



FEDERATION
OF COMMUNITY LEGAL CENTRES VIC

HOME, CONNECTION & HEALING

PATHWAYS TO MENTAL WELLNESS

Royal Commission into Victoria's Mental Health System
Executive Summary for Submissions 1 - 3

July 2019

ABOUT THE FEDERATION

The Federation is the peak body for Victoria's Community Legal Centres (CLCs). Our members are at the forefront of helping those facing economic, cultural or social disadvantage and whose life circumstances are severely affected by their legal problem.

For over 40 years CLCs have been the heart of a powerful movement for social change, reshaping how people access justice, creating stronger more equitable laws, and more accountable government and democracy.

We pursue our vision of a fair, inclusive, thriving community through challenging injustice, defending rights and building the power of our members and communities.

WE WANT A COMMUNITY THAT IS FAIR, INCLUSIVE AND THRIVING: WHERE EVERY PERSON BELONGS AND CAN LEARN, GROW, HEAL, PARTICIPATE AND BE HEARD.

The Federation:

- ▼ Enables a strong collective voice for justice and equality;
- ▼ Mobilises and leads CLCs in strategic, well coordinated advocacy and campaigns;
- ▼ Works with members to continuously improve the impact of community legal services;
- ▼ Drives creativity and excellence in the delivery of legal services to communities;
- ▼ Helps make justice more accessible.

Read our strategic plan online
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THE FEDERATION ACKNOWLEDGES THE TRADITIONAL ABORIGINAL OWNERS OF COUNTRY AND WE PAY OUR RESPECTS TO ELDERS PAST, PRESENT AND EMERGING. WE RECOGNISE THEIR CONTINUING CONNECTION TO LAND, WATER AND COMMUNITY. SOVEREIGNTY WAS NEVER CEDED.

Executive Summary

The Federation of Community Legal Centres (the Federation) welcomes the opportunity to make a submission to the Royal Commission into Victoria's Mental Health System (the Royal Commission). We believe the Royal Commission provides a critical avenue for justice, in ensuring that we assess how we can all contribute to creating a mental health system that works for everyone.

The Federation is the peak body for Victoria's Community Legal Centres (CLCs). We strive for a community that is fair, inclusive and thriving: where every person can learn, grow, heal, participate and be heard. In pursuing this vision we work alongside our 48 member centres who are at the forefront of helping people in their communities experiencing economic, social or cultural disadvantage and injustice. Through our member centres, we see the overlapping life and legal issues that cause, and are caused by, issues that arise from poor mental health.

At least 20 per cent of the people who community legal centres assist and represent experience mental health issues, and we believe this is underreported, particularly when there is consideration of trauma. For our specialist legal service, the Mental Health Legal Centre, 100 per cent of the clients they work with have a mental health condition.¹ At our specialist centre for young people, Youthlaw, 80 per cent of the people they assist experience mental health issues.² The targeted programs and projects that our centres run see a large number of people with mental health issues, such as Justice Connect's Women's Homelessness Prevention Program, where 84 per cent of the women accessing the service reported having a mental illness.³

In writing our submission to the Royal Commission, the Federation collaborated with our members to assess the scope of the issue, understand what is currently working and what can be done better to assist the people who seek our support every day.

People do not experience mental health problems in a vacuum, life continues, often around them. Problems can build up. When going to work becomes difficult or impossible, debts build up too.⁴ Pressure from shame, stigma and anxiety may create family breakdowns and with it, family law matters.⁵ Poverty and homelessness, experienced by many struggling with mental health issues, may lead to fines for living in public spaces. Life and legal problems overlap, and if not addressed early, or at all, can snowball.⁶ This results in the development of mental health conditions,⁷ or the exacerbation of existing conditions. Our centres also see the most vulnerable Victorians driven into the criminal legal system as a result of a lack of support and gaps in vital social services.

People who experience mental health conditions often need more than medical care. As a community, the best response we can have is to provide wrap-around support services, which put the mental health consumer at the centre of our approach.

Wrap-around services should include many elements of assistance tailored to the person's needs, whether these are medical care, social care, housing, employment services, or legal assistance and representation.

Our mental health system provides positive programs and processes, but it is stretched in capacity and resourcing and those who are most vulnerable are falling through the gaps. Our members often see people when they are in crisis, when they are sleeping rough, have an overwhelming fines situation, in the aftermath of a family violence incident and sometimes through partnership with other social services when they didn't know they even had a legal issue.

This web of complex and interdependent issues which, if not addressed can contribute to or exacerbate mental health issues, fundamentally undermines the pursuit of a healthy community in which we can all thrive.

The systemic issues that contribute to and underlie mental health issues in overlapping life and legal circumstances were made overwhelmingly clear within our consultations. Assessing and providing a solution to a legal issue can help recovery and contribute to mental wellness.

To assist the Royal Commission, we have structured our submission in three parts to underscore the systemic and interdependent issues that are crucial to building a healthy and thriving society, in addition to providing key areas for reform and practical solutions.

To this end, our submission is comprised of the following papers:

- ▼ **First, a home - The importance of housing for mental wellness:** safe, stable and suitable homes; helping people to gain and keep their homes; making rooming houses safe and temporary; and preventing homelessness for people leaving care or prison;
- ▼ **Address connected life issues – The benefit of integrated services for mental wellness:** Overlapping life, mental health and legal issues; reaching people who are at greatest risk of experiencing poor mental health outcomes; supporting the mental health workforce; and a whole of government commitment; and
- ▼ **End criminalisation - Apply a health response for people experiencing mental health issues:** Abolishing unfair laws; ensuring access to therapeutic justice; supporting young people; preventing people from entering prison, and providing treatment; and healthcare for people in prison.

We have covered a breadth of issues that impact our communities in our submissions, however we have not covered everything that is significant to the people community legal centres represent. In particular, we rely on the submissions of our specialist Mental Health Legal Centre in the significant area of compulsory treatment and restraint and the *Mental Health Act*. Additionally, we strongly support Aboriginal and Torres Strait Islanders people's right to self-determination and culturally safe services, and endorse the submissions of our members, the Victorian Aboriginal Legal Service and Djirra. Recommendations made in relation to Aboriginal people are to complement and emphasise their comprehensive submissions.

The Federation is fortunate to have had particular input from Women's Legal Service Victoria and the Police Accountability Project (located within the Flemington & Kensington Community Legal Centre) and our specialist working groups: the Infringements Working Group, Prison's Working Group, Summary Crimes Working Group, and Tenancy Working Group.

We support the members of the Federation that have made submissions to the Royal Commission on behalf of the clients and communities they work with and for, acknowledging that they speak best to their needs. Strong community voices are the best means to understand and tackle the issues impacting our communities and to improve all of our health and wellbeing. We recommend the Commission review their submissions closely.

Following are a list of recommendations that the Federation of Community Legal Centres Victoria submits to the Royal Commission into Victoria's Mental Health System.

Recommendations

The recommendations from each submission paper have continuous numbering for ease of reference and to assist the Royal Commission.

Recommendations – Submission One: First, a Home

Increase Access to Housing

1. Grow public and community housing by 3,400 new homes each year for at least two decades, as recommended by the Family Violence Housing Assistance Implementation Taskforce.

Reduce Barriers to Entry & Increasing Early Support

2. Bond loan debts should not be a barrier to accessing public and community housing.
3. Expand the current contribution of public money, as well as broaden the accessibility criteria for the housing brokerage program to include people who experience mental illness.
4. Fund and expand integrated social and legal services programs that assist people maintain their housing on an ongoing basis.
5. Increase the number of publicly funded tenancy lawyers to assist people to stay in their homes, whether they live in private rental, community or public housing.
6. Provide brokerage funding to Aboriginal Community Controlled Organisations (ACCOs), including Victorian Aboriginal Legal Service, to support Aboriginal people facing eviction due to mental health conditions, modelled off similar funding provided to ACCOs for clients experiencing family violence.

Fairer Laws & Processes

7. Abolish the notice to vacate for successive breaches of duty through the removal of sections 249, 283, 308 and 217B of the *Residential Tenancies Act 1997* and sections 91ZP, 142ZH, 206AX and 207ZB of the *Residential Tenancies Amendment Act 2018*.
8. Introduce legislative provisions that require compliance orders to be worded as specifically as possible, and to be limited to a period of six months before lapsing. Only where subsequent orders are needed should there be discretion for compliance orders to be extended for up to 12 months.
9. Require that all VCAT members receive mental health and trauma training and education.
10. Require all VCAT members to be trained on the fair and appropriate use of compliance orders, given the orders can and do result in eviction. Before a compliance order is issued, consideration should be given to the seriousness of a breach, the duration the compliance order should fairly be in place for, and what support should be provided to assist compliance.
11. Legislate the right for an internal appeal at VCAT to create an accessible mechanism of oversight, improve the consistency, predictability and quality of decision-making and strengthen protections for tenants against evictions that should be avoided.
12. Ensure that VCAT is accountable and transparent with parties able to access written decisions and transcripts without cost.
13. Fund and support the provision of holistic and flexible services of community lawyers and social workers at health centres where people with complex mental health needs attend, to increase accessibility and attendance at VCAT hearings.

Guaranteed Protections No Matter Where You Live

14. Community housing providers develop fair, consistent and publicly available policies that fully implement tenants' rights.

15. Support and resource community housing providers to develop and implement these policies to adequately support and maintain tenancies.
16. Expand holistic housing support services for particularly vulnerable tenants, including integrated programs with mental health and legal supports.

Make Rooming Houses Safe and Temporary

17. Improve government scrutiny and oversight of funding of emergency crisis accommodation, including requiring that public money does not go to unregistered or illegal rooming houses.
18. Increase outreach services and legal assistance for people in rooming homes to facilitate people experiencing high levels of disadvantage and marginalisation access mental health services and other support services.
19. Prioritise enforcement of rooming house standards and provisions required under the *Residential Tenancies Act* by Consumer Affairs Victoria.
20. Commit to phasing out, within five years, the use of rooming houses for vulnerable people, including those with mental health conditions and complex health needs, those escaping family violence, and people leaving institutions.

Prevent Homelessness for People Leaving Care or Prison

21. Provide pre-release and post-release integrated services programs that support a person to access and maintain housing on release, including programs that assist addressing civil issues, such as debt and family matters.

Recommendations – Submission Two: Address Connected Life Issues

Improve the Fines System

22. Amend Section 9 of the *Fines Reform Act* to require Fines Victoria to waive or reduce costs where a person's mental health (special circumstances) substantially contributed to the person being unable to attend to their infringements in a timely manner.
23. Introduce a new legislative discretion to set aside a seven-day notice where the person has a mental health problem or other special circumstances. This would mean that the person is not excluded from applying for enforcement review, to the Family Violence Scheme or for a Work and Development Permit after the seven-day notice has expired.
24. Retain the Special Circumstances List of the Magistrates' Court – the specialist therapeutic jurisdiction for people with fines with serious mental health conditions and other special circumstances.
25. Adopt policies to encourage more agencies to become Work and Development Permit accredited, particularly for medical and mental health care. This includes funding for Work and Development sponsors.
26. Roll out Streamlinefines to more inpatient and community outpatient psychiatric facilities.

Connect the Family Violence and Mental Health Systems

27. Coordinate the response to achieving the goals of the Royal Commission into Family Violence, Access to Justice Review and address the overlapping mental health issues: ensure the Access to Justice Review recommendations, in particular 3.4, 3.5, 6.20 and 6.21 are implemented alongside, and give full effect to, the Royal Commission into Family Violence and the forthcoming recommendations of the Royal Commission into Victoria's Mental Health System.
28. To achieve the goals of the Royal Commission into Family Violence alongside addressing the mental health needs of those impacted by family violence, implement a timeline and plan for implementation of legal triage in the Orange Door and increase access to legal services more broadly for family violence and mental health.

Support Children and Families

29. Link women and families, including pregnant women, with culturally appropriate legal, mental health and wrap-around supports, at the earliest opportunity and before any consideration of removing children.

An Integrated Response

30. Support and expand existing integrated services and establish new services to remove barriers to access and address multiple needs for people experiencing mental health and related issues.
31. Provide ongoing funding for existing integrated services and a minimum of four-year funding blocks for new integrated services, in recognition that partnership and workforce development take time to establish and develop relationships of trust and shared learning.
32. Implement the Access to Justice Recommendation 3.4 to support integrated services, to meet service delivery gaps experienced by people with complex mental health needs in our community.
33. Develop a whole-of-government budget process that is responsive to holistic needs of communities and individuals in need of support.
34. Work with services and communities to develop nuanced outcomes measurement of successful program delivery for people who experience multiple and complex vulnerabilities and commit to consistency across departments and funding providers.

Recommendations – Submission Three: End Criminalisation

Abolish Unfair Laws

35. Repeal the following drunk and disorderly offences in *Summary Offences Act 1966* (Vic):
 - Section 13: Person found drunk in a public space
 - Section 14: Persons found drunk and disorderly
 - Section 16: Drunkards behaving in riotous or disorderly manner
 - Section 17A: Disorderly conduct
36. Repeal the following offences in the *Summary Offences Act 1966* (Vic) that disproportionately target persons with poor mental health and/or who are experiencing homelessness including:
 - Section 49A: Begging or gathering alms
 - Section 5: Obstruction of foot paths
 - Section 6: Directions to move on
 - Section 17: Use of obscene language in a public space

A Health Response

37. Establish mental health experts as first responders in a mental health crisis and to undertake welfare checks.
38. Require police to link people to mental health and social supports.
39. Repeal legislation imposing mandatory or presumptive terms of imprisonment upon conviction of an offender, particularly as it relates to police and emergency service response to mental health incidents.
40. Fund and implement in full the recommendations of the Parliamentary Inquiry into External Oversight of Police misconduct, including creating a new Police Corruption and Misconduct Division

of the Independent Broad-based Anti-Corruption Commission (IBAC) to investigate complaints of police misconduct.

41. Require police attending family violence incidents to follow the existing Risk Assessment and Management Report (L17) prompts in relation to mental health when assessing safety and risk of harm, and facilitate mental health, rather than criminal, responses to people experiencing family violence.
42. Provide greater funding to community mental health services to work with people experiencing mental health issues and provide wrap around support.
43. Support and expand existing integrated health and legal services that meet complex and interdependent needs, including alcohol and other drug dependency for those experiencing mental illness.

Therapeutic Justice

44. Implement the Victorian Ombudsman recommendation to expand current therapeutic court based interventions to make them available to all people who would benefit from them and ensure they are accessible across Victoria. Ensure the increase in therapeutic court capacity is coupled with a commensurate increase in capacity and availability of support services connected with the programs.
45. Support integrated services linked to local Magistrates' Courts to provide therapeutic support for people involved in the justice system, particularly in rural and regional areas; and ensure that culturally appropriate services are provided for Aboriginal people through funding Aboriginal Community Controlled Organisations.

Divert People from the Criminal System

46. Broaden the availability of diversion, including by removing police only initiations and prosecutorial veto powers in the Children's and Magistrates' Courts, to ensure decisions to grant diversion are fair, consistent and accountable.
47. Increase access to, and the quality of, diversion programs that are culturally appropriate and available to people in rural and regional areas.

Implement a Spent Convictions Scheme

48. Implement a graduated spent convictions scheme in Victoria that is fair and proportionate to the level of offending, and the age of the person.

Stop Kids Crossing From Out Of Home Care to the Criminal System

49. Implement inter-agency protocols for children living in residential care units, so they are not charged for criminal offences for conduct that would not be criminalised in the family home.
50. Increase mental health support for children in out-of-home care: prioritising their wellbeing and addressing the gaps in social health and wellbeing for at risk groups.
51. Ensure that young people with a child protection background are not disproportionately impacted because of lack of a home to be bailed to.
52. Provide long term and secure funding for Aboriginal Community Controlled Organisations to develop tailored, flexible plans specific to the needs of each Aboriginal family with a child in out-of-home care. This includes individual mental health plans that incorporate cultural support and trauma informed care for both the child and the parents, especially Aboriginal mothers.

Raise the Age of Criminal Responsibility

53. Raise the age of criminal responsibility to at least 14 years.

Aboriginal, Torres Strait Islander and Culturally and Linguistically Diverse Young People

54. Invest in culturally safe legal support and representation for young people and their families to ensure access at the earliest opportunity.
55. Increase community legal education and outreach to culturally and linguistically diverse communities to prevent unnecessary interaction with the justice system.
56. Commit long-term funding to ensure that the Victorian Police Koori Youth Cautioning program is implemented in all areas across Victoria.
57. Invest in culturally safe diversion programs run by Aboriginal Community Controlled Organisations, to ensure that Aboriginal young people can access diversion.

Further Bail Reform Needed

58. Royal Commission to review and make recommendations on Victoria's current presumptive bail laws and their impact on people experiencing mental health issues.
59. Increase funding for the Court Integrated Services Program (CISP) and other bail support programs and expand availability across Victoria.
60. Increase availability of residential bail programs, including working with Aboriginal Community Controlled Organisations to develop culturally safe residential bail programs.
61. Increase availability of culturally appropriate bail programs, such as Koori Court Integrated Service Program workers, particularly in regional areas.
62. Ensure Aboriginal and Torres Strait Islander people have access to culturally appropriate legal assistance through the Victorian Aboriginal Legal Service and Djirra.
63. Develop guidelines and culturally sensitive training on the application of Section 3A of the *Bail Act 1977* (Vic), as recommended by the Australian Law Reform Commission.
64. Introduce a presumption against custodial sentences of less than three months.
65. Review the impact of short sentences and consider the creation of a presumption against sentences under six to 12 months.

Healthcare and Services for People in Prison

66. Ensure access to appropriate mental health support and treatment in prison. Any increase in the number of people in prison should see a commensurate increase in access to services.
67. Provide adequate and ongoing funding for programs provided in prison that work, such as those delivered by Djirra and the Mental Health Legal Centre.
68. Provide adequate funding to connect people exiting prison to community-based mental health and holistic transitional support services.

¹ See YouthLaw, 'Submission to the Royal Commission into Victoria's Mental Health System' (2019) 1.

² National Association of Community Legal Centres, *Community Legal Assistance Services System (CLASS)*, 2017-2019.

³ Justice Connect Homeless Law, 'Keeping women and children housed: Women's homelessness prevention project – 2 years on 10 clients stories and 10 calls for change' (2018) 4.

⁴ Frijters, P., Johnston, D.W. and Shields, M.A., 2014, *The effect of mental health on employment: evidence from Australian panel data*, Health Economics, vol. 23, no. 9, 1058–1071.

⁵ Robinson, E. Rodgers, B. Butterworth, P. 'Family relationships and mental illness: impacts and service responses' Australian Institute of Family Studies: Australian Family Relationship Clearinghouse (2008) 4.

⁶ Law and Justice Foundation of New South Wales, *Legal Australia-Wide Survey (LAW)* (2012) 14.

⁷ LAW Survey found half (54 per cent) of people who experienced legal problem it had a 'severe' or 'moderate' impact on their daily life: 19 per cent reported stress related illness, 18% physical ill health. Law and Justice Foundation of NSW 'Legal Australia-Wide Survey of Legal Need in Victoria' (2012), xvi.



FEDERATION
OF COMMUNITY LEGAL CENTRES VIC

FIRST, A HOME

THE IMPORTANCE OF HOUSING FOR MENTAL WELLNESS

Royal Commission into Victoria's Mental Health System

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1. HOUSING AND MENTAL WELLNESS

To help prevent mental illness, and improve the mental health of people experiencing mental illness, housing must be a core component of the mental health system wide response.

What we all need is safe, stable and suitable housing. Becoming homeless is both a cause of mental illness, and caused by mental illness.¹ People who experience mental health issues face additional barriers to accessing and maintaining a home, caused by poverty and experiencing periods of illness.^{2,3} These recommendations aim to increase access to housing, remove barriers to maintaining a home, and prevent evictions into homelessness for people who experience mental health conditions.

Having a home is the first and necessary step to mental wellbeing.⁴ Homes that are safe, have security of tenure, are appropriate and well connected to services and a person's family, friends and community (particular culturally and linguistically diverse communities) help prevent mental illness.⁵ If a person has a mental health condition, a suitable, safe, stable home improves their ability to recover.⁶

Young people, Aboriginal people, people with chronic health conditions or disabilities, people with low incomes or people who are unemployed or underemployed are at greatest risk of having unsuitable or unsafe homes,⁷ which in turn raises their risk of mental illness.

The 2016 Australian Census found that 116,000 men, women and children were homeless – an increase of 4.6 per cent from the previous Census in 2011.⁸ Victoria currently has 82,000 people and 25,000 children waiting for housing. The list grows by 500 people every month.⁹

Mental health is the fastest growing reason for people to access specialist homelessness services, growing at an average rate of 13 per cent per year since 2012.¹⁰

Aboriginal people accessing specialist homelessness services are seven times more likely to have a mental health issue than non-aboriginal Australians.¹¹ Those aged between 15-17 years with mental health issues were the highest users of specialist homelessness services, followed by 18-24 years.¹² These are critical ages for intervention to reduce the impact of lifelong mental health conditions.¹³

An episode or episodes of mental illness can lead to homelessness; conversely, the isolation and trauma of sleeping rough and other types of homelessness can cause mental illness.¹⁴

A study in Melbourne found that 15 per cent of the 4,291 people surveyed had mental health issues before experiencing homelessness; an additional 16 per cent had developed mental illness since they became homeless.¹⁵

Without support, some behaviours associated with mental illness such as delusional thoughts, difficulty prioritising, particularly financial matters, and socially isolating behaviours can cause challenges in maintaining adequate and appropriate housing or lead to eviction.¹⁶

Homelessness also increases the interaction a person who is experiencing mental illness has with the criminal system. Nearly one in three people who enter prison in Victoria are homeless;¹⁷ more than half of the people who leave prison expect to be homeless.¹⁸

An effective mental health response requires a coordinated housing response: to ensure the provision of suitable, safe, and stable homes that enable people to achieve and maintain their mental wellbeing.



Terms of Reference

The Federation of Community Legal Centre's submission 'First, a home' seeks to assist the Royal Commission into Victoria's Mental Health System (Royal Commission) in addressing Term of Reference (6) 'Any other matters necessary to satisfactorily resolve the matters set out in paragraphs 1 – 5'.

The link between housing and mental wellbeing is well established and despite it not being a direct term of reference, it is a critical component to mental wellbeing and a successful mental health system. Housing will be raised by many in our community and should be given particular attention by the Royal Commission, for without stable and suitable housing, people living with mental illnesses will continue to struggle with their mental conditions.

