

# A Just and Fair Victoria

Federation of Community Legal Centres Victoria  
State Budget Submission 2018–2019



Federation of  
Community Legal Centres  
VICTORIA

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## Foreword

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Inequality in Australia has grown faster than in almost all comparable countries.<sup>1</sup> Billionaires amassed the equivalent of half of the federal health budget last year, while almost three million Australians live below the poverty line.<sup>2</sup> Workers face record insecurity and chronically slow wage growth. Victoria is experiencing an unprecedented housing crisis, with a record number of homeless people across urban and regional areas.<sup>3</sup>

This economic inequality means that people are more likely to experience disadvantage and discrimination that lead to legal problems. Councils fine people with rental stress who cannot pay for parking; officers charge people who are homeless for not having a tram ticket; real estate agents blacklist tenants for standing up for their rights; the government takes a person to court for not paying a fine to a private toll company; and the courts imprison rather than rehabilitate people convicted of crimes driven by poverty.

Systemic racism, sexism and all forms of discrimination work together with poverty to entrench this legal inequity. Many of the people experiencing the most acute inequality and injustice are Aboriginal and Torres Strait peoples, people with a disability, culturally and linguistically diverse communities, women, and LGBTIQ people.

In the context of rising inequality, the Federation of Community Legal Centres (the Federation) is a crucial advocate for the people most impacted by injustice. As a result of the sharply increasing inequality in Victoria and across Australia, community legal centres (CLCs) are experiencing unprecedented demand for our legal and social support services.

There are clear steps that the Victorian Government can take to make the legal system work for all Victorians. The Government should create a fair housing system, fix our broken infringements model, assist survivors of family violence, and invest in prevention and rehabilitation – not prisons. The solution also lies in funding CLCs properly, so that they can provide frontline legal services to the community and advocate for crucial law reform that makes the system fair for us all.

We can build a fair Victoria – one that delivers just outcomes for all Victorians, no matter their income or background.

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<sup>1</sup> Australian Council of Social Services, *Inequality in Australia: A Nation Divided* (2015) 15.

<sup>2</sup> Oxfam, *Growing Gap between Work and Wealth: Australian Fact Sheet* (January 2018); ACOSS, *Poverty In Australia in 2016* (2016).

<sup>3</sup> Department of Health and Human Services, *Victoria's homelessness and rough sleeping action plan* (2018) 7.

## Key steps for a more just Victoria:

- 1. Deliver Fairer Safer Housing:** Homes not housing. Legislate the 'Make renting fair' policy commitments and seize the opportunity to build more public housing.
- 2. Fix Our Fine System:** For our fine system to work, it must be fair. People should not be slugged with exorbitant fees on top of small fines. When there are special reasons a person cannot pay off a fine, they should get help not a prison uniform.
- 3. Be Smart About Justice:** Too many people are in prison for struggling with addiction, homelessness and poverty. Victoria can be smarter about investing in poverty prevention and in people, rather than building more prisons.
- 4. Keep Families Safe:** We can keep families safe and realise the vision of the Royal Commission into Family Violence only if we make sure legal help is integral to victim-survivor recovery. When a person escapes a violent partner, they shouldn't have to face the legal system alone.
- 5. Make Justice For All A Reality:** The law will only be equal when everyone has access to the rights and protections it affords us. People doing it tough are locked out of accessing justice and they deserve a fair go. Community legal centres are the safety net that catches people when they experience injustice and help them stand up for their rights. Strong CLCs means a strong community and a fair legal system for everyone.

### **Delivering Fairer, Safer Housing**

- The State Government made the commitment to make renting fair with its rental fairness package in October 2017; these changes should be legislated in full within a year of this announcement.
- As part of the State Government's commitment to making renting fair – fund community legal centres to provide legal assistance and representation so Victorian renters can access their legal right to a safe and secure home.
- Invest to increase public housing capacity and significantly increase the public housing available as part of the renewal program.
- Pledge that there will be no loss in public housing as a result of the public housing renewal program.
- Commit to improving and extending the rights of tenants in community housing across Victoria.

### **A Fine System – the case for fixing our infringement system**

- Establish a dedicated unit within Fines Victoria to administrate the scheme. Provide adequate resources to community legal centres and Victoria Legal Aid to develop, coordinate, support and publicise the Work and Development Permit scheme.
- Stop the criminalisation of private debts owed to toll companies by shifting toll debts to the civil system in line with other debt enforcement processes.
- Until toll debts are part of the civil system take immediate steps to mitigate the harm caused by criminalising toll debts:
  - Limit the issuing of an infringement to one per three months.
  - Increase the time that fines are held with tolling companies from 90 days to 180 days before infringements are issued by Police.
  - Allow infringements to be cancelled and fines to be returned to tolling companies where hardship or vulnerability is identified.
- Introduce a Code of Practice toll operators are required to comply with, to ensure that communication, accessible payment options, early intervention, hardship and other consumer protections are improved and monitored in line with other industries.
- Establish a robust, well-publicised Ombudsman scheme with full investigation powers and resources to undertake its work.

### **Smart Justice**

- Expand the Drug Court and the Family Drug Treatment Court (within the Children's Court) including to rural and regional Victoria.
- Fund diversion and rehabilitation programs for people with a drug dependency, particularly in rural and regional Victoria.
- Commit to permanently funding Victoria's safe injecting room.
- Increase funding for transitional support for people in prison and when they return to the community, including housing, healthcare and employment opportunities.
- Fund a fully-independent body to provide oversight and handle complaints about police conduct.
- Close children's prisons and invest in education, health and drug rehabilitation programs, and housing services for children and their families.

### **Raise the Age – target young people for support not prisons**

- Raise the age of criminal responsibility in Victoria to 14 years of age.
- Commit to diversion for young people by expanding the court-based diversion scheme.
- Increase the use of cautioning and pre-plea diversions to reduce high rates of arrests and convictions among Aboriginal and Torres Strait Islander young people.
- Increase funding for bail accommodation, particularly for Aboriginal and Torres Strait Islander community-controlled organisations and in regional and rural areas.
- Adequately fund long-term accommodation and services for young people who are homeless and for families in need of housing.

### **Keeping Families Safe**

- Work with community legal centres on the design of Support and Safety Hubs to implement recommendation 3.5 of *Access to Justice Review* and embed legal assistance in the Hubs.
- Ensure people escaping family violence can receive the legal help they need by funding community legal centres commensurate to other support services to meet the increase in demand for legal services.
- Provide ongoing funding for proven integrated legal services that address legal issues experienced during and in the aftermath of family violence – such as health justice partnerships, co-location of legal services with financial counselling, and homelessness prevention partnerships – and expand these services across Victoria.

### **Make Justice For All A Reality**

- Improve access to justice by growing the community legal sector to meet the increasing unmet legal demand in Victoria.
- Increase community legal centres' capacity to provide innovative integrated and client-centred legal services by providing adequate funding for:
  - Existing Health Justice Partnerships that are currently at risk;
  - School lawyer programs and education justice initiatives;
  - New integrated approaches – whether Health Justice Partnerships or models that involve social workers, financial counsellors or other services – that provide a holistic response to clients and their complex needs.
- Give more certainty for communities who rely on community legal centres' services by making four-year funding allocations a minimum requirement.
- Support effective collaborative planning across the legal assistance sector by adequately resourcing community legal centres and the Federation to meaningfully engage and share expertise in this important process.
- Support the shift to outcomes measurement and ongoing evaluation by adequately funding the Federation to continue leading and capacity building the sector. Provide adequate funding to centres to ensure they can implement this shift sustainably.

## Delivering Fairer, Safer Housing

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As buying a home becomes increasingly unaffordable, more people are renting than ever before.

