importance of Strengthening Prisoners' Family Ties to Prevent Reoffending and Reduce Intergenerational Crime (UK Ministry of Justice Report, August 2017).

There are various barriers to prison visits, especially for children. Based on its first-hand experience servicing inmates at the Wellington Correctional Centre, the Macquarie Correctional Centre and the Brewarrina (Yetta Dhinnakkal) Correctional Centre, and assisting families affected by incarceration, WNSWCLC perceives the most significant barriers to contact in the western NSW region to be prison visitation policies, family court proceedings, Apprehended Violence Orders (AVOs) and logistical transport barriers.

3.1 Prison policies

Prison policies should not unnecessarily restrict a child's ability to visit their parent and should enable, by all reasonable methods available, meaningful contact to be facilitated between children and their imprisoned parent in a safe and child-friendly environment.

The Custodial Operations Policy and Procedures Manual (COPPM), provides specific guidance on child visitation (10.11 Managing child visitors).³ All prison Visitation Policies need to take into consideration the needs and rights of children. Child friendly, supportive environments that respect the rights of the child and encourage family connection is essential.

WNSWCLC urges the Committee to ensure that policies and procedures under the COPPM are followed. In particular strip searches should not be conducted on any child, no physical disciplining of a child should take place, and food and water should be made available to all children visiting correctional facilities.

3.2 Children who are subjected to family law and/or child protection system orders

WNSWCLC believes the family law and child protection systems should not create a barrier to children visiting or having contact with their imprisoned parent. Based on its own experience, and supported by empirical research, WNSWCLC is firmly of the view that it is in the best interests of the child to maintain meaningful relationships with their imprisoned parent(s).

On the face of it, the family law system appears to advocate for contact between a child and their imprisoned parent by having as a paramount consideration the "best interests" of the child. Under the *Family Law Act 1975* (Cth), the two primary matters going towards a child's best interests are (a) the benefit to the child of having meaningful relationships with both parents, and (b) the need to protect the child from harm (physical and psychological). However, WNSWCLC is concerned that in actual practice, where a parent is incarcerated, the logistical difficulties involved in facilitating prison visits, and the toll such visits may take on the primary caregiver of the child, trump the child's right to have meaningful relationships with both parents.

³ New South Wales Government - Department of Communities and Justice, "About Us – Corrective Services NSW", *Department of Communities and Justice* (Web Page, 21 February 2020) <<https://www.correctiveservices.justice.nsw.gov.au/Pages/CorrectiveServices/related-links/about-us/about-us.aspx>>.

CASE STUDY OF DAVID AND HIS CHILDREN

WNSWCLC notes the matter of David (de-identified client) who is incarcerated at a Correctional Centre in relation to non-violent drug charges. His earliest release date is in 2026. He has two children under the age of 6 (who will be 9 and 12 upon his release). David last saw his children over a year ago. In light of David's period of incarceration, the children's mother, Julie, has been granted sole parental responsibility, with any contact with David to be at Julie's sole discretion. David is happy for Julie to raise the children and recognises that he "stuffed-up" by getting involved in drugs. However, he wants his children to know that he loves them and to keep open the option of having a relationship with them in the future. He has written various letters to his children over a 6 month period, asking how they are, and telling them that he misses and loves them. David is yet to receive a response and under the current family law orders, there is no obligation on Julie to acknowledge receipt of, or pass on, the letters to the children as any contact is at her discretion.

This is but one example of the way in which family law orders can have the unintended consequence of limiting a child's right to have meaningful relationships with both parents and, often, imprisoned parents do not have the resources or ability to access legal assistance to advocate for their children.

WNSWCLC calls for additional resources to be dedicated to the provision of legal representation to imprisoned parents during family court proceedings, and calls for reform to the family law system to attribute more weight to the need for child-parent contact during periods of incarceration when making parenting orders. In particular, contact between children and incarcerated parents must be prioritised over the potential negative effect that prison visitation may have on the child's primary carer (even where this may adversely impact the primary caregivers ability to then care for the child).⁴

3.3 No contact Apprehended Violence Orders

WNSWCLC considers that children should not be named on AVOs protecting a parent (often the mother) from their imprisoned parent unless it is absolutely necessary for the child's safety. WNSWCLC is concerned that when a child is named on a no-contact AVO, there is likely to be a denial of contact between the child and the imprisoned parent.⁵

The current laws governing AVOs prohibit children named on no-contact AVOs from visiting or contacting their parent, even if they are not afraid, at risk of, or have any other reason to be protected from their imprisoned parent.⁶ Other forms of contact are also made almost impossible under AVOs for the following reasons:

- visits between the child and their imprisoned parent is prohibited, even if the visit is initiated by the child, or if the child states they have no fear towards their imprisoned parent.⁷ The only way to permit visitation is if the AVO is varied or revoked by a court,⁸ which inevitably creates a number of additional barriers to contact between the child and imprisoned parent;
- telephone calls between the child and their imprisoned parent are prohibited; and⁹
- the imprisoned parent is prohibited from sending mail to the child.¹⁰

⁴O v C [2005] FMCAfam 20; *Vigano v Desmond* (2012) 47 Fam LR 552.

