



FEDERATION
OF COMMUNITY LEGAL CENTRES VIC

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SUBMISSION TO THE INQUIRY INTO HOMELESSNESS IN VICTORIA

March 2020

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



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

Everyone has a right to a home. A home is a basic human need and is fundamental to wellbeing. 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.

We all need a place to call home but it is becoming harder and harder for people to secure and maintain appropriate and stable housing. Each year, rents are getting higher and more families are experiencing housing stress. This, together with family violence, unfair evictions and short-term leases means that more and more people are finding themselves without a place to live.

A prolonged and systemic shortage of public and community housing has seen the waiting list for social housing skyrocket to over 80,000 people, and it is growing every day.

People who experience homelessness often face disadvantage, discrimination and problems with the law. We know that homelessness can be caused by legal problems, and that legal problems can be caused by homelessness. Every day, community legal centres and social services see people who have been criminalised because they are forced to live their lives in public spaces. We have an opportunity to get rid of outdated laws that punish people for being homeless and push them into the criminal legal system.

We know that people experiencing family violence and crisis situations need support to recover and address their complex and interconnected life issues. In many cases, a person will need help with a range of problems including social security, debt, family violence and housing. Housing is the very foundation of social support and is critical to ensuring that the work done by legal, financial, government and social services actually helps someone to get their life back on track and avoid legal issues.

The Victorian Government has an important opportunity to lead on this issue and also break the link between housing insecurity and prison. Providing people with a safe and stable home is both the right thing to do and the smart thing to do. By investing in preventative programs and policy reform, we can stop people from entering an often intergenerational cycle of poverty and homelessness.

RECOMMENDATIONS

Prevent Homelessness

1. The Victorian Government must grow public and community housing by 6,000 new homes including 600 Aboriginal community housing properties each year for 10 years.
2. The Victorian Government must ensure community housing providers' policies match the terms of public housing providers and are fair, consistent and publicly available.
3. The Victorian Government must support community housing support services to provide holistic support services for tenants with complex needs and ensure mental health and legal support services are integrated.
4. The Victorian Government must 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 (VALS). This can be done in a similar way that funding is provided to ACCOs for clients experiencing family violence.
5. The Victorian Government must ensure community housing providers are recognised as public authorities for the purposes of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).
6. The Victorian Government must prevent home owners from being evicted into homelessness by adequately funding community legal centres, financial counsellors and social workers to provide integrated wrap-around services to people experiencing mortgage stress, particularly in the outer suburbs.
7. The Victorian Government must increase stability for renters by requiring VCAT compliance orders to be worded as specifically as possible and limited to a period of six months before lapsing. Only where subsequent orders are needed should there be discretion for compliance orders to be extended for a period of up to twelve months.
8. The Victorian Government must abolish the notice to vacate for successive breaches of duty through the removal of ss 249, 283, 308 and 317ZB of the *Residential Tenancy Act 1997* (Vic) and ss 91ZP, 142ZH, 206AX and 207ZB of the *Residential Tenancies Amendment Act 2018* (Vic).
9. The Victorian Government must make it easier to obtain a fair outcome by making legislative amendments to allow for an internal appeals mechanism for decisions made in VCAT's Residential Tenancies List.
10. The Victorian Government must help tenants exercise their rights and support implementation of the new rental reforms by adequately funding and supporting community legal centres.
11. The Victorian Government must ensure Aboriginal people have access to adequately resourced and culturally safe integrated and holistic services, by increasing funding to providers such as the Victorian Aboriginal Legal Service (VALS).

12. Study Melbourne should protect international students by increasing funding to community legal centres across Victoria.
13. The Victorian Government must break the cycle of family violence by increasing housing stock for both victim-survivors escaping violent relationships and perpetrators of violence so that they can engage with services and reduce the risk of reoffending.
14. The Victorian Government must prevent homelessness by supporting victim-survivors of family violence to access culturally safe integrated legal and social services and increasing funding to community legal centres.
15. The Commonwealth government must ensure family violence is better recognised and accommodated by the migration system, and introduce practical measures such as:
 - a. allowing family violence victim-survivors to access the documents in their own file without the consent of their abuser under the Freedom of Information Act; and
 - b. exempting victim-survivors from having to provide a residential address to make a visa application when they are in crisis accommodation.
16. The Victorian Government must support children to thrive and avoid experiencing homelessness or becoming trapped in the criminal system by funding integrated legal assistance and community services programs.
17. The Victorian Government must break the cycle between mental illness and homelessness by increasing funding to integrated services that can address legal and social issues early and prevent people from falling into homelessness.
18. The Victorian Government must support older people to leave abusive relationships by increasing the amount of suitable accommodation and funding community legal services to advocate on their behalf.

