



**FEDERATION**  
OF COMMUNITY LEGAL CENTRES VIC

# NEXT STEPS FOR EQUALITY

VICTORIAN STATE BUDGET SUBMISSION 2020-2021

December 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 part 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](https://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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# FOREWORD

Australia prides itself on its values of equality and fairness but people are being left behind. While many Australians dream of owning their own home, too many are struggling to make ends meet and buy basic items like food and medicine. Over three million people in Australia live in poverty<sup>1</sup> and a person in the highest one per cent earns as much per fortnight as someone in the lowest five percent earns in an entire year.<sup>2</sup>

Economic inequality leads to disadvantage, discrimination and problems with the law. People who cannot pay their rent get parking and transportation fines, people experiencing homelessness get charged with obstructing footpaths, and real estate agents punish tenants for standing up for their rights. Despite our beliefs in a fair go, many people are unequal before the law. Aboriginal and Torres Strait Islander peoples, people with a disability, culturally and linguistically diverse communities, women, and LGBTIQ+ people are among those most frequently disadvantaged by systemic discrimination. This can affect the way a person accesses employment, personal loans, housing and even restaurants. Unless you have experienced the effects of systemic barriers in the legal and social systems, it can be very difficult to understand how complex and wide ranging their impacts are, and how difficult it can be to escape the cycle of disadvantage.

The Federation of Community Legal Centres (the Federation) is a crucial advocate for people whose lives are affected by injustice. Community legal centres (CLCs) in Victoria and across Australia are experiencing unprecedented demand for legal and social support services. Nearly half of all Victorians will have a legal problem in the next 12 months, and nearly one third will have more than one.<sup>3</sup> CLCs understand that vulnerable community members with complex needs often do not even know that they have a legal issue. CLCs go beyond purely legal problems to provide an integrated service and work with doctors, social workers, financial counsellors and teachers to reach those who really need our help and address all of their issues.

Luckily, there are clear solutions that the Victorian Government can implement to make the legal system fair and accessible for all Victorians. The government should take a long-term view and fix our broken infringements system, create fair and accessible housing, and invest in prevention and rehabilitation services instead of prisons. Rights are meaningless unless people can fight to protect them, so the government must give CLCs the long-term funding they need to provide the community with frontline legal services and advocate for crucial law reforms that make the system fairer for everyone.

Budgets are about people and the kind of society we want to live in. It's time to take the next steps for equality and ensure people have access to community legal help and the support they need to thrive.

The Victorian Government has some big plans for our State, and we hope that it will fix long-term issues that create generational and systemic disadvantage so that we can all live in a just and fair Victoria.

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<sup>1</sup> Australian Council of Social Services and UNSW, 'Poverty in Australia 2018' (2018), p. 12.

<sup>2</sup> Australian Council of Social Services and UNSW, 'Inequality in Australia 2018' (2018), p. 16.

<sup>3</sup> Department of Justice and Regulation Victoria. Access to Justice Review, (2016), p. 55.

# NEXT STEPS FOR EQUALITY:

## STEP 1 – Access to Justice for Those Who Need It Most

The legal assistance sector saves lives, and can be the critical factor that prevents a big bank from unfairly taking a family's home, a worker from being exploited by their employer or a person experiencing family violence from being stuck with the crippling debts of their abuser. The sector has been chronically underfunded for years, and needs secure, ongoing funding so that it can focus on supporting Victorians when they need it most.

## STEP 2 – Safe, Secure and Affordable Housing

Everybody needs a safe and secure place to live. It is becoming increasingly difficult to afford a home and renters need access to a lawyer to stand up to dodgy landlords that only see rental properties as investments instead of as people's homes. The Victorian Government needs to rapidly build more social housing and support community lawyers that help people fight for their rights to a stable home.

## STEP 3 – Community Legal Help for Victim-Survivors

No one should be unsafe in their own home. Demand on legal services to help people escape family violence is rising and will continue to do so as the recommendations of the Royal Commission into Family Violence are implemented. Community legal centres are at the frontline of family violence matters, and need secure, ongoing funding to help those who need it most.

## STEP 4 – Support Mental Wellness

People who are unwell need medical care so that they can recover, not time in a jail cell. We know that life and legal problems frequently overlap and that legal issues that are not addressed early can snowball and become crises. People from all walks of life experience mental illness, and having early access to a lawyer and wrap-around support services can make a crucial difference to people living with mental illness, as well as their families and their children.

## STEP 5 – Smart Justice for Strong Communities

We need a justice system that is fair, inclusive and creates opportunities for everyone to thrive. Too many Aboriginal and Torres Strait Islander people, people experiencing homelessness and disadvantage are being sent to prison. We need to abolish outdated laws that punish people for sleeping rough without looking at why they are struggling in the first place. Communities are better off if government invests in legal assistance, social services and treatment programs that help people deal with complex issues instead of wasting money on prisons.

## STEP 6 – A Fairer Fines System

For some people, fines are more than a mere inconvenience and can stop someone from being able to pay the rent and feed their kids. Even worse are fines that are incurred while a person is experiencing family violence, mental illness, homelessness or addiction. The Victorian Government needs to support people and properly invest in schemes designed to help them such as the Infringements Family Violence Scheme and Work and Development Permits, and retain the Magistrates' Court Special Circumstances List.

# RECOMMENDATIONS

## Access to Justice for Those Who Need It Most

1. Support community legal services to meet increasing demand and ensure people can receive the help they need by providing stable funding in at least four year blocks.
2. Prevent service delivery gaps and ensure that people's complex needs can be met by providing ongoing funding for integrated justice partnerships that have been proven to work, as stated in Recommendation 3.4 of the Access to Justice Review.

## Safe, Secure and Affordable Housing

3. Help tenants exercise their rights and support implementation of the new rental reforms by supporting community legal centres.
4. Grow public and community housing by 6,000 new homes for at least ten years plus at least 300 Aboriginal community housing properties each year.
5. Ensure community housing providers' policies match the terms of public housing providers and are fair, consistent and publicly available.
6. Support community housing providers to provide holistic support services for tenants with complex needs and ensure mental health and legal support services are integrated.
7. Support Aboriginal people facing eviction due to mental health conditions by providing brokerage funding to Aboriginal Community Controlled Organisations (ACCOs), including Victorian Aboriginal Legal Service, in a similar way funding is provided to ACCOs for clients experiencing family violence.

## Community Legal Help for Victim-Survivors

8. Ensure people who need urgent legal assistance receive it by funding legal services to provide triage services at referral hubs and access to integrated services to address multiple needs.
9. Secure referrals for legal assistance as early as possible by funding Women's Legal Service Victoria to train workers at referral hubs to identify legal issues.
10. Increase positive outcomes in child protection matters by expanding successful community legal centre models across Victoria.
11. Commit to reducing rates of police misidentifying women as primary aggressors in family violence matters.

## Support Mental Wellness

12. Support and expand health and legal services that work to prevent criminalisation of people with mental health issues.
13. Link women and families with culturally appropriate legal, mental health and wrap-around supports at the earliest opportunity to ensure their children can remain in their care.

## Smart Justice for Strong Communities

14. Deliver on the commitment to a health-based response to public drunkenness by adopting a community-led model that includes funding for non-police responders, sobering up centres and legal assistance.
15. Prevent people from interacting with the legal system by increasing funding for alcohol and other drug treatment programs.
16. Develop and fund an overarching mental health and alcohol and other drug framework that embeds a health-based response and works to address intersecting issues.

17. Repeal outdated offences in the Summary Offences Act 1966 (Vic) that disproportionately target people with poor mental health and/or who are experiencing homelessness.
18. Commit to increasing the use of diversion programs to keep people out of prison and continue to expand the Drug Court and Family Drug Treatment Court so that they are accessible to all Victorians.
19. Reduce the number of Aboriginal and Torres Strait Islander young people in detention by increasing funding and support for the use of culturally-safe pre-charge cautioning and increasing the number of Children's Koori Court locations.
20. Ensure that Aboriginal children and youth have access to culturally safe legal services by increasing support for Aboriginal Community Controlled Organisations and culturally safe legal services such as the Victorian Aboriginal Legal Service (VALS).
21. Develop a plan to close children's prisons and instead fund legal assistance and community services programs that support children to thrive and avoid becoming trapped in the criminal system.
22. Raise the age of criminal responsibility to bring Victoria into line with world standards and reduce reoffending.
23. Stop young people waiting in jail before they attend court by providing more housing and suitable accommodation.
24. Keep people out of prison by maximising the use of diversion programs.
25. Allow people to move on with their lives by implementing a new graduated spent convictions scheme.
26. Reform bail laws to ensure they are targeting serious offending, and stop locking up women who should not be in prison.
27. Commit to ensuring that all women are represented at court hearings and can access trauma-informed community legal services, before the day of their hearing.
28. Support women in prison or at risk of entering prison to deal with intersecting issues such as family violence, child protection, tenancy concerns and fines by increasing funding to integrated support services and providing transitional support to ensure that no woman leaves prison into homelessness.
29. Implement the recommendation of the Inquiry into the External Oversight of Police Corruption and Misconduct in Victoria and establish and fund a new and independent Police Misconduct and Corruption Division within the Independent Broad-based Anti-Corruption Commission (IBAC).

## A Fairer Fines System

30. Help Victorians experiencing disadvantage access justice by retaining and funding the Special Circumstances List in the Magistrates' Court.
31. Ensure the Infringements Family Violence Scheme works as intended and that applications are processed quickly, with requests for further information made within no more than three months of the application being received.
32. Support Victorians to thrive by significantly increasing support for sponsors of Work and Development Permits and increase funding for community legal centres that support the scheme's operation.
33. Stop the criminalisation of private debts owed to toll companies by shifting debts to the civil system in line with other debt enforcement processes and use the savings to fund integrated legal and social services that support people.
34. If tolls continue to be collected by government services, increase the time that fines are held with tolling companies from 90 days to 180 days before infringements are issued by the police. This will allow more time for toll companies to implement appropriate hardship programs and prevent infringements being issued.
35. Introduce a Code of Practice that toll operators are required to comply with to ensure that communication, accessible payment options, early intervention, hardship and other consumer protections are improved and monitored in line with other industries.
36. Expand the role of the Tolling Ombudsman and ensure it has full investigation powers and sufficient resources to undertake its work.



# SECTION 1: ACCESS TO JUSTICE FOR THOSE WHO NEED IT MOST

All Victorians need equal access to justice and the legal system so that our core values as a fair and just society are put into practice. Nearly half of all Victorians will have a legal problem in the next 12 months, and nearly one third will have more than one.<sup>4</sup> From the outside, it can be difficult to see the difference that access to legal services can make to a person dealing with complex and overlapping issues, which can include anything from family violence, housing and consumer law to elder abuse and disability discrimination. The legal system is complex and people need help to navigate it and make informed choices that can impact on all aspects of their lives. Publicly funded legal assistance services provide a crucial safety net for people in our community who need it most<sup>5</sup>, helping Victorians in need get the justice they deserve while also fighting for law reforms that make the legal system fairer for us all.

People experiencing disadvantage are even more likely to have complex legal problems<sup>6</sup>, including people with a disability, Aboriginal and Torres Strait Islander people, single parents and people experiencing disadvantage and marginalisation. These legal problems are magnified because they are more likely to face discrimination and be ripped off by dodgy landlords or payday lenders. Although they need more support, these people have unequal access to legal resources and information and often fall through the cracks of the legal system, ending up in prison, with crippling debts or homeless.

Although demand for legal assistance is increasing, community legal services are still chronically underfunded and need sustainable, ongoing funding so they can meet the communities' needs. The Federal Productivity Commission's 2014 Inquiry into Access to Justice Arrangements recommended an urgent injection of \$200 million per year just to address the immediate funding shortfall for civil law matters.<sup>7</sup> Despite this, and the recommendations of the 2016 Victorian Access to Justice Review, the sector has not seen anywhere near this level of investment and people who urgently need help are missing out.

"Advocating for increases in funding (however modest) in a time of fiscal tightening is challenging. However, not providing legal assistance can be a false economy as the costs of unresolved problems are often shifted to other areas of government spending such as health care, housing and child protection." - 2014 PRODUCTIVITY COMMISSION

We know that demand for legal assistance is only going to rise, particularly as systemic changes are made to implement the recommendations of the Royal Commission into Family Violence. The recommendations must be implemented and we applaud the Andrews Labor Government for committing to doing so. However, legal assistance was overlooked in the recommendations and demand has escalated. We expect that the Royal Commission into Victoria's Mental Health System and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability will put even more demand on community legal centres as their recommendations are implemented. As more support services receive funding and begin helping people experiencing disadvantage, people will learn more about their legal problems and need help to exercise their rights and seek a positive outcome. The legal assistance sector must be set up to help those who need it.

