

# ACTION PAPER

March 2007

*Children: Unintended victims of legal process*



Supporting Offenders and their Families





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VACRO also thanks all those people who participated so generously and thoughtfully in the consultation forums. The contributions of these participants have provided the major content in this *Action Paper* and we gratefully acknowledge their role. Several agencies were unable to attend consultation forums and provided written submissions or one-to-one consultations instead. Their comments and suggestions have been included in this Paper and we thank those concerned. More specific acknowledgement of all contributions and participants is provided in this report.

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Jenny Roberts - Manager, Women's Policy Unit, Corrections Victoria

# Executive Summary

In response to the findings from the Discussion Paper *Children: Unintended Victims of Legal Process* (Hannon, 2006), VACRO conducted a series of community consultation forums seeking recommendations and ideas to address the policy and service deficits facing children with imprisoned parents. Six key Recommendations emerged from the six consultation topics covered in the VACRO forums:

<b>Forum Topic</b>	<b>Recommendations</b>
<b>Arrest</b>	Victoria Police and DHS to consider developing policy and establishing protocols regarding children with parental legal involvement, with all other stakeholders i.e. Police, Courts, child-care and Foster care agencies, prisons etc.
<b>Bail/Remand</b>	To consider revising the Bail Act to acknowledge the unique position of primary carers, and their dependent children’s safety needs, and review associated policy and procedures.
<b>Courts and Sentencing</b>	To consider the development of protocols and supporting legislation to acknowledge and protect dependent children throughout adult criminal court proceedings and in sentencing options and considerations.
<b>Prisons/Visits/Programs</b>	To consider the development of protocols and policies between and within the Department of Justice, the Department of Human Services and the Department of Education ensuring that the best interests of prisoners’ children are factored into all prison planning and implementation processes.
<b>Pre and Post Release</b>	Primary carers and their children’s needs to be identified, assessed and acknowledged in all pre and post release planning (inc. male prisoners) N.B. <i>Children of Corrections’ clients to be treated as individual clients to assure adequate allocation of pre &amp; post release funds.</i>
<b>Interdepartmental</b>	Progress the findings from the <i>Discussion Paper</i> and the recommendations from this paper ( <i>Action Paper</i> ) into actions at an interdepartmental level.

These key Recommendations are supported by further suggestions and proposed actions that range from the broad to the quite specific. (*The full Table of Recommendations can be found on p. 25*).

# Foreword

VACRO is an independent, community based, non-profit organisation that provides:

- Support and Information for individuals charged with a criminal offence, offenders, prisoners and their families; and
- Leadership, education, training and research on the justice system for the community

VACRO is actively engaged in the education, counselling and personal development of offenders while they are in prison, and provides a range of ongoing programs to facilitate the reintegration of ex-offenders into the community on their release. The organisation has extensive knowledge of the impact of imprisonment on families and this underpins a commitment to providing a holistic service - to provide for the needs of all family members.

Acknowledging that very little was known about the needs of children with a parent in prison, VACRO commissioned the research *Doing It Hard* (VACRO, 2000), as a first step in exploring and documenting the needs of children and families of prisoners in Victoria. A *Children's Support Service* followed in 2005, following the recommendations expressed in *Doing It Hard*, culminating in an evaluation articulating a way forward. The report provided a unique, practical opportunity to learn more about the most appropriate service response that can be offered to children and families. The project *Children: Unintended victims of legal process*, extends this work by offering a research based policy framework to underpin future service delivery and planning.

The unique focus of VACRO in the area of our work with families (particularly children) of offenders is for projects and research that are a part of a multi-faceted approach; one where it is recognised that to reduce risk and increase resilience in children with a parent in prison, developments should ideally form part of an integrated service, operating as one inter-departmental system.

The support given to this project over a number of years has been phenomenal. This report is the result of that support and speaks highly of the way forward: in partnership and collaboration. Thank you to all involved. It is a credit to you all.

**Andrea Lott**  
**Chief Executive Officer**  
**VACRO**

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# Introduction

In June 2006, VACRO and Flat Out Inc. published a Discussion Paper entitled *Children: Unintended Victims of Legal Process – A review of policies and legislation affecting children with incarcerated parents*.<sup>\*</sup> The paper highlighted a number of policy, legislative and partnership gaps that were adversely affecting these children and additionally placing considerable strain on associated services such as foster care agencies, the Children’s Court, schools, prisons etc, as well as various individual participants such as police officers, judges, carers and welfare workers.

These gaps were presented under six major headings and covered existing policy deficits, the international, national and Victorian context, the implications of policy and legislative vacuums, and the impact of policy failure on participants. These headings were:

1. Arrest
2. Bail/Remand
3. Courts and Sentencing
4. Prison
5. Pre and Post Release
6. Interdepartmental issues.

To further discussion of the issues raised by the *Discussion Paper*, the project *Children: Unintended Victims* ran a series of community consultation forums. The forums were intended to serve multiple purposes: to keep the dialogue around these issues open and moving forward; to begin building bridges and networks between interested representatives from the various stakeholder departments concerned with children with parental justice issues; to explore what was known about their situation in policy and response terms, and what was already in place; and to invite commitments and generate recommendations from those who will be involved in the envisioned change process.

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<sup>\*</sup> Available in pdf format at [www.vacro.org.au/Children\\_Unintended\\_Victims](http://www.vacro.org.au/Children_Unintended_Victims) or in hard copy from VACRO.

# Method

The first step in developing the forums was dissemination of the *Discussion Paper* and an Executive Summary of the research findings in June 2006. Copies were emailed and/or posted to over 350 organisations, Government Departments and individuals across a range of fields such as courts; corrections; police; education; mental health; social justice; prison and law reform; academics, research institutes and clearing-houses; child protection agencies; service agencies; and children's and human rights organisations.

Invitations to participate in a series of community consultation forums were included in the mail-out detailing the times, aims and format of the forums. A website was also established ([http://www.vacro.org.au/Children\\_Unintended\\_Victims](http://www.vacro.org.au/Children_Unintended_Victims)) to enable national and international input, and to provide an online submission process for any organisation or individual unable to attend the forums. One-on-one consultations were also offered if this option was preferred.