⁵Custodial Operations Policy and Procedures – 20.1 AVOs (NSW Corrective Services).

⁶Apprehended Violence Orders to protect children (LawAccess, 14 April 2018); Getting an Apprehended Violence Order (AVO) (NSW Government Communities & Justice, 24 September 2019).

⁷Custodial Operations Policy and Procedures – 20.1 AVOs (NSW Corrective Services).

⁸Ibid.

⁹Ibid, p 9.

¹⁰Ibid, p 9 and p13.

CASE STUDY OF JAMES AND HIS DAUGHTER, SOPHIE

WNSWCLC notes the matter of James (de-identified client) who is incarcerated in a Correctional Centre for a breach of AVO while on parole. James is facing 11 months incarceration. There is a no-contact AVO in place, taken out by police, for the protection of his partner, Naomi. James' and Naomi's teenage daughter, Sophie, is named on the AVO. Naomi wants James to have a relationship with Sophie. James is a loving Dad, who has had contact with Sophie throughout her life. There is no evidence that James has ever been violent towards Sophie. James' mother has offered to take Sophie to the prison for visits with James, however as Sophie is named on the AVO, facilitating such a visit will result in a breach of the AVO. Naomi has asked the police to vary the AVO to allow contact, however the police have refused. To have contact, a court application must now be made for the AVO to be varied. Naomi has told police that she would never have reported the violence if she knew that James wouldn't be allowed to see Sophie. Sophie blames her mum for stopping her from seeing her Dad and there is now significant tension in the family.

The law around AVOs places, at times, an unnecessary burden on contact between a child and their imprisoned parent. For this reason we recommend the Committee consider the following:

- if a child is named on an AVO, visits should still be permitted if initiated by the child. WNSWCLC acknowledges the need for safety measures, particularly in respect of family and domestic violence, but considers it is essential to listen to children and support them through safe contact opportunities; especially when the child is over 12 years of age and has the mental capacity to understand and make decisions for themselves in respect of parental contact; and
- telephone calls and mail should be permitted, unless that communication breaches mandatory conditions of an AVO (that is, for example, if the communication is threatening or intimidating).

3.4 Geographical barriers in regional, rural and remote areas

Access to, and the costs associated with, transport to prisons in regional, rural and remote areas makes contacting imprisoned parents difficult, if not impossible.¹¹ Some families who are living in circumstances of disadvantage may not have the means to pay for petrol or even have a car to travel long distances to visit incarcerated family members, and public transport in regional and remote areas is extremely limited. At times, the opportunity to visit an imprisoned parent may be entirely dependent on the assistance of a sympathetic adult¹² or other publically available services such as the Children's Supported Transport Service organised by SHINE.¹³ For some, the majority of contact may only occur through video conferences.¹⁴

We note the Brewarrina (Yetta Dhinnakkal) Correctional Centre, an unconventional minimum security prison,¹⁵ is set to close in mid-2020.¹⁶ Berrima, Grafton and Ivanhoe Correctional Centres and Illawarra Reintegration Centre are also set to close in 2020, which will impact 157 inmates and 114 staff in total.¹⁷ The families of 157 inmates (many whom are Aboriginal) will suffer from the closure of

¹¹ Let's Make it Easier for Kids to Visit Incarcerated Parents (The Marshall Project, 2019).

¹² Women in Prison: A Report (Anti-Discrimination Commission, March 2006).

¹³ Children's Supported Transport Service (Shine for Kids).

¹⁴ Women in Prison: A Report (Anti-Discrimination Commission, March 2006).

¹⁵ Brewarrina (Yetta Dhinnakkal) (NSW Government, Communities & Justice).

¹⁶ Successful community prison set to close mid-2020 (National Indigenous Times, February 2020).

¹⁷ Prisons to close: Jails in Central West could have an increase in inmates (Daily Liberal, September 2019).

these facilities. The relocation of inmates will make visits from children difficult, if not impossible, will increase the devastating effects incarceration has on these families, and is likely to heighten the already devastating rates of Aboriginal incarceration.

