# Royal Commission into Victoria’s Mental Health System submission

The Federation in collaboration with its members has developed submissions on the following three areas:

* **Housing and mental wellness:** preventing homeless to avert mental illness, preventing evictions during times of mental health treatment and crisis, strengthening rights of tenants in community housing;
* **Criminalisation of people experiencing mental illness:** policing practices, diversion, removing low level offences, mandatory sentencing, specialist and therapeutic courts; and
* **Overlapping life and legal issues – integrated services and civil/family issues:** the case for integrated and holistic services, recognising cluster legal issues, civil issues impacting consumers including fines, family violence, child protection.

Submission Two: Criminalisation of Mental Illness

**Short Introduction:** Mental health is a public health issue. However, we know that at almost half of the people in prison have a mental health issue.[[1]](#footnote-1) The increase of individuals into the criminal justice system as a result of harsher bail laws, fragmented community and social services, cuts to hospitals and the subsequent pressures that leave police as first responders to mental health crisis has rendered the criminal justice system an inadequate, overburdened and default mental health system, inadvertently criminalising those with mental illness.[[2]](#footnote-2) *For more see Problem Section of Workshop two notes.*

A Care Response:

There is a need for a trauma-informed and safe response to experiences of mental health crisis and circumstances where there is a need to intervene with persons experiencing mental illness.

1. **First Response**

Police are frequently called as the first responders when a person experiences a mental health crisis. Police are asked to step in when a person is at their most vulnerable and in need of urgent assistance and care. Police manage as best they can with the tools they have. However, given the often unpredictable nature of mental health crisis a situation that requires health care and social support can quickly turn to a criminal law response. 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, a better alternative should be resourced to assist people in critical need.

***Recommendation: Provide fully resourced alternatives to police response to mental health call outs based on holistic care and support.***

*City of Melbourne is working with Launch Housing to provide holistic support to people with experience of mental health illness and homelessness. By having a team available for outreach during a crisis, the response can be care and support, which assists a person reach the services they need to be well.*

*The Daily Support Team works directly to connect people with housing support and health services if and when they need them. The support team focuses on rapid response for those sleeping rough and is an assertive outreach service. For more information see: https://www.launchhousing.org.au/service/daily-support-team/*

1. **Ensuring carers and professionals can call for help during mental health crisis**

Late last year sentencing changes were introduced that made which made the offence of causing injury to police and emergency service workers a category one offence.[[3]](#endnote-1) The sentencing change mandates a custodial sentence of six months for anyone who causes injury (which can include scratch or bruise, intentionally or unintentionally made) to police, prison officer or emergency health worker. Our concern is these laws make it difficult for carers and professionals to call for assistance during a mental health crisis.[[4]](#endnote-2)

For people who experience a mental health incident, the creation of the offence becoming a category one (a category that in the past was reserved for the most serious crimes such as murder and rape) has serious implication 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.[[5]](#endnote-3) Additionally that the offence is now category one, bail is likely to be denied to anyone charged under the offence. This means, a person who is experiencing a mental health crisis could be put in custody on remand rather than receiving the health support they need when they most critically need it.

***Recommendation: Repeal mandatory sentencing legislation and reinstate judicial discretion to consider the context of the offending before issuing a sentence.***

Potential Recommendation:

**Causal element of Mental Health in instances of Misidentification of primary aggressors**

**Recommendation: that police members attending FV incidents follow existing L17 prompts in relation to mental health when assessing safety and risk of harm, and facilitate mental health, rather than criminal, responses as appropriate**

Poor police response to, and 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 (2018) from the Women’s Legal Service Victoria showed that from a sample size of 32 women whom police had misidentified as the family violence perpetrator[[6]](#footnote-3), 40% disclosed to us they were already suffering from a psychological illness. This included depression, anxiety, bi-polar disorder, and suicidal thoughts.[[7]](#footnote-4) 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 WLSV duty lawyers routinely note in police FVIO 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, “are the ones who will continue to face arrest”.[[8]](#footnote-5) 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).

Case study

**Stephanie** is a 35 year old communications professional and first generation migrant. She had recently given birth to her first child, when her partner Mark’s abuse escalated, including threats to kill her parents. Stephanie was also suffering post-natal depression and in severe pain from a caesarean section at that time.