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<sup>4</sup> Department of Justice and Regulation Victoria. Access to Justice Review, (2016) 55.

<sup>5</sup> Department of Justice and Regulation Victoria. Access to Justice Review, (2016) 4.

<sup>6</sup> 'In Australia as a whole, nine per cent of respondents accounted for 65 per cent of the legal problems reported.' See: Law and Justice Foundation (NSW), Legal Australia-Wide Survey: legal need in Australia, (2012) xiv.

<sup>7</sup> Productivity Commission Inquiry Report, 'Access to Justice Arrangements – Overview', p. 30. (2014).

## SECTION 1: ACCESS TO JUSTICE FOR THOSE WHO NEED IT MOST

People should have a lawyer to advise them on their rights when they receive an unfair robo-debt from Centrelink, and to stop temporary workers from being exploited by an employer, or to help them when they need to fight for a visa to stay with their family. There are some things that only a lawyer can do to help a person with complex needs. Having access to a lawyer is an essential part of the social justice system, and ensures people have help and advice so they can avoid being unfairly pushed onto the streets or taken advantage of.

People need access to legal assistance to deal with their often simultaneous legal problems and legal services need ongoing funding so that they can operate with certainty and avoid wasting time repeatedly applying for basic funding to keep their doors open. Core service funding should be provided in at least four-year blocks<sup>8</sup> so that centres can retain quality staff and focus on helping the people who need it most.

### RECOMMENDATION

1. Support community legal services to meet increasing demand and ensure people can receive the help they need by providing stable funding in at least four-year blocks.

## Prevent Elder Abuse

People should be safe from exploitation and abuse. Too often, senior Australians are abused by the people and family members they trust most and are mistreated, neglected and taken advantage of financially, psychologically or sexually. Over 92 per cent of elder abuse is carried out by people related to an older person or in a de facto relationship with them, and over 66 per cent of elder abuse is perpetrated by a child of the older person.<sup>9</sup> Community legal centres such as Eastern Community Legal Centre and Seniors Rights Victoria work to prevent elder abuse and help older Victorians protect their rights and reclaim their dignity. Community lawyers can work with older people to help them reclaim their home after a child fraudulently takes out a mortgage against it, or regain control of their money when a carer withholds essentials like medication, hearing aids and food. Our lawyers are well-placed to recognise these issues and work with essential services to put a stop to it.

## Equality and Respect for People with Disabilities

We all deserve to be treated equally and with respect and to be supported to make decisions about our lives. The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability has again highlighted how often people with disabilities are exploited or taken advantage of. Community legal centres such as Villamanta Disability Rights Legal Service and Disability Discrimination Legal Service work alongside people with disabilities to fight for equal opportunities and freedoms that we would all expect.

## Stop Big Banks from Taking Advantage of People

Consumers will never be on a level playing field with large corporations and financial institutions and the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services showed a clear power imbalance between consumers and big banks. This has allowed some shocking behaviour by financial institutions, such as irresponsible lending, selling junk insurance and exploitative sales of financial products, including to people with intellectual disabilities. The lesson is clear: banks should never be allowed to regulate themselves, and people will always need access to legal advice to fight for their rights.

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<sup>8</sup> Department of Justice and Regulation Victoria. Access to Justice Review, (2016), Recommendation 6.7.

<sup>9</sup> Seniors Rights Victoria, 'Your Rights', < <https://seniorsrights.org.au/your-rights/>>.

## SECTION 1: ACCESS TO JUSTICE FOR THOSE WHO NEED IT MOST

Community legal centres such as Murray Mallee Community Legal Services and the Consumer Action Law Centre provide essential services that help consumers fight back against the crippling consequences of banks' practices, and can even be the difference between a person staying in their home or being forced onto the streets. While a housing officer can help someone find temporary accommodation, or a financial counsellor can help a consumer work out the best way to pay a crippling debt, only a lawyer can help a person use the legal system to stand up for their rights and challenge an unfair outcome. These professionals working together can fully address people's needs.

### Protect Workers from Exploitation and Wage Theft

We should all be paid fairly for the work that we do. Every day, people's wages and entitlements are being stolen by their employers. As well as withholding penalty rates, superannuation and leave, many employers simply pay less than the minimum hourly rate allowed by law. At least one in five young workers are underpaid, and one third of migrant workers receive less than \$12 per hour (less than half of the legal minimum wage).<sup>10</sup>

Lawyers at community legal centres such as JobWatch, WEstjustice and Springvale Monash Legal Service help people who have been exploited to fight back and reclaim money that they are entitled to. They are a critical balance against unchecked employer power and exploitation. As of 2016, WEstjustice's Employment Law Project had helped clients recover or be awarded over \$120,000 in unpaid entitlements and over \$125,000 in compensation for unlawful termination.<sup>11</sup>

### Stop Support Payments Being Unfairly Cut

Many families rely on Centrelink and support payments to make ends meet. However, a range of welfare reforms and programs such as Parents Next have led to punitive changes that have had a devastating impact on families. Community legal centres such as Social Security Rights Victoria help people fight unfair cuts to their payments and support them to get back on their feet. The recent wave of 'robo-debts' have shown us how often these reforms can lead to changes that are both unfair and unlawful, and target specific communities, including Aboriginal and Torres Strait Islander people and single parents.

### Keep Families Together

People who have experienced trauma and come to Australia as refugees need to be supported to become part of the community. Every day, centres like Refugee Legal and inTouch help families fight for visas to stay together. They also help people whose support payments have been cut off and are now unable to pay for basics needed to survive such as a place to sleep, food for their families or kids' school fees. The fact that many migrant women's visas are linked to their partner increases the risk of family violence and becoming trapped in abusive relationships. Legal help makes it possible to escape violence to safety.

### Support Integrated Justice Partnerships

When someone is drowning under the weight of complex life problems, it can be hard for them to know what kind of help they need or who they should talk to. Community legal centres routinely see clients with complex and interconnected issues, and one client may simultaneously need help with obtaining a family violence intervention order, dealing with a landlord unlawfully seeking eviction and clearing thousands of dollars in unfair fines. The impact of each problem grows the longer it builds up, and a person cannot recover and thrive if they do not have the right support.

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<sup>10</sup> Laurie Berg and Bassina Farbenblum, 'Wage Theft in Australia - Findings of the National Temporary Migrant Work Survey' (2017), p. 5.

<sup>11</sup> Catherine Hemingway, 'Not Just Work – Ending the exploitation of refugee and migrant workers', WEstjustice, p. 15.

## SECTION 1: ACCESS TO JUSTICE FOR THOSE WHO NEED IT MOST

People are more likely to talk to their doctor about legal problems than a lawyer, which means that legal problems are often not addressed until their consequences are crippling. Community legal centres understand this and reach out to people to help them with their problems much earlier, before an issue becomes a crisis.

Community legal centres take a holistic approach and form integrated partnerships with key social and medical services to reach people before their problems snowball. 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 in or auspiced by a health or other partnership services settings; or
- ▼ Social service organisations that employ a lawyer within their service.

For example, community legal centres use Health Justice Partnerships to embed legal help into healthcare services to reach people in need who are unlikely to see a lawyer about their legal problems. These partnerships enable a doctor or health care provider to refer a patient to a lawyer when they identify a legal issue, and can also connect them with other support services they need such as housing or financial counsellors. People would often miss out on legal help without these integrated partnerships, which take time to develop, especially in small regional towns and communities where trust and sustained commitment is essential.

These integrated partnerships are powerful tools with significant and proven benefits to the community, however they need certainty to develop and operate effectively. The benefits of legal assistance services are often overlooked in favour of other social services, which are very important, but are not a substitute for legal advice. This is shortsighted, particularly because providing people with legal assistance magnifies the benefits of important work done by our colleagues in these sectors. Together, we can fully address people's multiple needs and support them to recover and thrive.

### 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.<sup>12</sup>

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.<sup>13</sup>

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<sup>12</sup> Inner Melbourne Community Legal, 'Health Justice Partnerships Legal Clinics in Hospital: Evaluation Report on the Health Justice Partnership: The Royal Melbourne Hospital and Inner Melbourne Community Legal 2018' (2018): [https://imcl.org.au/assets/downloads/RMH\\_Evaluation%20Report%202018.pdf](https://imcl.org.au/assets/downloads/RMH_Evaluation%20Report%202018.pdf)

<sup>13</sup> Inner Melbourne Community Legal, 'Health Justice Partnerships Legal Clinics in Hospital: Evaluation Report on the Health Justice Partnership: The Royal Melbourne Hospital and Inner Melbourne Community Legal 2018' (2018): [https://imcl.org.au/assets/downloads/RMH\\_Evaluation%20Report%202018.pdf](https://imcl.org.au/assets/downloads/RMH_Evaluation%20Report%202018.pdf)

## SECTION 1: ACCESS TO JUSTICE FOR THOSE WHO NEED IT MOST

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]."*

*"[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 Hospital<sup>14</sup>*

When a lawyer helps someone to obtain an intervention order against an abusive partner and remain in their home or clear thousands of dollars of unfairly incurred fines from their name, benefits flow not only to the client, but also to housing and social services that do not have to support a newly homeless family or help counter the significant psychological stress of traumatic situations. Frontline legal and social services need to be supported, but we must also use the opportunity to look to the future and spend our money in a smarter way to prevent legal issues from reaching crisis point.

Demand for legal services continues to rise. If the Victorian Government wants to make stronger rights a reality for people affected by these issues, it must ensure that they can access a lawyer that can help them stand up for themselves and get a fair outcome. Funding for several government-funded integrated partnerships will lapse in June 2020, as will many other successful programs that are funded from private and philanthropic sources. By looking ahead and supporting integrated legal services that address the many interconnecting issues in people's lives, we can resolve problems before they escalate and have complex, expensive and life-long consequences.

### RECOMMENDATION

2. Prevent service delivery gaps and ensure that people's complex needs can be met by providing ongoing funding for integrated justice partnerships that have been proven to work, as stated in Recommendation 3.4 of the Access to Justice Review.

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<sup>14</sup> Inner Melbourne Community Legal Service, Partners in Case: The Benefits of Community Lawyers Working in a Hospital Setting (2018) 40.

# SECTION 2: SAFE, SECURE AND AFFORDABLE HOUSING

Everyone has a right to a home. A home is a basic human need, and is more than just a roof over someone's head. It is nearly impossible to live a good life without a safe and secure place to live and use as a base from which to work, raise a family and get an education.

## Make Sure Changes to Renting Laws Make a Difference

Everybody needs a home that is safe, suitable and stable, and as buying a home becomes increasingly unaffordable, more people are renting than ever before. For too long, renters have been disadvantaged and unable to stand up to dodgy landlords who see rental properties only as investments instead of as people's homes. This power imbalance is felt every day as renters live in unsafe conditions because they are afraid to speak up and ask for repairs or maintenance. Landlords have a responsibility to provide a safe home for tenants and their families to live in, and for too long have gotten away with making people live in houses full of mould or infested with vermin.

Renting needs to be fair for everyone, and we welcome changes to tenancy laws that will take place by July 2020. The reforms will help even the playing field for all of us and make renting a more stable option for people experiencing disadvantage. Key changes include allowing renters to make minor changes to a rental property, allowing renters to keep pets and providing for yearly, instead of six-monthly, rent increases.<sup>15</sup> The reforms will also make bond repayments automatic and require landlords to tell potential tenants of important facts before they enter into a lease, such as their intention to sell the property or the presence of asbestos.<sup>16</sup> While these law reforms are an important first step, people also need access to legal services that will help them understand and exercise their rights if the system is going to change and become fairer.

While we commend the Victorian Government on this progress, more needs to be done to prevent people with mental illness or in need of support from being managed out of their homes, often during times of crisis. Too often, people experiencing mental illness receive breach notices for nuisance for behaviours linked to their illness, such as being too loud or for hoarding.<sup>17</sup> The current laws allow landlords to use breach notices and compliance orders to ultimately evict people from their homes for issues that are often caused by health conditions that they have suffered for years. This leads to significant flow-on costs associated with people becoming homeless and uses tribunal and social services resources that could be better used elsewhere.

Compliance orders never expire and may require a tenant to fix an issue, compensate their landlord, or not commit a similar breach at any time in the future. This means that a tenant who played music too loudly just once could be evicted for breaching an order that was issued many years earlier.<sup>18</sup> Compliance orders should be fair and reasonable and have a set time limit. People should never be evicted into homelessness for minor or trivial matters that are caused by mental illness.

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<sup>15</sup> Engage Victoria, 'Changes to Renting Laws' (7 September 2018).

<sup>16</sup> Engage Victoria, 'Changes to Renting Laws' (7 September 2018).

<sup>17</sup> Residential Tenancies Act 1997 (Vic) Tenant duties outlined in ss. 59-64. Breaches for people with mental illnesses are often related to s.60 'Tenant must not cause nuisance or interference', and s.63 'Tenant must keep rented premises clean'.