Making renting fair is the first step to creating housing which is more secure and safe. This Government has the focus right. The announcement to changes to the *Residential Tenancies Act* show this State Government knows that rental properties are not just investments, they are people's homes. The proposed reforms will allow renters to keep pets and make reasonable modifications. The reforms will allow renters to seek reimbursement for urgent repairs, and make bond repayments automatic. These proposed changes will make renting more stable for people experiencing disadvantage, and makes renting fairer for all of us.<sup>4</sup>

### Recommendation

- The State Government made the commitment to make renting fair with its rental fairness package in October 2017; these changes should be legislated in full within a year of this announcement.

Rights are only meaningful if people have the ability to stand up for them. Laws are only half of the equation. Renters need to have the ability to stand up to dodgy landlords.

Addressing the power imbalance between landlords and renters is necessary for tenancy laws to be effective. Renters will always be afraid to speak up: Complain too loudly about the leaky tap and risk your rent going up. Complain about unreasonable landlord visits and risk your tenancy not being renewed. Demand removal of mould to make the home safe to live in and risk being on real estate blacklist.

This power imbalance is felt every day and shows up in the statistics of who takes legal action to enforce their rights.

*Of all the applications made to Victorian Civil and Administrative Tribunal (VCAT) only 6.6%, or 3,931 applications, are made by renters. The staggering majority (65.5%) are made by landlords represented by professional estate agents.*

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Renters do not want to end up in VCAT, most want the matter sorted out before then. These statistics demonstrate the need for legal assistance to address the power imbalance landlords hold over renters.

Community legal centres have a unique set of skills to advocate for renters in a way that helps to resolve the matter before it goes to the courts and to represent them when

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<sup>4</sup> Andrews Labour Government, 'Andrews Labor Government Will Make Renting Fair' (Media release, 8 October 2017).

landlords push the matter to VCAT. We can help people with multiple legal issues stay in their homes. This is money well spent.

*In 2015–16 Community Legal Centres assisted with more than 26,735 tenancy matters throughout Victoria.*<sup>5</sup>

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This Government knows this. In announcing the rental reforms it also announced funding for legal assistance. Minister for Consumer Affairs Marlene Kairouz said,

*"It isn't always easy understanding your rights as a tenant or a consumer. So it's vital Victorians get help and advice where and when they need it. That's why we're doing more than ever to boost advocacy services. These community organisations will assist and advocate on behalf of our most vulnerable renters and consumers."*<sup>6</sup>

Despite this rhetoric, in 2017 a number of CLCs were stripped of their tenancy funding. From experience, CLCs know tenancy issues do not exist in isolation. When a woman is leaving a violent partner, the lawyer may need to file both an invention order and a change of lease to remove her partner's name from it. A person may be in rental arrears trying to pay a toll fine. A Centrelink debt may miscalculate rental allowances due to co-tenant arrangements that have fallen apart. Addressing tenancy issues in isolation is unlikely to prevent a person from becoming homeless. Integration of services is a core recommendation of the Royal Commission into Family Violence. Holistic legal services which connect to the local community is what CLCs specialise in. This saves families from becoming homeless.

There is a difference between housing services – which are a vital service to find housing and keep people in housing – and legal assistance and representation, which empowers individuals to uphold their rights under Victorian tenancy laws. Empowering people is cost effective, ensuring sustainable housing for renters and preventing homelessness or insecure housing.

When millions of dollars are raised each year from the interest on renters' bonds, it is only fair that this money goes back into the support services that renters themselves rely on.

Given this State Government is committed to making renting fairer – we are sure it was never the intention to deny renters help to enforce and exercise their rights to a safe and secure home. Community legal centres need to be adequately funded to provide legal assistance and representation for renters.

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<sup>5</sup> Federation of Community Legal Centres, Tenancy Working Group Joint Submission to the *Residential Tenancies Act Review*, (February 2018)

<sup>6</sup> Andrews Labour Government, 'Extra Support For Vulnerable Renters And Consumers' (Media release, 6 April 2017).

## Recommendation

- As part of the State Government's commitment to making renting fair – fund community legal centres to provide legal assistance and representation so Victorian renters can access their legal right to a safe and secure home.

## A home for everyone – increasing public housing

The State Government's policy *Homes for Victorians* rightly finds a key role for the Government to invest in and support the provision of homes for people doing it tough. Homes are crucial for all of us. They provide stability and security. When you have a home it is easier to hold a job or care for your family. Providing a home for everyone is the right thing to do for a civil society.

We should not be afraid of investing in public housing as the social and financial return on this investment is substantial. From the social benefit of being engaged in community to savings on health, from reduction in crime and substance abuse to protection of property, the list could go on.

A once in a lifetime opportunity exists to invest in public housing. Our waiting lists are long:

*42,000 people are waiting for public housing. Officially people are waiting over 10 months for urgent housing;<sup>7</sup> the actual wait time for early housing is estimated to be over 2 years.<sup>8</sup>*

Another 15,000 people are waiting for social housing.<sup>9</sup> The lists are growing every quarter.<sup>10</sup> As private housing becomes increasingly unaffordable, more people will fall through the housing gap.

Building new public housing, as part of the public housing renewal program, is to be applauded. The public housing selected for renewal is old and in dire need of an upgrade. The State Government is funding only the demolition. The build will be entirely funded by selling off valuable inner-city land to developers.

Selling off public land is serious business. It can only be done once. The promised return of 10 per cent increase in public housing is not good enough. A 10 per cent increase in public housing properties is only an extra 110 units across all sites. The plan to replace three or four bedroom homes with one or two bedroom units will mean even with an increase in units there will, in all likelihood, be a decrease in capacity (that is, in available rooms). This simply is not good enough. If billions of dollars of valuable inner-city land – currently owned by all Victorians – is to be sold to a few private developers,

<sup>7</sup> Victorian Auditor-General Report, *Managing Victoria's Public Housing* (June 2017) 19.

<sup>8</sup> Family and Community Development Committee, Parliament of Victoria, *Parliamentary Inquiry into the Adequacy and Future Directions of Public Housing* (2010) 125.

<sup>9</sup> Department of Housing and Human Services, 'Victorian Housing Register transitional report – December 2017' (2017).

<sup>10</sup> *Ibid.*

we need a bigger return. The State Government should be committed to spending money on building public housing: as inner-city land gets more valuable, the social and economic return is only going to grow.

If these sites are going to mix public and private housing, the mix has to be right. Public housing should not be pushed to the fringes to maximise profits. The purpose of this land must be to provide public housing to those residents who want to return to their homes and those on the waiting list in most need, not private housing. Private housing should not out-number public housing or result in the overcrowding of these sites.

Safe and secure housing matters to all Victorians. Do not leave this vital social infrastructure in developers' hands.

### **Recommendation**

- Invest in public housing and significantly increase the public housing available as part of the renewal program.

In *Homes for Victorians* the State Government emphasises the critical role of social housing in providing homes for Victorians in need.<sup>11</sup> Social housing is made up of community housing and public housing. Community housing is run by community organisations to provide subsidised homes for Victorians doing it tough. Public housing is owned and run by the Government. Both play an important role in the housing mix, but they are not the same.

Community housing should not replace, but rather complement, public housing. Community housing tenants are more likely to receive notices to vacate 'without grounds' than public housing tenants.<sup>12</sup> For Victorians experiencing serious hardship, public housing will always play an important role. We should be careful not to create policies which reduce public housing, especially without getting the right checks and balances to protect vulnerable tenants. Keep in mind: if you fall out of social housing, you have fallen out of the safety net. With no options left you are most likely to end up on the street. Eviction from social housing is a serious thing.

### **Recommendation**

- Pledge that there will be no loss in public housing as a result of the public housing renewal program.
- Commit to improving and extending the rights of tenants in community housing across Victoria.

<sup>11</sup> State Government of Victoria, *Homes for Victorians - Affordability, access and choice* (2017) 31.