*“I was admitted into a psychiatric mother-baby facility and diagnosed with post-natal depression. I stayed in hospital for five weeks – it was the worst but most valuable time of my life. Here I was, a 37-year-old, independent, career-driven woman, who could never go past a good coffee, at her absolute lowest and most vulnerable. And it still hurts me when I think back to that time because I wanted the memory of my baby’s birth to be joyous and happy, filled with tears of joy (like in the movies). But in reality, it was terrifying, filled with anguish and desperation. I remember asking my treating psychiatrist if I was going crazy and she said, “if you were going crazy, you wouldn’t be asking me if you’re going crazy”.*

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 Stephanie 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*”. Stephanie fought back, using a blunt pen to stab mark in the arm. Mark took her keys and phone, and called the police.

*“I could hear him telling them that I had been drinking and that I was heavily medicated and psychotic”.*

Two male police arrived.

“*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*”.

Police took Stephanie 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 Stephanie, and took and searched through her belongings.

“*I was crying and repeating 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. I remember looking at the scratch marks on the back of the door and wondering what sort of people had been here. I felt like a true criminal now and I was furious that I was being unjustly categorised as one*”.

Later that night police escorted Stephanie 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?”*

In some senses, Stephanie was fortunate, and able to tap into the significant support around her. At the third court hearing, following WLSV duty lawyers’ advocacy, police agreed to withdraw their application against her. Stephanie still becomes emotional in describing what happened, but her resilience is also evident.

“*In trying to be positive, I’m going to pluck some lessons from my experience over the past 10 months. Firstly, 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. Secondly, I will never trust a man who tries to isolate me from my own family again. Thirdly, I know who my true friends are now, as they were there for me in my darkest hour*”.

Other women without access to such resources fare much worse. The separation of children from their mothers is not uncommon when the aggressor’s relentless efforts to wear her down succeed. We have seen children removed from a mentally ill mother and placed by DHHS with the father – despite his role in her mental collapse. For women in this situation, recovery of their mental health, much less their children, is a Sisyphean task, particularly while police and courts struggle to avoid colluding in his continued coercion and control.

Submission Three: The case for integrated Services

**Short Introduction:** Community based partnerships or integrated services are where social workers, financial services, legal services and education service work together to provide holistic support and care when and where people need it most.

Legal assistance is a vital component to these holistic services. The Victorian Inquiry into Access to Justice found people who experience a disability are particularly vulnerable to having legal problem, and those who have experience of mental health illness have significantly more legal problems compared to other disabilities.[[9]](#endnote-4) The Victorian Inquiry into Access to Justice also found that for women experiencing family violence, access to legal services is a critical aspect of their survival and recovery.[[10]](#footnote-6) Family violence victims are 10 times more likely to have legal problems than are other community members.[[11]](#footnote-7) If these problems are not addressed they lead to severe adverse impacts for these women, and significant downstream costs to other publicly funded services (such as health (including mental health), housing and financial support).[[12]](#footnote-8)

The Inquiry into Access to Justice explicitly recommended that legal services be integrated with other services (R 3.4) and that legal triage occur (R 3.5) to improve access to justice.[[13]](#footnote-9) It also recommended that the state increase funding for legal assistance (R 6.21) and appropriate levels of Commonwealth funding for legal assistance be restored (6.20). Despite the Government accepting these recommendations, their implementation has been overlooked, not least in the state-wide response to family violence (including in The Orange Door), in a context of significantly increased legal demand and worsening mental health outcomes across Victoria (see NTV submission).

Funding allocations have broadly excluded legal triage (or identification of legal needs), and access to appropriate legal services to address these legal needs (such as safety, housing, immigration, parenting, property, and financial needs). As a result, we are not seeing the foundations laid for improved access to justice across Victoria, either as a preventive for mental illness, or to alleviate its causes.

In sum, 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.

**Case Study**

**Lucinda**, a teenage girl, had been a child bride and was the victim of severe family violence at the hands of her ex-husband. He sent their two young children to Zimbabwe to live with his mother and refused to bring them back. A deeply traumatised Lucinda and her children were kept apart in different countries for more than a year when a social worker in an international NGO contacted WLSV as a last resort.