Stop Criminalising Homelessness

19. The Victorian Government must 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, and repealing relevant offences in the *Summary Offences Act 1966* (Vic), including:
 - Section 13: Person found drunk
 - Section 14: Persons found drunk and disorderly
 - Section 16: Drunkards behaving in riotous or disorderly manner
20. The Victorian Government must prevent people from interacting with the legal system by increasing funding for alcohol and other drug treatment programs.
21. The Victorian Government must develop and fund an overarching mental health and alcohol and other drugs framework that embeds a health-based response and works to address intersecting issues.
22. The Victorian Government must 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 5: Obstruction of footpath
 - Section 6: Directions to move on
 - Section 17: Use of obscene, indecent, threatening language and behaviour etc in public
 - Section 17A: Disorderly conduct
 - Section 49A: Begging or gathering alms
23. The Victorian Government must help Victorians experiencing homelessness or other disadvantage access justice by reinstating the Special Circumstances List in the Melbourne Magistrates' Court.
 24. The Victorian Government must ensure the Infringements Family Violence Scheme works as intended and that applications are processed quickly, with requests for further information made within three months of the application being received.
 25. The Victorian Government must support Victorians to thrive by significantly increasing funding for sponsors of Work and Development Permits and increase funding for community legal centres that support the scheme's operation.

Break the Cycle Between Prison and Homelessness

26. The Victorian Government must reduce rates of reoffending and bring Victoria into line with world standards by raising the age of criminal responsibility to 14.
27. The Victorian Government must prevent children from experiencing lifelong trauma and resulting homelessness by developing a plan to close children's prisons.
28. The Victorian Government must ensure that Aboriginal children and youth have access to culturally safe legal services by increasing funding for Aboriginal Community Controlled Organisations and culturally safe legal services such as the Victorian Aboriginal Legal Service (VALS).
29. The Victorian Government must empower the court to determine whether diversion is appropriate in each case by amending s 59 of the *Criminal Procedure Act 2009* (Vic) and removing the requirement that the prosecution consent to the Criminal Justice Diversion Program.
30. The Victorian Government must reform bail laws to ensure they are targeting serious offending, and stop locking up women who should not be in prison.
31. The Victorian Government must 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.
32. The Victorian Government must 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.

SECTION 1: PREVENT HOMELESSNESS

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Everyone has a right to a safe and stable home. A home is a basic human need, and is more than just a roof over someone's head. Access to good-quality, affordable housing is fundamental to wellbeing¹ and 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.

Having a home means much more than just having a roof over your head. People who are sleeping rough, frequently moving from one temporary shelter to another, sleeping on a friend's couch, or who are staying in accommodation that falls below minimum community standards like boarding houses are all considered homeless.² More than 116,000 people were experiencing homelessness in Australia on Census night in 2016, and both younger and older Australians emerged as groups experiencing increasing levels of homelessness.³

If we want to put an end to homelessness, we need to stop the drivers. Many Australians who are not yet homeless are at risk of homelessness due to a range of factors, including housing affordability, rental stability, unfair community housing policies, mental health crises and family violence. By working to address these issues, we can prevent homelessness and the lifelong social and financial costs that come with it.

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. For single mums, survivors of family violence and people on low incomes, the threat of experiencing homelessness can be a daily reality. Our most marginalised Victorians rely on social housing, 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.⁴ Victoria also has the lowest proportion of social housing properties per capita of all states and territories in Australia.⁵

It is important to distinguish between the different types of housing in Victoria: 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.