<sup>12</sup> 18.8% of community housing evictions faces by Homeless Law clients involved notices to vacate "without grounds" (*Residential Tenancies Act 1997* (Vic) s 263) as opposed to only 1% of public housing evictions" IN Friends Of Public Housing Victoria, Submission No 131 to Victorian Labour Government, *Inquiry into the Public Housing Renewal Program*, November 2017, 3

## A Fine System – the case for fixing our infringement system

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When in a moment of hardship, whether you are experiencing family violence or mental illness, paying a fine can suddenly change from an annoying cost to an insurmountable hurdle. When this is coupled with financial stress, it may be impossible. The consequence may be a build up of penalties for failure to pay, court hearings, and jail. People should not have to make a choice between paying a fine and paying rent. Making the system fairer and easier to navigate at the beginning of the process will lead to better outcomes for everyone. We commend the Government's commitment to tackling this issue and to make the infringement system more equitable.

### **Safer and fairer system – assisting when family violence occurs**

For a woman experiencing family violence, changes to the infringements system will make escaping a violent partner that bit safer. Under recent changes to the law, a victim of family violence can seek waiver of fines incurred by the perpetrator, without identifying the perpetrator and risking reprisals. The Government should be applauded for implementing these reforms recommended by the Royal Commission into Family Violence and developed in consultation with the Federation's Infringements Working Group. These are changes that make women safer.

### **Work and Development Permits**

What happens when you cannot pay a fine? If you are mentally ill or experiencing acute financial hardship, and you have no capacity to pay? Should the police and court system waste valuable resources chasing a debt which cannot be paid, or should a new model be introduced, recognising people's circumstances and working with them to find a better way?

We welcome the Government's foresight in choosing the latter through introducing Work and Development Permits. It is in all of our interests for this scheme to succeed and it will only succeed if the right resources are allocated now.

No one's interest is served by people going to jail over their inability to pay a fine. Yet nearly 50 people are imprisoned every year in Victoria for failure to pay a court fine or infringement penalty.<sup>13</sup> Tax payers have to pay for the cost of imprisoning people. The cost to individuals is even higher. They will likely lose their jobs, and may not be able to be reemployed in their professions. If they hold on to their tenancies during jail, they are unlikely to afford the rent when they get out. For many women, going to jail may mean losing custody of their children.

Work and Development Permits are an initiative designed to help people in our community who have faced particular hardship and turmoil: people with a mental illness, those experiencing acute financial hardship, drug addiction or victims of family violence. The system allows people to pay off their debt in activities that recognise their

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<sup>13</sup> Sentencing Advisory Council of Victoria. 'The Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria: Report' (May 2014) 403.

circumstances. We commend the Government for this sensible initiative which makes fines more equitable.

Evaluation of a similar scheme in NSW found 94 per cent of sponsors agreed that the scheme enabled people to resolve their fines by activities which benefited them and the community.<sup>14</sup> NSW invests considerable resources to support the program, recognising the value of doing so. It has dedicated resources to finding new sponsors to provide work and development orders and maintaining relationships with existing sponsors.

The scheme began in Victoria in July 2017. To date, few people have had access to the permits. We know many more would like to. There are not many sponsors who have registered, but there is a great deal of opportunity to engage more organisations. For the work and development permit scheme to work, the NSW experience shows us resources need to be invested.<sup>15</sup>

Resourcing a dedicated work and development support service within Fines Victoria, who works directly with the legal assistance sector, would ensure success of this sensible initiative.

### **Recommendation**

- Establish a dedicated unit within Fines Victoria to administrate the scheme. Provide adequate resources to community legal centres and Victoria Legal Aid to develop, coordinate, support and publicise the Work and Development Permit scheme.

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<sup>14</sup> NSW Department of Justice, 'Evaluation of the Work and Development Order Scheme: Qualitative Component' (May 2015).

<sup>15</sup> See for example the work of Illawarra Legal Centre, 'ILC aiding the success of Work and Development Orders (WDO) as an option for fines debt of young people and others' (2012), available at <http://www.illawarralegalcentre.org.au/law-reform-a-policy-work.htm>

## Taking its toll

The Toll system in Victoria is broken. The number one charge being dealt with by our Magistrates' Courts is not theft or assault, or even speeding, it is driving on Citylink without paying.<sup>16</sup> The third highest ranking charge is driving on Eastlink without paying.<sup>17</sup> This is disturbing for two reasons.

One, as a system of compliance, it is not working. In fact, seven out of 10 toll road fines go unpaid and end up in enforcement action and court.<sup>18</sup> Research shows us fines seen as unfair are less likely to be paid, or to promote compliance.<sup>19</sup> Tolls quickly escalate to exorbitant amounts due to unreasonable fees added by the toll company.

Two, our public resources are being wasted to collect private companies' debts. It is like the Government following up your phone bill on behalf of the phone company. This is what the government is doing for private toll companies. On the flip side, the two big toll companies – Transurban and ConnectEast – paid no corporate tax in 2015–16.<sup>20</sup>

This public debt recovery system is clogging up our court system. In fact, the Royal Commission into Family Violence found that time spent on fines and infringements were slowing down the court's capacity to deal with urgent and critical family violence matters, putting family violence survivors at serious risk.<sup>21</sup>

No one knows how much the system is costing Victorians. The Victorian Ombudsman noted the complete absence of data on the cost of fine enforcement system:

*'it is concerning that the overall cost, including the impact on the justice system, is not an explicit consideration in developing infringement policies.'*<sup>22</sup>

Despite the full costs not being known, it is clear that significant State Budget savings can be made by freeing up our Magistrates' Courts and addressing how toll roads collect and process fines.

Toll fines escalate quickly. A week without paying tolls can lead to seven individual toll fines of \$158 each. If these are not paid quickly, an infringement warrant of \$367 is issued for every single unpaid toll fee of between \$0.41 and \$8.90. Drivers often receive a large number of warrants at once. For example, 50 warrants = \$18,368.50, this comprises as little as \$110 in toll fees and \$18,258.50 in added enforcement costs.<sup>23</sup>

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<sup>16</sup> Magistrates' Court Of Victoria (Vic), *Annual Report 2015/2016* (2016) 78.

<sup>17</sup> Ibid.

<sup>18</sup> Benjamin Preiss and Craig Butt, 'More than seven out of 10 toll road fines go unpaid, ending up in court', *The Age* (online), 9 July 2017 <<http://www.theage.com.au/victoria/more-than-seven-out-of-10-toll-road-fines-end-up-in-criminal-justice-system-20170709-gx7pwr.html>>.

<sup>19</sup> For example see: 'Why People Obey the Law; Closing the gap between regulation and the community', Kristina Murphy, 'Procedural justice and its role in promoting voluntary compliance' in Peter Drahos (ed) *Regulatory Theory* (2017, ANU Press) at 43; Kristina Murphy, 'Procedural Justice and the Australian Taxation Office: A study of scheme investors' *Centre for Tax System Integrity Working Paper No 35* (October 2002). See generally, the voluminous work of the Centre for Tax System Integrity (a joint research centre established by the Australian National University and the Australian Taxation Office)' IN Centre for Tax System Integrity, *Towards a Better Tax System for Australian Taxpayers* <http://www.ctsi.org.au/index.html>.

<sup>20</sup> ATO (CTH), 'Corporate Tax Transparency Report: 2015-16 income year' (2017).

<sup>21</sup> See Recommendation 62, Royal Commission into Family Violence (Vic) *Report and Recommendations*, Paper No 132 (2014-16), Vol III, p148

<sup>22</sup> Victorian Ombudsman (Vic), *Investigation into public transport fare evasion enforcement*, (2016) 56.

<sup>23</sup> West Justice Community Legal Centre, *Our Plan for a Fair and Effective Toll Enforcement System for Victoria* (April 2017).

In contrast, in NSW where Transurban also manages the majority of toll roads, non-payment is predominantly collected through the civil debt system, like all other company debts. Because of caps on the number of toll fines that can be issued, a large fine debt in NSW is from \$1,000 to \$3,000, which in most cases can be a realistic amount to pay off.<sup>24</sup>

To add to the injury, toll fines concentrate in the outer-suburban areas of greatest disadvantage. Local council areas in the West and along the Peninsula have the highest levels of fines.