Across the outline of questions provided by the Royal Commission, the answer to have a home, could almost be applied to all. Having a safe, stable and secure home is the core way we can reduce stigma and discrimination (question 1), a key factor to what we know works well (question 2); what prevents suicide (question 3); what assists family members and carers – having the person they love securely housed is a good first step (question 6). In particular, not having a home makes it hard to experience good health (question 4) and is a key driver of poor mental health outcomes (question 5).

Recommendations

This is paper one of three. All recommendations in subsequent papers follow on in numbering for ease of reference.

1. Grow public and community housing by 3,400 new homes each year for at least two decades, as recommended by the Family Violence Housing Assistance Implementation Taskforce.
2. Bond loan debts should not be a barrier to accessing public and community housing.
3. Expand the current contribution of public money, as well as broaden the accessibility criteria for the housing brokerage program to include people who experience mental illness.
4. Fund and expand integrated social and legal services programs that assist people maintain their housing on an ongoing basis.
5. Increase the number of publicly funded tenancy lawyers to assist people stay in their homes, whether they live in private rental, community or public housing.
6. Provide brokerage funding to Aboriginal Community Controlled Organisations (ACCOs), including Victorian Aboriginal Legal Service, to support Aboriginal people facing eviction due to mental health conditions, modelled off similar funding provided to ACCOs for clients experiencing family violence.
7. Abolish the notice to vacate for successive breaches of duty through the removal of sections 249, 283, 308 and 217B of the *Residential Tenancies Act 1997* and sections 91ZP, 142ZH, 206AX and 207ZB of the *Residential Tenancies Amendment Act 2018*.
8. Introduce legislative provisions that require compliance orders to be worded as specifically as possible, and to be limited to a period of six months before lapsing. Only where subsequent orders are needed should there be discretion for compliance orders to be extended for up to 12 months.
9. Require that all VCAT members receive mental health and trauma training and education.
10. Require all VCAT members to be trained on the fair and appropriate use of compliance orders, given the orders can and do result in eviction. Before a compliance order is issued, consideration should



be given to the seriousness of a breach, the duration the compliance order should fairly be in place for, and what support should be provided to assist compliance.

11. Legislate the right for an internal appeal at VCAT to create an accessible mechanism of oversight, improve the consistency, predictability and quality of decision-making and strengthen protections for tenants against evictions that should be avoided.
12. Ensure that VCAT is accountable and transparent with parties able to access written decisions and transcripts without cost.
13. Fund and support the provision of holistic and flexible services of community lawyers and social workers at health centres where people with complex mental health needs attend, to increase accessibility and attendance at VCAT hearings.
14. Community housing providers develop fair, consistent and publicly available policies that fully implement tenants' rights.
15. Support and resource community housing providers to develop and implement these policies to adequately support and maintain tenancies.
16. Expand holistic housing support services for particularly vulnerable tenants, including integrated programs with mental health and legal supports.
17. Improve government scrutiny and oversight of funding of emergency crisis accommodation, including requiring that public money does not go to unregistered or illegal rooming houses.
18. Increase outreach services and legal assistance for people in rooming houses to facilitate people experiencing high levels of disadvantage and marginalisation access mental health services and other support services.
19. Prioritise enforcement of rooming house standards and provisions required under the *Residential Tenancies Act* by Consumer Affairs Victoria.
20. Commit to phasing out, within five years, the use of rooming houses for vulnerable people, including those with mental health conditions and complex health needs, those escaping family violence, and people leaving institutions.
21. Provide pre-release and post-release integrated services programs that support a person to access and maintain housing on release, including programs that assist addressing civil issues, such as debt and family matters.



2. A SAFE, STABLE AND SUITABLE HOME

2.1 Increase Access to Housing

People who experience mental health issues often have complex needs. Secure, stable and suitable homes are a priority for mental wellbeing.

The Director of Housing provides public housing to Victorians most in need, particularly people who have experienced homelessness, mental or physical illness, disability, or victim-survivors of family violence.

Between 1 July 2013 and 21 April 2017, the Director of Housing managed 64,196 public homes which accounted for 83,152 public housing tenants.¹⁹ As of 2018 there are 19,000 households living in community housing in Victoria.²⁰

The Victorian Government spends less on social housing than any other state in Australia. The Victorian Government spends only \$83 per person, which is less than half the national average.²¹ Consequently Victoria has the lowest proportion of social housing properties per capita of all states in Australia.²² Only 3.47 per cent of occupied homes in Victoria are social housing homes, compared to the national average of 4.5 per cent. In NSW 5.2 per cent of occupied homes are social housing.²³

Additionally, Victoria also spends the least amount of public money on public housing than all other states, and that figure is only decreasing.²⁴ Despite increasing need and a growing population, there is less public housing in Victoria than there was a decade ago. Between 2006 and 2016 there were 581 fewer public homes in Victoria.²⁵

The decrease in public housing is in part the result of transferring public homes to community housing providers.²⁶ The Victorian Auditor-General noted that there has not been adequate assessment of the financial and operational implications of public housing transfers to community housing.²⁷ It cites the Department of Health and Human Services own assessment that the transfer of properties would have uncertain impacts on community housing providers' ability to balance their financial viability with meeting the needs of the most disadvantaged Victorians.²⁸

Often poor quality housing stock, which is transferred to community housing providers, results in a lower maintenance liability on the Department of Health and Human Services. This places community housing providers in the difficult position of having to maintain aged housing stock without sufficient resources.

Rather than growing the social housing pie, the current policy settings have simply recut a shrinking pie. A change of priority is needed to increase the supply of suitable social housing – public and community housing – to meet current and future needs for all Victorians to have an affordable, stable home.

A coordinated housing policy is required that assists everyone in need of housing. Whether the need is a result of mental illness, disability, or family violence, everyone should have a safe foundation to build their lives. The Family Violence Housing Assistance Implementation Taskforce looked at the housing needs of Victoria in light of the Royal Commission into Family Violence. Their work should be built on to ensure enough social and affordable housing is made available in Victoria to meet current and growing needs. The Taskforce found 1,700 new social housing homes would need to be built to maintain current levels of 3.5 per cent of the housing market, but to fulfil the unmet needs of Victorians under housing stress, an additional 3,400 homes are needed each year for the next two decades.²⁹



Recommendation

1. Grow public and community housing by 3,400 new homes each year for at least two decades, as recommended by the Family Violence Housing Assistance Implementation Taskforce.

3. HELP PEOPLE GAIN AND KEEP THEIR HOMES

3.1 Reduce Barriers to Entry

People who experience mental illness face many barriers to accessing housing as a consequence of poverty and discrimination.³⁰

Likewise, financial stress caused by few affordable housing options creates anxiety and poor mental health outcomes in the community.³¹ Government bond loan schemes assist people getting into the rental market and are a valuable service. However, for a person with mental illness, particularly when this may intersect with family violence, ending up with a bond loan debt can restrict their ability to access secure housing.

The debt could be because they had to leave a house in a hurry or the house was damaged by a violent partner. The consequences of having a bond loan debt makes accessing housing in the future difficult.

Public and community housing are for those people in most need, this may include those with existing debts. People should not be excluded from a safe place to call home on the basis of bond debt.

Recommendation

2. Bond loan debts should not be a barrier to accessing public and community housing.

3.2 Early Support

Mental health crisis can be a time of financial stress. Rental arrears can build up quickly, putting more pressure on someone and creating anxiety and depression, which in turn makes it hard to focus on recovery. Evicting people doing it tough into homelessness can be prevented if we give people early support and assistance from social and legal services working together.

Housing brokerage programs provide small amounts of money to assist people to enter the private rental market, or maintain their rental. At the right time, a small amount of money during a crisis is enough for someone to hold on to their home. However, brokerage programs are often limited to people experiencing certain 'vulnerabilities', such as being an older person or experiencing family violence.



The issue can be that some people receive assistance when they need it, while others miss out. People who experience mental illness are often not seen as a priority for assistance, and do not meet the criteria for some brokerage support, leaving people in mental health crisis with fewer options. More public money is needed for brokerage programs, particularly to allow their accessibility criteria to expand specifically to include people who experience mental illness.

Integrated services, that is where legal assistance is provided with other services, such as ongoing social worker support, play a critical role in maintaining housing.

Integrated services provide legal and community support where and when a person needs it most. For people on the brink of homelessness, support to maintain tenancies prevents them from homelessness or from spiralling into further mental health crisis.

The Women's Homelessness Prevention Project, run by Justice Connect Homeless Law, has provided an intensive combination of legal representation and social work support to 214 women, who had 305 children in their care. A vast majority of these women had experienced mental health issues and family violence. These women and their children were all on the brink of homelessness and the dislocation from their communities that comes with it.³²

Since it began, the project has resolved 82 per cent of legal matters successfully. This included 117 women and their families who directly avoided eviction into homelessness as a result of their advocacy. Based on findings from the Australian Housing and Urban Research Institute, this eviction prevention work equates to approximately \$3.6 million in savings of public money that can then be used to improve other community services, like homes or schools.

Aboriginal people are more likely to experience housing stress and are ten times more likely to experience homelessness than non-aboriginal Australians.³³ There is a need to provide and adequately resource culturally safe integrated and holistic services for Aboriginal people, such as those provided by the Victorian Aboriginal Legal Service and Djirra.

Community lawyers work with people in need to help them maintain their homes. Legal representation is a critical factor to preventing evictions into homelessness and ensuring a person is represented at VCAT hearings and direct negotiations with landlords to prevent evictions. In Melbourne's West, the local community legal centre, WEstJustice, has prevented over 154 evictions by providing legal representation before a person becomes homeless.³⁴

Recommendations

3. Expand the current contribution of public money, as well as broaden the accessibility criteria for the housing brokerage program to include people who experience mental illness.
4. Fund and expand integrated social and legal services programs that assist people maintain their housing on an ongoing basis.
5. Increase the number of publicly funded tenancy lawyers to assist people to stay in their homes, whether they live in private rental, community or public housing.
6. Provide brokerage funding to Aboriginal Community Controlled Organisations (ACCOs), including Victorian Aboriginal Legal Service, to support Aboriginal people facing eviction due to mental health conditions, modelled off similar funding provided to ACCOs for clients experiencing family violence.



3.3 Fairer Laws

The Victorian Government is to be commended for the recent substantial improvements to the *Residential Tenancies Act 1997*. However, to ensure all tenants can enjoy the right to a home, including those experiencing mental illness, further improvements need to be made.

People with mental illness are often managed out of their homes, through the use of notices to vacate for successive breaches of duties and breach of compliance orders. When people are experiencing a mental health episode, or are in need of support, they often face breaches for nuisance or interference or failing to keep the property clean.³⁵

Compliance orders are commonly issued to people who experience mental illness for behaviours linked to their illness, such as being too loud or for hoarding.³⁶

The way the legislation operates is the landlord first issues a breach notice: a breach of tenancy agreement can be broad,³⁷ from keeping a premise clean³⁸ to not causing nuisance: defined as not causing 'interference to the reasonable peace, comfort or privacy' of a neighbour.³⁹ The notice may require they fix the issue (as in cleaning up a property in the case of hoarding) or refrain from committing a similar breach in the future (making loud noises).⁴⁰ If the person does not do what the notice says, the landlord can apply to the Victorian Civil and Administrative Tribunal (VCAT) for a compliance order.⁴¹ The compliance order may require the person to fix the issue, compensate their landlord, or require that they do not commit a similar breach in the future.⁴² If a person breaches this compliance order, they may be evicted from their home.⁴³

Compliance orders issued by VCAT are not required to specify a time period for the order to be in place. A tenant who played music that was too loud only once could be in breach of this order many years after it was originally made. A breach may then result in their eviction.⁴⁴

Compliance orders should be fair and reasonable and have a set duration. People should not be evicted solely on the basis of behaviour that results from their mental illness for often minor or trivial matters. Provisions should exist to prevent discrimination and targeting of people with mental illness that make retaining housing more difficult than it should be.

Stephanie and Noah's Story

Tenancy compliance order given to a young family with an 11 year old boy experiencing mental health problems

Stephanie is a mother to two young boys, an adult daughter, and she also has a baby on the way. Stephanie's 11 year old son Noah* has been diagnosed with mental health conditions. A neighbour at Stephanie's public home had made continual complaints to the Department of Health and Human Services – Director of Housing (DHHS) about Noah and even applied for an intervention order against him. DHHS then gave Stephanie an order to control Noah's behaviour. Stephanie had asked DHHS to transfer her to another more suitable home but this never happened.

Stephanie contacted her specialist community legal centre on a Monday afternoon, after the police visited her to tell her they would be back on Friday to evict her with her family. Stephanie told her community legal centre that she didn't know how this had happened or why. She told them she knew she had missed one possession hearing at VCAT, not knowing what it was about at the time. She also said that she had applied for a review hearing at VCAT but had not gone to it because DHHS staff called her on the way



there to tell her she didn't need to go. Stephanie didn't know the order had been made without her until the police came knocking on her door.

Stephanie met with the lawyers from her community legal centre, and they gave her advice about her legal options and her human rights to have a safe and secure home. Her community legal centre represented Stephanie at VCAT immediately and stopped her eviction for a week.

During that week her community legal centre gathered supporting letters from Noah's paediatrician and school social worker which highlighted how important safe and secure housing was to Noah's mental health and continued progress.

Her community legal centre negotiated extensively with DHHS, advocating for Stephanie and her family by making sure all DHHS policies had been followed as well as the responsibilities they owed Stephanie under the *Charter of Human Rights and Responsibilities Act*.

At the VCAT hearing, DHHS, Stephanie and her community lawyer reached an agreement, that Stephanie and her family would leave their property and be rehoused somewhere more suitable where Stephanie and her family, especially Noah could continue their lives. If Stephanie had not received assistance in the matter, she most likely would have been evicted into homelessness with her children.

Recommendations

7. Abolish the notice to vacate for successive breaches of duty through the removal of sections 249, 283, 308 and 217B of the *Residential Tenancies Act 1997* and sections 91ZP, 142ZH, 206AX and 207ZB of the *Residential Tenancies Amendment Act 2018*.
8. Introduce legislative provisions that require compliance orders to be worded as specifically as possible, and to be limited to a period of six months before lapsing. Only where subsequent orders are needed should there be discretion for compliance orders to be extended for up to 12 months.

3.4 Fairer Processes

VCAT has a significant role to play in preventing unreasonable evictions. Support and recognition of the barriers for people with mental illness should be in place at VCAT in a similar way that similar supports have been implemented at the Tribunal for victims of family violence.

The Royal Commission into Family Violence made recommendations that have led to reforms that assist members of VCAT through training, support, education and, legislative reform.⁴⁵

VCAT needs to be able to deal with the significant issue of housing in a consistent, transparent and accountable manner. To ensure matters are transparent and accountable, an affordable internal review mechanism should be established. The lack of internal appeals means VCAT decisions can lack consistency.

Currently parties often accept unlawful or unjust decisions because the prospect of Supreme Court appeal is inaccessible. An appeal mechanism would bring Victoria in line with other states: Queensland, New South Wales, ACT and South Australia all have internal tribunal appeals.⁴⁶



To ensure transparency and accountability, and given that many tenants appear before VCAT without legal representation, access to written decisions and affordable access to transcripts should be available to parties to facilitate access to justice, particularly if they are facing something as serious as eviction, possibly into homelessness.

Kate's Story

Too overwhelmed to appeal to Supreme Court

Kate lives in a public home and has a mental health condition. She has received a number of breach of duty notices over the past few years. Recently, she has been given a breach notice for causing a nuisance to her neighbours.

When the Office of Housing was issued a compliance order for a claim that Kate had caused further nuisance, Kate and her community lawyer sought to challenge the order at VCAT (VCAT). The application by the Office of Housing had been made about the most recent breach notice only.

At the VCAT hearing, the Office of Housing tried to include additional evidence about previous breach notices Kate had been given over the years. Given that these notices were not part of the Office of Housing's application to VCAT, it was procedurally unfair for the previous notices to form part of the case against Kate. Despite this, the VCAT member allowed the previous breach notices to be included in the evidence, and ultimately found against Kate. This meant the compliance order was confirmed and she faced possible eviction if she was seen to cause any nuisance. When her community lawyer requested written reasons for the member's decision, the request was denied.

Kate was disappointed with the VCAT member's decision, and her community legal centre obtained an opinion from an independent barrister who advised Kate and her legal team that the VCAT decision could be successfully appealed to the Supreme Court of Victoria because a number of errors had been made by VCAT. Her community legal centre offered to assist Kate with an appeal, but she was so discouraged by what had happened at VCAT that she simply gave up and the period of time she had to lodge an appeal expired.

For fair and just decision-making, Kate should have had the option of an internal appeal of the decision made in error: this would make the process of appeal more accessible and affordable, and less daunting.

West Heidelberg Community Legal Service undertook an investigative project into the barriers to people attending VCAT cases. The project is called: *Improving Housing and Health Outcomes by Understanding and Addressing Barriers to VCAT Attendance*.

Nearly 60 per cent of the project clients who missed a hearing had a dual diagnosis. This is significantly higher than the figure of 38 per cent for the whole client group. In fact, 77 per cent of project clients with a dual diagnosis missed a VCAT hearing. Clients who missed a hearing were also notably more likely to report a current or past history of alcohol and other drug use than the whole client group.

The project also discovered that there were other differences between the demographic profile of non-attending tenants and the whole client group, but these were not statistically significant. This suggests that the experience of mental health problems and substance use issues, particularly when they co-exist, is a significant barrier to tenant attendance at VCAT.



The connection between substance use, mental health conditions and homelessness (single episode and recurrent) is supported by research showing that more than half of people experiencing homelessness are dependent on alcohol and other drugs. More than half also have a comorbid psychiatric disorder.⁴⁷

During West Heidelberg Community Legal Centre's project Joint Holistic Service Delivery, tenants with a dual diagnosis were the most challenging to consistently engage. Contact with the lawyer and social worker tended to be sporadic and often clustered immediately around a particular crisis point. Contact generally declined after the urgent legal or other problem was temporarily addressed or deferred. To maintain even sporadic engagement levels with these clients, the lawyer and social worker worked flexibly and responsively. For instance, these clients would be seen whenever they attended the health centre, regardless of whether an appointment with the legal service had been arranged or missed.

In this context, the VCAT attendance rate of project clients provides evidence that holistic service delivery can increase the likelihood of vulnerable and marginalised tenants participating in VCAT's processes.

Recommendations

9. Require that all VCAT members receive mental health and trauma training and education.
10. Require all VCAT members to be trained on the fair and appropriate use of compliance orders, given the orders can and do result in eviction. Before a compliance order is issued, consideration should be given to the seriousness of a breach, the duration the compliance order should fairly be in place for, and what support should be provided to assist compliance.
11. Legislate the right for an internal appeal at VCAT to create an accessible mechanism of oversight, improve the consistency, predictability and quality of decision-making and strengthen protections for tenants against evictions that should be avoided.
12. Ensure that VCAT is accountable and transparent with parties able to access written decisions and transcripts without cost.
13. Fund and support the provision of holistic and flexible services of community lawyers and social workers at health centres where people with complex mental health needs attend, to increase accessibility and attendance at VCAT hearings.

3.5 Guaranteed Protections No Matter Where You Live

All people should have protection from unfair eviction regardless of where they live. For people who live in social housing that is, public or community housing, extra protections are needed. That is because when you live in social housing you are much more likely to become homeless if you are evicted.

We provide social housing to those in our community who need extra help, whether it is due to poverty, disability and mental health conditions, experiences of family violence, or a combination of reasons. Rules and regulations that apply to social housing should recognise the additional needs of people who live in them.

Community housing, housing run by not-for-profit organisations, has increased dramatically in the last decade.⁴⁸ They are an increasingly significant part of the social housing mix dedicated to ensuring the provision of stable, safe and suitable homes for Victorians in most need. Each provider has policies and



procedures in place to support tenants to maintain their housing. However, there is no consistency across community housing providers in how they uphold tenant rights and maintain tenancies.

Consideration should be given to how to increase accountability and consistency across social housing, to ensure rights and responsibilities reflect best practice.

For example, the Department of Health and Human Services provides the following important rights for people in public housing who experience mental health issues, and these should also be available to those in community housing:

- ▼ Public housing tenants can apply for a six-month 'temporary absence' from their properties, including due to family violence, medical treatment and imprisonment, which allows them to pay a reduced rate of rent (\$15 per week) during this time. Further six-month extensions are also available in exceptional circumstances;⁴⁹
- ▼ Not pursuing compensation debt claims against public tenants where a property has been damaged due to violence, third parties or fair wear and tear;⁵⁰
- ▼ Public housing tenants' rent not being more than 25 per cent of their total household income;⁵¹ and
- ▼ Being required to take into account human rights and procedural fairness considerations before pursuing the eviction of a public housing tenant.⁵²

Security and stability of tenure is particularly important for people who experience mental health conditions. For people who have complex mental health needs, often overlapping with other vulnerabilities such as disability or dual diagnosis, maintaining housing can be particularly difficult.

Community housing providers are being increasingly relied on to house people with complex mental health and other needs. Providers need to be adequately resourced and more support needs to be provided for community housing to assist people to maintain their tenancies and prevent evictions into homelessness.

A recent report found nearly half of all tenancies by a community housing provider ended within 18 months, and most were due to negative 'push' factors such as being in arrears or disputes with neighbours.⁵³ In order for community housing providers to house people with complex needs, community housing needs adequate support and resources to ensure people living in community housing receive the wrap around support services they need to stay in their homes.

Wrap around support is particularly critical for those entering community housing from homelessness or institutions. Currently, one in five of those previously homeless, were no longer housed by their community housing provider after six months, and for those coming from prison or health institutions, a third no longer had a home after six months.⁵⁴ By 18 months, three in four people entering community housing from hospital or prison no longer had a home.⁵⁵

Recommendations

14. Community housing providers develop fair, consistent and publicly available policies that fully implement tenants' rights.
15. Support and resource community housing providers to develop and implement these policies to adequately support and maintain tenancies.
16. Expand holistic housing support services for particularly vulnerable tenants, including integrated programs with mental health and legal supports.



4. MAKE ROOMING HOUSES SAFE AND TEMPORARY

Eighty per cent of people in rooming houses identified themselves as having a mental health issue.⁵⁶ People with experiences of mental illness often find themselves in rooming house accommodation because no other housing is available to them. This might be because they have been blacklisted from private rentals, have difficulties applying for a home on the Victorian Housing Register on their own, are dissuaded by the long wait, or are put in emergency accommodation without any further support provided.⁵⁷

Rooming homes are not appropriate places to recover from mental illness. Illness can be exacerbated and created from what is often an unsafe or dangerous housing environment.⁵⁸ People in rooming houses report their experience as demoralising, creating 'a growing sense of worthlessness and a disconnection from their community'.⁵⁹

Rooming housing is expensive. People often pay \$200 to \$250 a week for a room. For a single person on the maximum Newstart Allowance of \$277.85 a week, this leaves very little money to live on.⁶⁰

Northern and Western Homelessness Network reports that The Palms Hotel in Footscray charges up to \$160 per night per person for rooms with no cooking facilities and 'a very low standard of amenities': yet receives nearly \$500,000 (or 20 per cent) of the \$2.5 million of public money spent by the Victorian Government on emergency accommodation in the North/West Metropolitan Region.⁶¹ Public money for housing support must instead be spent on services that help people experiencing a crisis recover from trauma rather than increase their trauma and marginalisation.