The community consultation forums were designed around the six major policy areas as identified in the *Discussion Paper* i.e. arrest, bail/remand, courts and sentencing, prisons/visits/programmes, pre and post release, and interdepartmental issues. Two forums were conducted on each topic, culminating in a final forum covering the interdepartmental issues and incorporating the previous forums' suggestions, identified problems etc.

At each forum participants were provided with an information sheet, a summary of the issues identified in the *Discussion Paper*, and a list of suggestions which were presented to provide a starting point for discussion. The forums were facilitated by the author of the *Discussion Paper* and notes were taken by a VACRO volunteer. Although the initial forum was recorded on a digital voice recorder, this process was abandoned for subsequent forums as it appeared to inhibit participant's contributions.

The results of each forum, including recommendations generated and issues/problems raised, were posted on an e-notice board on the VACRO website at [www.vacro.org.au/Children\\_Unintended\\_Victims](http://www.vacro.org.au/Children_Unintended_Victims) within 21 days, excluding the final forum on Interdepartmental Issues. The results from that forum will be presented as part of this *Action Paper*.

Overall attendance at the forums was good, with an average of 9 participants at each one, and 18 at the final Interdepartmental forum. Four forums were cancelled, however this did not seem to impact on numbers, as most intending participants either re-scheduled to fit in with other forums or provided feedback in alternative ways.

# The Forums

This section presents an overview of each of the six forum topics in the order in which they were conducted. Each overview consists of the issues identified from the *Discussion Paper*, the discussion points presented, a summary of the ensuing discussions, and a list of the participants. The recommendations generated from the forums will be presented in the final section of this paper.

## 1. Arrest

### *1.1 Issues Presented:*

- The Victoria Police have no guidelines for officers, or policies covering the apprehension, arrest, charging or detention of primary carers with dependent children; nor does it appear that the various issues related to prisoners' children, such as their care, holding, transference of legal responsibility, or the trauma children may experience are given adequate consideration.
- Search and arrest warrants make no reference to the special circumstances and legal protective requirements primary carers may have for their dependent children.
- The Department of Human Services (DHS) has no protocols with Victoria Police concerning this group of children.

### *1.2 Discussion Points Presented:*

1. Is there a need for Policy and Procedures to take children into account throughout the arrest process, including protocols both within and between:
  1. Victoria Police
  2. Department of Human Services (DHS)
  3. Non Government Organization's (NGO's)  
(*e.g Computer alert system for primary carers through Victoria Police.*)
2. Is there a need for Policy and Procedures to take interim carers into account throughout the arrest process?
3. Is there a need for training for all stakeholders in regards to children and carers in the context of arrest Policy and Procedure? If so, what would the training consist of?

### *1.3 Discussions*

The discussion centred around 3 issues:

#### **1.3.1 How Victoria Police respond currently**

Feedback from Victoria Police participants in regards to these issues suggested that the first thing the police do upon picking up a parent, is to ask them who they want to have temporary care of their children. If there is no family member available and no one can be nominated, or the person nominated is determined to be unsuitable by police, the police will contact DHS to place the children somewhere.

Alternatively, police will often directly contact a crisis centre.

However, the research findings and the experiences of some forum participants suggested that this often does not happen in practice. A number of scenarios were discussed, highlighting the difficulty for police given the range of situations they encountered:

- When children are absent at the time of arrest, no notification is given. For example, in after-school care, the co-ordinator is not advised, and nobody knows that the children are not going to

be picked up. Children have come home to an empty house and no information has been left as to where the parent/s have gone.

- In cases of ‘spontaneous’ arrest, the police have no way of knowing how long a parent will be held in custody; there is thus no way of knowing whether it is necessary that DHS be called.
- Parents may not inform the police that there are children at home because they do not want DHS involved.
- Arrests rarely happen between 9 – 5pm weekdays which restricts the number of people and support organizations that can be contacted to assist.

### **1.3.2 The presence of children at Police Stations**

A number of concerns were expressed about children at police stations in the period immediately after a primary carer’s arrest. For example, one issue raised was that longer time periods at police stations meant shift changes and children experienced different officers caring and making arrangements for them while parents were detained.

The view was expressed by some participants that ideally, the child should *never* enter the police station. This would require adequate protocols and partnerships to ensure that stress to the mother was kept to a minimum by knowing her children are safe. However, the child’s right to access with their primary carer must be preserved.

The question was also raised regarding who is actually responsible for a child if bail is refused and the primary carer is no longer able to provide duty of care.

### **1.3.3 Children visiting parents in police cells.**

Of particular concern was the lack of a standard, ‘human rights related’ policy regarding access for children to primary carers held in police cells. One of the concerns raised by Victoria Police participants was that children visiting parents in cells then have to be searched.

Further discussions on this topic were around the need for Police Stations to comply with Occupational Health and Safety regulations regarding *all* clients, including children with detained parents and their specific needs and including the right to access their primary carer.

## **1.4 The arrest forums were attended by:**

- Natalie Altman Senior Program Adviser, Office of the Child Safety Commissioner
- Linda Bennett Sergeant, Victoria Police SOCA
- Virginia Dods Senior Project Officer, Office of the Child Safety Commissioner
- Nancy Hanley Projects Officer, Court Network
- Dale Johnstone Sergeant, Victoria Police Youth Affairs
- Angela Langan Bail Review Team Leader, Victorian Law Reform Commission
- Keren Murray Research Policy Officer, Victorian Law Reform Commission
- Eva Orr ‘Safe at Home’ Family Worker, Windana
- Keryl Thancy Senior Project Officer, DHS

## **2. Bail/Remand**

### **2.1 Issues Presented:**

- Bail laws make no reference to the needs of this target group. When mothers are unable to obtain bail and are remanded in custody, there is no legislation, policy, or guidelines, (with the courts, police, prisons, or DHS) regarding who takes responsibility for the children, or how this responsibility is transferred from the mother. Nor are there any protocols alerting any Department of any concerns.
- In this study (*Discussion Paper*), ten of the fifteen mothers interviewed were refused bail, affecting 25 of the 35 children concerned.