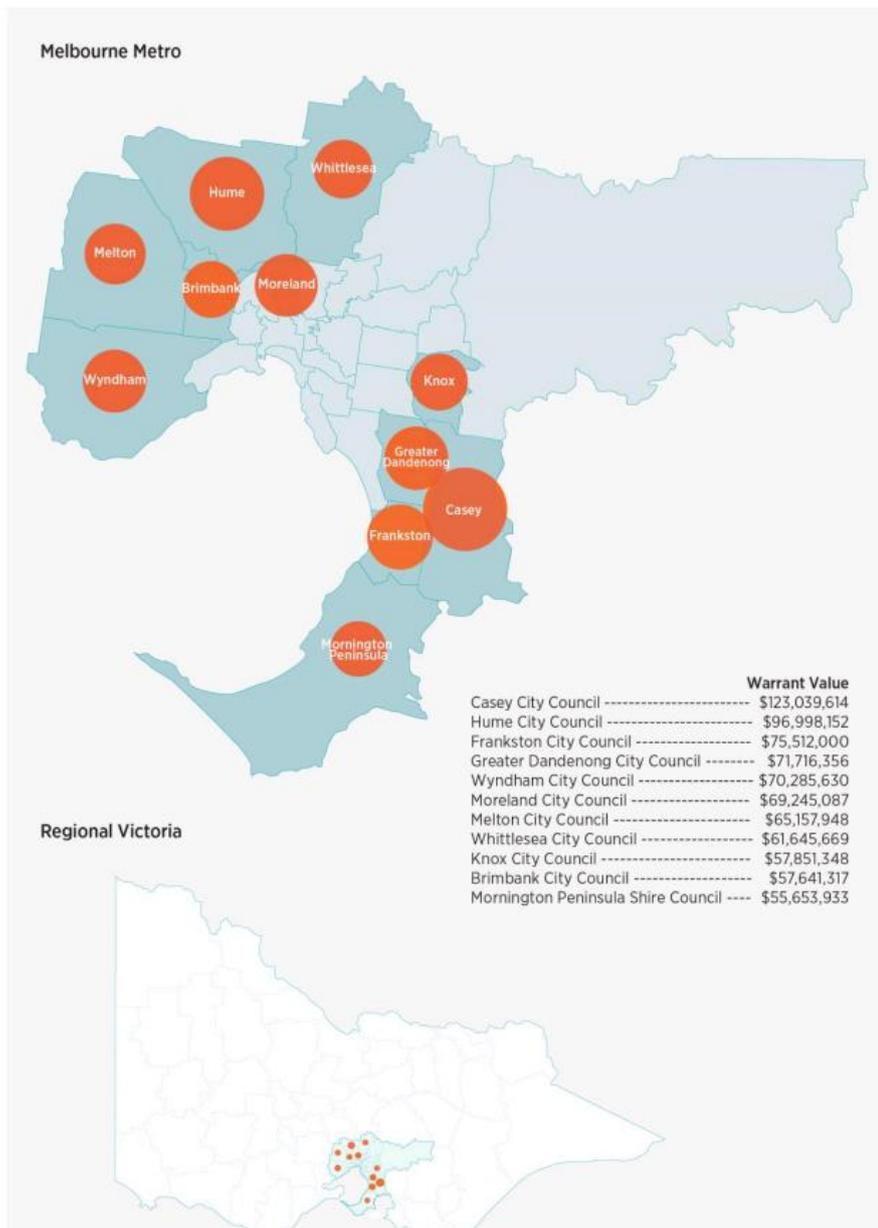


Image Source: '[Our plan for a fair and effective toll enforcement system for Victoria: Briefing Paper](#)' (2017) 12.

<sup>24</sup> Ibid.

The Tolling Ombudsman is not well placed to deal with these systemic issues of debt, populations experiencing disadvantage, and a huge impact on our court system. Where the Energy and Water Ombudsman has the power to investigate and resolve disputes, the power of the Tolling Customer Ombudsman is limited to providing access to alternative dispute resolution<sup>25</sup> and cannot intervene at all once a toll debt becomes a fine. The Tolling Customer Ombudsman does not meet the Attorney-General's Department guidelines for an industry complaint scheme.<sup>26</sup> The ombudsman itself concedes its limited jurisdiction makes it an inappropriate service with no capacity to investigate and report.<sup>27</sup> There are no consumers on the board.<sup>28</sup> Even if the laws were to be improved the ombudsman lacks power and jurisdiction to tackle this growing problem for Victorian motorists.

### Recommendations

- Stop the criminalisation of private debts owed to toll companies by shifting toll debts to the civil system in line with other debt enforcement processes.
- Until toll debts are part of the civil system take immediate steps to mitigate the harm caused by criminalising toll debts:
  - Limit the issuing of an infringement to one per three months of non-compliant driving, rather than one per day.
  - Increase the time that fines are held with tolling companies from 90 days to 180 days before infringements are issued by Police. This will allow more time for tolling companies to implement appropriate hardship programs and prevent infringements being issued.
  - Allow infringements to be cancelled and fines to be returned to tolling companies where hardship or vulnerability is identified.
- Introduce a Code of Practice toll operators are required to comply with, to ensure that communication, accessible payment options, early intervention, hardship and other consumer protections are improved and monitored in line with other industries.
- Establish a robust, well-publicised Ombudsman scheme with full investigation powers and resources to undertake its work.

<sup>25</sup> See comparison of ombudsman powers see: <<https://www.vic.gov.au/law-justice/roles-tasks/ombudsmen.html>>

<sup>26</sup> Economics References Committee, Parliament of Australia, *Toll roads: issues of building, financing and charging* (September 2017) 4.31

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

## Smart Justice

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A law and order budget must be smart. The Federation leads the Smart Justice coalition of 46 organisations committed to criminal justice policies that reduce crime, are based on evidence and comply with human rights obligations. Smart Justice complements the work of CLCs serving people experiencing disadvantage or injustice who come into contact with the criminal justice system in Victoria.

Building a safer and more secure Victoria means addressing crime before it happens. Early intervention. Diversion. Rehabilitation. The evidence shows that economic inequality and entrenched poverty promote crime.<sup>29</sup> Courts and elected officials disproportionately send Aboriginal and Torres Strait Islander people and those with drug dependencies to prison. It is clear that we need to address systemic racism, entrenched poverty and other forms of disadvantage if we want to tackle crime. Only when we fund services properly and distribute opportunities fairly can we reduce offending.

A safe Victoria requires justice reinvestment: the government should divert funding from prisons toward community-based programs that deal with the underlying causes of crime, such as drug dependency, poverty and homelessness.<sup>30</sup> Justice reinvestment strategies have a proven track record of reducing offending, while prisons have consistently failed to make the community safer.<sup>31</sup> Employment, healthcare and education have much more long-term value to the community than more and larger prisons.

### **Diverting people with a drug dependency**

We know that drug dependency is best treated as a health issue. As such, the Federation welcomes the Victorian Government's investment in a medically-supervised safe injecting room and an increase in the rehabilitation beds available. International evidence confirms that safe injecting rooms save lives and set people on the path to dealing with addiction.<sup>32</sup> But we need to do more to divert people with a drug dependency away from the criminal justice system and toward the medical and social services they need to assist their recovery.

The Victorian Government must expand the Drug Court and the Family Drug Treatment Court both to divert people from prisons and to improve the treatment of those placed under Drug Treatment Orders. The evidence shows that Victoria's specialist Drug Court program has reduced offending while better helping people to overcome their drug dependency: the reoffending rate decreased by 34 per cent within the first 24 months.<sup>33</sup>

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<sup>29</sup> Pablo Fajnzylber, Daniel Lederman and Norman Loayza, 'Inequality and Crime' (2002) 45 *The Journal of Law and Economics* 1.