Tenants Victoria reports that while there are standards required for rooming houses, operators often avoid scrutiny due to the failure of Consumer Affairs Victoria to properly enforce breaches of the *Residential Tenancies Act*.

A Tenants Victoria freedom of information request to Consumer Affairs Victoria in January 2018 found that during 2014-15 to 2017-18, Consumer Affairs Victoria had only issued 16 infringement notices for rooming house offences. Consumer Affairs Victoria cracked down on rooming houses during 2012-14 and issued over 200 infringements in those years alone. There needs to be more than blitzes of enforcement. Instead there should be ongoing and accountable regulation.

Community lawyers who do outreach work to advocate for people living in rooming houses report that they have ongoing concerns about non-compliance and breaches of the *Residential Tenancies Act* not being adequately enforced. Given that people living in rooming houses experience high levels of mental health issues, disadvantage and marginalisation, regulatory oversight is crucial.

People in rooming houses are the least able to reach services they need. Often they are itinerant, moving from one local council catchment to another, and losing connections to services.

Poverty, experiences of family violence and trauma, and a high prevalence of dual diagnosis, mean that many people within rooming houses have multiple legal issues – such as fines, public spaces offences, family violence and child protection, alongside the tenancy issues they experience.

Rooming house outreach services, where social workers and legal assistance work together, are an effective way to reach people who would not otherwise seek help. Legal assistance can set a person up to address outstanding issues, such as housing bond debts that limit their ability to access stable housing.



Outreach ensures that people in rooming houses get the health and social support they need, when and where they need it. There are not enough outreach community workers and lawyers to assist and advocate for all the people in need.

Sami's Story

Outreach and integrated support prevents eviction into homelessness

In 2018, when a rooming house was being shut down, 11 residents faced eviction into homelessness. They each had complex issues with nearly all of them having experienced homelessness before and three-quarters experiencing mental illnesses.

Community legal centres worked together to organise sessions to give legal help and advice to the people affected and their support workers. Nine of the people who worked with their community legal centre avoided evictions and were helped into safe homes, which prevented their mental illnesses from getting worse.

Legal problems regarding housing rarely occur in a vacuum. A community legal centre that represented eight of the people living in the rooming house also helped them with 15 other legal problems.

Sami, who was at risk of being evicted would have found it difficult to find his local community legal centre for help, in part because his first language is not English. Sami was doing it tough and would have been forced into homelessness by the eviction; understandably this made his mental illness worse. Because his health deteriorated, he was placed on an Involuntary Treatment Order.

With the help of his legal, health and social work team, Sami was rehoused in a suitable and stable home. This reduced his stress, ensured he did not return to homelessness, and allowed him to focus on his mental health recovery.

Recommendations

17. Improve government scrutiny and oversight of funding of emergency crisis accommodation, including requiring that public money does not go to unregistered or illegal rooming houses.
18. Increase outreach services and legal assistance for people in rooming houses to facilitate people experiencing high levels of disadvantage and marginalisation access mental health services and other support services.
19. Prioritise enforcement of rooming house standards and provisions required under the *Residential Tenancies Act* by Consumer Affairs Victoria.
20. Commit to phasing out, within five years, the use of rooming houses for vulnerable people, including those with mental health conditions and complex health needs, those escaping family violence, and people leaving institutions.



5. PREVENT HOMELESSNESS FOR PEOPLE LEAVING CARE OR PRISON

Nearly one in three people who enter prison are homeless;⁶² more than half of the people who leave prison expect to be homeless.⁶³ Over half of the people in Victoria's prison system have been diagnosed with a mental health issue.⁶⁴ People's ability to stay well is impacted by insecure and inappropriate housing, and their chances of reoffending increase significantly too.⁶⁵

One in four people in acute mental health services are homeless prior to admission, and most are discharged to homelessness due to a lack of suitable accommodation.⁶⁶ The number of people leaving mental health facilities into homelessness has grown 55 per cent in the last five years.⁶⁷ Our community legal centres who work with hospitals and psychiatric services report that people are kept in acute care beds, as there is no safe home to discharge them to.⁶⁸

Providing suitable and stable housing is a much better use of public money (the cost of an acute care bed is \$917 a day⁶⁹) and leads to better health and social outcomes for all of us.

5.1 Prevent Evictions

People can be evicted from their homes for periods of absence due to abandonment.⁷⁰

For a person experiencing a mental health crisis who is either being admitted to a health facility, or going to prison, they need assistance to maintain their housing. Skilled caseworkers should be provided to assist them advise their landlord of their temporary absence. Or for long term absences, legal assistance may be needed to ensure a person does not lose their personal belongings and potentially accrue a bond loan debt for abandoned property.

Appropriate and flexible temporary absence policies are essential for providers of social housing, whether public or community housing. Most people spend only short periods in hospital or prison. A significant number of people in prison are on remand and do not receive a custodial sentence.⁷¹ Efforts should be made to maintain the housing they have; whether through brokerage programs or temporary absence policies that reduce rent. This is particularly critical for those in social housing who rely on Commonwealth welfare payments that stop during periods in prison.

Paula's Story

Evicted during a health crisis

Paula has been living in a public home for almost 20 years. In addition to experiencing mental health issues and alcohol and drug dependency, Paula suffers from an acquired brain injury. She often finds it difficult to stay connected with support services and to follow up correspondence, such as mail or notices sent to her home as a result of her mental health and other issues.

After being particularly unwell, Paula was arrested by police and for a six-week period spent time in and out of custody and hospital. She did not advise the Office of Housing that she was absent.



The Office of Housing tried to contact her. When they couldn't reach her, her home was declared abandoned. Proceedings were commenced in VCAT to evict her without Paula's knowledge, even though her belongings were still in her home and all rent and utility bills had been paid in full. When she returned to her home, Paula found a new family living there and all her belongings gone.

Since her eviction, Paula has been living on the streets and unable to find a new place to live even after working with various housing agencies. During this time, she has been attacked on several occasions and unable to see her four children, causing added distress to an already fraught situation. Her community legal service, the St Kilda Legal Service is currently advocating on Paula's behalf to have the decision reviewed and is liaising with various support services to find adequate accommodation for its client.

If on being admitted to hospital or prison, a trained caseworker had checked on her housing situation, Paula could have been advised to notify the Office of Housing of her absence and prevented her eviction into homelessness.

People leaving hospital to homelessness undoes the benefits they have received in getting well. Stopping the cycle of hospital, homelessness, and prison, requires effort to ensure a person has stable and suitable housing to go to. This requires a mix of social and legal assistance before leaving care and comprehensive wrap around housing support once they have been discharged. It also requires an increase in available public and community housing.

Following are two examples of integrated services that work to prevent people leaving prison or hospitals into homelessness. Additionally, more should be done to ensure culturally safe and trauma informed pre-release programs are available for Aboriginal people in prison.⁷²

Programs that work

Leaving hospital

"If someone has significant financial or legal issues for which they need legal consultation, we can't engage them as well in therapy. So that need is not met, because their mind is on something else, or they've got multiple stressors. So you know, I would recommend [the legal clinic] because it means that that's one less stressor and your patient's likely to be more engaged, and have a safer discharge when they go home and a highly successful discharge. Because that need is being met."

Inner Melbourne Legal runs a health justice partnership with Royal Melbourne Hospital. This means they provide free, accessible legal assistance at clinics situated inside the two hospital campuses in Parkville.

By helping people with their legal problems inside the hospital, community lawyers can coordinate with other professionals caring for them which helps them address social problems before they are discharged. This is really important for people who have complex psychosocial needs. Community lawyers in hospitals help victim-survivors of family violence with their legal problems as well as helping people with tenancy problems or debts that can make their mental health worse. By working as part of a health care team, community lawyers help reduce how long a person is in hospital, as they help ensure there is a safe home to discharge a person to. Additionally, addressing the underlying systemic causes that can exacerbate their mental health condition, legal help decreases the chance they may return to hospital.

Evaluations of this partnership have found that of the people they assisted:

- ▼ 74 per cent had some form of disability (including mental health issues),
- ▼ 43 per cent were homeless or at risk of homelessness, and
- ▼ 35 per cent were experiencing family violence or at risk of family violence

Sixty per cent of clients felt their legal issue had an impact on their health and wellbeing.



The specialist community lawyers have become an integral part of the patient's care team. After legal consultation with a community lawyer, 76 per cent of people felt they were able to cope better with their legal issues, compared to 44 per cent before their legal consultation with a specialist community lawyer. Resolving legal issues during hospital admission has shown to lead to better health outcomes and improved hospital processes for discharging patients.

Programs that work

Leaving prison with a clean slate

Justice Connect - Homeless Law runs a program called the Closing Revolving Door.¹ The program aims to prevent homelessness for people leaving prison by reducing, resolving and managing debts and infringements while they are in prison.

In a single year:

- ▼ 37 per cent of all participants reported having a mental illness. A further 52 per cent reported an alcohol or other drug dependency; 13 per cent an acquired brain injury; 24 per cent reported a physical disability; 17 per cent an intellectual disability; and 43 per cent had, or have had, a combination of more than two of these issues.
- ▼ 72 per cent of people reported feeling worried or very worried about their financial issues when they left prison, and only 20 per cent felt prepared to deal with their financial issues.
- ▼ 85 per cent of the people they saw in prison had debts, ranging from \$390 - \$133,000. The program resolved total debts of \$290,560, not including infringement or housing debts.
- ▼ The program kept 25 people in their homes by preventing eviction to homelessness on release, saving at least \$850,000 of public money that can be used to improve other social services.

¹Justice Connect – Homeless Law, '[Closing the Revolving Door prison project: 12 months on](#)' (2016).

² Department of Human Services, Support for High Risk Tenancies Strategic Project (October 2006), cited in Department of Human Services, *Human Services: The case for change* (December 2011) 12. Based on this Victorian Government paper, there is a potential cost of over \$34,000 per year to support a tenant evicted from public housing through homelessness services. This was compared to approximately \$4,300 in service costs per year for a household in public housing.)

Recommendation

21. Provide pre-release and post-release integrated services programs that support a person to access and maintain housing on release, including programs that assist addressing civil issues, such as debt and family matters.



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- ¹Australian Housing and Urban Research Institute, *Housing, Homelessness and Mental Health: Towards Systems Change* (2018), 13.
- ² See for example: Northern and Western Homelessness Networks, *A crisis in crisis; the Appalling State of Emergency Accommodation in Melbourne's North and West*, <http://www.nwhn.net.au/admin/file/content2/c7/A_crisis_in_crisis_doc_final_040219_1550142202053.pdf> accessed 1 February 2019.
- ³ Australian Housing and Urban Research Institute, *Housing, Homelessness and Mental Health: Towards Systems Change* (2018) 15
- ⁴ Ibid 13
- ⁵ Ibid 14
- ⁶ Siskind, D., Harris, M. Kisley, S. Siskind, V. Brogan, J. Pirkis, J. Crompton, D. Whitford, H, 'A retrospective quasi-experimental study of transitional housing programs for patients with severe and persistent mental illness' *Community Mental Health* 50(5):538-47 (2014)
- ⁷ Australian Institute of Health and Welfare, *Mental Health Services in Brief 2018* (2019)
- ⁸ Ibid.
- ⁹ Parliament of Victoria, 'Inquiry in Public Housing Renewal Program' (June 2018) xi
- ¹⁰ Australian Institute of Health and Welfare, 'Australia's Welfare 2017: in brief' (2017) 31.
- ¹¹ Australian Institute of Health and Welfare 'Mental health services in Australia' (2019) .
- ¹² Ibid.
- ¹³ World Health Organization, *Adolescent Mental Health* (18 September 2018), <<https://www.who.int/news-room/fact-sheets/detail/adolescent-mental-health>>, accessed July 2019.
- ¹⁴ Australian Housing and Urban Research Institute, '[Australia's Welfare 2011: Chapter 8 Homelessness](#)' (2011) 247
- ¹⁵ Australian Housing and Urban Research Institute, *Housing, Homelessness and Mental Health: Towards Systems Change* (2018)13
- ¹⁶ Ibid. 15
- ¹⁷ Australian Institute of Health and Welfare, 'The health of Australia's prisoners 2018' (2018)
- ¹⁸ Ibid.
- ¹⁹ Victorian Ombudsman, *Investigation into the Management of Maintenance Claims Against Public Housing Tenants* (2017), p16
- ²⁰ Victorian Auditor-General, *Victorian Auditor-General Report: Managing Victoria's Public Housing* PP No 254, Session 2014–17. (June 2017) vii
- ²¹ Australian Productivity Commission, *Report on Government Services 2019*, (2019) Table 18A.1
- ²² Parliament of Victoria, Legislative Council Legal and Social Issues Committee, *Inquiry Into the Public Housing Renewal Program*, (2018) 25
- ²³ Victorian Auditor-General, *Victorian Auditor-General Report: Managing Victoria's Public Housing* PP No 254, Session 2014–17. (June 2017) 18
- ²⁴ Kelly D, Porter L, *Understanding the Assumptions and Impacts of the Victorian Public Housing Renewal Program* (2019)
- ²⁵ Victorian Auditor-General, *Victorian Auditor-General Report: Managing Victoria's Public Housing* PP No 254, Session 2014–17. (June 2017)17
- ²⁶ Kelly D, Porter L, *Understanding the Assumptions and Impacts of the Victorian Public Housing Renewal Program* (2019)18
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FEDERATION
OF COMMUNITY LEGAL CENTRES VIC

ADDRESS CONNECTED LIFE ISSUES

THE BENEFIT OF INTEGRATED SERVICES FOR MENTAL WELLNESS

Royal Commission into Victoria's Mental Health System

Submission Paper 2 of 3
July 2019

ABOUT THE FEDERATION

The Federation is the peak body for Victoria's Community Legal Centres (CLCs). Our members are at the forefront of helping those facing economic, cultural or social disadvantage and whose life circumstances are severely affected by their legal problem.

For over 40 years CLCs have been the heart of a powerful movement for social change, reshaping how people access justice, creating stronger more equitable laws, and more accountable government and democracy.

We pursue our vision of a fair, inclusive, thriving community through challenging injustice, defending rights and building the power of our members and communities.

WE WANT A COMMUNITY THAT IS FAIR, INCLUSIVE AND THRIVING: WHERE EVERY PERSON BELONGS AND CAN LEARN, GROW, HEAL, PARTICIPATE AND BE HEARD.

The Federation:

- ▼ Enables a strong collective voice for justice and equality;
- ▼ Mobilises and leads CLCs in strategic, well-coordinated advocacy and campaigns;
- ▼ Works with members to continuously improve the impact of community legal services;
- ▼ Drives creativity and excellence in the delivery of legal services to communities;
- ▼ Helps make justice more accessible.

Read our strategic plan online:

fclc.org.au/about



THE FEDERATION ACKNOWLEDGES THE TRADITIONAL ABORIGINAL OWNERS OF COUNTRY AND WE PAY OUR RESPECTS TO ELDERS PAST, PRESENT AND EMERGING. WE RECOGNISE THEIR CONTINUING CONNECTION TO LAND, WATER AND COMMUNITY. SOVEREIGNTY WAS NEVER CEDED.

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1. OVERLAPPING LIFE, MENTAL HEALTH AND LEGAL ISSUES

People do not experience mental health problems in a vacuum, life continues, often around them. Problems can build up. When going to work becomes difficult or impossible, debts build up too.¹ Pressure from shame, stigma and anxiety may create family breakdowns and with it, family law matters.² Poverty and homelessness experienced by many struggling with mental health issues, may lead to fines for living in public spaces. Life and legal problems overlap, and if not addressed early, or at all, can snowball.³ This results in the development of mental health conditions,⁴ or the exacerbation of existing conditions.

People who experience mental health conditions often need more than medical care. As a community, the best response we can have is to provide wrap around support services, which put the mental health consumer at the centre of our approach.

Wrap around services should include many elements of assistance tailored to the person's needs, whether these are medical care, social care, housing, employment services, or legal assistance and representation.

Health and legal problems are intrinsically linked, particularly for people who experience mental health conditions. More people ask their doctor or nurse for legal advice than a lawyer.⁵ For a person experiencing a legal problem, the problem does not appear to the person as a statement of legal claim; it is more likely to appear as a feeling of stress and anxiety. It feels like a health problem.

Mental illness is both caused *by* and a cause *of* legal problems. Over half of the people who experience a legal problem say that it has an impact on their daily life: 19 per cent said it resulted in stress related illness, 18 per cent said it caused physical ill health.⁶

The Victorian Access to Justice Review found that people who experience a disability are particularly vulnerable to having a legal problem, and those who have experience of mental illness have significantly more legal problems compared to people with other disabilities.⁷

The Legal Australia-Wide Survey (LAW), the first comprehensive research into legal needs in Australia, found that legal problems tend to cluster and then compound, particularly for people who experience disadvantage. A third of all respondents, accounted for four-fifths of all legal problems. In other words, having a legal problem itself increases the likelihood of experiencing further legal problems, with vulnerability increasing over time the more legal problems someone experiences.⁸ Over 60 per cent of people who experienced more than six legal problems reported having mental illness.⁹

At least 20 per cent of the people who community legal centres assist and represent experience mental health issues, and we believe this is underreported, particularly when there is consideration of trauma. For our specialist legal service, the Mental Health Legal Centre, 100 per cent of the clients they work with have a mental health condition.¹⁰ At our specialist centre for young people, Youthlaw, 80 per cent of the people they assist experience mental health issues.¹¹ The targeted programs and projects that our centres run see a large number of people with mental health issues, such as Justice Connect's Women's Homelessness Prevention Program, where 84 per cent of the women accessing the service reported having a mental illness.¹²

Our community legal centres have a wealth of experience of the needs of people with complex and intersecting mental health and other health issues and how they impact and overlap with their lives. Our knowledge has informed how we work with our communities.



Terms of Reference

This submission addresses:

- ▼ **Prevention:** integrated services assist in addressing the social determinates of health, by providing meaningful and accessible support in communities which experience disadvantage and discrimination
- ▼ **Early intervention, crisis management, and ongoing support after a crisis:** recognition that addressing people's multiple and complex legal issues is a necessary step to mental wellness

The integrated nature of the work outlined in this submission means that our programs cut across a number of the Royal Commission into Victoria's Mental Health System (the Royal Commission) terms of references and formal outline of questions.

In particular this submission seeks to address terms of reference 1, 2, 4 and 5, and respond to the Royal Commission's outline of questions 2 to 8.

This submission provides examples of just some of the many integrated services being run by our 48 specialist and generalist community legal centres across Victoria. Most services are precariously funded, with services regularly having to compete for funding to keep their doors open.

The Federation of Community Legal Centres would welcome the opportunity to provide more details to the Royal Commission on the services community legal centres and our partners provide to people experiencing mental health conditions and communities in need.

Summary of Recommendations

This is paper two of three. The recommendations in this paper follow on from the previous paper.

22. Amend Section 9 of the *Fines Reform Act* to require Fines Victoria to waive or reduce costs where a person's mental health (special circumstances) substantially contributed to the person being unable to attend to their infringements in a timely manner.
23. Introduce a new legislative discretion to set aside a seven-day notice where the person has a mental health problem or other special circumstances. This would mean that the person is not excluded from applying for enforcement review, to the Family Violence Scheme or for a Work and Development Permit after the seven-day notice has expired.
24. Retain the Special Circumstances List of the Magistrates' Court – the specialist therapeutic jurisdiction for people with fines with serious mental health conditions and other special circumstances.
25. Adopt policies to encourage more agencies to become Work and Development Permit accredited, particularly for medical and mental health care. This includes funding for Work and Development sponsors.
26. Roll out Streamlinefines to more inpatient and community outpatient psychiatric facilities.
27. Coordinate the response to achieving the goals of the Royal Commission into Family Violence, Access to Justice Review and address the overlapping mental health issues: ensure the Access to Justice Review recommendations, in particular 3.4, 3.5, 6.20 and 6.21 are implemented alongside, and give full effect to, the Royal Commission into Family Violence and the forthcoming recommendations of the Royal Commission into Victoria's Mental Health System.



28. To achieve the goals of the Royal Commission into Family Violence alongside addressing the mental health needs of those impacted by family violence, implement a timeline and plan for implementation of legal triage in the Orange Door and increase access to legal services more broadly for family violence and mental health.
29. Link women and families, including pregnant women, with culturally appropriate legal, mental health and wrap-around supports, at the earliest opportunity and before any consideration of removing children.
30. Support and expand existing integrated services and establish new services to remove barriers to access and address multiple needs for people experiencing mental health and related issues.
31. Provide ongoing funding for existing integrated services and a minimum of four-year funding blocks for new integrated services, in recognition that partnership and workforce development take time to establish and develop relationships of trust and shared learning.
32. Implement the Access to Justice Recommendation 3.4 to support integrated services, to meet service delivery gaps experienced by people with complex mental health needs in our community.
33. Develop a whole-of-government budget process that is responsive to holistic needs of communities and individuals in need of support.
34. Work with services and communities to develop nuanced outcomes measurement of successful program delivery for people who experience multiple and complex vulnerabilities and commit to consistency across departments and funding providers.



2. IMPROVE SERVICE SYSTEMS THAT IMPACT MENTAL HEALTH

Evidence shows homelessness,¹³ financial stress,¹⁴ family violence¹⁵ and other legal problems¹⁶ cause mental health problems. Early legal support is a protective element that can prevent the mental illness developing or stop it from becoming as severe.¹⁷

Legal support and representation empowers people to understand the situation they are in, their rights and responsibilities, and can help resolve the stressful situation. For example, a person facing eviction into homelessness can, with the help of a lawyer, have an unreasonable compliance order revoked or an arrears payment scheme negotiated.

A community lawyer can assist a person under financial stress to have an unfair pay day loan debt wiped, or advocate to the Magistrates' Court for a reduction in a toll road fine (too often a person can be appearing before the Court without representation and up to \$100,000 in toll road fines).

A woman experiencing family violence can have legal protections put in place to allow her to escape the violent situation safely and allow her to clean up often a web of financial abuse and debt that the relationship might have caused. All of these complex life situations create mental stress, anxiety and anguish that can escalate into lifelong mental conditions.¹⁸

We need early support, as well as changes to the systems that prevent people from recovering.