### **2.2 Discussion Points Presented:**

1. Is there a need for inclusion of the impact of parental remand on children as a factor for consideration in the Bail Act?
2. Is there a need for Policy and Procedures taking children into account throughout the bail/remand process, including Protocols both within and between:
  - a. Courts
  - b. Department of Human Services (DHS)
  - c. Prisons
  - d. Non Government Organization's (NGO's)
  - e. Department of Education (DOE)
3. Is there a need for Protocols in regard to information provision for remandees? (e.g. rights, needs, services, special visits for making care arrangements, school access/communication etc.)
4. Is there a need for Protocols in regards to information provision for interim carers (e.g. rights, needs, services etc.)?
5. Is there a need for a separate legal representative for the child during a parent's criminal court proceedings?
6. Is there a need for specialist services for counselling for children and carers regarding post arrest trauma?

### **2.3 Discussion**

Discussions focussed on existing supports during the bail process, and their extent and limitations. For example, the CREDIT/Bail Support Program has primary carer focused questions.

One of the first questions asked by CREDIT/Bail Support Program staff when dealing with *both* male and female prisoners is whether they have children and whether they are currently being cared for. However, it was also acknowledged that there was a lack of support services available for referrals if responses to these questions indicated some form of intervention was required (not necessarily Child Protection).

Other court services available to bail applicants included Court Network, who stressed that they are only there for support on the day at court, and the Salvation Army *if* they are in the court on the day. However it appears that it is currently a "hit and miss" process.

(N.B. The author followed up on the Salvation Army process at Melbourne Magistrate's Court in the early stages of the research and found that Salvation Army officers tended to take any care concerns to the remandee's police informant, who did not usually see it as their responsibility, and so no follow up actually occurred.)

The forum participants who worked in court support services noted a pervasive fear in women during the bail/remand process for the safety of their children. However, often they cannot talk about it with officials or non-officials because they are afraid that their children will be taken by DHS.

One forum participant noted that situations had sometimes occurred, where a man being held in police cells had appealed to a cellmate being released to care for his children until he is let out. The cellmate may be someone that the man has known for only a few hours. For the remanded person this is felt to be preferable to DHS involvement.

Further discussion focussed on the issue that the court itself is not mandated to inquire about children or to take the care of the child into account when considering bail applications. In practice it appears that most magistrates/judges take dependant children's circumstances into consideration, however child care is considered a 'welfare matter' and therefore not under the jurisdiction of the court. Forum participants expressed the concern that primary carers have a legal responsibility of care which can be undermined by being remanded in custody.

One result of the failure by courts to gather pertinent information occurs when children and their primary carers have to appear at different courts on the same day. Further, children are often being placed on protection orders, having met eligibility criteria because the parent is being kept on remand for upward of 12 months.

It was agreed by all that fast-tracking of primary carers through criminal court systems as a solution was not very likely.

#### ***2.4 Forums attended by:***

- Jo Beckett Magistrate, CREDIT/Bail Support Program, Melbourne Magistrates Court
- Lorraine Beeton Senior Project Manager, Strategic Services, Corrections Victoria
- Virginia Dodds Senior Project Officer, Office of the Child Safety Commissioner
- Nancy Hanley Projects Officer, Court Network
- Angela Langan Bail Review Team Leader, Victorian Law Reform Commission
- Jessamy Nicholas Project Officer, Better Pathways Initiative, Corrections Victoria
- Sally Rogers Fostercare Manager, Anglicare Victoria

### **3. Courts and Sentencing**

#### **3.1 Issues Presented:**

- Despite many precedents and instructions otherwise, custodial sentences are not always used as a last resort when mothers are sentenced.

*Four of the fifteen mothers interviewed in this study were in prison for their first offence (Discussion Paper).*

- There are no laws, policies, or guidelines for the courts, the Victoria Police, Corrections, or DHS regarding who takes responsibility for the children when their primary carers receive prison sentences, or how this responsibility is transferred from the primary carer.

*In this study four children were left abandoned and neglected as a result of three mothers' arrests and imprisonment, and were still uncared for well after sentencing. A further three were abandoned during their mother's sentence; no-one was notified (Discussion Paper).*

#### **3.2 Discussion Points Presented:**

1. Is there a need to revisit the Sentencing Act in relation to children of defendants to:
  - a. Accord with the UN Charter for the Rights of Children.
  - b. Include the option of Court reports covering defendants' children.
  - c. Require a children's advocate in parental criminal proceedings.
2. Is there a need for Policy and Procedures to take children into account throughout the court/sentencing process, including Protocols both with and between:
  - a. Courts
  - b. Prisons
  - c. Department of Human Services (DHS)
  - d. Non Government Organization's (NGO's)
3. Is there a need for Policy and Procedures to take interim carers into account throughout the court/sentencing process?
4. Is there a need for a Specialised Court for primary carers?
5. Is there a need to provide judicial education regarding the implications of the new *Child, Youth and Families Act 2005* for primary carer defendants and their children?

### **3.3 Discussions:**

Discussions related to courts and sentencing revolved around three main topics:

#### **3.3.1 Consideration for children in the sentencing process**

In practice, the family *is* often taken into account by magistrates/judges through either shorter or non-custodial sentences. However, it appeared that taking the family *overtly* into account leaves sentences open to appeal in the Higher Courts.

The problems regarding children at the sentencing stage more specifically apply to primary carers who are on bail rather than on remand, as the latter have likely already had to face these issues earlier. However, by the time sentencing occurs, many children become Children's Court clients unnecessarily as a result of the lack of planning regarding children's placement/safety when the parent is remanded. In the post-sentence context, the formal process of custody transfer when the primary carer is removed takes too long. This means that children have no designated place to go in the meantime.

The children are rarely present or 'accounted for' in court situations. Children not present at court are still no-one's responsibility if their parent is remanded or sentenced, unless the parent has made prior arrangements or until a crisis notification occurs.

#### **3.3.2 Post sentence arrangements for children**

The question was raised: Where do children go once their primary carer is taken into custody? It was recognized that for DHS (child protection) it is not necessarily an issue yet (or ever an issue for them, depending upon the children's circumstances). However, ironically, children going to kinship carers generally have no formal support because no service providers know they exist.

For kinship carers taking on children immediately post-sentencing, one problem is that Centrelink payments do not automatically transfer to the next carer. Centrelink often does not know about the 'other carer'. The carer will therefore have to go into Centrelink and apply for financial assistance. Unfortunately, many new carers are not aware of their entitlements. If the child is cared for by a non-family member, payment issues become even murkier and are often only resolved via court processes.