<sup>30</sup> See, for example, Kim Williams, Jennifer Poyser and Kathryn Hopkins, 'Accommodation, Homelessness and Reoffending of Prisoners. Results from the Surveying Prisoner Crime Reduction Survey (2012, UK Ministry of Justice).

<sup>31</sup> Melanie Schwartz, 'Building communities, not prisons: Justice reinvestment and indigenous over-imprisonment' (2010) 14(1) *Australian Indigenous Law Review* 2, 2.

<sup>32</sup> European Monitoring Centre for Drugs and Drug Addiction, *Drug consumption rooms: an overview of provision and evidence* (June 2017).

<sup>33</sup> Magistrates' Court of Victoria, *Evaluation of the Drug Court of Victoria: Final Report* (2014) 4.

However, the Drug Court remains out of reach for rural and regional Victorians, even though they face higher levels of drug dependency.<sup>34</sup>

The solution to dependency lies in connecting people with the medical care and mental health, housing and employment services that they require, not further stigmatising them. The Government should empower the Drug Court to better assist people with a drug dependency. In the case of low-level offending, the Drug Court should link people with therapeutic interventions as an alternative to punitive custodial sentences. Diversion is the best solution based on the evidence: drug diversion programs are proven to reduce rates of offending among participants.<sup>35</sup> This is because medical and social services equip people to overcome drug dependency, making them less likely to resort to crime to sustain their addiction.

Further, the Government should expand the Drug Court and the Family Drug Treatment Court beyond Melbourne and Dandenong to ensure access in rural Victoria, particularly since regional families already struggle with fewer services.

### **Recommendations**

- Expand the Drug Court and the Family Drug Treatment Court (within the Children’s Court) including to rural and regional Victoria.
- Fund diversion and rehabilitation programs for people with a drug dependency, particularly in rural and regional Victoria.
- Commit to permanently funding Victoria’s safe injecting room.

### **Prioritising rehabilitation during and after prison**

Rehabilitation cannot end at the point that a person is discharged from prison. However, high rates of recidivism reflect inadequate investment in the opportunities that allow people to break free from crime, including training, accommodation and mental health services.<sup>36</sup>

The Victorian Government needs to adequately fund transitional support so that people have the housing, education and employment services that allow them to live fulfilling lives and engage with their communities. Rehabilitation services in prisons should link to services provided outside of prisons.

### **Recommendation**

- Increase funding for transitional support for people in prison and when they return to the community, including housing, healthcare and employment opportunities.

<sup>34</sup> National Rural Health Alliance Inc, *Illicit Drug Use in Rural Australia: Fact Sheet 33* (June 2015).

<sup>35</sup> Jason Payne, ‘The Queensland Drug Court: a recidivism study of the first 100 graduates’, *Research and Public Policy Series*, No. 83 (2008).

<sup>36</sup> Maria Borzycki and Eileen Baldry, *Promoting Integration: The Provision of Prisoner Post-Release Services* (November 2017)

## Restoring police accountability

Confidence in the police can help to reduce social alienation, which can be an underlying cause of crime. The community's confidence depends on complaints of misconduct being handled fairly and the police being held accountable for their actions.

However, Victoria's system of handling police complaints is not working.<sup>37</sup> IBAC has proven ineffective at handling complaints of police misconduct since it routinely refers complaints back to Victoria Police to self-investigate. When complaints go to the courts, they are substantiated at a far higher rate than by police investigators.<sup>38</sup> The self-investigation model is inconsistent with international research, which suggests that hierarchical and institutional independence is necessary to hold police to account.<sup>39</sup>

Given the risk to social cohesion that complaints of police misconduct raise, police must be held to account in a fair, transparent and independent manner. The Victorian Government should fund an independent police complaints body to investigate all complaints of police misconduct, with a narrow exception for customer service complaints.<sup>40</sup> The Police Ombudsman in Northern Ireland shows that this approach is realistic and effective.<sup>41</sup> A fully-funded independent police complaints body is necessary to restore the community's confidence in the police.

### Recommendation

- Fund a fully-independent body to provide oversight and handle complaints about police conduct.

## Youth justice

Young people belong with their families and in school, not in prisons. The evidence shows that young people do better when we intervene early and give them a second chance rather than seeking punishment or retribution. The Victorian Government needs to close children's prisons and replace them with supportive communities and services to help children thrive.

We also know that Aboriginal and Torres Strait Islander young people have the best chance of succeeding in life when they remain in their communities. However, submissions to the *Inquiry into Youth Justice Centres in Victoria* confirm that the lessons of the Northern Territory Royal Commission (NTRC) are not confined to the NT.<sup>42</sup> Aboriginal children do not commit more crimes than non-Aboriginal children, but they

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<sup>37</sup> Police Accountability Project, *Independent Investigation of Complaints against the Police*, Policy Briefing Paper (2017).

<sup>38</sup> Ibid 9.

<sup>39</sup> Tamar Hopkins, 'When Police Complaints Mechanisms Fail, The use of civil litigation' (2011) *Alternative Law Journal* 36, 99.

<sup>40</sup> Police Accountability Project, *Independent Investigation of Complaints against the Police*, Policy Briefing Paper (2017).

<sup>41</sup> Ibid 22.

<sup>42</sup> Victorian Aboriginal Legal Service, Submission No 15 to Victorian Labour Government, *Inquiry into Youth Justice Centres in Victoria submission*, March 2017, 2-4.

are policed more,<sup>43</sup> and more likely to be held on remand without conviction.<sup>44</sup> As a result, Aboriginal and Torres Strait Islander children are more than 25 times more likely to be incarcerated than non-Aboriginal and Torres Strait Islander children.<sup>45</sup>

When the government child protection officers put Aboriginal and Torres Strait Islander children in out-of-home care, it places them into the youth justice pipeline. The pipeline stems from over policing and monitoring, flowing downstream into convictions for otherwise minor incidents. A broken chair becomes property damage, yelling at your guardian becomes verbal assault. The normal testing behaviours of a young person are criminalised. An opportunity to give support to this young person (who has already missed out on so much love and support) is replaced with giving them a criminal record. It is no wonder these children are almost guaranteed to end up in the adult correct system.<sup>46</sup> The solution is not to keep removing children from their families and communities at record rates but to address structural inequality and empower Aboriginal and Torres Strait Islander young people by funding education, health and housing services.

### Recommendation

- Close children's prisons and invest in education, health and drug rehabilitation programs, and housing services for children and their families.

### Raise the Age – target young people for support not prisons

Raising the age of criminal responsibility is the right thing to do for young people and the community. School-aged children need opportunities to break out of the cycle of poverty and disadvantage that cause crime. Instead, prisons offer even more punishment, while separating children from the families and communities that are vital for their development.<sup>47</sup>

The evidence shows that raising the age of criminal responsibility will reduce crime. The earlier a child is sentenced, the more likely they are to reoffend.<sup>48</sup> This makes sense because prison can be a traumatising experience for a 12-year-old child, who would instead benefit from support when they are experiencing turmoil and diversion away from the criminal justice system.

A higher age of criminal responsibility would also bring Victoria into line with international standards. Most countries across Europe from Spain to Norway and around the world, including Russia, China, Argentina, South Korea and Vietnam, have higher

<sup>43</sup> Police Stop Data Working Group, *Monitoring Racial Profiling: Introducing a scheme to prevent unlawful stops and searches by Victoria Police report on racial* (2017) 14.

<sup>44</sup> Amnesty International Australia, *A Brighter Tomorrow: Keeping Indigenous Kids in the Community and Out of Detention in Australia* (2015) 31.

<sup>45</sup> ABS, *Report on Corrective Services* (2017).

<sup>46</sup> Victoria Legal Aid, *Care Not Custody: A new approach to keep kids in residential care out of the criminal justice system* (2016).

<sup>47</sup> Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (2006).

<sup>48</sup> Sentencing Advisory Council, *Sentencing Children and Young People in Victoria* (2012).

ages of criminal responsibility.<sup>49</sup> Experience shows that a greater focus on rehabilitation sees lower rates of recidivism.<sup>50</sup>

The Victorian Government needs to invest in diversion and rehabilitation programs. Instead of funding more prison beds, the government should commit to offering more paths to health, housing and educational opportunities.