<sup>18</sup> Residential Tenancies Act 1997 (Vic) s. 248.



## SECTION 2: SAFE, SECURE AND AFFORDABLE HOUSING

### 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 had a baby on the way. Stephanie's 11 year old son Noah was diagnosed with mental health conditions. A neighbour at Stephanie's public home had made continual complaints to the Department of Health and Human Services (DHHS) about Noah and even applied for an intervention order against him. DHHS then ordered Stephanie to control Noah's behaviour.

Stephanie had asked DHHS to transfer her to another more suitable home but this never happened. Stephanie contacted her local 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 because she did not know about it. 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 compliance order had been made without her until the police came knocking on her door. Stephanie met with 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 lawyer represented Stephanie at VCAT immediately and stopped her eviction for a week. During that week, the 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.

Stephanie's community legal centre negotiated extensively with DHHS, advocating for her and her family and ensuring that DHHS complied with its policies and the responsibilities they owed Stephanie under the Charter of Human Rights and Responsibilities. 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.

**\*All names in this submission have been changed.**

### Ensure People Can Stand Up for Their Rights

Rights are only meaningful if people can stand up for them. Of all the applications made to VCAT, only 6.6 per cent are made by renters, while the vast majority are made by landlords who are represented by professional real estate agents. Although most renters want their issues fixed without having to go to VCAT, tenants must have access to legal advice to correct the power imbalance that favours landlords. Community legal centres provide essential services to thousands of renters and can advocate for them to resolve disputes before they go to court, or represent them if they have to go to VCAT. Importantly, lawyers can also help people negotiate and settle their matter before a hearing begins, saving everyone and the court system valuable time and money.

## SECTION 2: SAFE, SECURE AND AFFORDABLE HOUSING

Tenancy issues rarely exist in isolation and frequently take place alongside other very stressful life events. A woman leaving a violent partner may need a lawyer to apply for both an intervention order and to remove her partner's name from the lease. Centrelink may miscalculate someone's rental allowance after a co-tenancy arrangement ends, causing them to end up unable to pay their rent.

It is essential to give people access to integrated services, and community legal centres play a crucial role in providing a holistic service and preventing people from falling through the cracks. Housing services are vital in helping people find and keep a place to live. However, in many cases, housing services are also a tenant's landlord, which means that there is a conflict of interest when they give advice about a tenancy matter. Community lawyers can work alongside housing agencies to support people and help them exercise their rights so that they can have a safe and stable home. It is important that legal assistance is prioritised and funded separately to housing services so that they can help them fight for their rights. The legal support provided by CLCs is fair and unbiased and prevents families from becoming homeless while also making the whole system work more fairly and efficiently in the long run.

### The Women's Homelessness Prevention Project

The Women's Homelessness Prevention Project, run by Justice Connect Homeless Law, is a holistic integrated model providing legal services that prevent homelessness by addressing both legal and non-legal issues.

Over a five-year period, the Project has provided an intensive combination of legal representation and social work support to 280 women, who had 391 children in their care. A vast majority of the women had experienced mental health issues and family violence and were on the brink of homelessness and dislocation from their communities.

Since it began, the Project has successfully resolved 84 per cent of legal matters. This included 148 women and their families who directly avoided eviction into homelessness as a result of their advocacy. According to a pro bono valuation of the Project conducted by Pitcher Partners, the benefit of the Project has been 6.3 times the level of investment, with a cost saving to tax payers of approximately \$4.9 million. This is an incredibly effective use of money, and these savings can now be used to improve other community services, like homes or schools.

Given the State Government's commitment to making renting fairer, it should take the steps needed to ensure that renters can legally enforce their rights to a safe and secure home and adequately fund CLCs that provide vital assistance and representation for tenants.

Vulnerable and disadvantaged renters such as people coming out of hospital or prison have very complex needs and must have wrap-around support. Integrated services provide legal and community support where and when a person needs it most. For people on the brink of losing their home, support to maintain tenancies prevents them from experiencing homelessness or spiralling into further mental health crises.

Community lawyers can work with people and help them stay in their homes instead of being pushed out onto the street. Work done by local community legal centre WEstJustice in Melbourne's West has prevented over 154 evictions by providing legal representation before a person becomes homeless.<sup>19</sup>

Aboriginal people are more likely to experience housing stress and are ten times more likely to experience homelessness than non-Aboriginal Australians.<sup>20</sup> Aboriginal people must have access to adequately

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<sup>19</sup> WEstJustice, 'Economic impact statement 2015-2018' (2018) available at <[https://www.westjustice.org.au/cms\\_uploads/docs/economic-impact-statement-15-18.pdf](https://www.westjustice.org.au/cms_uploads/docs/economic-impact-statement-15-18.pdf)>

<sup>20</sup> AIHW, Aboriginal and Torres Strait Islander people: a focus report on housing and homelessness (2019), 46.



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resourced and culturally safe integrated and holistic services, such as those provided by the Victorian Aboriginal Legal Service (VALS). The Victorian Government needs to increase funding to these services as a matter of priority.

### RECOMMENDATION

3. Help tenants exercise their rights and support implementation of the new rental reforms by supporting community legal centres.

### Provide More Public and Community Housing

When you are experiencing illness or a crisis situation, you are not going to get better living on the streets. Our most vulnerable Victorians rely on public housing to have a roof over their heads, and have frequently experienced homelessness, mental or physical illness, disability or family violence. Despite the importance of housing to everyone's physical and mental wellbeing, the Victorian Government spends less on social housing than any other state in Australia, and less than half the national average per person.<sup>21</sup> Victoria also has the lowest proportion of social housing properties per capita of all states in Australia.<sup>22</sup>

It is important to understand the differences between the different types of housing: social, public and community. Public housing is owned and run by the government while community housing is run by community organisations to provide subsidised homes. Social housing is a mix of public and community housing and, while both types are important, they are not the same. A mix is needed to provide housing security, meet people's needs and grow the amount of affordable housing available.

There are currently over 80,000 people waiting for social housing or a transfer to appropriate housing, including over 24,000 children, and the list is growing by around 1,000 applications every three months.<sup>23</sup> Almost 30,000 of the applications for housing or housing transfers are considered to be 'Priority Access', which means that those on the list urgently need housing for safety reasons such as family violence, health problems or because they are experiencing homelessness.<sup>24</sup>

Investing in public housing provides significant social and financial returns. When a person has a safe and stable home, they are better able to heal from trauma and access employment, health and social services<sup>25</sup>, which can contribute to a reduction in crime and substance abuse. While we support the Victorian Government's commitment to building 1,000 public housing properties over three years<sup>26</sup>, this is not nearly enough to combat a waiting list that is rapidly growing.

The Victorian Government must increase the number of homes available to Victorians in need. We are very concerned by the decision to transfer public homes to community housing providers without significantly increasing the overall number of homes available to people. The Andrews Labor Government should commit to ensuring that there is no loss to the number of public housing properties and increasing social housing by at least 6,000 new homes per year for at least 10 years.

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<sup>21</sup> Australian Productivity Commission, Report on Government Services 2019, (2019) Table 18A.1.

<sup>22</sup> Parliament of Victoria, Legislative Council Legal and Social Issues Committee, Inquiry Into the Public Housing Renewal Program, (2018) 25.

<sup>23</sup> Department of Health and Human Services Victoria, 'Victorian Housing Register Transition Report', (June 2019); Victorian Public Tenants Association, 'Housing Wait List Jumps Again', (2019) < <https://vpta.org.au/housing-wait-list-jumps-again/> >.

<sup>24</sup> Parliament of Victoria, 'Inquiry into the Public Housing Renewal Program' (2018), p. 202.

<sup>25</sup> Productivity Commission Inquiry report - Introducing Competition and Informed User Choice into Human Services: Reforms to Human Services, p. 175.

<sup>26</sup> State of Victoria, 'Delivering More Public Housing for Victorians' (2019) < <https://www.premier.vic.gov.au/delivering-more-public-housing-for-victorians/> >.

## SECTION 2: SAFE, SECURE AND AFFORDABLE HOUSING

### RECOMMENDATION

4. Grow public and community housing by 6,000 new homes for at least ten years plus at least 300 Aboriginal community housing properties each year.

### Raise Community Housing Standards and Capacity

Community housing providers may struggle to meet the needs of complex individuals who are experiencing a number of intersecting issues. They provide social housing to people in the community who need extra help for many reasons, including poverty, disability, mental health conditions and family violence. The rules and regulations that apply to social housing should recognise the additional needs of people who live in them, especially because they are much more likely to become homeless if they are evicted.

The amount of community housing has increased dramatically in the last decade<sup>27</sup> but community housing providers have different policies and protections in place for their tenants than public housing providers, and there is no consistency in how they maintain tenants' rights. The Victorian Government must ensure that community housing policies offer tenants the same protections as public housing. For example:

- ▼ Public housing tenants can apply for a six-month 'temporary absence' from their properties, for reasons including 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;<sup>28</sup>
- ▼ Compensation is not sought from public tenants where a property has been damaged due to violence, third parties or fair wear and tear;<sup>29</sup>
- ▼ Public housing tenants' rent is not more than 25 per cent of their total household income;<sup>30</sup> and
- ▼ Public housing providers are required to take into account human rights and procedural fairness considerations before trying to evict a public housing tenant.<sup>31</sup>

Community housing tenants often have less protection and are more likely to receive notices to vacate 'without grounds' than public housing tenants.<sup>32</sup> Currently, one in five of those previously homeless, were no longer housed by their community housing provider after six months, and a third of people coming from prison or health institutions were homeless after six months.<sup>33</sup> Within 18 months, three out of four people entering community housing from hospital or prison no longer had a home.<sup>34</sup>

The Victorian Government should commit to ensuring community housing providers give their tenants the same protections as those in public housing, prevent evictions into homelessness, and ensure they have sufficient funding and resources to do so.

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<sup>27</sup> Victorian Auditor-General Report: Managing Victoria's Public Housing PP No 254, Session 2014–17 (June 2017), p. vii.

<sup>28</sup> Department of Health and Human Services, Temporary Absence Operational Guidelines (June 2019) available at: <https://providers.dhhs.vic.gov.au/tenancy-management-manual-temporary-absence-operational-guidelines-word>.

<sup>29</sup> Department of Health and Human Services, Temporary Absence Operational Guidelines (June 2019) available at: <https://providers.dhhs.vic.gov.au/tenancy-management-manual-temporary-absence-operational-guidelines-word>.

<sup>30</sup> Department of Health and Human Services, Tenancy Management Manual, Chapter 1 – Arrears (July 2017) 14.

<sup>31</sup> Department of Health and Human Services, Tenancy Management Manual, Chapter 1 – Arrears (July 2017) 48.

<sup>32</sup> "18.8% of community housing evictions faces by Homeless Law clients involved notices to vacate "without grounds" (Residential Tenancies Act 1997 (Vic) s 263) as opposed to only 1% of public housing evictions" IN Friends Of Public Housing Victoria, Submission No 131 to Victorian Labor Government, Inquiry into the Public Housing Renewal Program, November 2017, 3.

<sup>33</sup> Johnson, G. McCallum, S. Watson, J., Who stays, Who Leaves and Why? Occupancy Patterns at Unison Housing Between 2014-2016 (2019) 4, 5.

<sup>34</sup> Johnson, G. McCallum, S. Watson, J., Who stays, Who Leaves and Why? Occupancy Patterns at Unison Housing Between 2014-2016 (2019) 4, 5.

## SECTION 2: SAFE, SECURE AND AFFORDABLE HOUSING

### RECOMMENDATIONS

5. Ensure community housing providers' policies match the terms of public housing providers and are fair, consistent and publicly available.
6. Support community housing providers to provide holistic support services for tenants with complex needs and ensure mental health and legal support services are integrated.
7. Support Aboriginal people facing eviction due to mental health conditions by providing brokerage funding to Aboriginal Community Controlled Organisations (ACCOs), including Victorian Aboriginal Legal Service, in a similar way funding is provided to ACCOs for clients experiencing family violence.

# SECTION 3: COMMUNITY LEGAL HELP FOR VICTIM-SURVIVORS

Everyone should be safe in their own home and live a life free of family violence and abuse. The effects of family violence are long-lasting, intergenerational, and are disproportionately felt by Aboriginal and Torres Strait Islander women, who are almost 34 times more likely to be hospitalised from family violence<sup>35</sup> and almost 11 times more likely to be killed as a result of violent assault than other women.<sup>36</sup>

The 2016 Royal Commission into Family Violence report made 227 recommendations, and the State Government has rightly pledged to implement all of them. However, the demand on legal services is only going up as the Royal Commission recommendations come into effect as family violence is better identified by services and communities.