2.1 Improve the Fines System

The fines system disproportionately impacts those who experience mental illness, alcohol and drug dependencies and other forms of disadvantage.¹⁹ Victoria Legal Aid reports that of the five million fines issued in 2018, only 26,000 were revoked on special circumstances - on grounds such as mental illness, disability, drug addiction and homelessness.²⁰

Enforcement processes can be difficult to navigate for anyone. For someone who experiences mental illness, there are additional hurdles to overcome in managing this debt,²¹ undermining their ability to adequately access remedies to challenge the fines and ultimately unsettling their mental health.

Amending the *Fines Reform Act* to waive or reduce costs where a person's special circumstances contributed to the person being unable to pay the fine on time, rather than requiring a nexus, would reduce the number of people with mental illness issued for fines which they do not understand nor have the ability to pay. This has been introduced for people experiencing family violence and should be broadened.

The Special Circumstances List at the Magistrates' Court provides for people who experience mental illness, serious addiction, family violence or homelessness²² to have their matters heard in a therapeutic setting. In 2016-17, there were over 55,000 matters referred to this list.²³ This allowed people with mental illness, and related issues such as problematic drug use or homelessness, to have all their fines dealt with in one hearing before a Magistrate who understood the complexity of the issues the person faced.

The Magistrates' Court intends to abolish the Special Circumstances List in anticipation of changes in processing fines. However, while people who experience mental illness and other vulnerabilities continue to



receive fines (at a higher rate than otherwise well people),²⁴ the Special Circumstances List should be maintained.

To assist people who cannot pay fines through complex life circumstances, including poor mental health, the Work and Development Scheme was introduced in Victoria in 2017.²⁵ This allows people to pay off fines through participating in medical treatment or care, education, counselling, or unpaid work.²⁶ Currently, there are not enough sponsors to allow all the people who would like to participate in the program to be able to do so. For people who experience mental illness, the ability to pay off multiple fines that may have accumulated during an episode of ill health, by seeking and receiving treatment, would be hugely beneficial. More people need support to access the scheme, through appropriate time limits for accessing the program and by promoting more services – particularly medical and mental health services – to become accredited work and development sponsors.

Streamlinefines is an innovative partnership between Victoria Legal Aid, WEst Justice, Moonee Valley Legal Service and Peninsula Community Legal Centre that combines technology, health justice partnerships and bulk processing of similar infringement matters. The aim is to address the ever-increasing number and complexity of special circumstances fines matters being handled by Victorian Legal Aid and community legal centres. The project has significant advantages to helping people who experience mental health illness to resolve fines they will unlikely ever be able to pay and that are causing them stress and anxiety: and outreach should occur in areas of most need, such as inpatient and outpatient psychiatric care.

Stephanie's Story

Woman experiencing homelessness and mental health concerns takes 34 months to resolve her fines through the infringements system

Stephanie is a middle-aged woman with a history of homelessness, who suffers from an acquired brain injury and depression. She also experiences financial hardship and is reliant on a Newstart Allowance. Stephanie approached her community legal centre after she had been issued with five fines from July 2012 to July 2013 for travelling without a valid ticket on public transport.

Stephanie was homeless after having to leave her rental property when her relationship ended. She was paying her ex-partner to be able to sleep on a couch in his office, but could not stay at the office during business hours.

The fines were generally issued when Stephanie was travelling to a suburban soup van for dinner (there were no kitchen or bathroom facilities in the office). Between September 2013 and February 2014, Stephanie's community lawyers obtained a variety of support letters from treating doctors, support workers and the operator of the soup van. The letters commented on her homelessness and mental health concerns.

The court process started in February 2014 and was not resolved until May the next year. During that process, Stephanie was required to provide detailed evidence that more clearly identified the link between Stephanie's special circumstances and the fines.

The fines were unconditionally dismissed by the Magistrates' Court. Despite this ultimately positive outcome, 34 months passed between the time Stephanie was issued her first fine in July 2012 and the dismissal of this fine by the Magistrates' Court.

The process could have been resolved more simply if the link between the fines and her special circumstances had been identified by what is now Fines Victoria, before the matter went to Court.



Recommendations

22. Amend Section 9 of the *Fines Reform Act* to require Fines Victoria to waive or reduce costs where a person's mental health (special circumstances) substantially contributed to the person being unable to attend to their infringements in a timely manner.
23. Introduce a new legislative discretion to set aside a seven-day notice where the person has a mental health problem or other special circumstances. This would mean that the person is not excluded from applying for enforcement review, to the Family Violence Scheme or for a Work and Development Permit after the seven-day notice has expired.
24. Retain the Special Circumstances List of the Magistrates' Court – the specialist therapeutic jurisdiction for people with fines with serious mental health conditions and other special circumstances.
25. Adopt policies to encourage more agencies to become Work and Development Permit accredited, particularly for medical and mental health care. This includes funding for Work and Development sponsors.
26. Roll out Streamlinefines to more inpatient and community outpatient psychiatric facilities.

2.2 Connect the Family Violence and Mental Health Systems

Women who experience gender-based or family violence are more likely to experience mental illness during their life: 77 per cent of women who have experienced gender-based violence report anxiety disorders, 56 per cent report post-traumatic stress disorders, and 35 per cent (one in three) had made suicide attempts.²⁷ One third of people who commit suicide in Victoria have exposure to interpersonal violence: making up half of all female suicides and a third of all male suicides.²⁸

For some women and older people who are victims of family violence, their abusers use the mental health system to perpetuate their abuse by forcing them into compulsory treatment. Special training and awareness should be provided in relation to how family violence perpetrators may use the system against their intimate partner or family member.

The Victorian Access to Justice Review found that for women experiencing family violence, access to legal services is a critical aspect of their survival and recovery.²⁹ Family violence victims are 10 times more likely to have legal problems than others in the community.³⁰ If these problems are not addressed, they lead to severe adverse impacts for these women individually and on their communities.

The Access to Justice Review recommended that legal services be integrated with other services to improve access to justice, particularly so legal services can be provided to complement a person's care.³¹ The Review also recommended that the Victorian Government increase the amount of public money provided for legal assistance, as well as recommending that the Commonwealth Government contributes their share.³²

Despite the Victorian Government accepting these recommendations, their implementation has been slow. The impact is felt acutely in how they relate to the state-wide response to family violence and the opportunity to address the mental health of women experiencing family violence.



What is needed now, is recognition that a coordinated approach between family violence and mental health is critical, as family violence rarely occurs without mental health implications. Accessing justice is necessary to empower and overcome family violence and mental health issues.

Currently, despite the ongoing and increased demand for legal assistance, there was no increase in funding for legal services to be part of the new Orange Door family violence hubs. This missed an important opportunity to ensure holistic support is provided for women to escape family violence safely.³³

Building on the implementation of the Orange Door, ensuring access to justice, legal assistance and mental health is a core element of the services provided is the necessary next step in reforming our service systems.

Ensuring women experiencing family violence are able to identify and assert their legal needs, and have access to the right services to address their legal problems, like personal safety, secure homes, immigration support, parenting advice and good financial counselling is essential. It's time to ensure the foundations are laid for improved access to justice for women escaping family violence, both as a preventive for mental illness, and to alleviate its causes.

Recommendations

27. Coordinate the response to achieving the goals of the Royal Commission into Family Violence, Access to Justice Review and address the overlapping mental health issues: ensure the Access to Justice Review recommendations, in particular 3.4, 3.5, 6.20 and 6.21 are implemented alongside, and give full effect to, the Royal Commission into Family Violence and the forthcoming recommendations of the Royal Commission into Victoria's Mental Health System.
28. To achieve the goals of the Royal Commission into Family Violence alongside addressing the mental health needs of those impacted by family violence, implement a timeline and plan for implementation of legal triage in the Orange Door and increase access to legal services more broadly for family violence and mental health.

2.3 Support Children and Families

Inadequate mental health supports for women and children experiencing family violence in the child protection system impede family reunification and increase permanent separations of children from their families.

The Royal Commission into Family Violence recognised that family violence profoundly and negatively impacts women's mental health.³⁴ Women victims of family violence need mental health and other supports, before any consideration of removing their children. Too often, women and children are further traumatised by being separated, following historical or ongoing family violence.

The longer-term mental health and trauma of separating mothers from their children significantly affects women and children,³⁵ and results in poor health outcomes for newborns, including lower birth weights, premature neonate, and foetal stress and trauma.³⁶ Additionally, there are long-term impacts of mother and child separation, and the impact of poor treatment of children in out-of-home care (especially children with special needs).³⁷



People who are removed from their families as children and put into out-of-home care are more likely to end up in the criminal legal system. We need to stop the cycle before it begins, by supporting families with wrap around holistic and culturally appropriate support. The Federation of Community Legal Centres' submission paper three, *End Criminalisation*, provides specific recommendations on ways to avoid criminalising children in and out of home care.³⁸

Our members inform us that too many children are removed from their mothers and families due to a lack of access to mental health supports. This is particularly the case for Aboriginal children and families who face the effects of entrenched systemic racism and intergenerational trauma. The Federation endorses both the Victorian Aboriginal Legal Service's and Djirra's submissions in full. However, we particularly draw the Commission's attention to their recommendations in this area, due to the record level of Aboriginal children in Victoria being taken from their families and communities.

The approach in this area should be to support families at the earliest opportunity, and prevent child removal.

Recommendation

29. Link women and families, including pregnant women, with culturally appropriate legal, mental health and wrap-around supports, at the earliest opportunity and before any consideration of removing children.

3. AN INTEGRATED RESPONSE

Fines, family violence, and child protection impact people's mental health but they are only a few of the legal problems a person who experiences systemic disadvantage and mental health issues may face. A person-centred holistic response is required to address the multitude of overlapping issues.

One of the tasks of the Royal Commission into Victoria's Mental Health System is to determine 'how to deliver the best mental health outcomes and improve access to the navigation of Victoria's mental health system for people of all ages'.³⁹ Addressing the overlapping and intersecting systemic health issues will be a necessary element to delivering the best mental health outcomes and improving access to the navigation of the system, particularly for those who experience systemic disadvantage.

These are the people most impacted by the negative impacts of the social determinants of health. The World Health Organisation defines social determinants of health as:

'The conditions in which people are born, grow, work, live, and age, and the wider set of forces and systems shaping the conditions of daily life. These forces and systems include economic policies and systems, development agendas, social norms, social policies and political systems.'⁴⁰

What has proven to be successful to address social determinants of health are community based partnerships or integrated services.⁴¹ This is where healthcare professionals, social workers, financial services, educational institutions and legal services work together to provide holistic support and care when and where people need it most. Integrated services focus on providing help, care, and support to the whole person, instead of forcing someone to seek different services to have their varied needs met.



The Victorian Access to Justice Review found that ‘integrated and collaborative forms of service delivery’ better targeted disadvantaged and vulnerable groups and had positive impact on their health.⁴² The Review 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’.⁴³

Integrated models of legal and other services are used by community legal centres to address their communities’ needs. Integrated services create better health and wellbeing outcomes, because they treat a person as an *individual* with complex needs. Rather than responding to whatever need is the most pressing or urgent, integrated services can deal with needs simultaneously, not needing to prioritise one need over the other. For example, medical care with legal assistance can treat suicidal ideation alongside a tenancy problem. Resolving the housing situation may seem a secondary need, however addressing both needs together creates stability and security for the person, which can assist their path to recovery. The Australian Productivity Commission found that:

‘Holistic services are a particularly effective mechanism for disadvantaged individuals to have their legal needs addressed. For example, close connections between disability advocates and lawyers may help to overcome the barriers faced by people with disabilities who may need additional assistance to understand information or communicate with their lawyers.

Holistic services can ‘help to prevent the degeneration of circumstances that can lead to further problems for users by targeting a number of their problems at once.’⁴⁴

‘Integration’ can take different forms including co-location, multidisciplinary teams or partnerships with other community services. Models of integrated services that community legal centres are involved in include, but are not limited to:

- ▼ Community legal centres employing one or more social workers, financial counsellors, or family violence workers;
- ▼ Community legal centres that are based or auspiced by a health or other partnership services settings; or
- ▼ Social service organisations that employ a lawyer within their service.

For people, particularly those who never had or no longer have family and carers who are able to support them, integrated services act as a safety net, to stop them falling through the gaps of the mental healthcare and social services systems.

Integrated services take the pressure off our traditional mental health system and the nurses, social workers and other workers, who are often asked to do too much, or who take on too much feeling their patients have no one else to turn to.

3.1 Reaching People Who Are At Greatest Risk of Experiencing Poor Mental Health Outcomes

Unsurprisingly, poverty, inequality, racism and discrimination are damaging to the mental and physical health of Victorians.⁴⁵ As someone’s socioeconomic status declines, experiences of racism increase. In fact, Victorians who frequently experience racism are almost five times more likely to have poor mental health than those who do not.⁴⁶



Social determinants of poor health occur in communities which are strong and resilient. People in these communities often have to deal with more complicated issues that impact their mental health, with less resources and support than advantaged communities have.⁴⁷

People with a low socioeconomic status and people experiencing mental illness are least likely to have the capability to respond to their legal problems, which in turn compounds the problems they have.⁴⁸ People of low socioeconomic status often report feeling despair, hopeless, overwhelmed and of being undeserving of justice.⁴⁹

For many people, mental illness is a direct cause of poverty. For people experiencing mental illness, finding and maintaining a job can be difficult.⁵⁰ In fact, 34 per cent of people receiving Disability Support Pension report having a mental illness.⁵¹ For many others, because their experience of mental illness may be episodic or the barriers in the application process are too numerous, access to the Disability Support Pension is out of reach,⁵² leaving them to rely on the lower Newstart Allowance rate, of just \$278 a week.⁵³

Racism and discrimination also increase the likelihood of mental illness, particularly for Aboriginal people. The Aboriginal Experiences of Racism survey conducted by VicHealth in 2010-11 found that almost all of the Aboriginal Victorians surveyed had experienced racism in the last 12 months.⁵⁴ The people who experienced the most racism, reported the most psychological distress.⁵⁵

People who experience poverty, discrimination, and mental health problems are more likely to experience life problems that have legal solutions, and they are more likely to experience more than one.⁵⁶ When they do have a problem, they are less likely to seek help.⁵⁷

Effectively, to seek a legal solution to a problem, a person must identify the legal dimension of their problem, recognise they have a right that has been breached, know and understand the justice system or have the capacity to gain this information. Then, they must communicate and explain their problem to others in sufficient detail, know how to act in a timely manner and they must be able to perceive a just or desired outcome.⁵⁸ It is no wonder, that in the midst of a crisis, particularly a mental health crisis, seeking help can be overwhelming.

A person experiencing a mental health crisis does not generally book an appointment with a community lawyer and turn up, particularly if their mental health problems overlap with other complex issues such as discrimination, poverty or problematic alcohol and other drug use. The complexity of their lives, their isolation, financial disadvantage and low awareness of legal issues make them more reluctant to seek help than people who do not face these barriers.⁵⁹

Many people who experience discrimination, systemic racism, or have been in prison, understandably have a conscious or subconscious mistrust in the system and are less likely to engage.⁶⁰ This is particularly true of young people.⁶¹ Furthermore, young people who experience violence and trauma are likely to have a mistrust of authority, which makes them even less willing to seek assistance.⁶²

One of the biggest barriers for people at greater risk of poor mental health is their limited capacity to find and access all of the services they need: [they need the services to find them](#).

Following are examples of where community legal centres have reached out to ensure people most at risk of experiencing poor mental health, have the access to justice barrier removed: Aboriginal people, young people, LGBTIQ, older people and people in mental health units.



Aboriginal People

Colonisation, racism, and lack of appropriate services continues to impact on Aboriginal people in Victoria.

Aboriginal Victorians experience far higher rates of mental illness than the rest of the population: they are three times as likely as non-Aboriginal people to experience high or very high psychological distress; 35 per cent of Aboriginal people have been diagnosed with depression and anxiety (compared to 20 per cent non-Aboriginal people). Intergenerational trauma is a contributing factor; almost half of Victoria's Aboriginal people have a relative who was forcibly removed. Today, Aboriginal children are 12 times more likely to be in child protection and for 60 per cent of Aboriginal children who are removed from their parents, mental health is the driving factor.^[1]

Djirra (formally Aboriginal Family Violence Prevention and Legal Services Victoria) and the Victorian Aboriginal Legal Service have both made submissions to the Royal Commission into Victoria's Mental Health System outlining their recommendations for improving mental health of Aboriginal people.

The Federation of Community Legal Centres endorses these submissions and the rights of Aboriginal people for self-determination. There is an acute need to support specialist services in order to overcome barriers to access and provide environments where Aboriginal women feel safe and heard. The connection to community and integrated ways of working in specialist Aboriginal and Torres Strait Islander services such as Djirra and the Victorian Aboriginal Legal Service are vital to ensuring the mental health and wellbeing of Aboriginal and Torres Strait Islander peoples. In particular, Aboriginal and Torres Strait Islander women who face significant barriers in accessing culturally safe and effective mental health services.⁶³

Djirra Koori Women's Place

Djirra's Koori Women's Place is an initiative that empowers Aboriginal women to lead independent and thriving lives as they work through adverse circumstances such as the ongoing trauma of family violence. The Koori Women's Place is culturally safe, providing appropriate support as a result of client relationships rooted in trust and a connection to culture. The Koori Women's Place seeks to overcome the isolation that many Aboriginal women affected by family violence experience, through creating connections with other Aboriginal women in a welcoming space that fosters feelings of safety and cultural acceptance. Through the Koori Women's Place, Aboriginal women are able to access required supports, including mental health support in addition to cultural programs that strengthen and affirm cultural identity, sense of belonging and self-worth.

These integrated ways of working provide assistance for not only the pressing family violence issues and resulting mental health and legal needs but also enable Aboriginal women to access tools for mental wellbeing and address deeper systemic and intergenerational traumas. This unique assistance and support assists to create a foundation of cultural pride and safety that will ripple through to not only other Aboriginal women but their families and communities as well.



Young People

Young people who are homeless are particularly vulnerable to lifelong poor mental health outcomes.⁶⁴ To reach these young people is difficult. Their lives are chaotic as a result of unstable housing and substance abuse problems which itself is a consequence of high rates of dual diagnosis.

Mental health and legal service for young people Check-in

YouthLaw is a specialist community legal centre that provides legal assistance to young people under the age of 25. Eighty per cent of the young people YouthLaw sees have experience of mental health issues, and most of these are a result of childhood trauma like abuse, neglect, their parents' own mental illness or substance abuse.

Frontyard Youth Service, partnering with YouthLaw, recently established a mental health program called *Check-in*, designed for young people between 12 and 25 displaying psychological distress and who are at risk of or who are experiencing homelessness,⁶⁵ and with it, lifelong poor mental health outcomes.⁶⁶

To reach these young people is difficult. Their lives are chaotic as a result of unstable housing and substance abuse problems that have occurred in relation to their mental health conditions.

The service provides legal assistance for young people such as unpaid fines, assistance in family violence matters, or to resolve tenancy issues.

The service helps young people navigate the health service and get the therapeutic and social support they need, addressing a large gap in service delivery. Because these young people are most at risk they often present with challenging behaviours, so the specialist support team helps them get their lives back on track as well as prevent them from self-harming or suicide.

LGBTIQ

Lesbian, gay, bisexual, intersex, and/or queer people (LGBTIQ) people report experiencing high rates of disadvantage on key indicators including mental illness, homelessness and suicidal ideation.⁶⁷ As many LGBTIQ people are distrusting of the legal system, due to previous discrimination when seeking legal help in the past,⁶⁸ or their well-justified fear of being "outed" to friends and family in order for them to seek the help they need, legal outreach is critical.

LGBTIQ Legal service

Last year, the St Kilda Legal Service and Thorne Harbour Health launched Australia's first dedicated LGBTIQ health justice partnership – the LGBTIQ Legal Service.

Thorne Harbour Health, formerly the Victorian AIDS Council, is a community-controlled organisation which provides a range of health and allied services to people living with HIV and the broader LGBTIQ community.⁶⁹



Eddie's Story

Connected services

Eddie, a bisexual man in his 50s, has significant mental health, drug and alcohol issues relating to traumatic personal history. When his social housing home was destroyed in an act of violence by a stranger, he was left homeless.

It was his specialist LGBTIQ drug and alcohol case manager who identified that he needed legal assistance and connected him with the in-house LGBTIQ community lawyer. His community lawyer was able to successfully advocate for him to the Department of Health and Human Services to urgently find him a new home. His community lawyer then assisted him to make a victims of crime application and make out a will (which he had been wanting to do for years but couldn't afford to).

Eddie would have been unlikely to receive legal help without specialist LGBTIQ health services being integrated with the legal service.

Eddie now has a new home and financial support from the victims of crime claim, which has reduced the ongoing mental impact of the violence act. By writing his will, he has taken back control over his life and his financial affairs.

Older People

Up to one in 20 older Victorians experience elder abuse, which is abuse perpetrated by a person in a position of trust with the older person.⁷⁰

A person experiencing mental illness, disability or social isolation is at a high risk of also experiencing elder abuse.^{71,72} However, an older person who is otherwise well and healthy may experience abuse perpetrated by an adult child who is unwell. Experiencing elder abuse can have a detrimental effect on the older person, often resulting in depression, anxiety and stress or exacerbating existing mental illness.

The complex nature of elder abuse and the family relationships involved means older people are less likely to ask for help. Legal assistance that is provided alongside healthcare and other support has been proven to be particularly effective intervention.⁷³ Such approaches are run by many of our community legal centres that address elder abuse, including: Seniors Rights Victoria, Justice Connect Seniors Law, and Eastern Community Legal Centre.

Health justice for older people

Evaluation of Justice Connect Seniors' Law program, found that over two years, they addressed 436 legal issues, with referrals increasing 112 per cent in the second year. Once there is awareness of the issue and awareness of support available, the need for services increases. Before seeing a lawyer, 70 per cent of the people said the issue was causing them stress. After receiving help, nearly 60 per cent felt less stressed.⁷⁴



Peter's Story

Elder abuse using mental health system as form of control

Andrew is 50 years old and he moved into his father's home. He took his father, Peter, to a lawyer to appoint himself as his father's enduring power of attorney. Andrew was also in financial difficulty and wanted to receive his inheritance from his father so he began a vicious campaign to convince his father that he was losing his 'marbles' and the capacity to manage his own affairs.

Andrew took his father to medical appointments and convinced Peter's GP that Peter was exhibiting signs of dementia. Peter was put on medication that produced a sedative-like effect. Andrew then arranged a neuropsychological assessment of his father, took him to his appointment and ensured he had taken his medication beforehand. Unsurprisingly Peter failed the test and Andrew made a successful application to VCAT to become Guardian and Administrator of his father and all of his affairs.