The Federation supports the use of youth cautioning and pre-plea diversions. We welcome the Victorian Government's expansion of the youth diversion pilot which should be available to young people across Victoria, noting the pilot's success.<sup>51</sup> The program should be legislated to ensure consistency of funding and to entrench diversion as a long-term youth justice strategy.

Given the high rate of incarceration of young Aboriginal and Torres Strait Islander people,<sup>52</sup> the Victorian Government should also increase the use of cautioning among Aboriginal and Torres Strait Islander young people. Cautioning young offenders is an alternative to the over-policing of racial minorities while providing a useful avenue for providing diversion services like education and training. The success of trials in Morwell and Mildura show that a cautioning program can form part of a solution to repeat offending.<sup>53</sup>

### Recommendations

- Raise the age of criminal responsibility in Victoria to 14 years of age.
- Commit to diversion for young people by expanding the court-based diversion scheme.
- Increase the use of cautioning and pre-plea diversions to reduce high rates of arrests and convictions among Aboriginal and Torres Strait Islander young people.

### Remand and bail accommodation

Prison is no place for children, particularly those who have not even been sentenced for committing a crime. Young people should always be with their families and communities when they are awaiting sentencing, supported by the services and amenities that they need.

But young people on remand make up as many as half of all young people in detention in Australia.<sup>54</sup> And young Aboriginal and Torres Strait Islander people are 23 times more likely to be held in prison prior to sentencing than non-Aboriginal and Torres Strait

<sup>49</sup> See Child rights international network at: [www.crin.org/en/home/ages](http://www.crin.org/en/home/ages) Accessed on: 13 April 2018.

<sup>50</sup> Don Cipriani, *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective* (2010) Volume 50, Issue 5, 104; Torbjørn Skardhamar and Kjetil Telle, 'Post-release Employment and Recidivism in Norway' *Journal of Quantitative Criminology* (2012) 28(4) 629.

<sup>51</sup> The Children's Court, *Evaluation of the Youth Diversion Pilot Program* (2016).

<sup>52</sup> Australian Institute of Health and Welfare, *Victoria: Youth justice supervision in 2014-15* (2016).

<sup>53</sup> Victorian Aboriginal Legal Service, *Practical Recommendations for Diversion* (2016).

<sup>54</sup> Australian Institute of Criminology, *Bail and remand for young people in Australia: A national research project* (2017).

Islander young people.<sup>55</sup> Young people in rural and regional areas also lose out due to a focus on providing accommodation to those in metropolitan areas.<sup>56</sup> They are often in prison because they are homeless or because the government has not provided suitable bail accommodation.<sup>57</sup>

We must close children's prisons, but while they exist, they should not be a substitute for housing for those who cannot afford it. Increasing funding for bail accommodation is crucial for keeping young people out of prison when they have not even been sentenced for an offence. The more than 6,000 young Victorians experiencing homelessness need stable, long-term accommodation and support, not be confined to a children's prison cell.<sup>58</sup>

### **Recommendation**

- Increase funding for bail accommodation, particularly for Aboriginal and Torres Strait Islander community-controlled organisations and in regional and rural areas.
- Adequately fund long-term accommodation and services for young people who are homeless and for families in need of housing.

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<sup>55</sup> Amnesty International Australia, *A Brighter Tomorrow: Keeping Indigenous Kids in the Community and Out of Detention in Australia* (2015) 31.

<sup>56</sup> Australian Institute of Criminology, *Bail and remand for young people in Australia: A national research project* (2017).

<sup>57</sup> *Ibid.*

<sup>58</sup> Council to Homeless Persons, *Youth homelessness in Victoria: Key statistics* (2012).

## Keeping Families Safe

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On 29 March 2016, the Royal Commission into Family Violence (the Royal Commission) delivered its report to Government.<sup>59</sup> After a 13-month inquiry which included nearly 1000 written submissions and 25 days of hearings, the Commission made 227 recommendations.<sup>60</sup> The State Government has pledged to implement every one of the recommendations and last year, the Government announced \$1.91 billion in funding.<sup>61</sup> This will save lives and we highly commend the Government for their leadership and commitment.

Our submission goes to how best to implement the recommendations. Community legal centres are embedded in communities and are deeply involved with tackling family violence. CLCs work directly with women and their families and the services they rely on.

### Support and Safety Hubs

The State Government has committed to spending \$448.1 million to create 17 Support and Safety Hubs across the state.<sup>62</sup> Support and Safety Hubs (Hubs) are a core recommendation of the Royal Commission. The Hubs will be 'a single, area-based entry point into the local specialist family violence services' and allow for 'co-location of other services likely to be required by victims and any children'.<sup>63</sup> A safe space to get all the help the women escaping family violence need, whether it be a risk assessment and safety planning, linking into social work services, or a doctor. A key function is to help navigate people through the system.<sup>64</sup>

The demand for legal assistance for people escaping violence is high and increasing. In the period from 2008–09 to 2013–14 the number of new family violence cases opened by community legal centres increased by 85 per cent.<sup>65</sup> The Crime Statistics Agency reported that services provided by Victoria Legal Aid where the primary matter was family violence related increased by 8.5 per cent over the same period, which amounts to 21,172 services.<sup>66</sup> The Royal Commission into Family Violence found:

*'The provision of adequate legal services is crucial, and Victoria Legal Aid and community legal centres must be resourced.'*<sup>67</sup>

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<sup>59</sup> Royal Commission into Family Violence, 'Royal Commission report delivered to Government House' (Media release, 29 March 2016).

<sup>60</sup> See <http://www.rcfv.com.au>

<sup>61</sup> Andrews Labour Government, 'Unprecedented investment to end family violence' (Media release, 2 May 2017).

<sup>62</sup> Ibid.

<sup>63</sup> 'See Recommendation 37' IN Victoria, Royal Commission into Family Violence, *Summary and Recommendations*, Paper No 132 (2016).

<sup>64</sup> Victoria State Government, *Support And Safety Hubs: Statewide Concept* (2017) 11.

<sup>65</sup> For more information see Federation of Community Legal Centres, Submission 0958.001.0002 to Victoria, *Royal Commission into Family Violence* (2014) 19.

<sup>66</sup> Victoria, Royal Commission into Family Violence, *Report and Recommendations*, (2016) Vol III, 150.

<sup>67</sup> Victoria, Royal Commission into Family Violence, *Report and Recommendations*, (2016) Vol IV, 214.

What role do legal centres have in the model? What funding should be provided? These were questions the Royal Commission decided should be determined by the State Government's review of Access to Justice.<sup>68</sup> The *Access to Justice Review* found that the best results would be achieved through a combination of good generalist and specialist legal knowledge and the integration of legal and other services that support women and their children. It also made a clear recommendation that legal services must be included in the design of the Hubs:

*'The Victorian Government should ensure that the design of the Support and Safety Hubs recommended by the Royal Commission into Family Violence includes legal professionals to perform legal triage, information and referrals...to identify the full range of potential legal issues, assist victims to seek the advice and assistance they need at an early stage, connect people with the right services, and reduce referral fatigue for people experiencing or at risk of family violence.'*<sup>69</sup>

Potential users of the Hubs have identified, 'navigating the justice system and legal matters' as one of their biggest service needs.<sup>70</sup> Legal issues can arise as part of violent and coercive behaviours – such as debt and visa status – and play a significant role in the ability to escape a violent partner safely, such as intervention orders, finances and housing.

The Federation commends the Government for agreeing to this key recommendation.<sup>71</sup> However, despite agreeing to adopt the *Access to Justice Review* recommendation to embed legal support in the Hubs, currently no certainty or resources have been provided to ensure legal assistance will be co-located in the Hubs.