Many women experiencing family violence need legal assistance to help negotiate solutions that will enable them to live safely and free from violence. Legal issues and legal assistance have been identified as key factors to the way family violence is experienced by several Victorian Government Reviews, frameworks and plans for family violence reforms.<sup>37</sup> People who were expected to use the new Support and Safety Hubs identified navigating the justice system and legal matters as one of their biggest needs.<sup>38</sup> Despite this, community legal centres have still not received the level of funding they need to provide this essential service.

We know that victim survivors of family violence are 10 times more likely than other community members to have legal problems and 16 times more likely to have family law problems.<sup>39</sup> Community legal centres are at the frontline of family violence matters, and must be properly funded if the Victorian Government is going to implement the recommendations successfully. While initiatives such as the new Specialist Family Violence Courts are very positive, women and families need early access to integrated legal services that will prevent their matters from reaching crisis point.

## Provide Access to Integrated Services

Community legal centres mainly assist victims of family violence in a variety of ways, including by providing legal advice and representation to obtain protective intervention orders, prevent families and children from becoming homeless and helping victims of crime to obtain compensation. Crucially, community legal centres work with non-legal services and connect people with them to help them deal with their complex issues and enable them to heal after trauma.

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<sup>35</sup> The Australian Productivity Commission, 'Overcoming Indigenous Disadvantage - Key Indicators 2014' (2014) 4.93 table 4A.11.22 available at: <http://www.pc.gov.au/research/recurring/overcoming-indigenousdisadvantage/key-indicators-2014/key-indicators-2014-report.pdf>.

<sup>36</sup> Australian Institute of Health and Welfare, 'Family violence among Aboriginal and Torres Strait Islander people' Cat. no. IHW 17 (2006) 71.

<sup>37</sup> Government of Victoria (2017). Support and safety hubs: statewide concept; Victorian Access to Justice Review.

<sup>38</sup> Government of Victoria (2017). Support and safety hubs: statewide concept, p.37

<sup>39</sup> Coumarelos, C 2019, Quantifying the legal and broader life impacts of domestic and family violence, Justice issues paper 32, Law and Justice Foundation of NSW, Sydney. p.1

## SECTION 3: COMMUNITY LEGAL HELP FOR VICTIM-SURVIVORS

### Lilly's Story\*

#### Empowered to thrive through effective community liaison

Lilly experienced extensive family violence committed by multiple perpetrators, which resulted in serious health concerns, pushed her into homelessness and caused her to lose care of her two young children. When she first met with Justice Connect, Lilly was facing charges at the Magistrates' Court related to her drug dependency, which she had developed when seeking to feel safe and reduce the pain of her isolation and trauma. Lilly also faced a charge for possessing a weapon that she carried due to fear of her violent ex-partner.

Lilly received specialised advice and ongoing representation from the Justice Connect senior criminal lawyer and targeted non-legal assistance from Justice Connect's social worker, the Homeless Persons' Liaison Officer (HPLO). This included the HPLO helping Lilly to access court, facilitating transport and short-term housing, offering direct assistance to feel more comfortable at her hearings, and a supporting letter to the Magistrate. Due to intensive legal and social work advocacy, Lilly secured a 12 month undertaking without conviction, which was an immense relief to her.

Although Lilly had previously struggled to engage with community workers, the HPLO built genuine trust with her for over six months, providing vital brokerage for essential needs, securing her a new driver's licence, recommencing her Centrelink payments, actively referring her to alcohol and drug counselling and family violence case management, and helping her to make a priority public housing application.

The HPLO has also arranged for Lilly to receive civil law help from Justice Connect to resolve her crippling consumer debts, and recently linked her to a long-term housing support worker, so Lilly can move into a transitional home while her public housing application is processed. These holistic outcomes have given Lilly crucial safety and stability, empowering her to reconnect with her children and to prioritise her continued health recovery.

People experiencing family violence and trying to escape violent relationships need urgent help, not time on a waiting list or having to navigate connecting to several different support services for help. Despite the role that legal assistance plays in family violence matters, the Royal Commission into Family Violence did not fully consider legal assistance because it was being considered by the Victorian Access to Justice Review that was already underway. The Commission deferred to the Review regarding the design and resourcing of legal assistance services for people experiencing family violence.

The Access to Justice Review identified family violence as a priority area of legal need and recommended that integrated services pioneered by community legal centres should be supported with ongoing funding. The Review also recommended that legal professionals be integrated into the Hubs so that legal matters could be triaged and urgent cases could get the help they needed.

Legal assistance has now fallen through the cracks, and although the Victorian Government has committed to implementing every recommendation of the Royal Commission into Family Violence, it has not funded the legal assistance that the Access to Justice Review recommended for family violence matters.

Victims of family violence also need support to remain with their children when experiencing family violence. Too many families are torn apart because they didn't receive the timely and dedicated support they deserved to escape violence and manage the range of trauma and complexity it brings. Loddon Campaspe Community Legal Centre and Women's Legal Service Victoria have completed a successful pilot program where lawyers addressed priority clients' complex and connected family and child protection law issues in a timely and

## SECTION 3: COMMUNITY LEGAL HELP FOR VICTIM-SURVIVORS

continuous way, leading to much better outcomes for families.<sup>40</sup> It is also essential that people can access culturally safe, holistic legal services during crisis situations, such as those provided by the Victorian Aboriginal Legal Service (VALS) and Djirra.

The demand on community legal centres is increasing and will only continue to do so as the Royal Commission's recommendations come into effect. We commend the Andrews Labor Government for setting up the Hubs to act as a front door for people to get help and for providing critical leadership and investment for addressing family violence. However, the vision of the Royal Commission will remain elusive if people cannot get legal help and integrated services are not available for people to receive ongoing support for the complex range of legal problems preventing them from securing safety and recovery. Without a systemic approach to identifying legal need and triaging referrals, it will remain a matter of chance whether victim-survivors of family violence will get the help they need.

### Samantha's Story

#### Integrated Services Assist Family to Feel Safe and Exercise Legal Rights

Samantha is a single mother who does not have any income. Samantha's daughter had disclosed over a year ago that she had been sexually abused by her father, Samantha's husband. Even with the intervention of Police and DHHS, her husband was still allowed to have contact with their daughter.

Her social worker at the hospital referred her to Inner Melbourne Community Legal (IMCL) out of fear for Samantha's safety and that of the children. IMCL assisted her in applying for parenting orders in the Federal Circuit Court of Australia and for an Intervention Order on behalf of her and her children. IMCL later helped her make complaints to police as her husband and his family members breached the order by continuously going to her new home and the children's school. IMCL continued to assist her through the proceedings in the Federal Circuit Court, and helped arrange counselling for the children.

The matter took over a year to resolve and Samantha was able to successfully obtain orders for her children to live with her and have no contact with their father, which was in accordance with their wishes. IMCL helped Samantha to apply for a divorce, which she chose to lodge herself after her confidence had increased through the continual support she had received. IMCL also referred her to a private lawyer so that her daughter could make an application for compensation to the Victims of Crime Assistance Tribunal (VOCAT).

"If it wasn't for the hospital, the counselling and the legal side, I would have been stuck, still, now I would have been still there, afraid and just not reaching out."

### RECOMMENDATIONS

8. Ensure people who need urgent legal assistance receive it by funding legal services to provide triage services at referral hubs and access to integrated services to address multiple needs.
9. Secure referrals for legal assistance as early as possible by funding Women's Legal Service Victoria to train workers at referral hubs to identify legal issues.
10. Increase positive outcomes in child protection matters by expanding successful community legal centre models across Victoria.

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<sup>40</sup> Victoria Legal Aid, 'Evaluation of the Community Legal Centre Children and Family Law Pilot' (September 2017).

## SECTION 3: COMMUNITY LEGAL HELP FOR VICTIM-SURVIVORS

### Ensure Police Hold the Right Person Responsible

When someone is experiencing family violence and police respond to a call out, the consequences of being accused of being the primary aggressor are devastating. Instead of receiving the protection they need, we know that at least one in 10 women are misidentified by police as the perpetrator of family violence.<sup>41</sup> We are seeing a trend where male perpetrators are effectively gaming the intervention order system, which allows them to obtain an intervention order against a woman and further their abuse.

The consequences of women being misidentified as a primary aggressor are crippling, and include criminal charges, separation from children, exposing children to further trauma, loss of access to social services such as housing and crisis accommodation and serious economic costs.<sup>42</sup> These women, who have often been subject to verbal and physical abuse, are frequently left with having to choose between returning to an abusive situation or becoming homeless.

**"Police scare me now ... I needed to be protected [but] I don't feel like they protected me" - WOMEN'S LEGAL SERVICE VICTORIA CLIENT**

We owe these women more than writing them off as 'hysterical' or 'crazy' or simply issuing an intervention order to the first person that calls the police. Perpetrators of abuse often get away with it for years and can be highly persuasive. We must not let them play the system and police must look beyond their initial impressions of a matter to identify a pattern of behaviour. The Victorian Government must fund integrated legal services to provide women with early access to a lawyer that can help them escape the cycle of abuse and provide a safe home for their families.

#### RECOMMENDATION

11. Commit to reducing rates of police misidentifying women as primary aggressors in family violence matters.

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<sup>41</sup> Women's Legal Service Victoria, "Officer she's psychotic and I need protection": Police misidentification of the 'primary aggressor' in family violence incidents in Victoria', p.1.

<sup>42</sup> Women's Legal Service Victoria, 'Policy Paper 1 - "Officer she's psychotic and I need protection": Police misidentification of the 'primary aggressor' in family violence incidents in Victoria' (2018), p. 2.



# SECTION 4: SUPPORT MENTAL WELLNESS

For a community where everyone has a chance to grow and thrive, people need access to wrap-around legal and social services that can provide a tailored response to their needs. Around 45 per cent of Australian adults will be affected by mental illness during their lifetime, and around one in five experience a mental illness each year.<sup>43</sup> People with mental illness are likely to experience multiple complex legal and other issues, which they are not always well placed to address. More than 60 per cent of people with more than six legal problems have a mental illness.<sup>44</sup>

Most Victorians know someone who has experienced mental illness and the challenges that has brought to their lives. We know that at least 20 per cent of the people helped by community legal centres have experienced mental health issues, and that for some centres 80 to 100 per cent of clients have a mental health condition.<sup>45</sup>

People do not experience mental health problems in a vacuum, and life and legal problems frequently overlap. Legal issues that are not addressed early can snowball, leading to a crisis situation that often makes a person's medical condition worse. People experiencing mental illness often have legal problems as a result of their health issues, and their interaction with the legal system often entrenches them in a cycle of disadvantage and poverty that can be difficult to escape. Our work with our member centres and their clients has shown us the complexity of mental illness and how frequently it affects people from all walks of life.

We all need support to thrive, and too many people with mental health issues are criminalised as a direct consequence of their health condition. For some people, their experience of mental illness makes keeping their home difficult. They may be evicted for anti-social behaviour or struggle to pay rent while on the Disability Support Pension. Because of this, people often end up homeless and living their lives in public where they are more likely to be arrested. Families in need of support resort to calling police in difficult situations, because comprehensive mental health supports are not available. As a result, people with a mental illness are disproportionately represented in the legal system and need early support to prevent this.

We commend the Victorian Government for establishing the Royal Commission into Victoria's Mental Health System. The Commission is a chance to address the fundamental failures experienced by people with mental health issues and ensure they can access the support they need. Crucially, it is an opportunity to prevent the drivers of people with mental health issues into the criminal justice system and end their criminalisation.

Having early access to a lawyer can make a crucial difference to people experiencing mental illness, as well as their families and children. Because evidence shows that homelessness<sup>46</sup>, financial stress<sup>47</sup>, family violence<sup>48</sup> and other legal problems<sup>49</sup> can cause mental health problems, early legal support is a protective

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<sup>43</sup> Department of Health and Human Services, 'Mental Health (2019) <<https://www.dhhs.vic.gov.au/mental-health>>

<sup>44</sup> Law and Justice Foundation of New South Wales, Legal Australia-Wide Survey (LAW) (2012) 14.

<sup>45</sup> 80 per cent of Youthlaw Clients and 100 per cent of Mental Health Legal Centre clients are experiencing a mental health condition.

<sup>46</sup> Australian Housing and Urban Research Institute, Housing, Homelessness and Mental Health: Towards Systems Change (2018), 13.

<sup>47</sup> Many help and government resources recognise the significant link between financial stress and poor mental health: See Lifeline, 'financial problems' <https://www.lifeline.org.au/get-help/topics/financial-problems> (Accessed: July 2019), Department of Health (Cth), 'Meaningful life: finances' <https://headtohealth.gov.au/meaningful-life/feeling-safe-stable-and-secure/finances> (Accessed: July 2017). Longitudinal study of student's debt in UK showed that financial stress significantly linked to the development of mental illness: Richards, T. Elliott, P. Roberts, R. Jansen, M. 'A longitudinal study of financial difficulties and mental health in a national sample of British undergraduate students' Community Mental Health J. 2017; 53(3): 344-352.