With legal assistance of Senior's Rights Victoria, Peter was taken off his dementia medication and his condition improved markedly. He went to VCAT after successfully passing his neuropsychological assessment and revoked the previous order, and was allowed to appoint his own trusted attorneys.

Women Experiencing Family Violence

The mental impact of family violence manifests most frequently as depression, anxiety, post-traumatic stress and suicidal ideation.⁷⁵ Women who experience family violence are twice as likely to be depressed, anxious or abuse alcohol.⁷⁶ Additionally, high levels of violence are linked to bipolar disorder, psychosis, schizophrenia and eating disorders.⁷⁷

Delayed access to justice, sometimes due to lack of integration with other services, can cause long-lasting trauma and mental health impacts. This can be particularly acute for women and their children experiencing family violence.⁷⁸

Family violence, with its mental health and legal implications, requires a holistic, person-centred response.

Women's Legal Service Victoria

Link Virtual Outreach Program

Women's Legal Service Victoria (WLSV) works with and for women experiencing particular disadvantage to address legal issues arising from relationship breakdown or violence. Their Link Virtual Outreach Program links specialist legal advice and representation to women experiencing family violence across Victoria. Using Skype and other internet-based tools, the project coordinates a virtual legal practice, allowing WLSV lawyers to meet with clients from multiple locations around the state during any one day.

Link provides assistance to some of the most disadvantaged and isolated women in Victoria, partnering with regional social services agencies including health centres, family violence refuges and community legal centres.

The program also conducts training for family violence partner organisations, based on the Critical Legal Issues Map developed by WLSV, which helps to identify critical legal need and facilitate timely referrals for



legal advice. The Map provides family violence practitioners with the knowledge and tools to identify legal need and refer women for urgent help. The Map training provided to their family violence partners around Victoria ensures that women are referred for legal advice and representation before a legal issue escalates to a crisis.

People in Mental Health Units

Victoria's Auditor General's report into mental health access, showed there were 184,000 Victorians with severe mental health illness, but there are only 72,852 registered users of mental health services.⁷⁹ The lack of availability of services means that from 2009 to 2016, demand for acute admissions increased by 19 per cent.⁸⁰ The lack of services means that the severity and complexity of needs have increased⁸¹, with holistic support necessary to ensure the mental health needs are met, especially given the length of stay is decreasing and unplanned readmission increasing.⁸² Resolving issues causing stress and complexity in a person's life, such as family violence, housing, or unpaid fines during this brief contact with the health system, can assist sustainable recovery when they leave hospital.

WEstjustice Community Legal Centre and Werribee Mercy Hospital Mental Health Unit

Werribee Mercy Hospital's health justice partnership with WEstjustice assists clients residing in the Werribee inpatient psychiatric unit primarily with family violence, fines and debts. These financial stressors are recognised as significant contributors to stress and reduced wellbeing.⁸³ Since its establishment in mid-2016, the service has assisted over 230 clients to have their fines cancelled and debts waived.

Clients have told us that this has impacted positively on their mental health and their capacity to recover from inpatient care without the stress of financial pressures, such as debt collectors and the Sheriff pursuing them. The partnership has also been beneficial for the Mercy Hospital and their patients. The Mercy Hospital defined the project as a highlight:

'Werribee Mercy Hospital's partnership with WEstjustice is benefitting some of the most vulnerable people in our community...[the service] offers patients attending antenatal clinics and mental health services the opportunity to seek confidential advice in relation to matters of family violence, fines and personal debt... the service is supporting Werribee Mercy Hospital patients and the state government's priority to respond to family violence.'⁸⁴

Recommendation

30. Support and expand existing integrated services and establish new services to remove barriers to access and address multiple needs for people experiencing mental health and related issues.



3.2 Prevention and Early Support

To be effective, intervention has to occur in the critical point of the cycle – before the life or legal problem spirals out of control and begins to cause or exacerbate mental health problems.

The Victorian Access to Justice Review found:

Integrated service delivery models offer a preventive approach to reduce and resolve complex social, legal, and health problems. These problems are often interrelated, and if not dealt with at an early stage, can contribute to people being the recipients of a range of public services over the course of their lifetime. Crisis points for many people can involve a legal issue, for example, about debt, housing, family relationship breakdown, family violence, substance abuse, or the death of a family member.⁸⁵

Community legal centres have worked with their communities to identify points of critical need for mental health and wellbeing, and are delivering targeted services to these communities to prevent problems escalating and to try to avoid lifelong mental illnesses developing.

The following models highlight how intervening early with legal, health and related supports can prevent and reduce mental health issues.

Post-natal Depression and Early Childhood Support

Family violence against a woman often first occurs during pregnancy or at the birth of her child.⁸⁶ A new mum who experiences family violence is four times more likely to also experience post-natal depression than a mother who has not experienced family violence.⁸⁷

Witnessing or experiencing family violence as a child also increases the likelihood of requiring mental health care as an adult. Data shows that 40 per cent of men, and somewhere between 50-90 per cent of women accessing mental health services have experienced family violence, with most experiencing or witnessing it when they were children.⁸⁸ Children exposed to family violence in their first year are more likely to have emotional/behavioural difficulties at the age of four.⁸⁹

Stopping the cycle before it begins, by intervening during pregnancy or the early days of motherhood makes sense. This is why a number of community legal centres provide legal support and referrals within maternity hospitals and maternal child health centres.

MABELS – Early intervention family violence legal assistance

MABELS is the health justice partnership Eastern Community Legal Centre runs with Boorndawan Willam Aboriginal Healing Service and local councils.

Access to this support significantly increases legal assistance received. One local council had family violence referrals increase by more than 18 times the pre-program rate.⁹⁰

Seeing a community lawyer allows the new mother to understand the nature of family violence and the options and supports available for her and her children. The community lawyer can put in place a safety



action plan that is tailored to the woman's needs: this may be an intervention order and safe accommodation, or it may be ensuring financial security and joint bank accounts are not emptied by the perpetrator.

Seventy two per cent of women said they would not have seen a lawyer if it was not for the program.⁹¹

The maternal health nurses report that the program has even reduced their own occupational mental stress and anxiety, allowing them to assist new mothers in a better, holistic way:

*"I can see someone at the centre on Thursday who has made a disclosure [of family violence]. By the next Tuesday she will be meeting with the MABELS team, and by the following week she's being assisted at court with a family violence intervention order."*⁹²

Providing empowerment and advice early in the cycle of family violence can mean that women leave the violent situation earlier than they would have without advice. This prevents or reduces the likelihood of lasting mental health problems for mothers and their children.

Adolescent Mental Wellbeing

One in seven children aged between 4–17 years old have experienced a mental health disorder in the last year.⁹³ Data shows that the first onset of mental disorders occurs in early childhood or adolescence.⁹⁴ Timely interventions may reduce the severity of or even prevent the development of further mental health conditions.⁹⁵

School Lawyers

The school lawyer programs provide legal education, legal assistance and representation to students at school and their families. Working in this way enables young people to address their overlapping life and legal problems, like unpaid fines, family violence,⁹⁶ crime, homelessness, cyberbullying, online safety, and dealing with police.⁹⁷

Evaluations of the school lawyer programs show that getting legal assistance improves the health and wellbeing of the students, their family and teachers.⁹⁸

One student said:

It makes you feel safer if you know your rights. Before I was nervous and scared of the outcome. And I didn't know how to handle the situation and I was scared to go to court alone. Knowing that the School Lawyer was there to support me made me feel relieved.⁹⁹

Having access to a school lawyer that the student knows and trusts makes a world of difference. Kyle* had been couch-surfing since he was 16. After disengaging with school for some time, he went back at 18 years old and tried to finish but he had Myki fines and had been told he had a Centrelink debt of \$6,000 which was being automatically deducted from his payments, making it difficult for him to be able to properly support himself:

"The School Lawyer was a big support for me. I could talk to him about what had happened and my circumstances at the time, and he discussed with me my different options. Having these options



eased so much pressure for me. I felt like I could breathe. Coming as far as I have come, it feels like an achievement. I completed Year 12, and got a job. I am now living in a stable home, and I am going to go to university and want to pursue a career".¹⁰⁰

From the schools' perspective, helping parents and students navigate the legal system can lead to a more stable home. This will mean better attendance and retention rates, and better life and wellbeing outcomes for the student:

"If you've got a young person who has significant issues at home or is unsure about their future, it's pretty destabilising. If you're a young person who is traumatised or doesn't know whether they're going to be in the same house this time next week, that has huge impacts on learning." – School Principal¹⁰¹

"In the last two to three years, we've had lots of Horn of Africa families move in. They're becoming more engaged in our school and I think with any new group coming into the school, it's very difficult to adjust to how our community operates and often the law is a very significant part of that. The law is all around us. So people do need some guide to work towards those areas." – School social worker¹⁰²

School is a place where nearly all young people go.¹⁰³ Integrating mental health, social, legal and other supports in the school is an effective intervention at the most critical moment of development in a child's life that may prevent, or reduce the severity of a mental health condition.

Preventing Homelessness

Almost half of Victorians experiencing homelessness are women and one-sixth are children under 12.¹⁰⁴ Family violence is the most common cause of homelessness in Victoria, with 34 per cent of people citing family violence as the main reason they need help from a specialist homeless service.¹⁰⁵ There are currently over 82,000 people on the waiting list for social housing in Victoria¹⁰⁶ and less than 1 per cent of private rental properties in and around metropolitan Melbourne are affordable for single parents on low incomes.¹⁰⁷

Timely assistance to keep women and children in their homes and prevent evictions, can do a great deal to prevent significant mental harm for both the woman and her children.

Women's Homelessness Prevention Project

Justice Connect's Homeless Law runs the Women's Homelessness Prevention Project, where their community lawyers work in partnership with social workers to prevent women and their children being evicted into homelessness. In two years, the program assisted 102 women and 157 children to access and maintain housing.

The program focuses on assisting women who are in housing and at risk of becoming homeless: so they can prevent the negative impact of homelessness.

While 84 per cent of the women Homeless Law helped already had a mental health illness, becoming homeless can have wide-ranging effects on children's long-term physical and mental health,¹⁰⁸ and is likely to exacerbate the mental health conditions of the mother.



The program directly prevented 62 women and their children being evicted into homelessness, and allowed 21 women and their children to resolve debt and other barriers preventing their access of housing. By preventing the evictions of 62 women, the modest program saved \$1.8 million in health, justice and welfare costs to the state, and more importantly led to better health and wellbeing outcomes for the women and their families.¹⁰⁹

Nicola's Story

Single mother of five and victim of family violence facing eviction after paying childcare debt instead of rent

Nicola is a 38 year old woman with five children in her care. She lives in a private rental property and her only source of income is Centrelink payments. Nicola and her children have all been exposed to family violence from Nicola's ex-partner.

Nicola suffers from depression and anxiety and does not sleep well. At one point, Nicola was hospitalised for her mental health conditions and her youngest children had to stay overnight with a family day care worker. This resulted in a large childcare bill that Nicola paid instead of her rent.

Nicola's landlord then issued her with a notice to vacate her private rental property and obtained a possession order from VCAT. Nicola didn't attend the VCAT hearing as she hadn't been regularly checking her mail due to the family violence and other stress.

When she contacted the Women's Homelessness Prevention Project, there was a warrant and the locks were going to be changed in the coming days.

She was booked into the clinic urgently. At the initial appointment, Nicola saw lawyers and the social worker. The lawyers made an urgent application for a re-hearing because Nicola had reasonable grounds on which she did not attend the first hearing. This put a hold on the eviction.

The lawyers then negotiated a payment plan with the landlord for Nicola to repay the arrears.

The social worker helped Nicola access support for other expenses, including beds and food for her children, so more money could be contributed to the rent. She also linked Nicola with support to help recover from long-term family violence.

At the VCAT hearing, Nicola's lawyer successfully argued for a payment plan to be put in place, which enabled Nicola to repay the arrears at an affordable fortnightly rate. The lawyers and social worker worked together to avoid Nicola and her children being evicted into homelessness. This gave her the time she needed to look for a more suitable rental property, as well as to establish crucial links with supports that are helping her to recover and her children to find their feet again.

3.3 Supporting the Mental Health Workforce

Mental health services are stretched. The workforce is overburdened. Often people experiencing mental health conditions or episodes need intensive, at times constant support. When mental health conditions are treated in isolation, pressure on overburden services are stretched even further.



Taking pressure off the healthcare system by providing holistic support has been proven to work. Integrated services benefit both people in need of help and service providers. As the Productivity Commission found:

“A better understanding of people’s problems reduces the number of referrals to inappropriate services and allows for those resources to be better utilised. Further, holistic services can streamline some functions. This is achieved by: ‘... [eliminating] the duplication of tasks such as intakes, eligibility, assessment, diagnosis and personal and social history taking.’”¹¹⁰

By having established relationships and partnerships in place, mental health workers and social workers know who to go to when their patient discloses a legal problem. This saves health professionals time and reduces stress levels in their workplace, ensuring better care for the patient.

A maternal and childcare nurse working at one of our integrated health and legal services said, “Before MABELS [the integrated family violence service], with a family violence disclosure, we would think ‘Oh my God, what am I going to do now?’ Now it’s like, ‘Sure, we can help you [because we have a lawyer in-house].’ MABELS is just such a relief!”¹¹¹

Community legal services offer professional development training to their community partners to assist them to identify whether their patient has a legal problem. Knowing there are solutions for their patient’s complicated life problems can reduce healthcare professionals’ stress and anxiety, and help them focus on supporting their patient’s recovery.

Additionally, community lawyers can assist in freeing up hospital beds; people who are otherwise well often cannot be discharged because they do not have a safe and suitable home to go to.¹¹² Community lawyers can help provide assistance in family violence cases to make arrangements for the victim-survivor to safely return home, or for people who are homeless, they can assist with barriers to social housing, such as outstanding bond loan debts.

Relationships in integrated services, particularly between large hospitals and relatively small community legal centres take time to develop, raise awareness and build knowledge and trust. As Consumer Action Law Centre identifies: ‘Successful relationship building requires time, a good experience, and trust. One-off contacts are rarely enough to build long-term successful relationships. Long-term partnerships require long-term funding and integration’.¹¹³

Furthermore, as the Victorian Access to Justice Review found, short-term funding arrangements are ‘ineffective because they require organisations to use resources to seek further funding, and undermine an organisation’s ability to undertake long-term planning and retain staff’.¹¹⁴

The Victorian Access to Justice Review recommended that public funding should be provided in four-year minimum blocks.¹¹⁵ This enables planning for service provision and is particularly relevant for integrated services, where time is set aside to build and develop the workforces and the partnership.

Secure funding is critical to maintaining a stable workforce. Supporting holistic models takes pressure off professionals by allowing them to support each other to do their jobs.

Bolton Clarke Homeless Persons Project and Mental Health Legal Centre

Bolton Clarke Homeless Persons Project nurses work closely with lawyers from the Mental Health Legal Centre, a community legal centre, specialising in working with people experiencing mental health problems.



Over the last year alone, the Mental Health Legal Centre lawyers have assisted 119 clients with 176 legal matters as part of the Bolton Clark Homeless Persons Project.

Clients report exceptionally high levels of service satisfaction (scoring service 4.7 out of 5):

- ▼ 73 per cent of clients consider that the legal service has had a positive impact on their health
- ▼ 86 per cent said it had a positive impact on their well-being

The nurses themselves rate the importance of the health justice partnership with a score of 4.8 out of 5. Over 80 per cent of the nursing team have referred clients to the specialist community lawyers. The nurses report that resolving legal matters has had a tangibly positive impact on their clients' health and wellbeing, as well as improved their capacity to focus on their health needs.

Funding for this program will finish at the end of 2019. Without securing further funding, this health justice partnership will no longer be able to provide assistance to those people experiencing homelessness and mental illness.

Sid's Story

Empowerment and self-determination

A Bolton Clark Homeless Person Project nurse referred Sid to the Mental Health Legal Centre. Sid was 54 years old with a mental health condition and had been on an Administration Order for more than 25 years.

The Mental Health Legal Centre lawyer took detailed instructions from Sid about his living arrangements and how he managed his money. Sid told his specialist community lawyer he was originally placed on an Administration Order because he refused to live in a boarding house. Sid had accommodation at the time of the hearing but liked to move around and found it frustrating that State Trustees would not listen to him and continue to pay rent for properties he no longer lived in.

With the help of his specialist community lawyer, Sid was able to prove that he managed his mental health condition and the little money he had well. The Tribunal agreed to revoke Sid's Administrative Order. This meant Sid had control of his own finances and decisions for the first time in more than a quarter of a century.

Inner Melbourne Community Legal and Royal Melbourne Hospital

Inner Melbourne Community Legal, a community legal centre, runs a health justice partnership with Royal Melbourne Hospital. This means they provide free, accessible legal assistance at clinics in the two hospital campuses in Parkville. Three quarters of the people Inner Melbourne Community Legal assists in the hospital have a disability, including mental health conditions. Nearly half of them are homeless or at risk of homelessness and a third have experienced family violence.¹¹⁶

Evaluations of this partnership have found that:

- ▼ 60 per cent of people felt their legal issue had an impact on their health and wellbeing.



- ▼ After the legal consultation with a specialist community lawyer, 76 per cent of people surveyed felt they were able to cope better with their legal issues, compared to 44 per cent before their legal consultation.¹¹⁷

The specialist community lawyers have become a critical part of the patient's care team. Specialist community lawyers also train health professionals to increase their understanding and identification of legal problems, and to promote referrals. Additional secondary consultations by telephone allow health professionals to call the lawyer directly for advice or to clarify a tricky legal question.

*"A lot of my patients are limited in being able to move and so the legal service has been really flexible in meeting with people on the ward. I think with my type of clients... they can be homeless or have mental health issues or a disability that makes it challenging for them to follow through with an appointment if they ever booked one [in the first place]."*¹¹⁸

"[co-located, integrated services are] very useful, particularly for our women, they're really difficult to engage and they often don't follow up with appointments if they're offsite so having a bit of a 'one-stop shop' at our clinic is really helpful."

– Social Worker, Royal Women's Hospital¹¹⁹

Despite the demonstrated success of this partnership for patients, their families, and their communities, this critical holistic service has never been able to secure funding for longer than 12 months at a time.

If long-term funding is not secured, this program will stop helping people and their communities in October 2019.

Recommendation

31. Provide ongoing funding for existing integrated services and a minimum of four-year funding blocks for new integrated services, in recognition that partnership and workforce development take time to establish and develop relationships of trust and shared learning.

3.4 Whole of Government Commitment

The effectiveness of integrated services as part of a holistic response to address people with complex needs has been demonstrated time and again.

The Victorian Access to Justice Review, in recognising the effectiveness of integrated services, recommended the Victorian Government provide sustainable funding to integrated services to support more integrated and holistic service delivery:

Recommendation 3.4 – Supporting integrated service delivery:

The Victorian and Commonwealth governments should seek to identify ongoing funding for integrated services where there are demonstrated legal needs for tailored or targeted services to reach particular client groups. Such services require cross-portfolio co-ordination between justice and human services areas. Certainty of funding would help legal service providers build long-term collaborative relationships with non-legal service providers, and provide more effective services to vulnerable and disadvantaged members of the community.



The Victorian and Commonwealth governments should seek to identify ongoing funding to proven programs that employ secondary consultation by non-legal workers, in order to improve the capacity of non-legal workers to identify legal problems, strengthen referral pathways, and expand the reach of legal assistance to people who would not otherwise access it.¹²⁰

The Victorian Government responded to the Access to Justice Review in 2017 and agreed to implement Recommendation 3.4 in full.¹²¹ The implementation of this recommendation has been delayed. There continues to be a lack of ongoing long-term funding to enable community partnerships to develop 'long-term collaborative relationships' that the recommendation calls for.

Holistic service delivery requires commitment by all levels of government: Commonwealth, state and local. A person's life does not fit neatly into the silos expected by government departments or agencies. When a person experiencing a mental health condition is the centre of our approach, it is clear that government processes are the ones that need to adapt and be more responsive to them and not the other way around.

The Productivity Commission found that:

Pursuing a holistic approach to solving legal problems is challenging. Establishing and building relationships between agencies that provide legal, health and social services requires planning, cooperation, resources and time. For holistic services to be effective, changes to how funding is allocated and the way that organisations operate may also be required.¹²²

Our community health partners and community legal centres find that one of the biggest barriers to establishing and maintaining successful integrated services is how funding is coordinated across departments. The breadth of partnerships that our community legal centres enter into can be funded from a variety of different government departments: the Department of Health and Human Services, Department of Justice and Community and Safety, and Department of Education, to name a few.

Sometimes partnership funding is provided for the legal assistance component but not for the health and social workers in the partnership, and sometimes it is the other way around. For an integrated partnership to work and effectively benefit people and their communities, all of the partners need to be properly funded to do the work.

To ensure that there is a genuine whole of government approach to integrated mental health service delivery, we need a whole of government budgeting process. A commitment for coordination at the policy level can be positive and create valuable innovations. However, this coordination falls down when budget processes require that the policy solutions are siloed through separate government departments, with each department having their own competing priorities and outcome frameworks.

The current department-based funding arrangement creates unnecessary and unhelpful competition between the different government departments, which leads to partnerships that do not fit neatly into a single government department being unfunded, or funded short-term.

Consideration should be given to reform how service delivery and coordination can be better integrated in formal budgeting processes to create a person-centred approach to mental health care.

Additionally, a shared commitment to integrated services requires a commitment, not just to the funding model, but to the reporting mechanism and accountability requirements that allow these services to deliver the care people need. Reporting to multiple funders often means that individual services have competing outcomes measurements, which itself can 'conflict with the holistic approach'.¹²³

For people with complex mental health conditions and complicated social needs, including being homeless, surviving family violence, or living in poverty: quantitative outcome measurements, such as the number of



clients through the door, or the number of case files opened, do not properly reflect the benefit or the impact of the support they have received. So that we can learn from what works well and what we can do better, we need more nuanced measures of success that consider mental and physical wellbeing outcomes and not just outputs.

Addressing the way our governments operate to better reflect everyone's needs is necessary for lasting change.

Recommendations

32. Implement the Access to Justice Recommendation 3.4 to support integrated services, to meet service delivery gaps experienced by people with complex mental health needs in our community.
33. Develop a whole-of-government budget process that is responsive to holistic needs of communities and individuals in need of support.
34. Work with services and communities to develop nuanced outcomes measurement of successful program delivery for people who experience multiple and complex vulnerabilities and commit to consistency across departments and funding providers.

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¹⁶ LAW Survey found half (54 per cent) of people who experienced legal problem it had a 'severe' or 'moderate' impact on their daily life: 19 per cent reported stress related illness, 18% physical ill health. Law and Justice Foundation of NSW 'Legal Australia-Wide Survey of Legal Need in Victoria' (2012), xvi.



