



**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

[fclc.org.au/about](http://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.**

# 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.<sup>1</sup> At our specialist centre for young people, Youthlaw, 80 per cent of the people they assist experience mental health issues.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> Pressure from shame, stigma and anxiety may create family breakdowns and with it, family law matters.<sup>5</sup> 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.<sup>6</sup> This results in the development of mental health conditions,<sup>7</sup> 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.

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

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

<sup>3</sup> 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.

<sup>4</sup> 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

<sup>5</sup> 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.

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

<sup>7</sup> 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.