<sup>48</sup> Rees S, Silove D, Chey T, Ivancic L, Steel Z, Creamer M, Teesson M, Bryant R, McFarlane AC, Mills KL, Slade T 2011, 'Lifetime prevalence of gender-based violence in women and the relationship with mental disorders and psychosocial function', JAMA, vol. 306, no. 5, pp. 513–521.

<sup>49</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.



## SECTION 4: SUPPORT MENTAL WELLNESS

element that can prevent mental illness from developing or stop it from becoming as severe. A lawyer can prevent a family from becoming homeless because they missed a rent payment due to illness or ensure that crippling fines incurred as a result of mental illness are wiped from a person's record. Early legal intervention allows a person to deal with often complex and interconnected life and legal issues so that they can then recover and thrive.

Health and legal problems are intrinsically linked and people who experience mental health conditions often need more than medical care. More people ask their doctor or nurse for legal advice than a lawyer<sup>50</sup>, and the Royal Commission into Victoria's Mental Health System has again highlighted the importance of having a safety net of integrated services in place that can support people experiencing mental illness and help them to address their complex issues. Wrap-around services should include many forms of help tailored to the person's needs, including legal assistance and representation, medical care, social care, housing and employment services.

### Support Children and Families to Stay Together

Women and families need to be supported when they are affected by mental health issues, particularly in traumatic circumstances such as family violence. There are not enough mental health supports for women and children experiencing family violence in the child protection system, which makes it much more likely that children will remain permanently separated from their families.

The Royal Commission into Family Violence recognised that family violence profoundly and negatively impacts women's mental health.<sup>51</sup> Victims of family violence need mental health and other supports, before anyone considers taking their kids away. Too often, women and children are further traumatised by being separated as a result of family violence, resulting in longer-term mental health and trauma for women and children<sup>52</sup> and poor health outcomes for newborns, including lower birth weights, premature babies, and foetal stress.<sup>53</sup>

We need to stop the cycle of disadvantage before it begins by supporting families with wrap-around holistic and culturally appropriate support. 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 know that our member centres see too many children removed from their mothers and families because of a lack of access to mental health supports. This is even worse for Aboriginal and Torres Strait Islander children and families who face the effects of entrenched systemic racism and intergenerational trauma and much higher rates of child removal.

The Andrews Labor Government must support families at the earliest opportunity by connecting them with the legal and mental health supports they need and work to keep kids with their families and communities.

#### RECOMMENDATION

12. Support and expand health and legal services that work to prevent criminalisation of people with mental health issues.
13. Link women and families with culturally appropriate legal, mental health and wrap-around supports at the earliest opportunity to ensure their children can remain in their care.

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<sup>50</sup> Of those people who sought help for a legal problem in the LAW foundation study 12-17% of people seek legal advice, 27% see a healthcare professional like a doctor or psychologist: Law and Justice Foundation of NSW, 'Legal Australia-wide Survey Legal need in Victoria' (2012) 187

<sup>51</sup> Royal Commission into Family Violence (Final Report, March 2016), Vol 1, 32.

<sup>52</sup> Royal Commission into Family Violence: Report Volume IV. 18.

<sup>53</sup> Campo, M. 'Domestic and family violence in pregnancy and early childhood: overview of emerging interventions' (CFCA Practitioner Resource, December 2015): <https://aifs.gov.au/cfca/publications/domestic-and-family-violence-pregnancy-and-early-parenthood>.

## SECTION 4: SUPPORT MENTAL WELLNESS

### Sid's Story

#### Empowerment and Assisted Decision-making

A Bolton Clarke homeless person's program 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 the State Trustees would not listen to him and continued 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 Administration Order. This meant Sid had control of his own finances and decisions for the first time in more than a quarter of a century.

Funding for this program has been unstable, and without secure, ongoing funding this health justice partnership will be unable to provide assistance to people experiencing homelessness and mental illness.

# SECTION 5: SMART JUSTICE FOR STRONG COMMUNITIES

We need a justice system that is fair, inclusive and creates opportunities for everyone to thrive. The Federation leads over 60 organisations in the Smart Justice Coalition, which is committed to evidence-based criminal justice policies that reduce crime and protect the values of freedom, respect, equality and dignity. The organisations involved in Smart Justice are passionate about promoting safe and vibrant communities and have extensive experience working in the criminal justice system and with those affected by it.

Every Victorian deserves a fair go and if we want to tackle crime, we need to address entrenched poverty, systemic racism and other forms of disadvantage.<sup>54</sup> Right now, a disproportionate number of Aboriginal and Torres Strait Islander people are being sent to prison<sup>55</sup>, as are people experiencing disadvantage. As we have seen during the Royal Commission into Victoria's Mental Health System, people are often caught in the criminal system because they could not access enough care and support when they needed it most. People who have lost their housing during crisis situations or who have received fines for living in a public space are more likely to be punished by police under outdated laws that do not address why people are struggling in the first place. Communities are better off if government works to prevent crime before it happens by funding and prioritising community-based programs that deal with the underlying causes of crime, such as mental health, poverty, drug dependency, and homelessness.<sup>56</sup>

People who are unwell and experiencing disadvantage need access to support services instead of time in a prison cell. Nearly one in three people who enter prison are homeless<sup>57</sup>, and around half of people in the prison system have been diagnosed with a mental health issue.<sup>58</sup> Individuals must be able to access support services before they come into contact with the criminal system, and we can only reduce offending when we fund services properly and distribute opportunities fairly. Employment, healthcare and education have much more long-term value to the community than prisons, which have consistently failed to make the community safer.<sup>59</sup>

## A Health Based Response

When our friends or family are sick, we tell them to go to the doctor – we don't punish them. Every year, people are criminalised because of drug dependencies and alcoholism and pushed into the criminal justice system, instead of towards the medical and social services they need to recover.

Police are not a substitute for a doctor, and prison cannot replace a hospital. Earlier this year, the Andrews Government acknowledged the need to decriminalise public drunkenness and replace it with a health-based response<sup>60</sup>, and we applaud its commitment to providing Victorians experiencing disadvantage and vulnerability with the help and support that they need. Taking a health-based approach benefits communities

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<sup>54</sup> Pablo Fajnzylber, Daniel Lederman and Norman Loayza, 'Inequality and Crime' (2002) 45 The Journal of Law and Economics 1.

<sup>55</sup> Almost half (43 per cent of indigenous prison entrants had been in prison at least five times before, compared with 25 per cent of non-Indigenous entrants – Australian Institute of Health and Welfare, 'The health of Australia's prisoners 2018' (2019), p. vi.

<sup>56</sup> See, for example, Kim Williams, Jennifer Poyser and Kathryn Hopkins, 'Accommodation, Homelessness and Reoffending of Prisoners. Results from the Surveying Prisoner Crime Reduction Survey (2012, UK Ministry of Justice).

<sup>57</sup> Australian Institute of Health and Welfare, 'The health of Australia's prisoners 2018' (2018).

<sup>58</sup> Australian Institute of Health and Wellbeing, 'The Health of Australia's Prisoners 2018' (2019).

<sup>59</sup> Melanie Schwartz, 'Building communities, not prisons: Justice reinvestment and indigenous over-imprisonment' (2010) 14(1) Australian Indigenous Law Review 2, 2.

<sup>60</sup> State of Victoria, 'New Health-Based Response To Public Drunkenness' (2019), < <https://www.premier.vic.gov.au/new-health-based-response-to-public-drunkenness/>>.

## SECTION 5: SMART JUSTICE FOR STRONG COMMUNITIES

by ensuring people receive targeted help, and avoids making people criminals for behaviour that would be legal if they had their own home, such as having a glass of wine.

We urge the Andrews Labor Government to broaden this approach and commit to taking a health-based response to all health issues. This is smarter, cost-effective and supports people to recover from their medical issues instead of criminalising them for being unwell.

### Deliver on the Promise to Stop Criminalising Public Drunkenness

We applaud the Andrews Labor Government's commitment to providing a health-based response to public drunkenness.<sup>61</sup> This is a significant shift in policy which must lead to an equally significant change in practice on the ground. Aboriginal and Torres Strait Islander people in Victoria have long been disproportionately affected by public-drunkenness laws<sup>62</sup> and are 10 times more likely to be targeted by police.<sup>63</sup>

We must move away from a model where a police-based response is used when someone is identified as being drunk in public, and avoid the dangerous situation of police having the power to hold intoxicated people in jail cells. Such a response would ignore the lessons and recommendations that have come out of almost 30 years' worth of Royal Commissions and Inquiries, and the recent Inquest into the Death of Yorta Yorta woman Auntie Tanya Day.

The new health-based model must promote culturally safe pathways to help alcohol-affected people in public places and make sure they receive medical care and access to a safe place to recover. It must also refer them to relevant alcohol and other drug services and treatment programs, as well as to services that address the other challenges in their lives, including homelessness, mental illness and family violence.

Victoria is lucky that it is not the first state to address this issue, and that it is well positioned to learn from countries such as Canada, which has successfully implemented a model that responds to public drunkenness. These models have shown us that sobering up centres are a critical part of a health-based response, and that the centres should be locally tailored and community-led. They should also have medically trained staff and capacity to transport people home when they are ready to leave.

To be successful, a health-based response must be community-led and Aboriginal communities must have self-determination to develop a model that matches their needs. The Andrews Government has an important opportunity to bring about change and provide forward-thinking leadership on this critical issue.

#### RECOMMENDATIONS

14. Deliver on the commitment to a health-based response to public drunkenness by adopting a community-led model that includes funding for non-police responders, sobering up centres and legal assistance.
15. Prevent people from interacting with the legal system by increasing funding for alcohol and other drug treatment programs.

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<sup>61</sup> State of Victoria, 'New Health-Based Response To Public Drunkenness' (2019), < <https://www.premier.vic.gov.au/new-health-based-response-to-public-drunkenness/> >.

<sup>62</sup> State of Victoria, 'New Health-Based Response To Public Drunkenness' (2019), < <https://www.premier.vic.gov.au/new-health-based-response-to-public-drunkenness/> >.

<sup>63</sup> Human Rights Law Centre, 'Aboriginal women 10 times more likely to be targeted by police at time of Tanya Day's death in custody' (2019).

## SECTION 5: SMART JUSTICE FOR STRONG COMMUNITIES

### Repeal Outdated Public Order Offences

Just as people who are experiencing disadvantage and homelessness have been disproportionately affected by public drunkenness laws, they have also faced the devastating impact of other public order offences. For example, people experiencing homelessness are difficult to stay in contact with, and are often charged with the offence of begging, and then later have a warrant for arrest issued against them for failing to appear at the Magistrates' Court.<sup>64</sup>

These laws are not effective, and take up valuable police and court resources while also failing to address the underlying health and welfare issues that cause a person to beg on our streets. Other offences such as move-on directions, obstruction of foot paths and obscene language have a similarly negative impact on people who experience a mental illness and are homeless, and do nothing to help them.

#### 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 she was charged with begging. She was sleeping rough after significant violence committed by her ex-partner.

Having a criminal record will now make it that much harder for Jade to get back on her feet, to find a home and a job. Charging people with criminal offences without helping them and providing support services simply ensures that they remain in a cycle of disadvantage.

Instead of criminalising people, we should be supporting organisations to help people in need and we call on the Victorian Government to repeal these offences and fund an integrated health-based response. This is particularly important as many people charged with committing public order offences are experiencing mental health and other medical problems that need support and treatment instead of punishment through the criminal legal system.

We need to move away from a criminal police response and instead support and empower people to get their lives back on track. This approach reduces harm for people experiencing homelessness and disadvantage and also reduces the cost and burden of putting them through the criminal system.

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<sup>64</sup> Justice Connect, 'Asking for Change: a better response to begging' (2016) <<https://justiceconnect.org.au/wpcontent/uploads/2018/08/Asking-for-change-a-better-response-to-begging.pdf>>.

## SECTION 5: SMART JUSTICE FOR STRONG COMMUNITIES

### RECOMMENDATIONS

16. Develop and fund an overarching mental health and alcohol and other drug framework that embeds a health-based response and works to address intersecting issues.
17. Repeal outdated offences in the Summary Offences Act 1966 (Vic) that disproportionately target people with poor mental health and/or who are experiencing homelessness, including:
  - 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
  - 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

### Ensure People Struggling With Addiction Receive Treatment Instead of Prison Time

Many families know someone who has struggled with drug dependency and wished that they could get the help they need to get better. While we welcome the Victorian Government's investments in medically-supervised safe injection rooms and rehabilitation beds, too many people experiencing drug and alcohol dependency end up in prison instead of receiving medical care. The solution to dependency lies in connecting people with medical care and the mental health, housing and employment services that they require, not further stigmatising them. These services give people the tools they need to overcome drug dependency, making them less likely to resort to crime to sustain their addiction.