WLSV successfully applied to the court to place Lucinda’s ex-husband on the Airport Watch list and issue orders requiring him to organise for the children to be returned to Lucinda. Unable to leave Australia and with the threat of being jailed if he didn’t comply with the orders, the ex-husband finally brought Lucinda’s children home. The young children have been returned to their mother’s care, but the long period of separation has had a profound impact on all of their lives.

Had Lucinda been linked in with legal services earlier, urgent court action could have been taken to prevent the children’s removal from Australia and to secure their return to their mother. Effective early legal intervention could have prevented this lasting trauma.

A cluster of legal problems, particularly if left unaddressed can cause mental illness and impact health and wellbeing of a person.[[14]](#endnote-5)

Current Recommendations:

* That the Attorney General review budget allocations for legal assistance to ensure the recommendations of the AJR in relation to legal assistance are met.
* That the Attorney General progress implementation of AJR recommendations 3.4, 3.5, 6.21 and 6.20 (see above) to ensure they are implemented alongside, and give full effect to, the RCFV recommendations
* That the Government of Victoria develop a timeline and plan for implementation of legal triage in The Orange Door and increased access to legal services more broadly.
* **Identify service provision gaps to strengthen early intervention and prevention to reduce demand on the system.** State government to work with relevant bodies to address unmet legal needs and meet gaps in service provision to support people to suitable services and programs, to better their mental health and wellbeing.
* **Consumer-centred and trauma informed practices** Address the barriers to accessing assistance, by building and supporting community embedded partnerships in locations people with mental illnesses already go: whether they are homeless support centres, LGBTQI health centres, or women’s refuges.
* **Establish a downgraded version of the CAT team** (as they only engage in critical incidents – more funding may mean that come to less critical incidents, now only risk of harm to self or others – used to be 24 hours – SR example 30 year ago versus now – might need two tiers of service for less crisis moments – could visit the carer and also then assist deal with the other person – could then work with CAT team) – social worker / community (as long as not obvious that it was mental health worker): (discuss further with Senior Rights)
* **Measuring outcomes and success** – recognising that often services will see less clients but people with greater vulnerability and complex issues.
* **Secure ongoing funding.** Funding in a block rather than for service hours. The Victorian Access to Justice Review found that funding should be for four year minimum.[[15]](#endnote-6) Stable funding allows integrated services to maintain relationship and not have to start and stop program that work due to funding streams.

Input from Women’s legal:

WLSV notes the inadequate mental health supports for women and children experiencing family violence in the child protection system, that impede family reunification and increasing permanent separations of children from their families. The longer term mental health and trauma impacts on women and children (including premature neonates – see Samantha’s story) as a result of this separation, and also as a result of poor treatment of children in out of home care (especially children with special needs), are documented elsewhere.

Samantha’s Story

Samantha is a 20 year old ATSI mother of two children who was subject to Children’s Court Orders herself until her 18th birthday. When Samantha’s second child, Zoey, was born Samantha was already involved in child protection proceedings in the Children’s Court in relation to her oldest child Lola. Lola was in the care of the father and having supervised contact with Samantha when Zoey was born.

DHHS did not engage or plan with Samantha during her pregnancy but did communicate with her medical providers at the hospital following Zoey’s birth. Approximately 10 days after Zoey was born DHHS sought to remove Zoey from Samantha’s care. Zoey was not ready for discharge having been born prematurely. There were no other current protective concerns identified.

Samantha was assisted by WLSV’s duty lawyer at the Children’s Court where an interim order was made placing Zoey in Samantha’s care.

Earlier intervention in the form of legal advice at the hospital would have provided an opportunity for a collaborative approach from the hospital, WLSV and appropriate ATSI organisations which could have resulted in Samantha to positively engaging with DHHS and being supported to make safe and protective decisions about her care of Zoey.

Approximately 3 days later Zoey was ready to be discharged from hospital, DHHS applied to remove Zoey from Samantha’s care again. DHHS physically removed Zoey from Samantha placing her in an out of home care placement pending the court hearing. WLSV were not given an opportunity to speak with hospital staff before DHHS removed Zoey from Samantha’s care. Samantha was traumatised. The impact on Zoey of being removed from Samantha’s care in those circumstances cannot be measured at this time.

Earlier intervention in the form of legal advice at the hospital would have resulted in WLSV, together with Samantha and appropriate ATSI organisations, working with the hospital to ensure clarity around the arrangements for Zoey following her discharge from hospital.