We know that almost 25,000 Victorians are reported as being homeless on any given night⁶, and that the actual number is likely to be much higher. 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

¹ Australian Institute of Health and Welfare, 'Housing affordability', (September 2019) < <https://www.aihw.gov.au/reports/australias-welfare/housing-affordability>>.

² Chamberlain, C and MacKenzie, D, 'Understanding Contemporary Homelessness: Issues of Definition and Meaning', Australian Journal of Social Issues (1992), 27(4), 274–297; Australian Bureau of Statistics, '4922.0 Information Paper – A Statistical Definition of Homelessness', (2012) < <https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4922.0Main%20Features22012?opendocument&tabname=Summary&prodno=4922.0&issue=2012&num=&view=>>>.

³ Australian Bureau of Statistics, 'Census reveals a rise in the rate of homelessness in Australia' (2018) < <https://www.abs.gov.au/ausstats/abs@.nsf/lookup/2049.0Media%20Release12016>>.

⁴ Australian Productivity Commission, Report on Government Services 2019, (2019) Table 18A.1.

⁵ Parliament of Victoria, Legislative Council Legal and Social Issues Committee, Inquiry Into the Public Housing Renewal Program, (2018) 25.

⁶ Council to Homeless Persons, 'Homelessness will increase as social housing proportion falls', (2019) <<https://chp.org.au/media-releases/homelessness-will-increase-as-social-housing-proportion-falls/>>.

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applications every three months.⁷ Almost 30,000 of the applications for housing or housing transfers are for '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.⁸

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 services⁹, 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 years¹⁰, 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 Victorian Government must 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.

RECOMMENDATION

1. The Victorian Government must grow public and community housing by 6,000 new homes including 600 Aboriginal community housing properties each year for 10 years.

Prevent Homelessness by Raising Community Housing Standards and Capacity

Ensure Community Housing Policies Provide the Same Protection as Public Housing

Tenants that live in community housing should have the same rights as those living in public housing. Without the right support and policies, community housing providers may struggle to meet the needs of people with complex needs who are experiencing a number of intersecting issues. Community housing associations 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 therefore 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 number of community houses built in Victoria has increased in the last decade¹¹ 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

⁷ 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/> >.

⁸ Parliament of Victoria, 'Inquiry into the Public Housing Renewal Program' (2018), p. 202.

⁹ Productivity Commission Inquiry report - Introducing Competition and Informed User Choice into Human Services: Reforms to Human Services, p. 175.

¹⁰ State of Victoria, 'Delivering More Public Housing for Victorians' (2019) < <https://www.premier.vic.gov.au/delivering-more-public-housing-for-victorians/> >.

¹¹ Victorian Auditor-General Report: Managing Victoria's Public Housing PP No 254, Session 2014–17 (June 2017), p. vii.

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rent (\$15 per week) during this time. Further six-month extensions are also available in exceptional circumstances;¹²

- ▼ Compensation is not sought from public tenants where a property has been damaged due to violence, third parties or fair wear and tear;¹³
- ▼ Public housing tenants' rent is not more than 25 per cent of their total household income;¹⁴ and
- ▼ Public housing providers are required to take into account human rights and procedural fairness considerations before trying to evict a public housing tenant.¹⁵

Community housing tenants often have less protection and are more likely to receive notices to vacate 'without grounds' than public housing tenants.¹⁶ 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.¹⁷ Within 18 months, three out of four people entering community housing from hospital or prison were homeless.¹⁸

The Victorian Government should commit to preventing evictions into homelessness and ensure community housing providers have the funding and resources to give their tenants the same protections as those in public housing.

RECOMMENDATIONS

2. The Victorian Government must ensure community housing providers' policies match the terms of public housing providers and are fair, consistent and publicly available.
3. The Victorian Government must support community housing support services to provide holistic support services for tenants with complex needs and ensure mental health and legal support services are integrated.
4. The Victorian Government must 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 (VALS). This can be done in a similar way that funding is provided to ACCOs for clients experiencing family violence.

Rachel's* Story

Woman with mental illness evicted into homelessness for rental arrears after not securing post-release public housing

After Rachel left prison, she was unable to secure public housing, so she moved into a community housing property to avoid post-release homelessness. She had spent over half her life in custody. Rachel struggled with mental illness, which was intertwined with issues related to institutionalisation and substance

¹² 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>.