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FEDERATION
OF COMMUNITY LEGAL CENTRES VIC

END CRIMINALISATION

APPLY A HEALTH RESPONSE FOR PEOPLE EXPERIENCING MENTAL HEALTH ISSUES

Royal Commission into Victoria's Mental Health System

ABOUT THE FEDERATION

The Federation is the peak body for Victoria's Community Legal Centres (CLCs). Our members are at the forefront of helping those facing economic, cultural or social disadvantage and whose life circumstances are severely affected by their legal problem.

For over 40 years CLCs have been the heart of a powerful movement for social change, reshaping how people access justice, creating stronger more equitable laws, and more accountable government and democracy.

We pursue our vision of a fair, inclusive, thriving community through challenging injustice, defending rights and building the power of our members and communities.

WE WANT A COMMUNITY THAT IS FAIR, INCLUSIVE AND THRIVING: WHERE EVERY PERSON BELONGS AND CAN LEARN, GROW, HEAL, PARTICIPATE AND BE HEARD.

The Federation:

- ▼ Enables a strong collective voice for justice and equality;
- ▼ Mobilises and leads CLCs in strategic, well-coordinated advocacy and campaigns;
- ▼ Works with members to continuously improve the impact of community legal services;
- ▼ Drives creativity and excellence in the delivery of legal services to communities;
- ▼ Helps make justice more accessible.

Read our strategic plan online:

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THE FEDERATION ACKNOWLEDGES THE TRADITIONAL ABORIGINAL OWNERS OF COUNTRY AND WE PAY OUR RESPECTS TO ELDERS PAST, PRESENT AND EMERGING. WE RECOGNISE THEIR CONTINUING CONNECTION TO LAND, WATER AND COMMUNITY. SOVEREIGNTY WAS NEVER CEDED.

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1. CRIMINALISATION OF MENTAL HEALTH ISSUES

How much a person is at risk for being criminalised for their mental illness depends on how their illness manifests and the level of support they have around them.

For some people, their experience of mental illness makes keeping their home difficult. They may be evicted for anti-social behaviour or be existing on Disability Support Pension and struggling to pay rent: they end up homeless and living their lives in public and at greater risk of arrest.¹

For others, their mental health issues are linked to alcohol and other drug dependency and high rates of addiction, increasing interaction with the law.² For others still, their experience of mental illness is linked to discrimination and racism, and they may find police interacting with them at higher rates.³

For many of the people community legal centres work with, they experience a mix of the above and often some other overlapping complexity, including experiences of family violence, out of home care, and other experiences of trauma and discrimination.

All of these factors combine and make people with mental illness at risk of criminalisation as a direct consequence of their health condition.

Victoria's prison population has increased by 80 per cent in the last 10 years.⁴ In 2018 alone, the population increased by 7 per cent: from 145 people in prison for every 100,000 of the adult population to 152 people in prison.⁵

'People with a mental illness are disproportionately represented in the justice system, as offenders, victims and people in need of assistance.'⁶ People with mental illness make up 60 per cent of Victoria's prison population.⁷ The reason is two-fold; prisons are difficult places for many to maintain good mental health, and people who experience mental illness are at increased risk of being criminalised.⁸

The Victorian Ombudsman found that people in prison are 'two or three times more likely than those in the community to have a mental illness, and ten to 15 times more likely to have a psychotic disorder'.⁹ Women reported higher rates than men, with 65 per cent compared to 36 per cent having a history of a mental health condition.¹⁰ One quarter of prison entrants reported that they were currently taking medication for a mental health condition.¹¹

Aboriginal people in Victoria are significantly more likely to be impacted by poor mental health and more likely to be criminalised for it.

Victoria is seeing a disproportionate growth in the imprisonment rate of Aboriginal Victoria. Five years ago, 1,330 Aboriginal Victorians for every 100,000 were in our prison system. Now 2,012 are. This is 13 times the rate of other Victorians (152 people for every 100,000).¹²

Inequality, discrimination and penalising rather than supporting people with poor mental health has played a role. Nearly half (44 per cent) of the Aboriginal people in prison have not been sentenced, compared to 35 per cent of general prison population. Most who are sentenced are being jailed for less serious crimes¹³ and



serve shorter sentences: 35 per cent who serve sentences serve less than a year (compared to 25 per cent of non-Aboriginal people).¹⁴

This discrimination in the criminal legal system reflects the injustice in healthcare. Aboriginal Victorians experience far higher rates of mental illness than the rest of the population: they are three times as likely as non-Aboriginal people to experience high or very high psychological distress; 35 per cent of First Nations people have been diagnosed with depression and anxiety (compared to 20 per cent of non-Aboriginal people). Intergenerational trauma is a contributing factor, almost half of the Aboriginal people in Victoria having a relative who was forcibly removed. Today Aboriginal children are 12 times more likely to be in child protection and for 60 per cent of Aboriginal children who are removed from their parents, mental health is the driving factor.¹⁵

The Royal Commission should pay particular attention to the needs of Aboriginal people, with self-determination and community-led response being critical to stem the tide of discriminatory policies and intergenerational harm that has been caused to Aboriginal people in Victoria. The Federation of Community Legal Centres endorses the submissions of the Victorian Aboriginal Legal Service and Djirra and the principles of self-determination for their communities.

Services for all people who experience mental illnesses are chronically underfunded. In fact, many people are only diagnosed once they come into contact with the criminal system. One Australian study found that a third of those with a psychiatric illness had been arrested during a 10-year period and the first arrest often occurred before the first contact with mental health services.¹⁶

The Victorian 10-Year Mental Health Plan notes the importance of 'addressing the needs of people with mental health problems who become involved with the justice system at all points of contact: at arrest or apprehension, in police custody, at court, during community-based corrections orders, in prison, and at all transition points'.¹⁷ The main priority however should be how we avoid people with experiences of mental health interacting with the criminal system in the first place.

Terms of Reference

The Federation's Criminalisation of Mental Illness submission addresses terms of reference 4 (particularly 4.4) and 5. As well as formal submission questions 4, 5, 8, and 9.



Recommendations

This is paper three of three. The recommendations in this paper follow on from the previous papers.

35. Repeal the following drunk and disorderly offences in *Summary Offences Act 1966* (Vic):
 - Section 13: Person found drunk in a public space
 - Section 14: Persons found drunk and disorderly
 - Section 16: Drunkards behaving in riotous or disorderly manner
 - Section 17A: Disorderly conduct
36. Repeal the following offences in the *Summary Offences Act 1966* (Vic) that disproportionately target persons with poor mental health and/or who are experiencing homelessness including:
 - Section 49A: Begging or gathering alms
 - Section 5: Obstruction of foot paths
 - Section 6: Directions to move on
 - Section 17: Use of obscene language in a public space
37. Establish mental health experts as first responders in a mental health crisis and to undertake welfare checks.
38. Require police to link people to mental health and social supports.
39. Repeal legislation imposing mandatory or presumptive terms of imprisonment upon conviction of an offender, particularly as it relates to police and emergency service response to mental health incidents.
40. Fund and implement in full the recommendations of the Parliamentary Inquiry into External Oversight of Police misconduct, including creating a new Police Corruption and Misconduct Division of the Independent Broad-based Anti-Corruption Commission (IBAC) to investigate complaints of police misconduct.
41. Require police attending family violence incidents to follow the existing Risk Assessment and Management Report (L17) prompts in relation to mental health when assessing safety and risk of harm, and facilitate mental health, rather than criminal, responses to people experiencing family violence.
42. Provide greater funding to community mental health services to work with people experiencing mental health issues and provide wrap around support.
43. Support and expand existing integrated health and legal services that meet complex and interdependent needs, including alcohol and other drug dependency for those experiencing mental illness.



44. Implement the Victorian Ombudsman recommendation to expand current therapeutic court based interventions to make them available to all people who would benefit from them and ensure they are accessible across Victoria. Ensure the increase in therapeutic court capacity is coupled with a commensurate increase in capacity and availability of support services connected with the programs.
45. Support integrated services linked to local Magistrates' Courts to provide therapeutic support for people involved in the justice system, particularly in rural and regional areas; and ensure that culturally appropriate services are provided for Aboriginal people through funding Aboriginal Community Controlled Organisations.
46. Broaden the availability of diversion, including by removing police only initiations and prosecutorial veto powers in the Children's and Magistrates' Courts, to ensure decisions to grant diversion are fair, consistent and accountable.
47. Increase access to, and the quality of, diversion programs that are culturally appropriate and available to people in rural and regional areas.
48. Implement a graduated spent convictions scheme in Victoria that is fair and proportionate to the level of offending, and the age of the person.
49. Implement inter-agency protocols for children living in residential care units, so they are not charged for criminal offences for conduct that would not be criminalised in the family home.
50. Increase mental health support for children in out-of-home care: prioritising their wellbeing and addressing the gaps in social health and wellbeing for at risk groups.
51. Ensure that young people with a child protection background are not disproportionately impacted because of lack of a home to be bailed to.
52. Provide long term and secure funding for Aboriginal Community Controlled Organisations to develop tailored, flexible plans specific to the needs of each Aboriginal family with a child in out-of-home care. This includes individual mental health plans that incorporate cultural support and trauma informed care for both the child and the parents, especially Aboriginal mothers
53. Raise the age of criminal responsibility to at least 14 years.
54. Invest in culturally safe legal support and representation for young people and their families to ensure access at the earliest opportunity.
55. Increase community legal education and outreach to culturally and linguistically diverse communities to prevent unnecessary interaction with the justice system.
56. Commit long-term funding to ensure that the Victorian Police Koori Youth Cautioning program is implemented in all areas across Victoria.
57. Invest in culturally safe diversion programs run by Aboriginal Community Controlled Organisations, to ensure that Aboriginal young people can access diversion.
58. The Royal Commission to review and make recommendations on Victoria's current presumptive bail laws and their impact on people experiencing mental health issues.



59. Increase funding for the Court Integrated Services Program (CISP) and other bail support programs and expand availability across Victoria.
60. Increase availability of residential bail programs, including working with Aboriginal Community Controlled Organisations to develop culturally safe residential bail programs.
61. Increase availability of culturally appropriate bail programs, such as Koori Court Integrated Service Program workers, particularly in regional areas.
62. Ensure Aboriginal and Torres Strait Islander people have access to culturally appropriate legal assistance through the Victorian Aboriginal Legal Service and Djirra.
63. Develop guidelines and culturally sensitive training on the application of Section 3A of the *Bail Act 1977* (Vic), as recommended by the Australian Law Reform Commission.
64. Introduce a presumption against custodial sentences of less than three months.
65. Review the impact of short sentences and consider the creation of a presumption against sentences under six to 12 months.
66. Ensure access to appropriate mental health support and treatment in prison. Any increase in the number of people in prison should see a commensurate increase in access to services.
67. Provide adequate and ongoing funding for programs provided in prison that work, such as those delivered by Djirra and the Mental Health Legal Centre.
68. Provide adequate funding to connect people exiting prison to community-based mental health and holistic transitional support services.



2. ABOLISH UNFAIR LAWS

People experiencing mental illness and homelessness are 40 times more likely to be arrested, and 20 times more likely to end up in prison than those in stable accommodation.¹⁸ One in three people who enter prison were homeless or in insecure accommodation before entering prison.¹⁹

Being homeless means living your life in public. You are more likely to interact with the police and more likely to be arrested for public space offences, like begging or failing to move on. For example, a person who is drunk in public will get told to go home to 'sleep it off'; when you are homeless you are more likely to get arrested.

To reduce the number of people in prison who are homeless and who have experience of mental illness requires a focus on healthcare and housing, and to revisit our criminal law system that locks up so many people with mental illnesses. A recovery oriented mental health system should also be a core tenet of the Victorian justice system.

2.1 Public Drunkenness

A person who is homeless and has experience of a mental health condition, lives their private life in public. People without a home who are drunk in public cannot be sent home to 'sober up' and 'sleep it off', instead they can be arrested for being drunk in public. We see that people experiencing mental illness or crisis may also present as drunk; the first responder may misunderstand the situation and arrest the person for being drunk rather than getting them the medical care they need.

The criminalisation of public drunkenness instead of providing a public health response, particularly for Aboriginal and Torres Strait Islander Victorians who are more likely to be targeted by police,²⁰ has led to tragic deaths in custody that could have been prevented.

The Royal Commission into Aboriginal Deaths in Custody that reported in 1991 recommended a public health response to public drunkenness.²¹ Since then, two inquiries by the Victorian Parliament's Drugs and Crime Prevention Committee in 2001 and 2006 have made similar recommendations.²² The ongoing impact of not decriminalising public drunkenness continues to be felt: with Yorta Yorta woman Tanya Day's tragic death on 5 December 2017 after being arrested for public drunkenness while asleep on a train.²³ Victorian Aboriginal Legal Service and Djirra, make recommendations to this Royal Commission in relation to public order offences that are urgently heeded given the direct and discriminatory impact these laws have of Aboriginal people.

2.2 Other Public Order Offences

People who are experiencing mental health issues and homelessness are at higher risk of coming into contact with the criminal legal system. They require a public health approach and targeted support. The punitive and criminal response to mental health issues, especially where they intersect with homelessness, do not address the underlying causes of offending and serve to further entrench people within the criminal legal system and exacerbate poverty.²⁴



Justice Connect interviewed 30 people who had been charged with the offence of begging, finding that 87 per cent had a mental health issue, 37 per cent had experienced childhood trauma, and 33 per cent had experienced family violence.²⁵

Jade's Story

Woman experiencing homelessness charged with public order offence

Jade, who would crouch behind a 'homeless due to domestic violence' sign did not have a criminal record until being charged with begging.²⁶ She was sleeping rough after significant violence committed by her ex-partner. Having a criminal record will make it that much harder for Jade to get back on her feet, to find a home and a job.

Reviewing begging cases over a three year period in the Magistrates' Court, half were dismissed or discharged, and 30 per cent resulted in a fine.²⁷ However, people who experienced homelessness are difficult to communicate with and might have trouble making appointments with legal services, so are at particular risk of not attending court. Justice Connect's research found over half of the people charged with begging were then issued with a warrant for arrest for failing to appear at the Magistrates' Court.²⁸ The law is ineffective, takes up police and Magistrates' Court resources, and does not address the underlying health and welfare issues that lead to a person needing to beg on our streets.

Other offences such as move on directions, obstruction of foot paths and obscene language are similarly ineffective and have a particularly devastating impact on people who experience a mental illness and are homeless. Instead of criminalising people, we should be supporting organisations to assist people in need.

Recommendations

35. Repeal the following drunk and disorderly offences in the *Summary Offences Act 1966* (Vic):

- Section 13: Person found drunk in a public space
- Section 14: Persons found drunk and disorderly
- Section 16: Drunkards behaving in riotous or disorderly manner
- Section 17A: Disorderly conduct

36. Repeal the following offences in the *Summary Offences Act 1966* (Vic) that disproportionately target persons with poor mental health and/or who are experiencing homelessness, including:

- Section 49A: Begging or gathering alms
- Section 5: Obstruction of foot paths
- Section 6: Directions to move on
- Section 17: Use of obscene language in a public space



3. A HEALTH RESPONSE

3.1 Our First Response for People in Crisis

Police are frequently called as the first responders when a person experiences a mental health crisis. They arrive when a person is at their most vulnerable and in need of urgent assistance and care. A report found that 50 per cent of police surveyed will interact with a person who appears to have a mental illness one to two times a week, with more than a third of police reporting between three and 10 encounters.²⁹

Police work as best they can with the tools they have. However, given the often unpredictable nature of mental health crisis, a situation that requires healthcare can quickly turn to a criminal law response: for example, if a person ignores police commands or becomes abusive in a psychotic state, the person could be quickly charged with resisting arrest and assault of a police officer. The risks are heightened for people whose experience of trauma may mean that their condition may worsen when approached by figures of authority or police.

We should not be relying on our police to provide mental health care and support; mental health experts should be the first responders to mental health crises, call outs and welfare checks. A better alternative should be resourced to assist people in critical need receive the healthcare and social services they need.

Police should only be involved where there is a clear risk of serious harm to others. Where police are involved, they should link people to support services and divert them away from the legal system.

Recommendations

37. Establish mental health experts as first responders in a mental health crisis and to undertake welfare checks.
38. Require police to link people to mental health and social supports.

3.2 Ensuring Carers and Professionals Can Call for Help

Late last year, sentencing changes were introduced that made the offence of causing injury to police and emergency service workers the highest category of offence - putting the offence into the same classification as rape and murder (a category one offence).³⁰ The sentencing change mandates a minimum custodial sentence of six months for anyone who causes injury (which can include a scratch or bruise, intentionally or unintentionally made)³¹ to police, prison officers or emergency health workers.³² Our concern is these laws make it difficult for families and social workers to call for help.³³

For people who experience a mental health incident, the creation of causing injury to being a high level offence has serious implications for their ability to seek help. In recognition of the need for an exception for people who experience mental illness, an impaired mental function exception was included in the legislation, however it is narrowly defined and will be difficult to prove in most instances.³⁴ Additionally, now that the offence is category one, bail is likely to be denied to anyone charged under the offence. This means that a



person who is in need of help could be put in custody on remand rather than receive the health support they need when they most critically need it.

Recommendation

39. Repeal legislation imposing mandatory or presumptive terms of imprisonment upon conviction of an offender, particularly as it relates to police and emergency service responses to mental health incidents.

3.3 Police Accountability

Our police provide vital frontline services and should be respected and accountable. We should be striving for Victorian police procedures and accountability to be amongst the best in the world, particularly when it comes to interaction with people who experience mental illness and other vulnerabilities.

The recent Parliamentary Inquiry into police misconduct found that people with disability or mental illness are more vulnerable to police misconduct and have 'distinctive challenges to making complaints about police misconduct'.³⁵ The Police and Accountability and Human Rights Clinic reported to the Inquiry that 48 per cent of its complainants reported having a disability, with 51 per cent having a mental illness.³⁶ How police complaints are handled is of particular concern to those with experience of mental illness and should be addressed to ensure appropriate responses for people in crisis.

John's Story

CCTV of welfare check³⁷

John is a disability pensioner, with mental illness, chronic back pain and in cancer remission.

John's psychologist had called 000 for a welfare check, as she was worried about his wellbeing. When the police arrived at John's door, John pleaded for them to leave him alone. He told police he was detoxing from painkillers prescribed for chronic back condition, had diarrhoea, was 'vomiting blood' and very weak.

CCTV footage showed that police persuaded John to open his door and pulled him from his property. Six police officers held him to the ground, beat him multiple times with an extended baton, sprayed him with pepper spray and verbally abused and taunted him. John is too scared to 'cause trouble' and make a complaint against the police.

The vast majority of police officers who interact with people experiencing mental illness and when doing welfare checks, do so professionally with appropriate care. However, cases like John's demonstrate the importance of police accountability given the considerable power they hold over people in the community and how harmful it is when this power is abused. For police and the criminal legal system to have integrity, there must be an independent system of complaints to investigate allegations of police misconduct.



3.4 Family Violence and Mental Health

The overlap between family violence and mental illness was explored during the Royal Commission into Family Violence. It found that 40 per cent of men, and between 50 and 90 per cent of women accessing mental health services have experienced family violence. For men it was predominately childhood sexual abuse; for women they experienced childhood sexual abuse and other forms of family violence.³⁸

The complexity is further exacerbated with police responses to the complex problem. Recent research has found that the primary aggressor of family violence is misidentified by police in as many as one in 10 incidents.³⁹ Misidentification is more likely when a woman has a mental illness.⁴⁰ Criminalisation of mental illness, particularly in victims of family violence, compound the vulnerability of women already under significant stress. It also profoundly undermines confidence in policing among survivors of family violence.

Recent primary research from the Women's Legal Service Victoria⁴¹ over a five-month period found that when a Family Violence Intervention Order was taken out against a woman, it was mistaken in 58 per cent of cases.⁴² That is, the police had misidentified the woman as the family violence perpetrator. Of these, 40 per cent disclosed they were already suffering from a psychological illness. This included depression, anxiety, bipolar disorder, and suicidal thoughts.⁴³ Her existing mental illness and distress can be dreadfully compounded when her partner has committed family violence and then succeeds in turning the protective and punitive resources of the state against her, instead of him, very commonly by weaponising her illness.

"Officer, she's psychotic/crazy" are among phrases that Women's Legal Service duty lawyers routinely note in police Family Violence Intervention Order application narratives, to the extent that they have become a red flag for misidentification. Wounds such as scratch marks and bites, which women commonly inflict when they are defending themselves from strangulation, are proffered by the actual aggressor to police as evidence of her 'psychosis'. His post-violence, effusive expressions of concern for her mental health are among perpetrator strategies to draw attending police into a collusive relationship with him, against her.

Academic research bears out the challenge that women with mental illness, or who appear other than as the 'ideal victim': who yell, are otherwise aggressive, or hostile to police when they arrive, and "are the ones who will continue to face arrest".⁴⁴ This occurs even at times when they most need police protection, and referrals to support services (usually including mental health, housing and family law advice).

Jane's Story

Woman wrongly identified as primary aggressor by police as a result of mental illness

Jane is a 35 year old communications professional and first generation migrant. Jane was admitted to the psychiatric mother-baby facility when her first child was born. She was suffering post-natal depression and in severe pain from a caesarean section when her partner Mark's abuse escalated, including threats to kill her parents.

Over the next five months, their arguments became more heated. On the night of the last incident, during an argument, Mark got out of bed to hit Jane hard twice across the head, while she was feeding the baby, saying *"the police won't see these marks because I hit you over the head"*. Jane fought back, using a blunt pen to stab Mark in the arm. Mark took her keys and phone, and called the police.

Jane recalls, *"I could hear him telling them that I had been drinking and that I was heavily medicated and psychotic"*.



"When the policeman asked me to recount my story, I was very emotional, but I tried my best to articulate that my partner had hit me first, without trying to sound like a child. The policeman said, "well, if he hit you first, why didn't you call police? I could hear you screaming when your partner was on the phone to us", making out that I was just another crazy screaming female. I replied that I couldn't call because my partner hid my phone. I later confirmed that my partner didn't tell police that he had hit me at all".

The police took Jane to the station, in the back of their police wagon, leaving the baby strapped into a stroller at home while Mark remained locked in the bathroom. Police actions compounded her existing post-natal anxiety: *"As they escorted me out of my home, I was screaming out to my partner "she needs to be fed, she needs a bottle, please give her a bottle". The police then made me put my baby in her pram, buckle her in and leave her there. I'd never left my child before – it was gut wrenching".*

Police photographed Jane and took and searched through her belongings.