The State Government's concept plan for the Hubs recognises that legal assistance is critical to the immediate crisis response.<sup>72</sup> A great opportunity to provide women and their children with the legal help they need will be missed if legal services are not included. The *Access to Justice Review* reiterated that people may have a range of pressing and complex needs with a legal dimension, including intervention orders, child protection and custody, debt, property or other financial issues and family law and victims of crime proceedings.<sup>73</sup> Embedding legal professionals within the Hubs is a necessary first step to providing holistic and early support to people experiencing family violence. Working with community legal centres on the design of the Hubs will ensure that the right services are provided to women and their children at the right time.

There is also a real risk that the vision of the Royal Commission will not be realised if legal assistance, a critical part of the service response, does not grow in funding comparative to other services. As awareness increases, as social services for escaping violence grows, so does the demand for legal assistance. Keeping legal services under-resourced will create a backlog in the referral system putting women at risk at the most dangerous moment when leaving an abusive partner. A victim of violence's' ability to understand their legal rights and options is necessary to address the complex array of issues they face when escaping a violent partner. These reforms are our best chance as

<sup>68</sup> Victoria, Royal Commission into Family Violence, *Report and Recommendations*, (2016) Vol III, 170.

<sup>69</sup> Department of Justice and Regulation, *Access to Justice Review: Report* (2016) 190, Recommendation 3.5.

<sup>70</sup> Victoria State Government, *Support And Safety Hubs: Statewide Concept* (2017), 37.

<sup>71</sup> Department of Justice and Regulation Victoria. *Access to Justice – Government Response* (2017) 6

<sup>72</sup> *Ibid*, 32.

<sup>73</sup> Department of Justice and Regulation, *Access to Justice Review: Report* (2016) 189, Recommendation 3.5.

a state to fix the family violence system. The support network will be incomplete without legal advice, representation, and ongoing casework assistance.

### Recommendations

- Work with community legal centres on the design of Support and Safety Hubs to implement recommendation 3.5 of *Access to Justice Review* and embed legal assistance in the Hubs.
- Ensure people escaping family violence can receive the legal help they need by funding community legal centres commensurate to other support services to meet the increase in demand for legal services.

### Leaving and wellbeing

The complexity and trauma of family violence does not stop on the day that a Court grants an intervention order. The Royal Commission found to recover and thrive after family violence, women and children need 'housing, financial security, education and employment [and] the ability to regain their health and sense of wellbeing'.<sup>74</sup> Without support, recovery from family violence is tough. Women often return to violent relationships to have a roof over their heads or access to their relatives. The Royal Commission report gives us a chance to pause. To think holistically. To commit to breaking the cycle of violence.

Twenty-five per cent of the women assisted by the Women's Legal Service's *Stepping Stone Project*, had a debt accrued by an abusive partner against their wishes.<sup>75</sup> This is a story common to the women helped by many community legal centres across the state.

Victims of family violence are three times more likely to receive less than 40 per cent of shared property.<sup>76</sup> Fear of a partner does not go away during property negotiations. A victim's desire to avoid confrontation means many walk away with far less than their share: far less than they need in order to re-establish a new life for themselves and any children they have.

They are also more likely to become homeless. Women's Homeless Prevention Project showed that pairing legal assistance with social workers can prevent homelessness. It saved 63 women and their children from homelessness.<sup>77</sup> Saving \$1,825,000 of health, justice and welfare costs alone.<sup>78</sup> And this does not include the incalculable personal benefit for each woman and her children. This is but one example of community legal centre early intervention and integrated services, that shows helping women at the time she is seeking other legal assistance or social worker support, works. It works because community legal centres can address the issues before the crisis escalates.

It is this reality of financial difficulties, practical concerns of housing, and untangling lives that led the Royal Commission to make a raft of recommendations from essential

<sup>74</sup> Victoria, Royal Commission into Family Violence, *Report and Recommendation*, (2016) 82.

<sup>75</sup> Women's Legal Service Victoria, *Stepping Stones: Legal Barriers to Economic Equality After Family Violence* (2015).

<sup>76</sup> *Ibid.*

<sup>77</sup> Justice Connect Homeless Law, *Keeping women and children housed* (January 2017).

<sup>78</sup> *Ibid.*

services hardship programs for victims of family violence, to amending how traffic fines are incurred, withdrawn or revoked, and amending the *Residential Tenancies Act*.<sup>79</sup>

We congratulate the State Government for making headway on these administrative and legislative reforms. We believe consultation with CLCs to get this drafting right, will make a difference.

More can be done to embed the integration of the services we know work. Support for integrated services were a key recommendation of the *Access to Justice Review* and agreed to by the Government.<sup>80</sup> Without legal representation, the changes in law recommended by the Royal Commission will be ineffective, as women won't be able to fully exercise their rights.

To ensure the wellbeing recommendations of the Royal Commission are fully implemented, legal assistance needs to be connected to these reforms. Integrated models, proven to work, are a great starting point and have potential to be expanded across the state.

### **Recommendation**

- Provide ongoing funding for proven integrated legal services that address legal issues experienced during and in the aftermath of family violence – such as health justice partnerships, co-location of legal services with financial counselling, and homelessness prevention partnerships – and expand these services across Victoria.

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<sup>79</sup> Victoria, Royal Commission into Family Violence, *Report and Recommendation*, (2016) 82.

<sup>80</sup> Department of Justice and Regulation, *Access to Justice Review: Report* (2016) 190, Recommendation 3.4. See also: Department of Justice and Regulation Victoria. *Access to Justice – Government Response* (2017) 6

# Make Justice For All A Reality

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*'While the system is not broken, it is under considerable strain'<sup>81</sup>*

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## **Justice for some - chronic underfunding means many miss out**

Every year, millions of people will experience a legal problem.<sup>82</sup> Nearly half of all Victorians will have a legal problem in the next 12 months.<sup>83</sup> Thirty per cent will experience more than one.<sup>84</sup>

People experiencing disadvantage are even more likely to have a legal problems.<sup>85</sup> If you have a disability you are most likely to experience a legal problem. Aboriginal people, the unemployed, single parents, people living in disadvantaged housing and people whose main income is from government payments also have more legal problems. This is because they are more likely to face discrimination, be targeted by dodgy landlords, payday lenders or police and have unequal access to resources and information.

And then there is the 'missing middle': those who are neither very wealthy nor very poor and who the legal system remains inaccessible.<sup>86</sup> These people also rely on the advocacy work of community legal centres to reform the legal system to make it easier and more affordable to navigate for everyone.

We welcome the Government's commitment to the justice system and to making reforms to make justice accessible for all. Last year's State budget made a welcome investment in community legal centres and broader legal assistance. This year, we need to build on this to ensure access to justice is a reality for more people.

The *Access to Justice Review* makes a number of significant findings and recommendations. It found:

*The Victorian Government should seek to identify additional funding for legal assistance, with priority for duty lawyers services, family violence-related legal services, Aboriginal legal services, and integrated service provision partnerships.*<sup>87</sup>

The *Access to Justice Review* concluded that there is a significant gap between the legal needs of the most vulnerable and disadvantaged people in Victoria, and the resources available for legal assistance services to meet these needs. It stated that demand for

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<sup>81</sup> Department of Justice and Regulation Victoria. *Access to Justice Review: Summary and Recommendations* (2016) 10.

<sup>82</sup> The Law and Justice Foundation of NSW interviewed more than 20,000 people across Australia and asked them about the issues in their lives that could be characterised as legal issues. Based on these findings the LAW Survey estimates 2,064,000 Victorians experience a legal problem in a 12-month period. IN Law and Justice Foundation (NSW), *Legal Australia-Wide Survey: legal need in Australia*, (2012)

<sup>83</sup> Department of Justice and Regulation Victoria. *Access to Justice Review*. (2016) 55

<sup>84</sup> Ibid.

<sup>85</sup> 'In Australia as a whole, nine per cent of respondents accounted for 65 per cent of the legal problems reported.' See: Law and Justice Foundation (NSW), *Legal Australia-Wide Survey: legal need in Australia*, (2012) xiv.

