

Committee on Children and Young People
Public hearing – 14 May 2021

Responses to questions taken on notice
Advocate for Children and Young People

Inquiry into Support for Children of Imprisoned Parents – Response to Questions on Notice

Q: I was wondering whether the Advocate was able to provide any information on whether young people in the juvenile justice system had any comments about what might have turned their life around had they been better supported as children of incarcerated parents, if in fact they were children of incarcerated parents?

ACYP regularly undertakes face-to-face consultations with children and young people in juvenile justice centres. In a number of these consultations children and young people have referenced the impact of parental incarceration on their lives. For example, a number of young people referenced their parents being constantly in and out of jail, noting that they “grew up to know crime and drugs” and stating that growing up they believed they might end up in jail like their parents. In the past ACYP has not specifically sought this information from children and young people during the interview process, rather it has been voluntarily raised during our consultations. As a result, we cannot provide detailed comments specifically in relation to what children and young people have said ‘might have turned their life around had they been better supported as children of incarcerated parents’. However, throughout our consultations with young people in youth justice they have told us that having a positive relationship with a consistent caseworker, support worker, or counsellor who understood their life experiences and could help them navigate complex support systems has a significant impact on their quality of life. This was especially true for young people in the Out of Home Care system who spoke about the negative consequences resulting from experiences of multiple caseworkers and placements throughout their lives. In addition, young people said they wanted connection to trusted adults in the community such as mentoring by community members, Elders, and other respected people with similar lived experiences to themselves so they could share knowledge and life experience.

Another key issue raised in our consultations with young people in youth justice was the importance of educational, vocational and life skills programs in assisting them to make changes in their lives. While education was of high importance and value to young people in custody, most spoke about having been disengaged from school for long periods of time. Many young people reported that it was not uncommon to be subjected to long suspensions of up to 20 days: “[I would get] 20 days, I would go back and stuff up and get another 20 days, it was like a repeat occurrence.” Young people in nearly every Youth Justice have raised the issue of long suspensions and reported that it is often during a long suspension that they get into trouble with police, as they typically lack supervision and constructive activities during this time. Some young people further suggested that schools should provide greater support to students who are experiencing serious issues at home: “Instead of focusing on education they should also focus on what’s happening outside of school. Like what the kids are getting up to, if they have drug problems, ... family problems, domestic violence and stuff like that. They should try to solve it within school cos that’s where boys spend most their time.”

For more information on the issues raised by children and young people in relation to supports and services before and after custody, please see ACYP’s [2019 Juvenile Justice](#)

Report.

Q: Can you just help the Committee understand how the recommendations were prepared? Who did you consult with? How was this done and over what time period? Some of them are quite detailed. There is some degree of specificity in particular. How did you come up with the recommendations?

The Advocate for Children and Young People (ACYP) is an independent statutory appointment overseen by the Parliamentary Joint Committee on Children and Young People. ACYP's role is to advocate for and promote the safety, welfare, well-being and voice of children and young people in NSW aged 0-24 years, particularly those who are vulnerable or disadvantaged.

Under the *Advocate for Children and Young People Act 2014*, the statutory functions of ACYP include:

- making recommendations to Parliament, and government agencies on legislation, policies and practice and services that affect children and young people;
- promoting children and young people's participation in activities and decision-making about issues that affect their lives;
- conducting research into children's issues and monitoring children's well-being;
- holding inquiries into important issues relating to children and young people;
- providing information to help children and young people;
- providing information to help children and young people; and
- preparing, in consultation with the Minister responsible for youth, a three-year, whole-of-government Strategic Plan for Children and Young People.

As part of these core functions, ACYP regularly reviews existing and proposed legislation and makes recommendations about changes to laws and government policies that impact upon children and young people. This includes making submissions to government agencies, parliamentary committees and other inquiry bodies to promote policy and law reform that is grounded in child-rights principles.

Preparing a submission to any inquiry or committee requires a tailored approach. However, in general, ACYP uses a combination of the below steps and methods to prepare policy submissions and formulate recommendations.