"I was crying and repeating to myself that I was not a criminal; that my partner hit me first, but no one looked up at me or spoke to me. I was then escorted to a room that was graffitied, with a chair and a table bolted to the ground. The policeman then locked the heavy door behind me."

Later that night police escorted Jane home so she could collect her baby and her belongings. They had determined she was the primary aggressor, so she was excluded from the house.

"I went back to my parents' home with my baby and have continued to reside there ever since. My ex-partner and I have now separated, after police removed me from the house. What if I had nowhere to go? What would I have done? Some women have no family or friends, where would they have gone? And with a baby as well? I will never call police again if I need protection. They have destroyed my belief in the system, and quite frankly, I'm scared of them."

In some senses, Jane was fortunate, and able to tap into the significant support around her. At the third court hearing, following Women's Legal Service duty lawyers' advocacy, police agreed to withdraw their application against her.

Recommendations

40. Fund and implement in full the recommendations of the Parliamentary Inquiry into External Oversight of Police Corruption and Misconduct in Victoria, including creating a new Police Corruption and Misconduct Division of the Independent Broad-based Anti-Corruption Commission (IBAC) to investigate complaints of police misconduct.
41. Require police attending family violence incidents to follow the existing Risk Assessment and Management Report (L17) prompts in relation to mental health when assessing safety and risk of harm, and facilitate mental health, rather than criminal, responses to people experiencing family violence.



3.5 Support and Recovery for Alcohol and Other Drugs

Fewer than half those who experience a mental illness will access services in any year.⁴⁵ While many people recover without treatment for serious mental illness, many cannot access the right treatment for them at the time they need it, due to chronic underfunding. While national funding of mental health services between 2012 and 2016 grew on average 0.7 per cent, Victoria's funding decreased by 0.3 per cent: Victoria now spends \$197.30 per person - the lowest rate in Australia, with the national average expenditure being \$226.52.⁴⁶

Currently, the Department of Health and Human Services does not collect data on the unmet demand.⁴⁷ From community legal centres' perspective, we see people who are unable to access the services they need; self-medicating with alcohol and other drug dependency, which can increase their risk of interaction with the criminal system.

We know that drug and alcohol abuse or addiction is linked to mental illness.⁴⁸ Long-term addiction is linked to anxiety, depression, paranoia and other mental illness. Conversely, people with a mental illness such as anxiety, depression and personality disorders are the most vulnerable to addiction.⁴⁹

As Vic Health notes, 'Co-occurring substance use is common rather than exceptional among people with serious mental health problems and disorders'. This is for a range of reasons, including an inclination to self-medicate and to try to cope with the difficulties of living with serious mental illness.⁵⁰

Often people with dual diagnosis have experience of a range of challenging life events and circumstances, like a history of sexual or physical violence, institutionalisation, child removal, stigma, unemployment, criminal record discrimination and acquired brain injury. For people with such complex needs, they often end up in crisis, relying heavily on emergency and acute care. Mainstream early intervention services and delivery models are often difficult for them to engage with. This is amplified as some providers require a person to be clean of alcohol and other drugs before services are provided.

People with mental illness and alcohol and other drug problems often experience a range of legal problems, including offences related to being homeless and those that might relate to their drug dependency.

Often the legal issues build up before a person must address them. The intersection of mental health problems and dependency on alcohol and other drugs, led to the creation of Drug Outreach Lawyer programs run by Fitzroy Legal Service and St Kilda Legal Service. These specialist lawyers know that for people with dual diagnosis, the accumulation of a number of minor charges can lead to incarceration.

Working closely with primary health services, needle syringe programs and rehabilitation facilities allows the specialist lawyers to identify, prevent and address legal and social issues before problems escalate. This leads to better social health outcomes for people in most need. Fitzroy Legal Service's submission to this Royal Commission outlined Toby's story, showing the benefit of integrated drug outreach support model.⁵¹

Also located in St Kilda is First Step, a wrap-around addiction and mental health outpatient clinic with a fully integrated legal service.



Toby's Story

The difference drug outreach lawyers make

Fitzroy Legal Centres specialist drug outreach lawyer met Toby (a pseudonym) when he was using the Medically Supervised Injecting Room.

Toby was homeless and used drugs. As a result, he had a number of criminal charges before the court. Toby had been homeless for some time, was experiencing significant issues due to a psycho-social disability and drug dependence, and had not seen anyone about his growing legal issues.

The charges had been going through the system for some time, and the effect of not having those matters finalised put Toby at further risk of being remanded into custody.

Having the drug outreach lawyer onsite and embedded in the service delivery of the Medically Supervised Injecting Room enabled the following outcomes:

1. Toby could see a specialised community drug outreach lawyer about his problems through a health service he trusted;
2. Being provided in a healthcare setting and with people skilled in needs of people with alcohol and other drug dependency, Toby's needs were treated holistically, achieving targeted referrals for support services that would benefit him;
3. When Toby was ultimately remanded in custody for further offending, he had a community drug outreach lawyer to call for help.

Having legal assistance and representation changed Toby's trajectory. Without legal representation, Toby would have likely ended up as one of the many people with a mental health issue in Victoria's prisons. Instead, his community drug outreach lawyer helped him into supported housing, so he finally had a home to live in. Having a home was influential in ensuring he did not receive a custodial sentence. Instead, he received a good behaviour bond, allowing Toby to rebuild his life.

Integrated Response for Mental Health & Alcohol and Other Drugs

First Step Legal

With a focus on physical, mental and social wellbeing, First Step have built community trust and a reputation for compassion and excellence over their 17 years of service.

The health-justice partnership was conceived with the understanding that legal issues create stress. This stress can lead to ill health and pose a significant risk of compromising rehabilitation and destabilising the recovery of those dealing with mental health and addiction issues. This is detrimental not only to the individual, but also to the wider community, with the associated implications of relapse, mental health deterioration and a heightened risk of reoffending.

The First Step Legal model is more than a co-location of services. It involves an integrated and coordinated approach to supporting people dealing with mental health and addiction issues. Integrating legal services into a healthcare setting not only provides a direct referral pathway between health



professionals and legal practitioners but also contributes to better legal and health outcomes for our clients.

First Step Legal ensures that clients are well informed about the legal process throughout the proceedings, to enable them to make informed decisions. Treating professionals are advised of the status of the proceedings at each stage of the process, to ensure that the client receives adequate support throughout the stressful period.

First Step Legal works collaboratively with the treating professionals to help stabilise and support clients in their recovery and achieve court dispositions that support the clients' ongoing treatment and recovery in the community.

Recommendations

42. Provide greater funding to community mental health services to work with people experiencing mental health issues and provide wrap around support.
43. Support and expand existing integrated health and legal services that meet complex and interdependent needs, including alcohol and other drug dependency for those experiencing mental illness.



4. THERAPEUTIC JUSTICE

4.1 Expand Therapeutic Courts and Programs

People experiencing mental illness face increased barriers in navigating the court system. Courts do not function in a manner that allows persons experiencing mental illness to engage in the process and effectively access justice.

Evidence shows that therapeutic courts reduce recidivism, leading to better community outcomes and reduced costs to the community that would otherwise be spent on prisons.⁵² The Victorian Ombudsman's report recommended expanding successful models in Victoria including: the Drug Court of Victoria, the Assessment and Referral Court (ARC), Court Integrated Services Program (CISP), the Neighbourhood Justice Centre, the Koori Court and the Criminal Justice Diversion Program.

Evaluations of these models have shown they are effective in their recovery based approach, addressing the underlying mental health and other issues that cause the offending.

The ARC is a designated court list for people with mental illness or cognitive impairment that assists in addressing underlying offending through treatment and support. An independent internal Department of Justice and Regulation evaluation showed a return on investment between \$2 and \$5 for every dollar.⁵³

The Neighbourhood Justice Centre provides a place-based problem solving approach to reducing interactions people with multiple disadvantages have with the criminal system in the City of Yarra. The Neighbourhood Justice Centre has a 25 per cent lower rate of reoffending than other Magistrates' Courts,⁵⁴ and reduced crime in the Yarra area by 31 per cent (largely a result of a fall in property crime)⁵⁵

The Drug Court assists a person to address the causes of offending, including providing recovery support for existing mental health conditions and reducing their drug dependency: the reoffending rate decreased by 34 per cent within the first 24 months.⁵⁶ KPMG's evaluation of the Drug Court estimated that the cost of participating for two years was \$26,000 per person compared to two years of imprisonment of \$197,000, providing a far better outcome for the individual and the community as a whole.⁵⁷

The efficacy of these models has been stifled by the limited accessibility of the programs. For example, ARC is only available at the Magistrates' Courts in Frankston, Latrobe Valley, Korumburra, Melbourne and Moorabbin. To effectively support people experiencing mental illness and addressing the underlying factors that may contribute to their offending, there is a need to expand and increase access to these and similar programs, particularly in regional Victoria.

Koori Courts have improved the participation of Aboriginal communities in the administration of law and allowed for a more culturally appropriate setting. The Courts have proven an effective way to reduce recidivism and improve Aboriginal wellbeing through increasing awareness of culture and community.⁵⁸

Expanding the reach and capacity of therapeutic courts must be done in tandem with increasing community support and therapeutic services. To ensure everyone in Victoria who needs it has access to therapeutic justice will take time to do effectively. To complement this goal, immediate support should be given to new and existing integrated support services that work alongside courts and are assisting people with mental health and complex life issues stay out of prison. An example of these programs and services are highlighted below.



Therapeutic Support in Regional Areas

Maryborough Therapeutic Justice Project

People in rural and regional areas are at particular risk of poor mental health outcomes, due to reluctance to seek help, or 'rural stoicism'.⁵⁹ If they do seek help, availability to local services makes access to mental health care difficult. The disadvantage is further overlapped, when people with mental health conditions are also at greater risk of contact with the criminal justice system.

In Maryborough, the Loddon Campaspe Community Legal Centre found that people experiencing trauma, mental health, drug and alcohol and related health issues were getting caught up in the criminal justice system for breaches of intervention orders, assaults, damage to property, or minor possession.

For criminal matters, when the Court afforded a client a deferred sentence so that they could get appropriate legal or social supports (including a Mental Health Plan), the client would often not know where to go to access these services locally. Support services may be based outside of Maryborough in Bendigo or Ballarat, both 70 km away. The difficulties of getting to these services meant people were not only missing out on the support they needed, but could also be breaching court orders or perceived as not taking orders seriously.

Overcoming this rural access to justice barrier, Loddon Campaspe Community Legal Centre established the Maryborough Therapeutic Justice Project, working in partnership with Maryborough District Health Service to assist clients to access counsellors, housing supports, family violence counsellors, grief and loss counsellors, and other local supports.

Because of this service, now people with mental health issues who appear before the Magistrates' Court in Maryborough, or are on judicial monitoring (as part of their Community Corrections Order), are supported to engage with local therapeutic interventions to assist them meaningfully address the health needs underlying their legal issues.

While only new, this project, if it continues to be supported with sustainable funding, has the potential to change the trajectory of clients with mental health issues who are in contact with the criminal justice system in Maryborough. Currently the project is funded for one year by the Victorian State Government through the Integrated Service Fund.

The project shows the benefit of working with local communities for place based therapeutic solutions.

Breaking the Cycle of Criminalisation

Law and Advocacy Centre for Women

The Law and Advocacy Centre for Women (LACW) combines legal advice and representation for women, with a commitment to holistic and preventative case management and engagement with therapeutic services. Their model draws on the experience and a growing body of research around legal best practice to craft a centre dedicated to long term and achievable solutions for women in the community. LACW provide specialised representation for women in the areas of criminal law, infringements and victims of crime assistance tribunal applications, alongside in-house case management, to ensure the reasons for offending are addressed, and the risk of reoffending minimised. This assistance and early intervention addresses issues that frequently predicate poverty and criminal offending, such as financial stress, alcohol and drug issues, mental health and homelessness.



Recommendations

44. Implement the Victorian Ombudsman recommendation⁶⁰ to expand current therapeutic court based interventions to make them available to all people who would benefit from them and ensure they are accessible across Victoria. Ensure the increase in therapeutic court capacity is coupled with a commensurate increase in capacity and availability of support services connected with the programs.
45. Support integrated services linked to local Magistrates' Courts to provide therapeutic support for people involved in the justice system, particularly in rural and regional areas; and ensure that culturally appropriate services are provided for Aboriginal people through funding Aboriginal Community Controlled Organisations.

4.2 Divert People from the Criminal System

Diversion is beneficial to offenders and their mental wellbeing. It allows people to receive crucial counselling or rehabilitative services, rather than a criminal record.

Diversion is a meaningful way to contribute to the future mental wellness of offenders and can increase their opportunity to live healthy lives, as they are linked with relevant services and will not carry the stigma or discrimination of a criminal record, providing them better chances of being gainfully employed and accessing safe and stable housing. Diversion is effective: of 100 participants, only 0-7 per cent would be convicted of a subsequent offence within 12 months of starting a diversion program.⁶¹ However beneficial diversion is, it is not always provided to those who need it most.

In Victoria, it is police and the prosecution, rather than the magistrate, who have discretion as to who receives diversion and who does not.⁶² This could be the reason why Victoria has the lowest diversion rates for young offenders in Australia.⁶³ The proportion of young people diverted in Victoria is less than half the proportion of young people being diverted in all other states.⁶⁴ Aboriginal youth fare even worse: they are half as likely to be diverted as all other young Victorians.⁶⁵

The Magistrates' Court of Victoria's internal review of diversion programs formed the view that 'diversion should be available at the instance of a magistrate and not initiated by notice of a member of Victoria police.' It further held that diversion should not be subject to veto by the prosecution.⁶⁶

Reviewing the current diversion guidelines and policies to ensure they are fair and transparently applied would benefit many people with mental health conditions. Additionally, the removal of limiting police and prosecutorial powers would allow the courts to consider all the circumstances before them, including the mental health of the person, as to whether diversion should be issued.



Recommendations

46. Broaden the availability of diversion, including by removing police only initiations and prosecutorial veto powers in the Children's and Magistrates' Courts, to ensure decisions to grant diversion are fair, consistent and accountable.
47. Increase access to, and the quality of, diversion programs that are culturally appropriate and available to people in rural and regional areas.

4.3 Implement a Spent Convictions Scheme

Getting your life back on track after a criminal conviction can be hard. This is amplified for those who have experience of mental illness, who may already find seeking employment difficult.⁶⁷

When every second person entering Victoria's prison has a mental illness,⁶⁸ looking at what happens next to assist people released from prison and help them manage their mental illness, recover and thrive, is important. This requires considering the impact and stigma that having a criminal record creates.

Victoria is the only state or territory that does not have a spent conviction scheme, which would allow for certain offences to be cleared from a person's criminal record after a period of not offending.

Increasingly, criminal record checks are being used as de-facto assessments of someone's character and morality by potential employers and others. This is both inappropriate and unfair. In 2011, Victoria Police carried out 493,200⁶⁹ criminal record checks. In 2018, that number was 716,768.⁷⁰ By comparison, Victoria Police processed only 3,500 criminal record checks in 1993.⁷¹ A spent convictions scheme would help reduce this practice occurring, and remove one of the layers of discrimination people with mental illness can experience.

A spent convictions scheme would benefit people with experiences of mental illness get their lives back on track, allowing them to find well-paid permanent jobs, volunteer in the community, and travel.

Allowing short sentences to be spent quicker than longer sentences, would recognise that many people with experience of mental illness get trapped in the criminal system on short sentences for relatively minor offences related to homelessness and poverty, or personal drug dependency, and allow them to get their lives back on track sooner.

Recommendation

48. Implement a graduated spent convictions scheme in Victoria that is fair and proportionate to the level of offending, and the age of the person.



5. SUPPORT YOUNG PEOPLE

To prevent mental illness in adults, one of the best things we can do is to keep young people out of the prison system; improving their outcomes in life. A child forced into the criminal system is less likely to complete their education or find employment, and more likely to die an early death.⁷²

Prison is fundamentally the wrong place for a child to receive the appropriate care and assistance to help them build a stable and positive future. Young people drawn into the criminal legal system have significantly higher rates of mental health disorders and cognitive disabilities compared with the general youth population; and higher rates of co-occurring mental health disorders and drug or alcohol disorder.⁷³

The younger a child enters the prison system, the higher chance they have of reoffending.⁷⁴ Australian research suggests that these multiple factors, when not addressed early in life, compound and interlock to create complex support needs.⁷⁵ How we address social determinants of health and work with young offenders to address underlying systemic issues will do more to prevent future offending than putting children in prison. Addressing the causes of offending, such as out-of-home care and unstable housing environments, and supporting young people's mental health and wellbeing, will provide a better outcome for all children in Victoria, and should be our priority.

In the last five years, the number of children (10-17 years old) held in Victorian prisons on remand has doubled: from 37 children per day to 69 per day.⁷⁶ 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 Islander young people.⁷⁷ Increasing the number of young people in prison will result in poor mental health outcomes for the young person, their families, and Victoria as a whole.

5.1 Stop Kids Crossing from Out-Of-Home Care to the Criminal System

The 2019 Sentencing Advisory Council report '*Crossover Kids: Vulnerable Children in the Youth Justice System*' highlighted the over-representation of children in out-of-home care in the criminal legal system. Of children sentenced or diverted in the Children's Court in 2016-17, 38 per cent of the 5,063 had a history with the child protection system.⁷⁸ These figures show a staggering failure of the system to wholly address the trauma of childhood abuse and neglect and treat children out of the home as a good parent would.

Children in out-of-home care face a higher risk of mental illness,⁷⁹ homelessness and early parenthood⁸⁰ which can compound existing mental illness or create it where it previously did not exist. Young people transitioning from out-of-home care have poor emotional, social and financial support,⁸¹ and are vulnerable and disadvantaged.

Children in out-of-home care are at higher risk of coming into contact with police.⁸² Regular childhood behaviour should not be criminalised as a result of an over reliance on police to respond to incidents within the child protection setting.⁸³ This criminalisation of the behaviour of young and vulnerable children creates a vicious cycle of disadvantage that can entrench children in the criminal legal system.⁸⁴

Aboriginal children are particularly impacted by the out-of-home care system. Aboriginal children are 12 times more likely to be in child protection and for 60 per cent of Aboriginal children who are removed from their parents, mental health is the driving factor.⁸⁵

Protecting children in out-of-home care is crucial to not only their wellbeing but assists in mitigating lifelong institutional behaviours that can lead to substance abuse, homelessness and create patterns of intergenerational abuse and/or out-of-home care.⁸⁶



Recommendations

49. Implement inter-agency protocols for children living in residential care units, so they are not charged for criminal offences for conduct that would not be criminalised in the family home.
50. Increase mental health support for children in out-of-home care: prioritising their wellbeing and addressing the gaps in social health and wellbeing for at risk groups.
51. Ensure that young people with a child protection background are not disproportionately impacted because of lack of a home to be bailed to.
52. Provide long term and secure funding for Aboriginal Community Controlled Organisations to develop tailored, flexible plans specific to the needs of each Aboriginal family with a child in out-of-home care. This includes individual mental health plans that incorporate cultural support and trauma informed care for both the child and the parents, especially Aboriginal mothers experiencing family violence.

5.2 Raise the Age of Criminal Responsibility

The prison system has a profoundly negative impact on children, who most often have themselves been subject to trauma and abuse prior to prison. Prison practices such as isolation, strip searches and restraint in particular, harm children and young people's mental health, compounding and exacerbating existing mental health issues or creating them where they did not exist previously, given that one third of children in prison only experienced its onset once behind bars.⁸⁷

Victoria's age of criminal responsibility which imprisons children as young as 10 years old (grade 4) is the one of the youngest in the world.⁸⁸ For children, prisons are particularly harmful for their mental health and wellbeing, significantly increasing their chance of experiencing depression and risk of suicide.⁸⁹ Furthermore, the younger a person enters the prison system, the higher chance the child has of reoffending: each year prison is avoided, reoffending decreases by 18 per cent.⁹⁰ Youth imprisonment is associated with higher risks of suicide and depression.⁹¹

Recommendation

53. Raise the age of criminal responsibility to at least 14 years.



5.3 Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse Young People

Experiences of racism and racial discrimination can undermine the mental health and wellbeing of young people in particular.⁹² Young people in a *'Police and Community Perspectives'* study noted that they felt more vulnerable in public spaces as a result of over-policing.⁹³ This discrimination and presumption of deviance can further isolate young people and increase their experiences of depression and anxiety.^{94,95}

This increased interaction with police also makes them more likely to enter the prison system, which further exacerbates mental health issues, affecting their ability to lead healthy and stable lives following incarceration.

As a consequence of over-policing and systemic issues, approximately 50 per cent of the children in Victorian youth prisons are of Aboriginal Torres Strait Islander, African Australian or Pacifica backgrounds.⁹⁶ Aboriginal children are being diverted from prison at half the rate of non-Aboriginal children.⁹⁷

Victorian Aboriginal Legal Service reports on the harm caused to their young people through the criminal system, including:

- ▼ Over policing of Aboriginal children and young people;
- ▼ Frequent use of isolation and lock downs;
- ▼ Over-medication of young people in detention; and
- ▼ Dislocation from family, community and culture.⁹⁸

Recommendations

54. Invest in culturally safe legal support and representation for young people and their families to ensure access at the earliest opportunity.
55. Increase community legal education and outreach to culturally and linguistically diverse communities to prevent unnecessary interaction with the justice system.
56. Commit long-term funding to ensure that the Victorian Police Koori Youth Cautioning Program is implemented in all areas across Victoria.
57. Invest in culturally safe diversion programs run by Aboriginal Community Controlled Organisations, to ensure that Aboriginal young people can access diversion.



6. PREVENT PEOPLE ENTERING PRISON

Our prisons are full of people who have experienced mental illness, and there are signs that the number of people in Victoria's prison system with experience of mental health conditions is growing.

According to the Australian Institute of Health and Wellbeing, approximately 60 per cent of people entering Victorian prisons last year report to have been diagnosed with a mental illness, whereas 46 per cent of people who were leaving prison reported a previous diagnosis.⁹⁹ These statistics have yet to be confirmed over a period of time,¹⁰⁰ but if repeated, could show that Victoria is increasingly locking up people with a mental health condition in Victoria.

The discrepancy in people entering and leaving prison with mental illness is not reflected across Australia. Australia-wide, a similar amount of people enter prison as leave prison with a previously diagnosed mental illness (40 per cent and 37 per cent respectively).¹⁰¹

The growth of Victoria's prison population are the effects of reducing access to bail, community correction orders, tightening laws around parole and increased focus on custodial sentences.

Ultimately, growing the number of people who enter Victoria's prison system increases the harm to people who go to prison, and who on release have to rebuild and reconnect with their family and community and face discrimination, which limits their ability to find housing and a job. Plus, nearly half (44 per cent) will return to prison within two years - ¹⁰²showing that the system is not effectively working to address the causes of offending.