¹³ 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>.

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

¹⁵ Department of Health and Human Services, Tenancy Management Manual, Chapter 1 – Arrears (July 2017) 48

¹⁶ "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.

¹⁷ Johson, G. McCallum, S. Watson, J., Who stays, Who Leaves and Why? Occupancy Patterns at Unison Housing Between 2014-2016 (2019) 4, 5.

¹⁸ Johson, G. McCallum, S. Watson, J., Who stays, Who Leaves and Why? Occupancy Patterns at Unison Housing Between 2014-2016 (2019) 4, 5.

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dependence. These factors made it difficult for her to keep up with her rent and, when she came to Justice Connect, she was over \$2,000 in arrears.

Despite Rachel's obvious difficulty maintaining her tenancy, the community housing provider did not facilitate her engagement with a housing support worker. The community housing provider was on notice that the consequences of eviction for Rachel would be homelessness and, more than likely, deterioration of mental health, relapse or reoffending.

Rachel's offer to pay \$400 upfront toward the arrears and to enter into a payment plan was rejected and the community housing provider refused to withdraw the application for possession. The community housing provider refused to negotiate alternatives to eviction. At the VCAT hearing, the community housing provider made submissions that they were not in a financial position to absorb Rachel's \$2,000 in arrears, even though Rachel had proposed a payment plan. This was accepted by the VCAT Member who found that the community housing provider would suffer 'financial loss' under section 331 of the *Residential Tenancies Act 1997* (Vic).

The community housing provider successfully obtained a Possession Order from VCAT based on Rachel's arrears. When the warrant was executed, and the locks were changed, Rachel re-entered homelessness.

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

Rachel's story illustrates the system breakdowns that can cause vulnerable Victorians to experience homelessness. If Rachel had been able to secure public housing, the support systems would have been in place to enable her to avoid homelessness and remain in a safe and secure environment.

Clarify Human Rights Obligations of Community Housing Providers

Community housing tenants often experience vulnerability and have complex needs, and it is vital that decisions made about their housing are compatible with human rights. Although the *Charter of Human Rights and Responsibilities Act 2006* (Vic) plays a critical role in the protection of tenants, there is no certainty about whether community housing providers are 'public authorities' and have to comply with the Charter's human rights obligations.

The Charter provides a helpful framework for negotiating with public and community housing providers that are making difficult decisions because it encourages proper consideration of a tenant's individual circumstances and alternatives to eviction. This means that a tenant's risk of homelessness, their family and any health problems have to be taken into account, which is particularly important for people needing community housing.

The rights of community housing tenants should be expressly recognised under the Charter so that both tenants and community housing providers can have clarity about decision making.

RECOMMENDATIONS

5. The Victorian Government must ensure community housing providers are recognised as public authorities for the purposes of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

Support Lower-Income Home Owners Experiencing Mortgage Stress

Every day, families trying to make ends meet are experiencing mortgage stress, which means that more than 30 per cent of their household income is being spent on mortgage payments. In the outer suburbs of Melbourne, mortgage repayments can be cheaper than renting but many of these home owners face losing

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their homes as a result of financial hardship. Mortgage stress can be triggered by a range of factors, including family breakdown, family violence, unemployment, the illness or injury or death of a spouse¹⁹, as well as underemployment and an increasingly casualised workforce.

Families that cannot meet their everyday expenses and fall behind in their mortgage payments are often evicted from their home directly into homelessness. The situation is made worse by the fact that people can be forced out of their homes over debts as small as \$5,000 such as personal loans or unpaid council rates.

Support from community legal centres can be crucial in helping these families and children stay in their homes and avoid being evicted onto the streets. Community legal centres are well-placed to work in an integrated way with financial counsellors and social workers to support people experiencing mortgage stress and default. Integrated legal services can negotiate with councils, banks and financial lenders to keep people in their homes, which in turn prevents additional strains being put on homelessness and social services.

RECOMMENDATIONS

6. The Victorian Government must prevent home owners from being evicted into homelessness by adequately funding community legal centres, financial counsellors and social workers to provide integrated wrap-around services to people experiencing mortgage stress, particularly in the outer suburbs.