The Criminal Justice Diversion Program at the Magistrates' Court and the specialist Drug Court give people a chance to move on with their lives and get better. Diversion plays an important role in responding to drug addiction, and is a proven way to keep people out of prison and reduce offending rates.<sup>65</sup> The evidence shows that Victoria's Drug Court program has reduced the reoffending rate by 34 per cent within the first 24 months while better helping people to overcome their drug dependency.<sup>66</sup> In the case of low-level offending, the Drug Court should link people with therapeutic interventions as an alternative to punitive custodial sentences.

Although rural and regional Victorians face higher levels of drug dependency, many are unfairly deprived of access to the Drug Court.<sup>67</sup> The Government should avoid 'postcode justice' and continue to expand the Drug Court and the Family Drug Treatment Court beyond Melbourne and Dandenong to ensure access in rural Victoria, particularly given the struggle that so many regional families still face to access services.

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<sup>65</sup> Jason Payne, 'The Queensland Drug Court: a recidivism study of the first 100 graduates', Research and Public Policy Series, No. 83 (2008).

<sup>66</sup> Magistrates' Court of Victoria, Evaluation of the Drug Court of Victoria: Final Report (2014) 4.

<sup>67</sup> National Rural Health Alliance Inc, Illicit Drug Use in Rural Australia: Fact Sheet 33 (June 2015).

## SECTION 5: SMART JUSTICE FOR STRONG COMMUNITIES

### RECOMMENDATION

18. Commit to increasing the use of diversion programs to keep people out of prison and continue to expand the Drug Court and Family Drug Treatment Court so that they are accessible to all Victorians.

### Keep Children in School and Out of Prison

Young people belong in school and with their families, not in prison. Adolescence and young adulthood are vulnerable times for all young people and they have unique strengths, needs and vulnerabilities, especially in relation to mental health. Prison has a profoundly negative impact on children and the younger a child is when they enter the prison system, the higher chance they have of reoffending.<sup>68</sup> Routine prison practices such as strip searches, isolation and restraint are damaging to children who have most often already been subjected to trauma and abuse before entering. Research has shown that one third of children in prison developed mental health issues after being behind bars.<sup>69</sup>

When kids are doing it tough, they need guidance and support in a safe and trusted environment. It is easy to expel a child from school or exclude them from their community when we think they are acting out. Prison is the absolute wrong place for a child to receive the help and care they need to build a stable and positive future. Of the young offenders behind bars in Parkville and Malmsbury, 67 per cent were victims of abuse, trauma or neglect, 48 per cent presented with mental harm issues, 38 per cent had cognitive difficulties that affected their daily functioning and 27 per cent had a history of self-harm or suicidal ideation.<sup>70</sup>

All young people need support to become happy, healthy adults.<sup>71</sup> Young people interacting with the legal system have often experienced significant disadvantage, and addressing the underlying causes of offending, such as disengagement with school, unstable housing environments, out-of-home care and mental health and wellbeing will provide a better long-term outcome for all Victorians.

### Mental Health and Legal Services for Young People

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 experienced mental health issues, and most of these are a result of childhood trauma, including abuse, neglect, their parents' 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, and with it, lifelong poor mental health outcomes. It is difficult to reach these young people. Their lives can be chaotic as a result of unstable homes and substance abuse problems that have occurred in relation to their mental health conditions.

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<sup>68</sup> Andrew Becroft, 'From Little Things, Big Things Grow: Emerging Youth Justice Themes in the South Pacific' (Paper presented at the Australasian Youth Justice Conference on Changing Trajectories of Offending and Reoffending, New Zealand, 21-22 May 2013) 5 referring to Science Advisory Committee Improving the Transition: Reducing Social and Psychological Morbidity During Adolescence (May 2011) at 24. See also Kelly Richards, 'What makes juvenile offenders different from adult offenders?' (2011) 409 Trends & issues in crime and criminal justice, 4; Laurence Steinberg 'Risk Taking in Adolescence: New Perspectives from Brain and Behavioural Science' (2007) 16 Current Directions in Psychological Science 55, 56.

<sup>69</sup> Barry Holman and Jason Zidenberg, The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities (28 November 2006) Justice Policy Institute.

<sup>70</sup> Youth Parole Board, 'Annual Report 2018-19', p. 29.

<sup>71</sup> Koorie Youth Council, 'Ngaga-Dji (Hear Me) – Young Voices Creating Change for Justice', p. 46.



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This service provides legal assistance for young people on many matters such as unpaid fines, assistance in family violence matters, or 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 and also works to prevent them from self-harming or suicide.

We know that children who become disengaged at school are more likely to offend, so they need to be intensively supported when this happens to avoid falling into the quicksand of the court system. By engaging with communities and talking to them about what they need to support their kids, we can work out the best way to manage social, structural and mental health issues. We also know that change works better when young people are meaningfully involved, so the government should work with them to co-design the strategies they and their communities need. Young people have innovative ideas and ways of thinking and we need to empower and listen to them. The Victorian Government needs a plan to close children's prisons and ensure the education system is able to support a diverse range of young people's needs so that they can thrive.

### Ben's Story

#### Addressing the Underlying Causes of Family Violence

Ben has been diagnosed with Asperger's syndrome and was 14 years old when he was referred to Youthlaw at the Melbourne Children's Court. The police had applied for a family violence intervention order against him to protect his Mum and younger brother after several police call-outs to the home. It was alleged that Ben had used violence toward his Mum and caused property damage.

The Youthlaw family violence lawyer explained the law to Ben and his options for dealing with the application. The youth worker also met with Ben and undertook an assessment at court identifying that he would benefit from mental health support, school re-engagement assistance and opportunities for male mentoring. The lawyer then obtained an adjournment of the application so that Ben could engage with supports to address the underlying causes of his use of violence in the home.

During the adjournment period the youth worker, in collaboration with staff from the Education Justice Initiative, developed a school re-engagement plan for Ben. They also facilitated referrals for Ben to services and programs in his local community, including a support program for young men facilitated by male youth workers, and a 10-week course to address the young person's antisocial behaviours and personal difficulties.

Ben was also linked in with Headspace, a youth mental health service. With support from the youth worker, Ben successfully engaged with services and re-engaged with a school suited to his needs. Ben and his mother reported significant improvements at home as he developed strategies to manage his behaviour. When the matter returned to court, the police and the Magistrate were satisfied that no further court intervention was required and the intervention order against Ben was withdrawn.



## SECTION 5: SMART JUSTICE FOR STRONG COMMUNITIES

Although Aboriginal and Torres Strait Islander children do not commit more crimes than other children in our community, they are policed more<sup>72</sup> and are more likely to be held on remand without conviction.<sup>73</sup> Because of this, Aboriginal and Torres Strait Islander children are 25 times more likely to be behind bars than other children.<sup>74</sup> Placing Aboriginal and Torres Strait Islander children in the youth justice system results in convictions and criminal records for behaviour that many parents would consider normal among teenagers. Children are frequently taken from their families and communities and placed in out-of-home care, where they are often criminalised. Breaking a cup is permanently recorded as property damage<sup>75</sup> and yelling at a carer is labelled as disturbing the peace. Fifty-seven per cent of young people in residential care face criminal charges within one year and 23 per cent of young people who face criminal charges are under 14 years old.<sup>76</sup> This criminalisation of children creates a vicious cycle of disadvantage and traps them in the criminal legal system.<sup>77</sup> The solution is not to take children away from their families and communities, but to support them to remain at home and address structural inequality by funding education, health and housing services.

**"Legislation and official procedures already acknowledge that children and young people should be isolated only as a last resort and for the minimum time necessary. But we found the procedures do not translate into practice. The direct impact is that many of the practices in both our youth justice and prison systems are likely to be contrary to law, incompatible with Victoria's human rights legislation, unjust, oppressive, discriminatory or simply, wrong." - DEBORAH GLASS, VICTORIAN OMBUDSMAN.<sup>78</sup>**

Given the disproportionately high rate of young Aboriginal and Torres Strait Islander people behind bars<sup>79</sup>, the Victorian Government should also increase funding and support for the use of culturally-safe pre-charge cautioning among Aboriginal and Torres Strait Islander young people. Cautioning is an effective alternative to the over-policing of racial minorities<sup>80</sup> and allows referrals to be made to appropriate diversion services like education and training programs. The Victorian Government should commit long-term funding to ensure that the Victorian Police Koori Youth Cautioning program is implemented in all areas across Victoria.

If Aboriginal children have to move through the court system, they should have access to the Children's Koori Court, which provides a less alienating environment that is better for their social and emotional wellbeing. At the moment, the Children's Koori Court only operates in limited locations and is not accessible for all Koori children, particularly those whose families do not have enough money to pay for the extended travel required to attend. We call on the Victorian Government to provide additional resources to legal services to ensure vulnerable Aboriginal children and youth have access to culturally appropriate legal services, such as those provided by the Victorian Aboriginal Legal Services (VALS).

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<sup>72</sup> Police Stop Data Working Group, Monitoring Racial Profiling: Introducing a scheme to prevent unlawful stops and searches by Victoria Police report on racial (2017) 14.

<sup>73</sup> Amnesty International Australia, A Brighter Tomorrow: Keeping Indigenous Kids in the Community and Out of Detention in Australia (2015) 31.

<sup>74</sup> ABS, Report on Corrective Services (2017).

<sup>75</sup> 47 per cent are charged for criminal damage to property. See: Victoria Legal Aid, 'Care not Custody: A new approach to keep kids in residential care out of the criminal justice system' (2016).

<sup>76</sup> See: Victoria Legal Aid, 'Care not Custody: A new approach to keep kids in residential care out of the criminal justice system' (2016). < <http://www.legalaid.vic.gov.au/about-us/research-and-evaluation/evaluation-projects/care-not-custody-report> >

<sup>77</sup> Australian Institute of Health and Welfare 2016. Young people returning to sentenced youth justice supervision 2014–15. Juvenile justice series no. 20. Cat. no. JUV 84. Canberra: AIHW: The younger a person was at the start of their first supervised sentence, the more likely they were to return to sentenced supervision. For those whose first supervised sentence was community-based, 90% of those aged 10–12 at the start of this sentence returned to sentenced supervision, compared with 23% of those aged 16 and just 3% of those aged 17. More staggering were those sentenced to detention as their first supervised sentence, all (100%) those aged 10–12 at the start of his sentence returned to some type of sentenced supervision before they turned 18. This rate of return decreased with age, to around 80% of those 14 and 15, 56% of those 16 and 17% of those 17.

<sup>78</sup> Victorian Ombudsman, 'OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people', (2019). <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22411>

<sup>79</sup> Australian Institute of Health and Welfare, Victoria: Youth justice supervision in 2014–15 (2016).

<sup>80</sup> Victorian Aboriginal Legal Service, Practical Recommendations for Diversion (2016).

## SECTION 5: SMART JUSTICE FOR STRONG COMMUNITIES

"I walked into Koori Court ready to be locked up. I looked at the lawyer I'd met five minutes before, waiting to hear the same old stuff, but the Elders asked me to talk up. They listened to everything about home, school, Nan, resi, the cops, the crash. It was the first time I told my story where people heard me. They asked me what I needed and what my family needed. I felt a spark of trust light up again." - BINAK.<sup>81</sup>

### RECOMMENDATIONS

19. Reduce the number of Aboriginal and Torres Strait Islander young people in detention by increasing funding and support for the use of culturally-safe pre-charge cautioning and increasing the number of Children's Koori Court locations.
20. Ensure that Aboriginal children and youth have access to culturally safe legal services by increasing support for Aboriginal Community Controlled Organisations and culturally safe legal services such as the Victorian Aboriginal Legal Service (VALS).

### Support Education Justice Partnerships

We know how difficult it can be for young people to stand up for their rights. Young people interacting with the criminal system need access to culturally safe legal advice as well as knowledge about how to avoid problems with the law. School lawyer programs embed a lawyer within a public school community and create an inclusive relationship with students, parents, guardians and teachers.

School lawyers help students and parents deal with a wide range of legal issues including family law and family violence matters, fines, employment, consumer law problems and homelessness. Importantly, they also provide community legal education to staff, students and families on high impact issues such as bullying, cyber bullying and online safety. We need to move beyond short-term or one-off programs and provide ongoing community-designed and led solutions that support young people and prevent them from becoming unwell or entering the criminal system, regardless of where they live.

### RECOMMENDATION

21. Develop a plan to close children's prisons and instead fund legal assistance and community services programs that support children to thrive and avoid becoming trapped in the criminal system.