Many inmates at Yetta Dhinnakkal Correctional Centre have family and children in nearby surrounding communities. The closure of this facility will, at best, see them relocated to Wellington or Macquarie Correctional Centre. These are an additional 300 to 400 kilometres away from their families and children. If inmates are moved to Sydney or Grafton, they will be 700 to 800 kilometres from family and children. In addition to making it impossible for many children to travel these distances to visit an imprisoned parent, if family members are able to make the trip, the closure of the correctional centres is forcing families to travel off country. This has negative consequences for the children's mental, spiritual and physical well-being.

WNSWCLC believes that the decision to close the prisons referred to above should be reversed. WNSWCLC further recommends that when a parent is facing incarceration, consideration should be given to the locality of the prison in which they are incarcerated, and that support services should be increased to enable children to have the means to visit their imprisoned parent(s). This is particularly important in regional, rural and remote areas.

4. POST-RELEASE SUPPORT

4.1 Importance of after-release support to children, parents and families

Unfortunately, the heightened socio-economic risks and negative impact that imprisonment has on families and inmates only continue and, at times, increase on release.

Once released there are significant demands and challenges faced by a former inmate. These include, accessing housing, obtaining ID and meeting the ongoing demands of compulsory parole or rehabilitation meetings. These difficulties create additional hurdles, resulting in individuals feeling overwhelmed and potentially increases the risk of recidivism. These, at times, unsupported demands often compound the emotional toll on families and children.

WNSWCLC calls for an investment in additional counselling services to support families post release. This would include encouragement for reunification of families and the provision of services that are aimed at supporting former inmates in gaining employment and reintegrating into community.

A successful example of such a service is the mentoring service offered by the Women's Justice Network (the Network) (formally known as WIPAN). Of the 59 women mentored by the Network between August 2014 and August 2015, only four returned to custody (one for committing a new offence, three for breaches of parole). The recidivism rate of WIPAN's mentees was 7% in 2015, compared with the NSW female recidivism rate of 43.7%. This extraordinary reduction highlights the importance of these programs.

Factors preventing inmates from accessing such services includes a lack of formal support prior to release which makes accessing post-release services difficult, limited support or treatment of released women with significant mental health concerns and a current focus on short-term assistance at the expense of more long-term support arrangements. Furthermore, current services are fragmented and access to support services is difficult for those living in communities experiencing disadvantage.

4.2 Recommendations

Fortunately, there are services already in place which assist parents to re-integrate into society and re-unite children with their parents, which ultimately reduces the risk of recidivism. However, access to these services is very limited in regional, rural and (especially) remote areas. Lack of access in remote area is more likely to negatively impact Aboriginal families and children.

We urge the Committee to recognise the merit of these services and to provide more extensive State support. Specifically, we recommend that the Committee bring these critical support services under State agency administration. This would allow the integration of during-incarceration and post-incarceration care. The current lack of integration is failing to prepare individuals (particularly those with complex health and mental health difficulties) for the limitation of services upon release and the inevitable social, economic, and logistical challenges that grow on release.

We further suggest that the Committee acknowledge that post-incarceration support starts with laying the foundations of care during incarceration. It has long been recognised that strong family ties are an indispensable tool for the reintegration of recently released individuals. For example, the UK Ministry of Justice conducted research, showing that an inmate who received visits from a partner or family member was 49% less likely to reoffend upon release. Allowing inmates to continue to receive visits from their families in a safe and well supported environment is essential for maintaining the family ties that encourage post release success.

5. CONCLUSION

The WNSWCLC encourages the Committee to recognise the importance of contact between an imprisoned parent and their child. Some of the negative social and emotional impacts of being the child of an imprisoned parent can be buffered by ensuring appropriate contact during imprisonment. This is particularly important for Aboriginal families. Maintaining safe contact between a child and their incarcerated parent creates greater opportunities for the child to develop and maintain their personal and cultural identity; as well as preserving their kinship system both while the parent is in goal and post-release. The flow-on benefits to the child will empower them to have a positive future and give them a greater chance to heal any existing wounds by staying connected to their parents. This will work towards breaking the cycle of intergenerational incarceration.

Should you wish to discuss this submission please do not hesitate to contact Patrick O'Callaghan on 02 6884 9422 or at patrick.ocallaghan@wnswclc.org.au.

Yours faithfully

Western NSW Community Legal Centre Inc

Per:



Patrick O'Callaghan

Principal Solicitor