6.1 Further Bail Reform Needed

'When remand is seen as the best or indeed only option... this suggests that initiatives and investments in the community to address inequality and injustice are urgently needed'¹⁰³

Victoria's prison population increasingly consists of people who have not been sentenced. For the many people caught up in the criminal system with a mental illness, a short period in prison is enough to interrupt their treatment and undermine their health and wellbeing.

A snap shot of the prison population shows that on 30 June 2018, there were 3,186 Victorians in prison who had not been sentenced: a 196 per cent increase over the last six years.¹⁰⁴

Between 2012-2017, the number of men entering prison on remand almost doubled (3,803 to 7,474), whereas those entering under sentence decreased by 29 per cent.¹⁰⁵ In 2017, 43 per cent of men were released from prison without having served a sentence.¹⁰⁶

The tightening bail laws have particularly impacted women: a daily snapshot of the prison population shows that nearly half (42 per cent) of women in prison have not been sentenced.¹⁰⁷

The doubling of the women's prison population in the last five years is almost solely driven by the increase of remand.¹⁰⁸ Eighty-eight per cent of all women entering prison do so on remand,¹⁰⁹ while the number of sentenced women in prison has decreased by ten per cent since 2012.¹¹⁰

Two-thirds of women held in prison on remand will be released from prison without serving any time under sentence.¹¹¹ That is, 870 women were in prison in 2017 without being sentenced, a four-fold increase from 2011.¹¹² Nearly 69 per cent of them were mothers. One in five, that is 174 mothers, were the primary care giver and separated from their child.¹¹³



When we are considering the effectiveness of bail laws, it is worth looking at the types of crimes people are being remanded in custody for. For women, the most common offence to be held in remand were property offences, such as shoplifting, handling stolen goods, or motor theft.¹¹⁴ The next most common were drug related offences.¹¹⁵ Ten per cent were on remand for breaching a court order, which is a 630 per cent increase from five years ago.¹¹⁶

Of women who are received in prison on remand:

- ▼ 1 in 4 were homeless prior to entering custody;
- ▼ 2 in 3 reported being victims of family violence;
- ▼ 2 in 3 reported using drugs daily; and
- ▼ 1 in 2 had not applied for bail.¹¹⁷

What this suggests, is that the confluence of environmental factors, such as homelessness and poverty, are driving people to the criminal system, and particularly impacting their ability to access bail, rather than the seriousness of the crimes they are alleged to have committed.

Women Transforming Justice, an integrated partnership with Fitzroy Legal Centre (which now includes Darebin Community Legal Centre), has been working with women to assist them access bail. Their experience shows that the main barriers to receiving bail are: lack of stable housing, mental health issues and alcohol and other drug dependency. The underlying impact of family violence is prevalent in a majority of cases.

Consideration should be given to the impact of the bail laws and how people with relatively low level offending, and minimal risk to anyone but themselves, are getting caught up in the criminal system rather than receiving a public health response.

Additionally, consideration should be given to the prison system as a whole. The increasing prison population has amplified pressure on the entire system, limiting people's ability to access services and rehabilitative programs. This damages the mental health and wellbeing of those entering the system and undermines efforts to reduce rates of recidivism or reoffending.

Further bail reforms are needed to ensure people are not getting caught up in the prison system unnecessarily, focusing particularly on those who would not have otherwise received a custodial sentence for the alleged offence.

Recommendation

58. The Royal Commission to review and make recommendations on Victoria's current presumptive bail laws and their impact on people experiencing mental health issues.



6.2 Recovery Approach to Bail

The current bail and sentencing regime fail to recognise the impact of mental health crisis and poverty on an individual. Many people on remand are there as a result of homelessness.¹¹⁸ Our centres see people being denied bail if they do not have access to mental health support or a home. The laws are plugging a hole in the system where people needing support and mental health care are being locked up for short periods. The context of offending is always significant, but particularly for a person who experiences periods of mental illness. Bail support programs may assist in addressing the underlying issues that contribute to offending and increase a person's chances of interacting with police.

Therapeutic bail programs may be set by the police or magistrates to address perceived needs of the defendant. The Court Integrated Service Program (CISP) aims to improve the health and wellbeing of the accused by providing support to access priority housing, drug and alcohol services and mental health treatment. By providing referral and case management support prior to trial, the defendant's risk of undertaking activities, such as drug or alcohol use that may otherwise have resulted in remand is mitigated.

Recommendations

59. Increase funding for the Court Integrated Services Program (CISP) and other bail support programs and expand availability across Victoria.
60. Increase availability of residential bail programs, including working with Aboriginal Community Controlled Organisations to develop culturally safe residential bail programs.

6.3 Impacts of Bail and Remand on Aboriginal and Torres Strait Islander People

Aboriginal Victorians are now imprisoned at 13 times the rate of other Victorians: 2,012 Aboriginal people are in prison for every 100,000, compared to 152 people for every 100,000.¹¹⁹

Forty-four per cent of Aboriginal people in prison have not been sentenced, compared to 35 per cent of general prison population.¹²⁰ Forty-one per cent of Aboriginal men, and 63 per cent of Aboriginal women, will be released from prison without receiving a sentence.¹²¹

The high rates of Aboriginal people in prison is largely due to broader systemic issues that begin in un-met needs such as: socio-economics, lack of access to stable and safe housing¹²², and over-policing practices and structural bias.¹²³ 72 per cent of Aboriginal men and 92.3 per cent of Aboriginal women in custody have a persisting diagnosis of mental illness.¹²⁴

Conflicts between Aboriginal and Torres Strait Islander culture and standard bail conditions, such as exclusion zones, non-association orders and curfews can further impact upon their mental health and wellbeing by increasing isolation which may lead to exacerbated mental health issues.¹²⁵

Victorian Aboriginal Legal Service reports that key reasons why Aboriginal people are being denied bail relate to the lack of access to stable and safe housing, and limited availability of Court Integrated Services Programs (CISP) in regional areas where many Aboriginal people live.



Aboriginal people are less likely to apply for bail than non-Aboriginal people.¹²⁶ Increasing the availability of culturally appropriate legal representation for Aboriginal people at bail hearings would be a significant step in addressing the disproportionate rate of imprisonment and ensuring Aboriginal people are connected with culturally appropriate services to reduce their denial of bail on grounds such as lack of accommodation or support.¹²⁷

In 2010 following a Victorian Law Reform Commission (VLRC) report on bail,¹²⁸ the Victorian government implemented Section 3A, a unique provision of the *Bail Act 1977* (Vic), in consideration of issues that arise due to a person's Aboriginality, including cultural background, ties to family and place, and cultural obligations.

A 2013 study found that the provision set out in Section 3A of the *Bail Act* was consistently under-used.¹²⁹ To remedy this, Victorian Aboriginal Legal Service has advocated for greater training and guidelines on the section's use.¹³⁰ The Australian Law Reform Commission has adopted this advice and recommended guidelines should be developed with Aboriginal organisations on the application of Section 3A of the *Bail Act*, alongside cultural sensitivity training to be provided for Victorian police, court registrars, magistrates and bail justices.¹³¹

Recommendations

61. Increase availability of culturally appropriate bail programs, such as Koori Court Integrated Service Program workers, particularly in regional areas.
62. Ensure Aboriginal and Torres Strait Islander people have access to culturally appropriate legal assistance through the Victorian Aboriginal Legal Service and Djirra.
63. Develop guidelines and culturally sensitive training on the application of Section 3A of the *Bail Act 1977* (Vic), as recommended by the Australian Law Reform Commission.

6.4 Review the Impact of Short Sentences

People serving short prison sentences for low level offences, are less likely to be able to access much needed mental health support and rehabilitative programs that allow them to address the underlying factors that may contribute to their offending, as a result of increased demand for these services and long wait lists.¹³²

Short sentences particularly impact women, and people who experience poverty and discrimination, as often, the short prison sentences relate to low level theft and drug offenses related to personal drug dependency.

In the United Kingdom (UK) a Parliamentary Committee found 'Short sentences were wasteful and plunged women into further chaos, as even a brief spell in custody often led to a loss of accommodation, employment and custody of children.'¹³³ Most women who are in Victoria's prisons enter on remand and do not receive a sentence.^{134,135} Of those who are sentenced, 84 per cent of women sentenced for a crime were released after serving less than 12 months in prison (542 women). One in five were released after a month.¹³⁶



Of the remanded population, we know one in five are primary carers. This means too often, mothers are being separated from their children for relatively short periods in prison. The impact this can have on the mother's and child's mental health is profound.¹³⁷ It also creates intergenerational harm, with children put in out-of-home care more likely themselves to end up with mental illness, addiction and in prison.¹³⁸

Additionally, shorter sentences can also address the disproportionate rate of incarceration of Aboriginal people. Aboriginal people are more likely to be in prison for less serious crimes and for shorter sentences: 35 per cent who serve sentences serve less than a year (compared to 25 per cent of non-Aboriginal people).¹³⁹

In recognising the harm that short stints in prison can do to a person and its impact on the likelihood of reoffending, there has been an increasing move in the UK to abolish short sentences. Scotland has introduced a presumption against short sentences of up to three months. A recent proposal has been debated by the UK Ministry of Justice to create a presumption against sentences up to 12 months and to abolish all sentences shorter than six months.¹⁴⁰ The research pushing the move is that a reduction in short sentences will reduce reoffending and allow for assistance to be provided in the community, rather than separating communities and families in prison.¹⁴¹

Currently, 58 per cent of people sentenced in Victoria would spend less than six months in prison, 13 per cent under a month. Seventy-seven percent of sentenced people spend less than 12 months in prison. By abolishing sentences of less than six months' duration, 3,703 people, a majority with mental illness, would avoid interaction with the criminal system. An assumption against prison sentences under 12 months would prevent another 1,222 people coming into contact with the prison system.¹⁴²

When nearly half of the Victorians who go to prison will return in two years, doing something to stop the cycle before it begins makes sense.¹⁴³ By reducing the number of people who interact with the prison system and putting resources in the community to drive a recovery led health response, we can stop people getting trapped by the system and increase the wellbeing of Victorians as a whole.

Recommendation

64. Introduce a presumption against custodial sentences of less than three months.
65. Review the impact of short sentences and consider the creation of a presumption against sentences under six to 12 months.



7. HEALTHCARE AND SERVICES FOR PEOPLE IN PRISON

7.1 Access to Appropriate Mental Health & Related Care

The very high number of people in prison is seeing people failing to gain access to mental health care in prison.

The Victorian Ombudsman¹⁴⁴ and the Auditor General reports in 2014¹⁴⁵ reflect the chronic shortage of acute medical beds in Victoria's prisons. The State Government has invested in more beds since these reports. However, growth in acute beds has not kept up with the dramatic increase in prison population.

Prison compounds trauma for people who have already experienced enough: limits and delays in counselling services, lack of continuity of medicine, under-medication, over-medication, use of solitary confinement, inappropriate delays for requests for mental health response, and a lack of communication of mental health treatment – are a list of concerns Djirra reports from their experience of working with Aboriginal and Torres Strait Islander women within the prison system.¹⁴⁶

Mental Health Legal Centre reports on the inadequacy of mental health services within prisons to address the high level of trauma, including experiences of childhood abuse and neglect and family violence, that people in prison experience. They make an important point about the mental health care support for men in prisons, often forgetting that many men in prison were also victims of abuse as children.¹⁴⁷ For both men and women, too often group sessions and other sessions, can be triggering and there is not enough regular individualised psychiatric and psychological care to assist a person recover safely.¹⁴⁸

Victoria's mental health system should be targeted to keep people who experience mental illness out of prison, and ensure they receive appropriate recovery-led support in the community. Where people are in prison who have experienced mental illness, the priority should be on ensuring a system that drives recovery, which necessarily means adequate and responsive mental healthcare support that addresses the needs of the person. Mental health care in prison should be regular and consistent and available to all those who need it, whether they are on remand or short sentences. It should be integrated with services outside to allow recovery to continue upon release from prison.

To ensure people in prison are empowered to tackle their own health and other needs, integrated social and legal help in prison, ensures better outcomes. Community legal centres, including Mental Health Legal Centre, Djirra, and the Victorian Aboriginal Legal Service run vital services in prison. However, they are often funded short-term: for example, the significant wrap-around support Djirra runs in the Dame Phyllis Frost Centre that helps empower Aboriginal women to walk away from violence and attend to their mental, physical and spiritual wellbeing, will stop in December 2019 without further funding.



Holistic Support for Women in Prison

Inside Access Project

The Mental Health Legal Centre (MHLC) provides a unique service to women in prison at the Dame Phyllis Frost Centre (DPFC). Evolving to meet women's needs, MHLC have developed education sessions and clinic-based legal and social work services that provide holistic services. The team consists of a general lawyer and co-ordinator, a child protection lawyer, a family violence and victims of crime lawyer, a specialist fines lawyer and a social worker. This allows for targeted and tailored solutions and supports to the complex and interdependent issues that arise for women experiencing mental health issues and criminalisation.

To better understand how the mental health system works in Victoria's prisons and the impact of prison on people's mental wellbeing, community legal centres urge the Royal Commission to engage directly with people in prison to let them tell their stories in a confidential and safe way, with particular attention given to ensuring that Aboriginal voices are heard directly, in culturally safe spaces.

7.2 Provide Transitional Support

Too often, people leaving prison are not connected with appropriate community-based mental health support. Chronic under-funding of the community mental health system means wait lists are lengthy, or people may not be seen at all. This results in a failure to build on any support and treatment they may have received in prison.

Holistic transitional support, such as housing, health and employment, is essential to helping people re-enter the community. Evidence indicates that providing people with transitional support when leaving prison is four times more likely to reduce reoffending within two years of release.¹⁴⁹ People who have at some point been diagnosed with a mental illness have an increased likelihood of experiencing substance misuse issues, reoffending and poorer health outcomes in the six months following release from prison.¹⁵⁰ Providing appropriate support can prevent this trajectory.

Recommendations

66. Ensure access to appropriate mental health support and treatment in prison. Any increase in the number of people in prison should see a commensurate increase in access to services.
67. Provide adequate and ongoing funding for programs provided in prison that work, such as those delivered by Djirra and the Mental Health Legal Centre.
68. Provide adequate funding to connect people exiting prison to community-based mental health and holistic transitional support services.



- ¹ See Federation of Community Legal Centres, 'Submission to Royal Commission into Victoria's Mental Health System: Homelessness and Mental Wellbeing' (July 2019).
- ² Australian Housing and Urban Research Institute, 'Housing, Homelessness and Mental Health: Towards Systems Change' (2018)
- ³ Human Rights Law Centre, 'Aboriginal women 10 times more likely to be targeted by police at time of Tanya Day's death in custody' (Web Page, April 30 2019) <<https://www.hrlc.org.au/news/2019/4/30/aboriginal-women-10-times-more-likely-to-be-targeted-by-police>>
- ⁴ Corrections Victoria, 'Annual Prisoner Statistics Profile 2017-18' (June 2018). Available at: <https://www.corrections.vic.gov.au/publications-manuals-and-statistics/annual-prisoner-statistical-profile-2006-07-to-2017-18> (Accessed: July 2019)
- ⁵ Number of people in prison increased by 517 people, or 7 per cent in a single year 2017 to 2018. ABS 4517.0 Prisoners in Australia, 'Victoria Snapshot' (2018)
- ⁶ State of Victoria, Department of Health and Human Services. (2015). *Victoria's 10-year mental health plan*. Retrieved from <https://www2.health.vic.gov.au/mental-health/priorities-and-transformation/mental-health-plan>
- ⁷ Australian Institute of Health and Wellbeing, '[The Health of Australia's Prisoners 2018](#)' (30 May 2019).
- ⁸ World Health Organisation, Information Sheet on Mental Health and Prisons. Geneva, World Health Organisation. https://www.who.int/mental_health/policy/mh_in_prison.pdf (Accessed July 2019)
- ⁹ Victoria, Victorian Ombudsman Investigation into the *Rehabilitation and Reintegration of Prisoners in Victoria*, Parliamentary Paper No 94 (2015) 181.
- ¹⁰ Australian Institute of Health and Wellbeing, '[The Health of Australia's Prisoners 2018](#)' (30 May 2019).
- ¹¹ Ibid. 38.
- ¹² Table 1.3 and 1.4 respectively: Corrections Victoria, 'Annual Prisoner Statistics Profile 2017-18' (June 2018). Available at: <https://www.corrections.vic.gov.au/publications-manuals-and-statistics/annual-prisoner-statistical-profile-2006-07-to-2017-18> (Accessed: July 2019)
- ¹³ Table 1.4 and 1.3 respectively: Corrections Victoria, 'Annual Prisoner Statistics Profile 2017-18' (June 2018). Available at: <https://www.corrections.vic.gov.au/publications-manuals-and-statistics/annual-prisoner-statistical-profile-2006-07-to-2017-18> (Accessed: July 2019)
- ¹⁴ Table 1.4 and 1.3 respectively: Corrections Victoria, 'Annual Prisoner Statistics Profile 2017-18' (June 2018). Available at: <https://www.corrections.vic.gov.au/publications-manuals-and-statistics/annual-prisoner-statistical-profile-2006-07-to-2017-18> (Accessed: July 2019)
- ¹⁵ Department of Health and Human Services. [Balit Murrup](#): Aboriginal social and emotional wellbeing framework 2017-2027 (October 2017). 18.
- ¹⁶ Australian Institute of Health and Welfare, 'The health of Australian prisoners 2015', cat. no. PHE 207 (27 November 2015). 36.
- ¹⁷ State of Victoria, Department of Health and Human Services. (2015). *Victoria's 10-year mental health plan*. Retrieved from <https://www2.health.vic.gov.au/mental-health/priorities-and-transformation/mental-health-plan>
- ¹⁸ NSW Department of Corrective Services, 'Submission to Experiences of Injustice and Despair in Mental Health Care in Australia consultations by the Mental Health Council of Australia and the Brain and Mind Research Institute in association with the Human Rights and Equal Opportunity Commission' (2004), cited in Mental Health Council of Australia, *Not for Service* (2014)220
- ¹⁹ Australian Institute of Health and Welfare, 'The health of Australia's prisoners 2018' (2018) viii
- ²⁰ Human Rights Law Centre, 'Aboriginal women 10 times more likely to be targeted by police at time of Tanya Day's death in custody' (Web Page, April 30 2019) <<https://www.hrlc.org.au/news/2019/4/30/aboriginal-women-10-times-more-likely-to-be-targeted-by-police>>
- ²¹ Commonwealth Government, '*Royal Commission into Aboriginal Deaths in Custody: Volume 3*' (1991) [21.1.80]
- ²² Victorian Parliament, Drugs and Crime Prevention Committee, '*Inquiry into public drunkenness: Final Report*' (2001) available at: <https://www.parliament.vic.gov.au/80---dcpc/inquiry---into---public---drunkenness>; and, Victorian Parliament, Drugs and Crime Prevention Committee, '*Inquiry into strategies to reduce harmful alcohol consumption: Final Report (Vol 1)*' (2006) available at: https://www.parliament.vic.gov.au/images/stories/committees/dcpc/assaults/2006_Mar_Final_report_Vol1_Strats_to_reduce_harmful_alcohol_consumption.pdf
- ²³ Human Rights Law Centre, 'Aboriginal women 10 times more likely to be targeted by police at time of Tanya Day's death in custody' (Web Page, April 30 2019) <<https://www.hrlc.org.au/news/2019/4/30/aboriginal-women-10-times-more-likely-to-be-targeted-by-police>>
- ²⁴ See, e.g., Lucy Adams, The Winston Churchill Memorial Trust of Australia, *In the public eye: Addressing the negative impact of laws regulating public space on people experiencing homelessness* (April 2014), available at: <https://justiceconnect.org.au/wp-content/uploads/2018/08/In-the-Public-Eye-Churchill-Report-2013.pdf>.
- ²⁵ Justice Connect, 'Asking for Change: a better response to begging' (2016): available at <https://justiceconnect.org.au/wp-content/uploads/2018/08/Asking-for-change-a-better-response-to-begging.pdf> (Accessed: July 2019)
- ²⁶ Dow, Aisha, '[Welfare Agencies call for begging to be decriminalised in Victoria](#)' The Age (20 October 2016)
- ²⁷ Dow, Aisha, '[Welfare Agencies call for begging to be decriminalised in Victoria](#)' The Age (20 October 2016)
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- ²⁹ Police Responses to the Interface with Mental Disorder (PRIMeD) 2012 Policing Services with Mentally Ill People: Developing Greater Understanding and Best Practice (PRIMeD) 2012 p9
- ³⁰ s.10AA Sentencing Act 1991 (Vic)
- ³¹ Crimes Act 1958 (Vic) s.15
- ³² s.10AA Sentencing Act 1991 (Vic)
- ³³ See: Adam Carey, '[Someone will die plea to scrap jail terms for emergency assaults](#)' (The Age, 17 September 2018)
- ³⁴ S.10A Sentencing Act 1991 (Vic)
- ³⁵ Victorian Parliament. [Parliamentary Inquiry: Inquiry into the external oversight of police corruption and misconduct in Victoria](#). (2018) 155.
- ³⁶ Ibid.



- ³⁷ See McKenzie, N. 'Beaten, abused, humiliated and filmed by Victoria Police' The Age (2 April 2018) available at: <https://www.theage.com.au/national/victoria/beaten-abused-humiliated-and-filmed-by-victoria-police-20180321-p4z5f2.html> (accessed July 2019)
- ³⁸ Royal Commission into Family Violence: Report Volume IV. 18.
- ³⁹ Women's Legal Service Victoria: <https://www.womenslegal.org.au/files/file/WLSV%20Policy%20Brief%201%20MisID%20July%202018.pdf> 1
- ⁴⁰ Ibid. 1, 4
- ⁴¹ Women's Legal Service Victoria work with and for women experiencing particular disadvantage to address legal issues arising from relationship breakdown or violence. They have extensive expertise in the area of family violence, mental health and its devastating intersections with the criminal legal system. The Women's Legal Service Victoria, through its duty lawyer service at the Magistrates' Court at Melbourne (MMC), has observed a notable frequency in the rate at which women are being misidentified as respondents in police applications for family violence intervention orders (FVIOs).
- ⁴² These data were collected in the five months from January to May 2018 from WLSV duty lawyer intake forms for Melbourne Magistrates' Court. When police identified a woman as respondent on an FVIO application, Women's Legal Service data showed they were mistaken in 58% of cases.
- ⁴³ WLSV's paper intake forms do not prompt specifically for mental health, and rely instead on client disclosure when prompted in relation to disability. The actual prevalence of mental illness at the time a woman is misidentified is therefore likely much higher.
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