#### **3.3.3 Childcare at court for children of defendants**

The issue of childcare for children at court was discussed as an acute problem with few readily available solutions. The lack of policy or practical services for childcare has led to the use of existing court services in ways that they have not been designed for, causing problems for service providers and users. For example, Court Network has on occasion been left with responsibility for the child while at court. This is problematic because:

- Their staff are not equipped to take care of children.
- The environment is not child-safe.
- There are liability issues
- Staff are not subject to Working With Children Check requirements.

Despite these concerns, Court Networkers are often specifically asked by judges to look after children. The issue of what happens to the child and the Networker if the primary carer does not come back because s/he has been sentenced or placed on remand is not addressed, as is the placement of responsibility if the child is injured etc. It was agreed that Court Network need clear procedures that the judiciary must follow when requesting child-care from Networkers.

Forum participants agreed that the child-care issue for children at court is difficult to address, as generally courts do not provide on-site child-care facilities (exceptions are the Family Law Court and the new Neighbourhood Justice Centre). A proposed solution may lie in establishing links with local childcare services, however this was seen as problematic because these children will be

competing with the general public; nor does it solve the problem of what happens to the child should the primary carer not return.

Highlighting the issue of childcare at court was the information that there are not even child carers available at the Children's Court. However, despite the complexities of the problem, a strong argument was made that children at court have a presence and must be catered to.

### **3.4 *Forums attended by:***

- Natalie Altman      Office of the Child Safety Commissioner
- Carmel Benjamin    Sentencing Advisory Council
- Sonia Chudiak      Melbourne Citymission
- Michelle Gale      Melbourne Citymission
- Sonia Greguol      Corrections Victoria
- Nancy Hanley      Court Network
- Greg Levine      Children's Court of Victoria
- Victoria Moore    Sentencing Advisory Council
- Eva Orr      Windana, Families
- Graham Smillie    Centrelink (Prison Liaison Unit)

## **4. Prisons/Visits/Programs**

### **4.1 Issues Presented:**

- Children will spend the majority of their time with their imprisoned primary carer in prison visit centres which have not been designed to meet their needs, or those of their interim carers.
- Victorian prisons do not have 'Visitor Centres' for families visiting prisoners; these centres have been considered a national standard for prisons in the U.K. since 1994 and are a consistent feature of American prisons (and in several other Australian states eg. Western Australia).
- Carers are not supported to bring children to visits at the prison
- Visits are sometimes cancelled for various reasons by the prison, but interim carers are not informed
- Phone calls between primary carers and children are not well catered for by Corrections
- Consistent comments regarding a lack of activities for children in visit centres by both the primary carers interviewed for the *Discussion Paper* and the interim carers.

### **4.2 Discussion Points Presented:**

1. Is there a need for Policy and Procedures to take parenting into account throughout the prison sentence, particularly around:
  - a. Absentee parenting
  - b. Phone/video link contact
  - c. Crises contact
  - d. Family conferencing/planning/negotiating etc
  - e. Family/Children's Court issues
  - f. School contact
  - g. Reunification planning
  - h. Interim carer information, support and planning requirements
2. Is there a need for Policy and Procedures around prison visits to be re-examined/reviewed in accordance with the UN CROC:
  - a. Resources
  - b. Amenities
  - c. Access
  - d. Visitor centres
3. Is there a need for Protocols across whole of government and community agencies in regards to the care of children, including:
  - a. Family and Community Services (eg. Centrelink)
  - b. Department of Education
  - c. DHS
  - d. Department of Health
4. Is there a need for Protocols across whole of government and community agencies in regards to interim carers of children?

### 4.3 Discussion:

Initial discussions were based around the visiting issues that had been identified in the *Discussion Paper* and the initiatives currently being undertaken by Corrections Victoria that will hopefully address these.

Further discussions focussed on the lack of protocols between Corrections Victoria and the Department of Education and the subsequent impact on children at school, and the telephone system in prisons and the problems resulting for children and primary carers.

The issues regarding 'visits' were summarised as:

- Few age appropriate activities for children.
- Those activities that were in place did not entertain the children for long or they were too noisy and interfered with other people's visits.
- No sense of privacy, so that young people felt they could not raise sensitive issues with their parents.
- The impact of the closure of the 'children's farm' at Tarrengower (where children could take a quite lengthy walk with their primary carer and thereby have the opportunity to broach sensitive issues in private).
- Interim carers driving to the prison with children to visit and not being able to see the prisoner – e.g. due to the prisoner going on a management regime or being transferred.
- The carer/visitor is not informed by staff or the prisoner prior to their departure from home that they will be unable to have a contact visit. This can have an upsetting emotional impact on accompanying children.

N.B. In reference to this last point, it seems that women are allowed a phone call when in 'management' and can call carers, however some women choose not to exercise this option and others do not have direct access to interim carer's contact details.

Corrections Victoria representatives outlined the various initiatives and planning that is underway, summarised as:

- A toy library has been put in place at DPFC.
- Plans for expanding the visits centre at DPFC as part of the *Better Pathways* program. (This would include an outside area with play equipment, play area, gardens and tables.)
- An example of options being explored is the Visits Centre at Dillwynia Correctional Centre, NSW which has been constructed as a food court – including a Gloria Jeans coffee shop at which some of the women work. This environment normalises the experience, as opposed to standard prison environments which can be intimidating, particularly for children.

However, there were acknowledged difficulties in catering for all types of visits. For example, in providing for prisoners to talk to older children when younger ones also require attention.

The suggestion of video conferencing visits between primary carer prisoners and their children was discussed in some depth. It was regarded as eminently suitable and viable by all participants.

The school-focussed aspect of the discussion revolved around the issues affecting children of school age, based on examples from the *Discussion Paper*:

- Several teenage children of prisoners in the research dropped out of school or were heading rapidly in that direction;
- Some children are just beginning school;
- Some are changing from primary to secondary school;
- Many have to move schools due to their change in primary carer;

- The problems that the child experiences through having a parent in prison often manifest within the schoolyard, for example, via bullying, anti-authoritarianism, truancy

Forum participants agreed that it was in the best interests of the child that schools keep incarcerated primary carers informed about the child's progress. Additionally, it was felt that:

- this helps the primary carer to know what their child is learning and how they are developing;
- it gives the primary carer an understanding of the developmental process, therefore facilitating renewal of the parental role;
- it gives the primary carer something to talk about with their child on visits.