Increase Stability for Renters

As it becomes harder and harder to buy a home, more people are renting than ever before. For too long, renters have been disadvantaged and are often unable to stand up to landlords who see rental properties only as investments rather than as people's homes. This power imbalance is felt every day as many renters live in unsafe conditions because they are afraid to speak up and ask for repairs or maintenance.

Many families who are juggling bills and school fees are experiencing rental stress as it becomes increasingly unaffordable to access an appropriate rental property. In Victoria, 49.6 per cent of low income earners in private rentals are in rental stress.²⁰ On top of this, renters often do not know how long they can stay in their home and are concerned that they may be punished and evicted by their landlord with nowhere to go, especially if they ask for repairs or maintenance.²¹ We know that this situation is even worse in areas that are popular holiday destinations, where many tenants can only secure a six-month lease so that the property can be put on AirBnB in peak season.

Renting needs to be fair for everyone, and while we welcome changes to tenancy laws that will take place by July 2020, much more needs to be done to prevent people from being evicted or managed out of their homes, especially those experiencing mental illness or family violence. Community legal centres see far too many people being evicted for behaviour linked to family violence, such as being too loud or destruction of property, or for conditions caused by mental illness such as being too loud or hoarding.²² This leads to significant flow-on costs associated with people becoming homeless and wastes tribunal and social services resources that could be better used elsewhere.

¹⁹ Moore, S, 'Outer Sight Out of Justice – Finding Pathways to Justice for Melbourne's Outer-Metropolitan Areas' (2014), p. 45.

²⁰ Australian Institute of Health and Welfare, 'Housing affordability', (September 2019) <<https://www.aihw.gov.au/reports/australias-welfare/housing-affordability>>.

²¹ See Australian Institute of Health and Welfare, 'Housing affordability', (September 2019) <<https://www.aihw.gov.au/reports/australias-welfare/housing-affordability>> and CHOICE, National Shelter and NATO, 'Unsettled – Life in Australia's private rental market', (2017) <<https://www.choice.com.au/money/property/renting/articles/choice-rental-market-report>>: In Australia in 2016, 83 per cent of renters had no fixed-term lease or were on a lease of 12 months or less and 62 per cent feel they are not in a position to ask for longer term rental security.

²² 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'.

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People should not be evicted from their homes for trivial behaviour. Under the current system, landlords can go to the Victorian Civil and Administrative Tribunal (VCAT) and get a compliance order against a tenant that requires them to fix an issue and never commit a similar breach at any time in the future. These compliance orders never expire, which means that a tenant who played music too loudly just once could be evicted for breaching an order that was issued many years earlier.²³ Compliance orders should be fair and reasonable and have a set time limit. Evicting a person from their home should always be the last resort.

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 a number of mental health conditions. A neighbour at Stephanie's public housing residence 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 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 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 right 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 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.

RECOMMENDATION

7. The Victorian Government must increase stability for renters by requiring VCAT compliance orders to be worded as specifically as possible and limited to a period of six months before lapsing. Only where subsequent orders are needed should there be discretion for compliance orders to be extended for a period of up to twelve months.

²³ Residential Tenancies Act 1997 (Vic) s. 248.

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8. The Victorian Government must abolish the notice to vacate for successive breaches of duty through the removal of ss 249, 283, 308 and 317ZB of the Residential Tenancy Act 1997 (Vic) and ss 91ZP, 142ZH, 206AX and 207ZB of the Residential Tenancies Amendment Act 2018 (Vic).

Make Justice at VCAT More Accessible

No individual or institution is above the law, including courts and tribunals. All decision-making bodies need oversight to ensure their decisions are consistent and fair to all parties, especially the Victorian Civil and Administrative Tribunal (VCAT) which makes decisions every day that have a huge impact on people's lives. While VCAT was established to provide low cost, accessible and high quality dispute resolution, VCAT has no mechanism for internal review of its decisions. This means that parties often have to choose between accepting an unfair VCAT decision in the Residential Tenancies List or risking an adverse costs order by appealing the decision to the Supreme Court of Victoria.