- Review terms of reference for the inquiry;
- Review existing ACYP research and prior work that is related to the topic;
- Undertake a literature review of existing academic research, data, relevant legislation, case studies, services, policies and practice;
- Undertake comparative analysis of practices across jurisdictions – both domestic and international;
- Assess current policy, practice and services against key child rights principles and standards, including relevant policy and legal frameworks such as the United Nations Convention on the Rights of the Child;
- Consult with key stakeholders of relevance to the topic of the submission;
- Where timeframes and capacity allow, undertake new primary research and consultation with children and young people – either through qualitative face-to-face consultations or quantitative methods such as polling and surveys.

Given the short-time frame for submissions to be prepared for the Inquiry into Support for Children of Imprisoned Parents, mid-November 2019 to February 2020, ACYP was not able to undertake new consultations with children and young people for this submission. As a result, ACYP's submission to the Inquiry was based on a review of existing research and a child-rights review of legislation, policies, practices and services that impact and support children with imprisoned parents. In preparing this submission, ACYP also engaged and consulted with relevant government and non-government stakeholders. For example, in preparing the submission ACYP reached out to SHINE for Kids to ensure our submission was cognisant of current best practice in the sector. After ACYP's submission was finalised a copy was provided to a number of key stakeholders including NSW Police and SHINE for Kids.

As noted in ACYP's submission to this inquiry, ACYP would welcome the opportunity to undertake consultation with children and young people who have experienced parental incarceration in the future, to ensure their views are considered and their needs are being met.

Q: If I could impose, why would you have not consulted with children and young people in regard to this important inquiry?

ACYP regularly undertakes consultation with children and young people across NSW and promoting the voice and participation of children and young people is a core component of our work. Since 2015 ACYP has consulted with over 36,000 children and young people – including face-to-face consultations with over 12,000 children and young people and online quantitative research with 24,000 young people across NSW, across a broad range of topics.

However, it is important to recognise that undertaking meaningful engagement and consultation with children and young people takes time, and often does not fit within the short times provided for submissions to be lodged to a parliamentary inquiry. This is particularly the case for consultation with vulnerable and socially excluded children and young people, such as children with imprisoned parents, which requires time and careful planning.

As a result, ACYP's submission to this Inquiry is based on a child-rights focused review of legislation, policies, practices and services that impact and support children with imprisoned parents. However, as noted in our submission to this inquiry, ACYP would welcome the opportunity to undertake consultation with children and young people who have experienced parental incarceration in the future, to ensure their views are considered and their needs are being met.

Q: I just wanted to further pursue the line of questioning that you had. Recommendation 3, to amend the Bail Act 2013, the specifics of that are not before me. Are you able to expand on that on notice, if you would like?

As noted in our submission to the Inquiry, an important mechanism for reducing the impact of parental incarceration on children is reduce unnecessary periods of remand. As a result,

ACYP's submission recommended that the *Bail Act 2013* (Bail Act) be amended to ensure that the best interests of the children of those subject to remand are taken into account.

Section 18 of the Bail Act currently outlines a number of factors which must be taken into account as part of a person's bail assessment. For example, s18(k) asks the court to consider 'any special vulnerability or needs the accused person has including because of youth, being an Aboriginal or Torres Strait Islander, or having a cognitive impairment'. However, at present, there is no reference in the Bail Act to a specific consideration of the impact of remand on a defendant's children, particularly in instances where the defendant is the primary carer. As a result, ACYP recommends section 18 of the Bail Act be amended to include consideration of a defendant's care-giving responsibilities and the impact that their incarceration may have on dependent children.

Incorporating an amendment such as this would be in line with international standards. For example, as noted in our submission to the Inquiry, under the United Nations Standard Minimum Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) rule 64 states:

Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child.

A similar recommendation was also made to this Inquiry by SHINE for kids, who noted that "pregnant women and parents who are primary caregivers of young children or of people with disabilities should not be remanded unless they are charged with a serious offence" (recommendation 12). As noted in ACYP's submission, imprisonment of a parent has a significant impact on children and young people. Amending the Bail Act is an important mechanism to ensure that the court provides adequate consideration of the impact that even short periods of parental incarceration can have on children and young people, particularly in cases where a primary caregiver is being remanded in custody for a charge that is unlikely to lead to a custodial sentence.