The forum concluded with a discussion about the difficulties for primary carers and their children with the current phone call arrangements in most prisons. The main issues are summarised as:

- High cost
- Duration of calls (limited to 12 minutes, this is because of the number of prisoners per phone)
- Number of calls
- The times at which a call can be made are problematic because it has to fit in around the prison schedule **and** the home schedule
- Children cannot call in at a time of crisis

Corrections Victoria representatives offered to look at these issues.

#### **4.4 Forums attended by:**

- Natalie Altman      Senior Program Adviser, Office of the Child Safety Commissioner
- Ann Cunningham      VACRO Board
- Kim Hargreaves      Senior Policy Manager, Better Pathways Initiative, Corrections Victoria
- Anna Henry      Administrative Officer, Dame Phyllis Frost Centre, Corrections Victoria

## **5. Pre and Post Release**

### **5.1 Issues Presented:**

- Prison programs are not designed to specifically address the issues facing primary carers and their unique (and additional) pre and post-release challenges. These concerns may include: reunification, dealing with traumatised children, renegotiating broader family roles, setting up housing and material necessities, re-establishing contact with schools etc; all while coping with their own anxieties and readjustments.
- Corrections Victoria has no policy covering the release of primary carers in terms of the needs of the primary carers, their children or the interim carers.
- Interim carers are not informed of a primary carer's imminent release. Provisions are not often made for interim and primary carers to plan together for the handover of children.

### **5.2 Discussion Points Presented:**

1. Is there a need for Policy and Procedures to take children and parenting issues into account throughout the post release/parole process?
2. Is there a need for Policy and Procedures to take interim carers into account throughout the post release/parole process?
3. Is there a need for Policy and Procedures to take children into account in the Home Detention process?
4. Is there a need to inform both Family and Children's Court judges about the implications of the *Children, Youth and Families Act 2005* for primary carers in prison and their children?

### **5.3 Discussion**

These discussions centered on the lack of specific funding and support services for children during a primary carer's transition from prison to the community. Although a transitional case management role has been set up within Corrections Victoria, the comment was made that there is a lack of services to refer to. It appears that with virtually all post release support services:

- additional funds for children are not provided;
- funds get depleted by allocating women's money to children;
- women's services gets eroded as a result;
- services for children are provided, but are ad hoc; and
- children do not tend to qualify for funding with either services or grants and tenders.

NB. It was strongly felt that making children the official clients of Corrections Victoria is not the answer.

Further discussions developed around the issue of who should and how to alert children's interim carers of the impending release of the primary carer? Concerns were raised about privacy issues for prisoners versus the best interests of the child.

It was further recognized that children often do not want to return to live with the released parent. One solution that received considerable interest was for an advocate representing the child's best interests to address this issue. The idea was discussed and developed to encompass an advocate representing the child's best interests from the beginning of their parent's involvement with the criminal justice process to some time post release, but particularly during the court phase.

It was agreed by all that there was a need for partnerships between the Department of Human Services and Corrections Victoria (and possibly the Department of Education) in order to address these problems, ideally, however, the children should not be made into clients of Child Protection either.

A number of models were offered as examples of responses for children in similar situations and/or services that could be accessible for these children currently. For example, Mirabell offers services for grandparent primary carers.

The discussions concluded with reference to the lack of psycho-educational programs addressing the issues facing primary carers returning to parenting post-release. These types of programs were seen as highly desirable, although a lack of funding was preventing their development and consistent delivery.

#### **5.4 Forums attended by:**

- Marg Chipperfield General Manager, Placement and Support, Anglicare
- Virginia Dods Senior Project Officer, Office of the Child Safety Commissioner
- Eva Orr 'Safe at Home' Family Worker, Windana
- Megan Peacock Case Manager, Melbourne City Mission
- Leanne Roberts Manager, Transitional Services, Corrections Victoria
- Elissa Simon DPFC Program Manager, Corrections Victoria
- Ely Weston Case Manager, Melbourne City Mission

## **6. Interdepartmental**

### **6.1 *Issues and Discussion Points Presented:***

The areas of concern and the discussion points presented at this forum were a compilation of those presented at all the previous forums (see above), and the following specific points:

Is there a need for data collection in regards to children of offenders and carers experiencing:

- Arrest
- Bail
- Sentencing
- Prison reception
- Release
- Parole
- Home detention

With regards to incarcerated primary carers and their children, is there a need for education and training for staff from:

- Department of Human Services (DHS)
- Department of Education (DOE)
- Department of Health
- Family and Community Services (FaCS, Australian Government)
- Department of Justice (DOJ) – including prison officers, judiciary, parole officers.

### **6.2 *Discussion***

The discussions at this forum concentrated on the first stages of the legal process – arrest, the court process, and post-court planning for children. To begin with, it was established that Victoria Police *do* have the responsibility to notify the Department of Human Services when they find children alone. However, it was also recognised that this does not always happen in practice, and that the Department’s response time in the past has been up to ten hours.

A number of difficulties were discussed in terms of developing and implementing police policy and procedure regarding children. For example, at arrest there is no way of knowing how long the primary carer will be away. If children are placed with the grandparents, neighbours, etc, they have no way of knowing how long they will be taking on the responsibility for the child/ren. In addition, carers are often unaware of the support services that are available to them and consequently are unable to access support. A number of participants recalled that the police used to take a team of social workers with them to an arrest; however it appears that this practice has been discontinued. There were supporters for reinstating it.

In regard to the police response to family violence, when the laws were written up three and a half years ago it was ruled as incumbent upon police to check if children are in the house and to make provisions accordingly. It was suggested that the same response could be generalised to other arrest scenarios where children are / may be involved.

A part of the discussion focussed on the impact of Children's Court proceedings, particularly as remand times are increasing. Specific effects that were noted were lack of coordination around booking in primary carers' criminal hearings and Children's Court hearings, resulting in clashes leading to the carer's inability to attend Children's Court; children placed on orders as a result of 'remand uncertainty'; lack of communication across the two court systems, particularly regarding the impact of each system's processes and governing *Acts*.