### Raise the Age of Criminal Responsibility

Prison is no place for a child, especially one who is too young to open a Facebook account. The current age of criminal responsibility is 10 years old, which means that grade 4 children who are still learning how to spell, tell the time and remember their times tables are being put behind bars. This exposes children to a damaging prison environment instead of giving them the support they need to break out of the cycle of poverty and disadvantage that causes crime. Putting children in prisons significantly increases their chance of experiencing depression and the risk of suicide<sup>82</sup> and can lead to a lifetime of poverty and intergenerational

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<sup>81</sup> Koorie Youth Council, 'Ngaga-Dji (Hear Me) – Young Voices Creating Change for Justice', p. 15.

<sup>82</sup> Commonwealth, Royal Commission into the Protection and Detention of Children in the Northern Territory, Final Report (2017).

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disadvantage. While the consequences of this are personally devastating, the downstream and intergenerational effects can lead to significant costs for government, social services and taxpayers.

The evidence shows that raising the age of criminal responsibility will reduce crime. It would also bring Victoria into line with most countries around the world, including most of Europe, Russia, China, Argentina and Vietnam.<sup>83</sup> Evidence shows that focusing on rehabilitation results in lower rates of recidivism<sup>84</sup>, and that for every year a child stays out of prison, the risk of reoffending decreases by 18 per cent.<sup>85</sup>

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

### RECOMMENDATION

22. Raise the age of criminal responsibility to bring Victoria into line with world standards and reduce reoffending.

## Keep Young People At Home Before They Attend Court

Children's prisons should not exist, but while they do, they should not be filled with young people who have not even been sentenced for committing a crime. Young people waiting to be sentenced should always be with their families and communities so they can be supported by the services they need. Mandatory sentencing changes have had unduly harsh effects on young people and fail to recognise their ability to rehabilitate and the chances they should have to engage with education opportunities.

On an average night in June 2018, 60 per cent of young people in detention were unsentenced<sup>86</sup> and we again see unfair incarceration rates of Aboriginal and Torres Strait Islander people, who are 23 times more likely to be held in prison before they are sentenced than non-Aboriginal and Torres Strait Islander people.<sup>87</sup> Disturbingly, young people are often kept in prison because they are homeless or because the government has not provided suitable bail accommodation<sup>88</sup>, and the situation is even worse in rural and regional areas.<sup>89</sup>

We all have a responsibility for the wellbeing of children and young people. Nearly 10,000 young people were listed as homeless in the 2016 census<sup>90</sup>, and they need stable, long-term housing and access to support services. Prison should not be a substitute for housing for those who cannot afford it and the Victorian Government should increase funding for safe bail accommodation to keep children who have not appeared in court out of a prison cell.

### RECOMMENDATION

23. Stop young people waiting in jail before they attend court by providing more housing and suitable accommodation.

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<sup>83</sup> See Child rights international network at: [www.crin.org/en/home/ages](http://www.crin.org/en/home/ages) Accessed on: 13 April 2018.

<sup>84</sup> Don Cipriani, Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective (2010) Volume 50, Issue 5, 104; Torbjørn Skardhamar and Kjetil Telle, 'Post-release Employment and Recidivism in Norway' *Journal of Quantitative Criminology* (2012) 28(4) 629.

<sup>85</sup> Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria* (December 2016) 26.

<sup>86</sup> AIHW, 'Youth detention population in Australia 2018' (2018) < <https://www.aihw.gov.au/reports/juv/128/youth-detention-population-in-australia-2018/contents/table-of-contents> >

<sup>87</sup> Amnesty International Australia, *A Brighter Tomorrow: Keeping Indigenous Kids in the Community and Out of Detention in Australia* (2015) 31.

<sup>88</sup> Australian Institute of Criminology, *Bail and remand for young people in Australia: A national research project* (2017).

<sup>89</sup> Australian Institute of Criminology, *Bail and remand for young people in Australia: A national research project* (2017).

<sup>90</sup> ABS Census, *Estimating Homelessness, 2016*, cat no. 2049.0.

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### Maximise the Use of Diversion Programs

Diversion is a powerful and proven tool, and studies have shown that where 100 participants enter a diversion program, only 0-7 per cent would be convicted of a subsequent offence in the next 12 months.<sup>91</sup> Diverting people from the criminal system is beneficial to the community and people who offend, and allows them to receive crucial counselling or rehabilitative services instead of a criminal record. Our work has shown us the long-term benefits of diversion and early intervention to address the risk factors behind offending, as well as rehabilitation during and after prison. Rehabilitation programs should not end when someone leaves prison as ongoing support is essential to reducing rates of reoffending and protecting a person's mental health and wellbeing.

Diversion links people with essential services and increases people's chances of being gainfully employed and securing safe and stable housing. Diversion was designed to increase people's opportunity to live healthy lives without the stigma of a criminal record, however the program is being undermined by current Victoria Police policy to disclose diversion on criminal record checks.

#### RECOMMENDATION

24. Keep people out of prison by maximising the use of diversion programs.

### Create a Graduated Spent Convictions Scheme

Most of us would hate to be judged for things that took place 10 or 20 years ago, but that is the reality for many Victorians. Victoria is the only Australian jurisdiction that does not have a legislated spent convictions scheme, so even minor interactions with police become permanent stains on a person's criminal record. This can stop people from accessing basic job opportunities for the rest of their lives and moving out of a cycle of disadvantage and poverty. Disturbingly, this is what happens even when charges are dismissed, when a young person gets a caution or diversion instead of going to court, or when a judge decides to not record a conviction.

An unreasonably long waiting period for convictions to be removed from a criminal record entrenches disadvantage, particularly for low-level convictions. The effects are worse for Aboriginal and Torres Strait Islander people who are prevented from working with community or even volunteering in corrections facilities to share their experience and help people in custody to get their lives back on track.<sup>92</sup>

#### Dave's Story

##### Barriers to Future Opportunities without a Spent Convictions Scheme

In the absence of a spent convictions scheme, a young person convicted of an offence could be impacted by their offending for their entire lives. This happened to Dave, who was convicted of a theft-related offence when he was 16 years old and took his Dad's car for a joyride.

Some 17 years later, Dave successfully applied for a job within the Correctional Services system and underwent a four-month training course. In the last week of that training, he lost his job because of the conviction and was told that he could not work for Correctional Services unless he had a clear criminal record.

<sup>91</sup> Department of Justice, 'Court Diversion Program Evaluation Overview – Final Report' (2004) 6.

<sup>92</sup> Winford, Stan, Woor-Dungin Criminal Record Discrimination Project, RMIT University, December 2017, p11.

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We have an opportunity to craft a uniquely Victorian, graduated spent convictions scheme that imposes appropriate waiting periods according to a person's level of offending. A graduated scheme would ensure people convicted of a low-level offence are not continuously punished for something they have already been held accountable for through our criminal legal system. Instead, it would allow people to get on with their lives, contribute to their families and communities and seek out employment, travel or study opportunities.

As criminal record checks are increasingly used as tests of someone's character, we have to protect people from discrimination based on their spent convictions, and also make it an offence for people to improperly disclose any spent convictions. We recommend that the Victorian Government fund the establishment of a graduated spent convictions scheme, together with appropriate consultations to ensure the best model is adopted.

### RECOMMENDATIONS

25. Allow people to move on with their lives by implementing a new graduated spent convictions scheme.

## Keep Women Out of Prison

We know that the effects of trauma stay with people and have an impact on their lives and families for many years into the future. At least 65 per cent of women in prison have a background of family or sexual violence<sup>93</sup>, and our member centres tell us the actual figure is a lot higher. Prison environments are designed and built to reinforce power and control and are often retraumatising to women in prison, particularly those with a history of sexual abuse.<sup>94</sup> Women who have experienced family violence, victimisation and abuse, and mental health problems frequently end up in prison<sup>95</sup> and trapped in the legal system, instead of receiving the care and support services they need.

Most women in prison are mothers with children who depend on them<sup>96</sup> and usually commit lower level offences.<sup>97</sup> Although Aboriginal and Torres Strait Islander women account for only two per cent of the adult female population, they make up 34 per cent of women behind bars.<sup>98</sup> Fifty-one per cent of women received in remand did not apply for bail<sup>99</sup>, and Aboriginal women are less likely to apply for bail than non-Aboriginal women.<sup>100</sup> The Victorian Government needs to fund legal services to help women apply for bail and avoid spending longer amounts of time in remand than they would once sentenced.

The number of women in the prison system has risen by 138 per cent in the ten years to 2018, and 42 per cent of those have not even been sentenced yet.<sup>101</sup> Nearly two-thirds of women remanded in 2017 were released without being sentenced<sup>102</sup>, and 41 per cent served a sentence of less than one year.<sup>103</sup> While it cost taxpayers approximately \$120,000 per year to keep just one woman in prison<sup>104</sup>, the cost to the women and their families

<sup>93</sup> Department of Justice and Community Safety - Corrections Victoria, 'Women in the Victorian Prison System' (January 2019)

<sup>94</sup> Stathopoulos, Mary; Quadara, Antonia; Fileborn, Bianca; et al, 'Addressing women's victimisation histories in custodial settings', Australian Institute of Family Studies (2012), p. 1.

<sup>95</sup> Corrections Victoria, 'Women in the Victorian Prison System', Department of Justice and Community Safety (2019), p. 3.

<sup>96</sup> Australian Institute of Health and Welfare, 'The health of Australia's prisoners 2018' (2018), p. 14.

<sup>97</sup> Stathopoulos, Mary; Quadara, Antonia; Fileborn, Bianca; et al, 'Addressing women's victimisation histories in custodial settings', Australian Institute of Family Studies (2012), p. 8.

<sup>98</sup> Human Rights Law Centre and Change the Record, 'Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment' (2017), p. 4.

<sup>99</sup> Department of Justice and Community safety (Vic), 'Women in the Victorian Prison System', (2019), p. 4.

<sup>100</sup> Department of Justice and Community safety (Vic), 'Women in the Victorian Prison System', (2019), p. 12.

<sup>101</sup> Corrections Victoria (2019) Annual Prisoner Statistical Profile 2006-07 to 2017-18 Victoria. Department of Justice, Melbourne.

<sup>102</sup> Corrections Victoria, 'Women in the Victorian Prison System', Department of Justice and Community Safety (2019), p. 13.

<sup>103</sup> Corrections Victoria (2019) Annual Prisoner Statistical Profile 2006-07 to 2017-18 Victoria. Department of Justice, Melbourne.

<sup>104</sup> Corrections Victoria, 'Corrections statistics: quick reference' (2018).

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was immeasurable, and often led to them losing their jobs, housing and even their children.<sup>105</sup> Like all of us, these women need a number of basic factors to avoid offending and reoffending, including housing, income security, connection with their children and being free from alcohol, drugs, violence and abuse.<sup>106</sup>

A significant proportion of crimes committed by women is low level and related to trauma and disadvantage. In the two years before entering prison in 2018, forty percent of women had been the victim of family violence and 50 per cent were victims of a crime, which was most commonly assault.<sup>107</sup>

### Celeste's Story

#### Flawed Bail System Keeps Young Woman on Remand for Too Long

Celeste is a young Aboriginal woman who lives with her mother in Melbourne while the rest of her family live in a rural area. Celeste has used cannabis from a young age, has a potential acquired brain injury, and her mother also uses drugs.

Her mother's violent partner also lives with them and when the parties argue the police are called and Celeste is often asked to leave the home. An intervention order stopped Celeste from being able to go home and because she had no other family connections in the area, she became homeless.

Celeste was arrested by police when they discovered that she had outstanding warrants for shop thefts which were quite dated. A bail application was heard at court where bail was granted and Celeste was offered crisis accommodation with a social worker to help her out.

Unfortunately, Celeste returned to her family home and another incident occurred with her mum's partner. The police were called again and Celeste was again remanded in custody. Another bail application was made but bail was refused. As we see in many cases, Celeste was at risk of serving more jail time than she ought to while waiting to be sentenced.

A further application for bail was made to the Supreme Court where bail was granted. By this time Celeste had spent 104 days in custody, which exceeded the amount of time she would have received if she pleaded or was found guilty. Bail was granted with the prospect of Celeste getting a bed at a residential rehab facility for young Aboriginal adults. However, Celeste did not present for her plea hearing and there are now warrants for her arrest.

These women need help and support within their community but many are currently behind bars due to bail reforms designed to keep people charged with violent crimes locked away, such as murder, rape, drug trafficking and terrorism offences.<sup>108</sup> These reforms, as well as the abolition of home detention and suspended sentences have made it harder for women to be diverted away from spending time in prison. Importantly, there is evidence that putting people in jail for any period may actually lower community safety in the long term, as even relatively short periods of time behind bars or on remand are associated with higher

<sup>105</sup> Ella Baker Centre for Human Rights, 'Who Pays? The True Cost of Incarceration on Families' (2015), p. 7.