In Samantha’s case, earlier intervention would have allowed all interested parties to work together with Samantha to support the family unit remaining together. Hypothetically, had Samantha and Zoey had the benefit of the earlier intervention at the hospital and DHHS still made the decision to intervene, the earlier intervention at the hospital would have been likely to result in DHHS supporting a court order allowing for Zoey to remain in Samantha’s care, minimising the trauma to both Samantha and Zoey.

The Victorian Charter requires public authorities like DHHS to act compatibly with Charter rights and to give proper consideration of Charter rights in decision making. Samantha and Zoey both have a right to non-interference in their family life. They also had a right, as a family, to be protected as a family by the state, and as an Aboriginal child and mother, the right to enjoy their identity, culture and family together. Zoey had a right, as a child, to the protection of her best interests. There does not appear to have been sufficient consideration given by DHHS to these rights and the profound impacts of Zoey being torn away from her mother (in the absence of significant protective concerns?), both on Zoey and Samantha, and particularly in the context of a long history of Aboriginal children being taken from their parents by state authorities in Australia.

Integrated services models, such as health justice partnerships focussed on prevention and early intervention, see significant reductions in the separations of children, including newborns, from their mothers, and the accompanying, life-long trauma it inflicts.

**Recommendation**

To prevent long term trauma in women and babies separated at birth, and the use of the mother’s mental illness (often correlated with family violence) as a reason for separating them, we recommend:

* DHHS link vulnerable pregnant women with legal advice, and focus on putting supports in place for her during pregnancy to ensure baby remains in her care at birth. Putting supports in place, including mental health services, should be attempted ahead of any consideration of removal.
* DHHS work with appropriate sector workers (in Samantha’s case, ATSI organisations) to address DHHS protective concerns.
* For parents with a disability, DHHS link vulnerable parents with targeted disability support services, and link their case management with NDIS services.
* DHHS ensure that relevant provisions are followed in relation to Aboriginal family conferencing before child removal.

1. Australian Institute of Health and Wellbeing, ‘[*The Health of Australia’s Prisoners 2015*](https://www.aihw.gov.au/reports/prisoners/health-of-australias-prisoners-2015/contents/mental-health-of-prison-entrants)’ (27 Nov 2015). [↑](#footnote-ref-1)
2. Cordner D 2006 *People With Mental Illness US Department of Justice* p8 [↑](#footnote-ref-2)
3. s.10AA *Sentencing Act 1991* (Vic) [↑](#endnote-ref-1)
4. See: Adam Carey, ‘[Someone will die plea to scrap jail terms for emergency assaults](https://www.theage.com.au/politics/victoria/someone-will-die-plea-to-scrap-jail-terms-for-emergency-assaults-20180917-p504bv.html)’ (*The Age,* 17 September 2018) [↑](#endnote-ref-2)
5. S.10A *Sentencing Act 1991* (Vic) [↑](#endnote-ref-3)
6. 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, our data showed they were mistaken in 58% of cases. [↑](#footnote-ref-3)
7. 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. [↑](#footnote-ref-4)
8. Miller and Meloy, cited in WLSV Policy Paper “Officer She’s Psychotic and I need Protection”: Police Misidentification of the ‘primary aggressor’ in family violence incidents in Victoria, Updated 8 October 2018, pp.3-4. [↑](#footnote-ref-5)
9. Access to Justice Inquiry: volume I (August 2016) 78. [↑](#endnote-ref-4)
10. The Government of Victoria’s Royal Commission into Family Violence (RCFV) (March 2016), and the Commonwealth Government’s subsequent Access to Justice Review (August 2016), confirmed this nexus [↑](#footnote-ref-6)
11. The Law and Justice Foundation of NSW *Quantifying the legal and broader life impacts of domestic and family violence*  [↑](#footnote-ref-7)
12. As above [↑](#footnote-ref-8)
13. See Recommendation 3.4: supporting integrated service delivery; and Recommendation 3.5: including legal triage in the support and safety hubs. [↑](#footnote-ref-9)
14. 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’, xvi. [↑](#endnote-ref-5)
15. Department of Justice and Regulation Victoria. *Access to Justice Review: Summary and Recommendations* (2016) Recommendation 6.7. [↑](#endnote-ref-6)