A considerable portion of the discussion was devoted to the transition of responsibility from police to courts, and at what points and to what degree primary carers and interim carers would be involved in the process. The development of this issue was somewhat limited as representatives from Victoria Police were not available to inform the discussion. The dominating theme of this, and the previous forums, was that DHS is the prime player and needs to be involved in this process accordingly.

The forum conclusions were that workable policies would require a high degree of interdepartmental cooperation. Intra-departmental teams would also be needed to develop internal policies, processes and services. However, it was also agreed that such an effort would result in significantly reduced social and financial costs across a range of sectors.

### **6.3 Forums attended by:**

- Natalie Altman                      Senior Program Advisor, OCSC
- Graeme Chirgwin                  Manager, Specialist Courts, Department of Justice
- Jennifer Coate  
  Children's Court)                  Judge, Melbourne County Court (former President of the
- Virginia Dods                      Senior Project Officer, OCSC
- Lesley Galbraith                  Case Manager, McKillop Family Service
- Bernie Geary                      Child Safety Commissioner, OCSC
- Paul Grant                         Magistrate, President of the Children's Court
- Katie Lamb                        Senior Policy Advisor, DHS, Office for Children
- Tonya Lee                         Policy Officer, Victorian Legal Aid
- Francine McCabe                  Manager, DHS Juvenile Justice and Youth Services
- Jessamy Nicholas                 Project Coordinator, Corrections Victoria
- Wesley Pontley-Baker             Program/Policy Advisor, DHS, Early Years
- Vicky Profitis                     Senior Policy Advisor, DHS, Policy and Practice
- Jenny Roberts                     Manager, Women's Policy Unit, Corrections Victoria
- Megan Scannell                  Senior Program Manager, OCSC
- Claire Seppines                  Community Relationship Coordinator, Centrelink
- Chris Withers                     Manager, Promotion, Policy and Projects, OCSC
- Carolyn Worth                     Manager, South East Centre Against Sexual Assault

### ***Concluding comment***

The discussions presented above represent a brief synopsis of the main themes and topics covered at each forum. The forums lasted an average of two and a half hours, and it is beyond the scope of this paper to fully present the depth and range of their content.

As the forums developed it became clear that the deficits in policy regarding children with parental justice involvement were having an unacceptable social and financial impact. However, once attention had been directed to the issues there was no shortage of suggestions generated to address them. These suggestions ranged from quite specific practical solutions to general principles. It is hoped they will provide a practical framework for the great deal of work still required.

Perhaps one of the most encouraging results from the forums is that the number and scope of the following recommendations were achieved in less than 20 hours. The challenges we face in providing protection and support for these children are not insurmountable.

# Recommendations\*

## Arrest Recommendations

Issue	Recommendations	Actions Proposed
<b>Victoria Police and DHS to consider developing policy and establishing protocols regarding children with parental legal involvement with all key stakeholders i.e. Police, Courts, child-care and Foster care agencies, prisons etc.</b>	Bring the issues addressed in this paper to the attention of relevant Government Departments and bodies for consideration	To be considered by an Interdepartmental Committee (IDC) / Working Group
	Review existing DHS responses to various arrest scenarios and create clearer processes and policy about DHS and police response.	IDC/Working Group to consider in their discussions
	Review the protocols currently being developed by the Police <i>Family Violence Strategy</i> to inform police practice around children of suspects	Ensure representation or liaison with the Police <i>Family Violence Policy</i> unit on any on going committees to determine transferable policies
	Incorporate policy regarding children and primary carers into the <i>Police Code of Practices</i> and <i>Code of Conduct</i>	Ensure representation of Police policy and operations staff on any on going committees to incorporate developed child-related policy into Victoria Police <i>Codes of Practice and Conduct</i>
	Where possible, primary carers should be identified as such <i>before</i> the arrest and the children factored into arrest scenarios	IDC/Working Group to include this issue in their discussions
	Review the police computer ‘flagging system’ – currently used for Aboriginal/Torres Straight Islanders upon arrest – for use with primary carers	Ensure representation or liaison with LEAP development team on any on going committees to determine transferable policies / practice
	Review police stations’ physical facilities to ensure that they comply with OH&S requirements that public service facilities must <i>structurally</i> and <i>functionally</i> meet the needs of <i>all</i> users (ie. including children attending with offending carers).	IDC/Working Group to include this issue in their discussions
	Ensure that information pamphlets are developed with any change in practice or policy for use via: <ul style="list-style-type: none"> <li>• Parents in police detention</li> <li>• Police with children needing care</li> <li>• Local foster care agencies.</li> <li>• Solicitors</li> <li>• Bail justices &amp; magistrates</li> </ul>	Conduct focus groups and use research findings to design, publish and distribute pamphlets with relevant information for target audiences.

\* Please note that all Recommendations etc in this table are for male as well as female primary carers, and children are considered to be between 0 and 18 years old.

## Bail/Remand Recommendations

Issue	Recommendations	Actions Proposed
<p><b>To consider revising the Bail Act to acknowledge the unique position of primary carers, and their dependent children’s safety needs, in policy and procedures</b></p>	<p>Bring the issues addressed in this paper to the attention of relevant Government Departments and bodies for consideration</p>	<p>To be considered by an Interdepartmental Committee / Working Group.</p>
	<p>The development of a <i>Checklist</i> of children’s safety issues for use in Bail Hearings by magistrates/judges for policy and practice purposes</p>	<ul style="list-style-type: none"> <li>• Committee to Review specialist court evaluations and liaise with specialist court teams and prepare a report of the findings for use in court policy development</li> <li>• Ensure outcomes are available to all Magistrates/Judges</li> </ul>
	<p>Develop protocols linking adult courts and the Children’s Court.</p>	<p>Committee to take learnings from above to extrapolate for links between these courts</p>
	<p>In regards to Remand situations, reception assessment forms ascertaining the safety and care status of dependent children need to be more comprehensive and used throughout Victorian reception prisons (including for male primary carers)</p>	<p>Committee to take learnings from above to develop assessment, policy and practice procedures for all Victorian Reception prisons</p>