<sup>106</sup> Women's Health Victoria, 'Spotlight on Incarceration and Women's Health' (2018), p. 1.

<sup>107</sup> Crime Statistics Agency, Characteristics and offending of women in prison in Victoria, 2012-2018, 2019.

<sup>108</sup> McMahon, Marilyn, 'No Bail, more jail? Breaking the nexus between community protection and escalating pre-trial detention', Department of Parliamentary Services, Parliament of Victoria (2019), p. 1.



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rates of reoffending.<sup>109</sup> The Victorian Government must take a long-term view and link women to legal and support services that will keep them out of prison.

### RECOMMENDATIONS

26. Reform bail laws to ensure they are targeting serious offending, and stop locking up women who should not be in prison.
27. Commit to ensuring that all women are represented at court hearings and can access trauma-informed community legal services, before the day of their hearing.

### Support Women During and After Prison

People cannot break the cycle of crime and reoffending without a home to sleep in and access to education, training and mental health services.<sup>110</sup> At least 65 per cent of women in prison reported having a mental health condition<sup>111</sup> while 92.3 per cent of Aboriginal women in custody have a persisting diagnosis of mental illness.<sup>112</sup> A quarter of women who enter prison are homeless<sup>113</sup>, and at least 40 per cent are homeless when they are released<sup>114</sup>, making them far more likely to reoffend.<sup>115</sup> Nearly a third of women had a history of self-harm<sup>116</sup>, and in 2017, 69 per cent of female prisoners on remand had children.<sup>117</sup> This is particularly alarming as we know that the children of prisoners are six times more likely to be imprisoned themselves.<sup>118</sup>

Prisons with a rehabilitative culture can provide people with opportunities for growth and prepare them to move on with their lives after release. Women in prison need access to integrated in-reach rehabilitation services that continue when they leave. The Victorian Government needs to adequately fund programs that strengthen family relationships and support networks, and provide transitional housing, employment and education services. These will support people to get back on their feet and reduce the risk factors that cause people to reoffend.

Women have historically had access to far fewer support services than men leaving prison. Investing in integrated services that link rehabilitation services within prisons to the support services needed post-release will set women prisoners up for success when they are released. Research has shown that women leaving prison regularly struggle with housing, family connections, mental and physical health issues and generally rebuilding their lives following release<sup>119</sup>, and that these challenges are made worse when support services are disjointed and not integrated. People are four times more likely to die in the first six months after being released from prison than after a year<sup>120</sup>, which highlights the need for effective support to give people a fair chance to transition back into their community. We know that investing in these women will provide long-term benefits and we urge the Victorian Government to commit to supporting these marginalised Victorians.

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<sup>109</sup> McMahon, Marilyn, 'No Bail, more jail? Breaking the nexus between community protection and escalating pre-trial detention', Department of Parliamentary Services, Parliament of Victoria (2019), p. 1.

<sup>110</sup> Maria Borzycki and Eileen Baldry, Promoting Integration: The Provision of Prisoner Post-Release Services (November 2017).

<sup>111</sup> Australian Institute of Health and Welfare, 'The health of Australia's prisoners 2018' (2019).

<sup>112</sup> Ogloff, J., Patterson, J., Cutajar, M., Adams, K., Thomas, S., and Halacas, C. Koori Prisoner Mental Health and Cognitive Function Study (2013) prepared for the Department of Justice.

<sup>113</sup> Corrections Victoria, 'Women in the Victorian Prison System' (January 2019).

<sup>114</sup> Victorian Ombudsman (2015) Investigation into the rehabilitation and reintegration of prisoners in Victoria Office of the Victorian Ombudsman, Melbourne.

<sup>115</sup> I Brunton-Smith and K Hopkins, The factors associated with proven re-offending following release from prison, 2013, p. 19.

<sup>116</sup> Australian Institute of Health and Welfare, 'The health of Australia's prisoners 2018' (2019).

<sup>117</sup> Corrections Victoria, 'Women in the Victorian Prison System' (2019), p. 8.

<sup>118</sup> Victorian Ombudsman (2015) Investigation into the rehabilitation and reintegration of prisoners in Victoria Office of the Victorian Ombudsman, Melbourne, 2.

<sup>119</sup> Department of Justice and Regulation, 'Women exiting prison in Victoria: summary report of a post-release study by Monash University' (2016), p. 1.

<sup>120</sup> M Hobbs, K Krazlan, S Ridout, Q Mai, M Knuiman and R Chapman, Mortality and morbidity in prisoners after release from prison in Western Australia 1995–2003, 2018, p. 2.

## SECTION 5: SMART JUSTICE FOR STRONG COMMUNITIES

### RECOMMENDATION

28. Support women in prison or at risk of entering prison to deal with intersecting issues such as family violence, child protection, tenancy concerns and fines by increasing funding to integrated support services and providing transitional support to ensure that no woman leaves prison into homelessness.

### Establish Independent Police Oversight

The law should apply equally to everyone and the community's confidence in the police depends on them being held accountable for their actions, and complaints of misconduct being handled fairly, transparently and independently. A lack of confidence in the police can lead to social alienation, which can be an underlying cause of crime.

To ensure transparency in the complaints process and to gain the trust and confidence of the Victorian public, complaints of police misconduct should be investigated by IBAC instead of by Victoria Police. We support the recommendation of the Inquiry into the External Oversight of Police Corruption and Misconduct in Victoria, which called for the Victorian Government to establish and fund a new and independent Police Misconduct and Corruption Division within IBAC.<sup>121</sup> This would allow IBAC to investigate incidents and complaints fairly and impartially and avoid the currently ineffective approach where IBAC routinely refers complaints back to Victoria Police to self-investigate. Research has repeatedly demonstrated that a truly independent process is necessary to hold police to account<sup>122</sup>, and should be prioritised to ensure community confidence and social cohesion.

### RECOMMENDATION

29. Implement the recommendation of the Inquiry into the External Oversight of Police Corruption and Misconduct in Victoria and establish and fund a new and independent Police Misconduct and Corruption Division within IBAC.

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<sup>121</sup> The 'Inquiry into the external oversight of police corruption and misconduct in Victoria' report can be found here: <https://www.parliament.vic.gov.au/58th-parliament/ibacc/article/3802>.

<sup>122</sup> Tamar Hopkins, 'When Police Complaints Mechanisms Fail, The use of civil litigation' (2011) *Alternative Law Journal* 36, 99; 0 Police Accountability Project, *Independent Investigation of Complaints against the Police*, Policy Briefing Paper (2017).



## SECTION 6: A FAIRER FINES SYSTEM

# SECTION 6: A FAIRER FINES SYSTEM

We all know how irritating it can be to receive a fine, but for people experiencing financial hardship, family violence or mental illness, a fine can be a crippling financial hurdle. Unpaid fines can result in financial penalties, court hearings and even jail. The infringements system must be fair, transparent and easy to navigate for everyone.

## Retain the Special Circumstances List

The effects of homelessness, family violence, addiction, mental or intellectual disabilities reach into every aspect of the lives of people experiencing them, and often directly lead to them incurring fines. For example, a person living in their car because they are experiencing homelessness often receives thousands of dollars in parking fines, but has no real alternative other than to sleep on the street. The Special Circumstances List of the Magistrates' Court has provided an essential pathway for people experiencing these issues to deal with their fines, and allowed Magistrates the discretion they need to waive or significantly reduce the penalties they faced.

The Special Circumstances List is a crucial tool used to divert people experiencing family violence, intellectual impairment, homelessness, mental illness or drug and alcohol addiction away from the criminal justice system. The Special Circumstances List is more important than ever given the problems plaguing Fines Victoria and the significant delays faced by those lodging Special Circumstances applications.

### Emily's Story

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

Emily 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 relies on a Newstart Allowance.

Emily 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. Emily 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 Emily 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, Emily'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, Emily was required to provide detailed evidence that more clearly identified the link between Emily'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 Emily 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.

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The Special Circumstances List has functioned effectively for over a decade to provide fair, efficient and rehabilitative sentencing outcomes. Despite the essential role that the Special Circumstances List played in making the infringements system fairer for vulnerable people, it is being disbanded and these cases are instead simply being listed in the Magistrates' Court where they do not have the support they need. Not only does this greatly increase the risk of people being forced to pay thousands of dollars in fines incurred in times of crisis, it also makes it likely that they will have to attend multiple court dates in locations scattered across the state. This is simply unfair and the Victorian Government should ensure that the Special Circumstances List remains operational and fully funded to ensure disadvantaged people receive justice and access to the support services they need.

### RECOMMENDATIONS

30. Help Victorians experiencing disadvantage access justice by retaining and funding the Special Circumstances List in the Magistrates' Court.

## An Infringements Family Violence Scheme That Works

People who are experiencing family violence and are afraid for their lives should not be forced to pay fines that are unfairly incurred. The Andrews Labor Government recognised how unfair it was for victims of family violence to be liable for fines obtained by perpetrators or caused by their abuse, and took valuable steps to create a scheme to better support family violence victims within the infringements system. This was a powerful social justice initiative that was recommended by the Royal Commission into Family Violence and developed in consultation with the Federation's Infringements Working Group.

While these reforms were an important step in the right direction, the system is being let down by Fines Victoria. People are receiving final notices for tickets and infringements that they never received in the first place and are also experiencing delays of up to two years to have their applications assessed.

This means that people have to tell the traumatic story of their abuse and violent relationships, and then relive the trauma by retelling it all over again one or two years later when Fines Victoria finally responds and asks for further information. This delay completely undermines the scheme and stops it from operating in the way it was intended. The scheme must be able to work effectively to protect the rights of family violence survivors.

### RECOMMENDATIONS

31. Ensure the Infringements Family Violence Scheme works as intended and that applications are processed quickly, with requests for further information made within no more than three months of the application being received.

## Properly Fund Work and Development Permits

Putting someone in jail because they cannot pay a fine helps no one. Our taxpayers end up footing the bill for imprisoning people while these individuals often lose their homes and custody of the children that need them. Work and Development Permits are a forward-thinking initiative that allow some of our most disadvantaged people to pay off their debts by participating in programs that benefit them and the community. This means that people with mental illness, an intellectual disability, victims of family violence and people experiencing homelessness or acute financial hardship can pay off their fines by completing courses, receiving medical treatment, attending drug and alcohol counselling and other unpaid work.

## SECTION 6: A FAIRER FINES SYSTEM

This program provides people with the help they need, however, it cannot operate as it should due to a severe lack of funding and support. The few agencies that have financial counsellors who can sponsor people to participate in the scheme are overwhelmed with work. We strongly believe in the benefits of the scheme and applaud the Andrews Labor Government for recognising its value. However, the Victorian Government must increase funding to the scheme as well as to community legal centres that support its operation so that it can be accessed by those who need it most.

### RECOMMENDATION

32. Support Victorians to thrive by significantly increasing support for sponsors of Work and Development Permits and increase funding for community legal centres that support the scheme's operation.

## Make Toll Companies Do Their Own Work

We would not expect the government to chase payment for a phone bill or a fine for overdue library books, but this is effectively what it is doing for big toll companies. Our courts have limited time and resources and it is important that both are used well. Currently, our courts are being clogged up by toll road fine proceedings instead of focusing on life saving matters like family violence.<sup>123</sup> At the same time, the current system is placing unsustainable pressure on support services, communities and families. As most toll roads only cost a few dollars, most Victorians would be shocked to learn that fees for toll road fines can magnify the original cost by up to 83,000 per cent.<sup>124</sup> This means that a toll of \$0.41 can end up costing someone \$344.96.<sup>125</sup> This is unfair and entrenches disadvantage while causing crippling anxiety in people who receive fines.

The government and our courts should not be used as debt collectors for private companies and if these matters are going to be pursued, they should run in the civil debt system just like all other company debts.

### RECOMMENDATIONS

33. Stop the criminalisation of private debts owed to toll companies by shifting debts to the civil system in line with other debt enforcement processes and use the savings to fund integrated legal and social services that support people.
34. If tolls continue to be collected by government services, increase the time that fines are held with tolling companies from 90 days to 180 days before infringements are issued by the Police. This will allow more time for toll companies to implement appropriate hardship programs and prevent infringements being issued.
35. Introduce a Code of Practice that toll operators are required to comply with to ensure that communication, accessible payment options, early intervention, hardship and other consumer protections are improved and monitored in line with other industries.
36. Expand the role of the Tolling Ombudsman and ensure it has full investigation powers and sufficient resources to undertake its work.

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<sup>123</sup> Royal Commission into Family Violence, Final Report, 2016, p. 148.

<sup>124</sup> WEstjustice, Our plan for a fair and effective toll enforcement system for Victoria, 2017, p. 4.

<sup>125</sup> WEstjustice, Our plan for a fair and effective toll enforcement system for Victoria, 2017, p. 7.