<sup>86</sup> The Australian Institute, *Justice for All: Giving Australians Greater Access to the Legal System* (2012) 1.

<sup>87</sup> Department of Justice and Regulation Victoria. *Access to Justice Review. Summary and Recommendations* (2016) 21.

legal assistance services is increasing and government policies are one of the drivers of this demand.<sup>88</sup>

The earlier 2014 Federal Productivity Commission's *Inquiry into Access to Justice Arrangements* also found a pressing need for urgent injection of \$200 million to address funding shortfall for civil law matters alone.<sup>89</sup> Four years on, the urgent injection of funds has not been received and the funding gap continues to grow. While the Victorian Government contributes an increasing proportion to the sector,<sup>90</sup> there is still more we need to do to ensure sustainability of our sector to ensure our capacity to assist those most in need continues.

*Every review into the justice system is unanimous in their view that legal assistance needs more funding.<sup>91</sup> There is no justice if only those who can afford to pay can access their rights under the law.*

To increase access to justice, the Victorian Government should commit to growing the community legal sector to meet the increasing unmet legal demand in Victoria. The Government must continue to work with the sector to ensure that community legal centres are sustainable now and into the future. Funding to community legal centres should grow consistently with the Victoria Legal Aid budget recognising the value of mixed model of legal assistance.

### **Recommendations**

- Improve access to justice by growing the community legal sector to meet the increasing unmet legal demand in Victoria.

### **Justice that works – integrated services**

Community legal centres do not wait for problems to snowball or for people to reach out in crisis. We deeply understand the experiences of our communities and go to where people are, helping them sooner when the issues are more manageable. For example, CLCs established Health Justice Partnerships when we recognised people in our community were more likely to see a doctor about their legal problem than a lawyer. We found that putting lawyers in schools increased young people's awareness of their rights and allowed for early intervention when problems arise.

<sup>88</sup> Department of Justice and Regulation Victoria. *Access to Justice Review. Summary and Recommendations* (2016) 21.

<sup>89</sup> See Productivity Commission quoted IN Department of Justice and Regulation Victoria. *Access to Justice Review: Summary and Recommendations*, Vol II. (2014)

<sup>90</sup> 'In 1999-2000 Commonwealth Government contributed 47% of the funding and now it contributes just 31%, the Productivity Commission recommended that the Commonwealth Government contribute 40%. See: Department of Justice and Regulation Victoria.' IN *Access to Justice Review* (2016) 36; Productivity Commission. *Access to Justice Arrangements*, (2014) 738-39.

<sup>91</sup> 'See Productivity Commission' IN Department of Justice and Regulation Victoria. *Access to Justice Review: Summary and Recommendations* (2016)

We aim to prevent the escalation of issues, to resolve them before the need of intervention by the courts.

Helping early and helping those who face the biggest hurdles for legal assistance, is the right thing to do. It is also good public policy. Early legal assistance saves government money – from court costs to health services. Reaching out to those who need legal help makes a difference. It can change a person’s trajectory – whether it is keeping them in secure housing or freeing them from debt before they leave prison – legal assistance sets a person on solid footing. It prevents the downstream social issues that results when a person in crisis does not receive the right assistance at the right time.

The *Access to Justice Review* recognised and endorsed the approach and work of CLCs. It found:

*‘Community legal centres in Victoria have been at the forefront of finding new ways to provide legal help to people facing disadvantage, hardship, and discrimination’.*<sup>92</sup>

Evidence demonstrated that ‘integrated and collaborative forms of service delivery’ better targeted disadvantaged and vulnerable groups and had positive impact on their health.<sup>93</sup> Health Justice Partnerships run by CLCs were held up as strong examples of this work. Yet up to a dozen of these successful Health Justice Partnerships are about to become unfunded and will have to close.

Long term change cannot be achieved when funding is limited to short-term and ad-hoc pilot programs. This was a key finding of the *Access to Justice Review*.<sup>94</sup> It is clear, ongoing funding is critical to sustaining and growing programs that make a difference to everyday lives.

The *Access to Justice Review* strongly supported integrated service delivery calling on both State and Commonwealth governments to identify ongoing funding for integrated services where there is demonstrated legal need.<sup>95</sup> The State Government has agreed to adopt this recommendation in full.<sup>96</sup> The Federation calls on State government to have ongoing funding a key feature of their funding of integrated community legal centre services.

Integrated services will result in long term savings for the Victorian economy, and more importantly, result in improved health and well-being of our community. Implementing this recommendation must be made an urgent priority. For it to be successful, it must be implemented alongside *Access to Justice Review* Recommendation 6.7, which recommended funding of CLCs in at least four year funding agreements. Four year funding allocations would increase certainty and reduce the drain on resources that short-term funding cycles create.

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<sup>92</sup> Department of Justice and Regulation Victoria. *Access to Justice Review: Summary and Recommendations* (2016) 188.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid 188-189.

<sup>95</sup> Ibid. Recommendation 3.4

<sup>96</sup> Department of Justice and Regulation Victoria. *Access to Justice – Government Response* (2017) 6

Funding needs to recognise and enable the innovative and grassroots approach of CLCs. Collaboration must be done without removing autonomy to respond to and be led by the people who access our services. Transparency and accountability to the community is necessary for our centres to effectively address and prevent legal problems. Funding structures should recognise our unique approach and role.

While there was welcome investment in the previous budget for integrated services, it was modest<sup>97</sup> and will not support the existing services, nor does it enable expansion or development of new services needed. The Government should fully implement the Review recommendations, substantially increasing funding to integrated services provided by CLCs.

### **Recommendations**

- Increase community legal centres' capacity to provide innovative integrated and client-centred legal services by providing adequate funding for:
  - Existing Health Justice Partnerships that are currently at risk;
  - School lawyer programs and education justice initiatives;
  - New integrated approaches – whether Health Justice Partnerships or models that involve social workers, financial counsellors or other services – that provide a holistic response to clients and their complex needs.
- Give more certainty for communities who rely on community legal centres' services by making four-year funding allocations a minimum requirement.

### **Working together to deliver justice for all**

The legal assistance sector works in collaboration. Recognising the unique roles of Victoria Legal Aid and CLCs will strengthen our system. Community legal centres have a proud history of connection to our communities. We are embedded in the community and specialise in integrated provision of services that put people at the centre.

Both the Productivity Commission and the *Access to Justice Review* recommended collaborative planning across the legal assistance sector. Meaningful collaboration and partnership in service design takes time, effort and resources. Funding should reflect this and ensure that CLCs are able to engage in the collaborative planning process, while still delivering existing services.

The Federation also plays a key role in leading engagement between the CLC and other parts of the legal assistance sector in the collaborative planning process.

The reviews have also recommended an outcomes approach and that more data and evidence is needed to inform the system. The Victorian community legal sector is leading the way in this regard. The Federation has worked for two years to build the evaluation capacity of centres and develop a sector-wide outcomes framework. This work has been

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<sup>97</sup> \$600,000 per year for four years in the 2017-18 State Budget, representing support for approximately 2 integrated partnership services.

developed with short-term funding. The Federation is now supporting centres to use the framework and improve data standards. The framework will be continually updated to reflect learnings, enabling services to improve and be more effective on an ongoing basis for their communities.

Other parts of the legal assistance sector in Victoria and interstate are drawing on the work we have done. This major shift is resource intensive for both the Federation and the sector. This important work should be supported on an ongoing basis. Through this work, we are making the community legal sector even more embedded in our communities, more sustainable, accountable and better equipped to meet the legal needs of our community now and into the future.

### **Recommendations**

- Support effective collaborative planning across the legal assistance sector by adequately resourcing community legal centres and the Federation to meaningfully engage and share expertise in this important process.
- Support the shift to outcomes measurement and ongoing evaluation by adequately funding the Federation to continue leading and capacity building the sector. Provide adequate funding to centres to ensure they can implement this shift sustainably.