## Courts and Sentencing Recommendations

Issue	Recommendations	Actions Proposed
<p><b>To consider the development of protocols and supporting legislation to acknowledge and protect dependent children throughout adult criminal court proceedings and in sentencing options and considerations.</b></p>	<p>Bring the issues addressed in this paper to the attention of relevant Government departments and bodies for consideration</p>	<p>To be considered by an Interdepartmental Committee / Working Group.</p>
	<p>Review of the <i>Sentencing Act</i> (and <i>Search</i>’ and <i>Arrest Warrant Acts</i>) in line with Recommendation 9 of the Belfast Declaration:</p> <p><b>(9) Children with parents in prison</b></p> <p>‘If a decision is taken to send a parent to prison, a well developed care plan must be put in place prior to incarceration, involving the convicted parent, her/his child(ren) and significant others. The care plan must ensure protection of the child(ren) and should provide for continued contact between the child(ren) and the parent. ... it is also recommended that steps be taken to develop protocols for the police and others involved in criminal justice on how parents, in particular mothers, with dependent /young children should be treated within the criminal justice system in order to ensure that the rights and needs of the child(ren) of these parents are well taken care of.’</p>	<ul style="list-style-type: none"> <li>• Place on the Sentencing Advisory Council agenda</li> <li>• Include Sentencing Advisory Council representation on IDC / Working Party</li> </ul>
	<p>Primary Carer assessment ‘service’ (with a report that can form the basis of a pre sentence report) to be made available pre-sentencing that can be utilized by Courts for sentencing (including preferred carer options and potential impact if custodial sentence given)</p>	<ul style="list-style-type: none"> <li>• Establish a Working Party to look at existing Family Assessment services in the Family and Children’s Courts that would be transferable to the criminal courts.</li> <li>• Determine information pathway and response points</li> <li>• Develop checklist form</li> <li>• Pilot use of form in several courts</li> <li>• Ensure legislative reflection of outcomes</li> </ul>
	<p>Investigate the need for a separate child’s advocate for participation in primary carer hearings</p>	<p>IDC / Working party to include this issue in their discussions</p>
	<p>Establish a flagging system, for Department of Human Services (DHS) or alternative where appropriate, for children without any clear carer options</p>	<p>IDC / Working Party to include this issue in their discussions</p>
	<p>Establish a flagging system for information to be sent to prison/s regarding primary carer and any relevant information.</p>	<p>Working Party to include this issue in their discussions</p>
<p>Establish a service or develop departmental funding for children to address the trauma experienced through the arrest, loss of parent etc, {possibly using referrals from bail hearings (or earlier, police) and audited via pre-sentence report}.</p>	<p>Include Department of Health representation on IDC / Working Party to discuss the development of a service model and identify funding sources to target children with parental justice involvement</p>	

## Prisons/Visits/Programs Recommendations

Issue	Recommendations	Actions Proposed
<p><b>To consider the development of protocols and policies between and within the Department of Justice, the Department of Human Services and the Department of Education ensuring that the best interests of prisoner’s children are factored into all prison planning and implementation</b></p>	<p>Explore the implementation of Visitor Centres across the Corrections Victoria system (as distinct from visits centres).</p>	<ul style="list-style-type: none"> <li>• Work in partnership with community agencies to identify and implement buildings and support requirements for a visitor centre at each prison</li> <li>• Ensure appropriate funding avenues to support this</li> </ul>
	<p>Ensure the delivery of consistent, diverse, quality parenting programs across the prison system</p>	<ul style="list-style-type: none"> <li>• Work in partnership with community agencies and Government Departments</li> <li>• Ensure appropriate funding avenues to support this</li> </ul>
	<p>Develop a system for identifying interim carers and their emergency contact details and establish policies and best practice in working collaboratively to ensure the ‘best interests of the child’ are always met</p>	<p>Ensure that a <i>flagging system</i> is in place for when a primary carer prisoner loses contact visits so that the interim carer is contacted in a timely manner</p>
	<p>Extend Video conferencing for:</p> <ul style="list-style-type: none"> <li>• children who cannot visit the prison;</li> <li>• between schools and prisons.</li> </ul>	<ul style="list-style-type: none"> <li>• Identify agencies/departments to provide an ‘outside’ video linking service;</li> <li>• Implement a pilot program using video conferencing facilities in prisons and identified ‘outside’ service providers and within the Education Department</li> <li>• Ensure appropriate funding avenues to support this</li> </ul>
	<p>Establish formal, sustainable communication channels between schools, prisons and prisoners (including on-going forums/ committees)</p>	<ul style="list-style-type: none"> <li>• Liaise between relevant education bodies and Corrections Victoria to develop policies and procedures</li> <li>• Ensure Department of Education (DoE) representation on committees to ensure that this is developed collaboratively</li> </ul>
	<p>Ensure that information is available to prisoner parents about the benefits and possible ways of keeping in touch with their children throughout their incarceration.</p>	<p>Add information about schools to the prison reception information; orientation process and Transitional Assistance Program program</p>
	<p>Establish a ‘major school event / primary carer’s leave’ – for prisoners to be able to attend major school events such as first day, changing schools etc.</p>	<ul style="list-style-type: none"> <li>• Sentencing Management Unit or Ministerial Community Advisory Committee to consider the development of assessment criteria for primary carers with school-aged children and protocols for leaves</li> </ul>

<b>Issue</b>	<b>Recommendations</b>	<b>Actions Proposed</b>
	Develop support (educational and practical) and counselling services for children of prisoners (ensure that getting children to visits is factored into these supports)	<ul style="list-style-type: none"> <li>• Assess existing educational and counselling supports for children and modify/extend services to address the children of prisoners</li> <li>• Ensure appropriate funding avenues to support this</li> </ul>
	Develop training / education on the issues affecting children of prisoners for school staff, carers and foster families	<ul style="list-style-type: none"> <li>• Develop a training package (using VACRO FORK project learnings)</li> <li>• Ensure appropriate funding avenues to support this</li> </ul>
	Provide an emergency call-in number for children to reach the prison.	<ul style="list-style-type: none"> <li>• Set up a specific phone number at each prison to enable children in crisis to ring their primary carer.</li> </ul>

## Pre and Post Release Recommendations

Issue	Recommendations	Actions Proposed
<p><b>Primary carers and their children's needs to be identified, assessed and acknowledged in all pre and post release planning</b></p> <p><i>N.B. Children of Correction's clients to be treated as individual clients to assure adequate allocation of pre &amp; post release funds</i></p>	<p>More demographic information about primary carers and their children collected to use for future planning and operations</p>	<p>Add non-identifying demographic fields concerning children of prisoners to Corrections Victoria database</p>
	<p>Incorporate primary carers and their children's best interests into all aspects of pre and post release planning, including Home Detention guidelines and protocols.</p>	<ul style="list-style-type: none"> <li>• Assessment and review processes throughout Corrections system to ensure that children are a part of planning when working with primary carers.</li> <li>• Work collaboratively with transitional and post release services to ensure holistic planning and service provision</li> </ul>
	<ul style="list-style-type: none"> <li>• Research addressing the specific needs of prisoner primary carers and their children during this transitional phase to be established across the various departments (inc. a specific focus on long term prisoner parents).</li> <li>• Pilot program/s based on the research</li> </ul>	<p>Continuing the work already undertaken by VACRO and elsewhere, work collaboratively to establish a research project to investigate the needs and experiences of primary carer prisoners and their children with a view to program/s in the future</p>
	<p>Family group conferences occurring currently for DHS clients in prisons to be made available to all carers wherever possible</p>	<ul style="list-style-type: none"> <li>• Review prison visit criteria to allow family conferencing</li> <li>• Provision of a facilitator to enable negotiation/mediation between carers regarding arrangements for children post-release</li> </ul>
	<p>Development of a check list for correctional and prison agency staff regarding parenting issues to raise with parents inside eg. release date issues</p>	<ul style="list-style-type: none"> <li>• Produce and distribute a checklist to all prison and pre and post-release support agencies</li> <li>• Ensure that it is reviewed and evaluated.</li> </ul>

## Interdepartmental Recommendations

Issue	Recommendations	Actions Proposed
<p><b>Progress the findings from the <i>Discussion Paper</i> and the recommendations from this paper (<i>Action Paper</i>) into actions on an interdepartmental level</b></p>	<p>Establish an Interdepartmental Committee with representation of OCSC, police, DHS, Sentencing Advisory Council and DoJ (Courts, prisons and policy)</p>	<ul style="list-style-type: none"> <li>• OCSC to propose the establishment of an IDC</li> <li>• OCSC to chair meetings</li> </ul>
	<p>Incorporate children of prisoners as a specific group into all <i>Acts</i> and legislation effecting them</p>	<p>Draft legislative amendments and submit to parliament via the IDC</p>
	<p>Need for specific, funded independent service for children of prisoners (advocacy/case management etc) based on the best interests of the child. This service should ideally be tied to the court system.</p>	<p>To be included for consideration in committee discussions</p>
	<p>To continue advocating for children of prisoners</p>	<p>Dissemination of research findings and the forum recommendations through conferences, media, meetings, etc</p>

# Conclusion

The publication and launch of this *Action Paper* concludes the second stage of the project *Children: Unintended Victims of Legal Process*. The previous stages included:

- A national and international review of existing policy and legislation affecting children with parental criminal court proceedings, particularly the children of prisoners
- Qualitative research exploring the effect of existing policy gaps on: mothers in prison and during post release, arresting police officers, solicitors, magistrates and judges, and the interim carers of children with a primary carer in prison
- Publication of the above findings in the Discussion Paper *Children: Unintended Victims of Legal Process – A review of policies and legislation affecting children with incarcerated parents*
- Dissemination of the Discussion Paper to over 350 recipients including Government Departments, Ministers, community organisations, and academics
- A series of collaborative community consultation forums seeking ideas and recommendations aimed at addressing existing legislative and policy gaps affecting children during parental criminal court proceedings
- Publication of the Action Paper *Children: Unintended Victims of Legal Process – A call for action*

From the project's viewpoint, the mantle for carrying the identified issues forward has been handed over via the Recommendations. However, VACRO's commitment to seeking real and lasting policy change for the children of prisoners remains. The project *Children: Unintended Victims* will continue to drive the policy issues towards a working conclusion through consultancy, advocacy, and dissemination of the publications. It will also continue developing programs and partnerships to address the service gaps that were identified through the research.

Victoria is now in a position to develop a model of legal process that honours children's rights and addresses their requirements. This achievement would be an international milestone, placing our justice system at the forefront of human rights and social justice development. The 45,000 children in Australia with parents currently in prison – and potentially the 750,000 children in the European Community and the 2.5 million children in the United States – will all be the beneficiaries of such an initiative.

All that is required now is to work together to action the recommendations.

# Afterword

This is a timely and significant *Action Paper* on a subject that has received far too little attention both in Australia and overseas.

Australia, as one of the principal protagonists of the *United Nations Convention on the Rights of the Child*, has little cause to congratulate itself upon its observance of that Convention. In fact the cause of human rights in general and children's rights in particular have suffered considerably over the last 12 years, particularly at Federal level, but also at State and Territory level as well.

There are exceptions to this trend however in both Victoria and the ACT, which have recently adopted charters of rights and freedoms. Victoria has also passed child protection legislation which for the first time has taken human rights considerations directly into account. It is to be hoped that this project will similarly fall upon sympathetic ears in those two jurisdictions and in others throughout Australia.

As a person who has been associated with the sentencing process, bail, parole and prison post release programmes as well as family law throughout his career, as well as children's rights issues, I feel well able to endorse this *Action Paper's* approach and recommendations. I am pleased to see that representatives of courts, police and government departments have been involved in the process as well as the all important NGOs who work in this field.

However as the conclusion to the paper suggests, VACRO's continuing commitment to seeking real and lasting policy change towards the children of prisoners remains a vital part of the process of protecting these unintended victims of other's behaviour. While much attention has been given to the victims of crime in recent times, it is all too often forgotten that the children of offenders are just as much victims of crime and that common humanity requires that we recognise this. As the paper indicates, there are many things that need to be done for these children and insofar as there is expense involved it is expense well incurred, both for the benefit of the children themselves and for the community in which they live and grow up.

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