An appeal to the Supreme Court is a daunting and expensive prospect for even the most experienced and sophisticated parties to a dispute, and is inaccessible to both tenants and landlords. Given the seriousness of the potential consequences of a VCAT decision and the fact that an arbitrary eviction can result in a family becoming homeless, VCAT should have an internal appeals mechanism that would allow parties to appeal a decision without incurring the costs and stress of going to the Supreme Court. This would make it easier for everyone to obtain a just and fair outcome at VCAT, and improve the consistency, predictability and quality of decisions.

Mabel's Story

VCAT appeals inaccessible to the general public

An appeal to the Supreme Court can be a daunting prospect given the risk of adverse costs and protracted proceedings. For many tenants, a Supreme Court appeal is simply not an option, even when they have a reasonable prospect of success.

Mabel is a public housing tenant who has received a number of breach of duty notices in the past few years. She was also issued a breach notice for causing a nuisance to her neighbours. Mabel sought Homeless Law's assistance after learning that the Office of Housing had obtained a compliance order from VCAT in her absence, based on allegations that she had caused a further nuisance after receiving the most recent breach notice.

Mabel hadn't known about the VCAT hearing due to issues with receiving her mail. Homeless Law helped Mabel to apply for a review, and obtained a copy of the Office of Housing's application to VCAT, which had only included a copy of the recent breach notice Mabel had been given. However, at the VCAT review hearing the Office of Housing sought to lead evidence about all the previous breach notices Mabel had been given over the years.

When Homeless Law's lawyers objected to this on the basis that it was procedurally unfair given the application to VCAT had not referred to any of this historical evidence, the VCAT member disagreed and allowed this evidence to be relied on. Ultimately, the VCAT member confirmed the previous compliance order. When the Homeless Law lawyers requested written reasons for the member's decision, this request was denied.

Mabel was disappointed with the VCAT member's decision, and Homeless Law obtained an opinion from a barrister who confirmed it was likely that the decision could be successfully appealed to the Supreme Court as a number of errors of law could be identified. Homeless Law offered to assist Mabel with an appeal, but

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she was so discouraged by what had occurred that she became disengaged and did not return calls before the 28-day period to lodge an appeal had expired.

This case demonstrates how an easily accessible internal review mechanism within VCAT could provide an appropriate forum for clarifying a decision without placing more strain and pressure on an already struggling tenant.

We call on the Victorian Government to bring Victoria into line with most other Australian jurisdictions to make it easier to access justice at VCAT by establishing a mechanism to allow internal appeals of VCAT decisions.

RECOMMENDATION

9. The Victorian Government must make it easier to obtain a fair outcome by making legislative amendments to allow for an internal appeals mechanism for decisions made in VCAT's Residential Tenancies List.

Support Renters to Stand Up for Their Rights

Rights are only meaningful if people can stand up for them. 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.

Renters deserve a fair chance to fight to stay in their homes and avoid being evicted, often into homelessness. Of all the applications made to VCAT, only 6.6 per cent are made by renters, with the vast majority being made by landlords who are represented by professional real estate agents. In many cases, the same housing services that work to find people a place to live are also the landlord for the purposes of the tenancy, which means that a renter cannot ask them for independent advice.

Although most renters want their issues fixed without having to go to VCAT, tenants must have access to independent legal advice so that they can understand and exercise their rights. Community lawyers can prevent homelessness by working with people and helping them to stay in their homes. Community legal centres provide integrated legal services to thousands of renters, which means that they can represent them in their tenancy dispute and also help them to access essential services to address interconnected issues such as financial counsellors and social services. These holistic services are particularly important for renters with complex needs, such as people experiencing mental illness or those coming out of psychiatric wards or prison.

Aboriginal and Torres Strait Islander people are more likely to experience housing stress and are ten times more likely to experience homelessness than non-Aboriginal Australians.²⁴ Aboriginal people must have access to adequately 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.

Community lawyers save the court system valuable time and money by helping people to negotiate and settle a matter before it gets to Court, and also prevent an additional burden being placed on social services that would otherwise have to meet the needs of a newly homeless family. It is important that legal assistance is prioritised and funded separately to housing services. The legal support provided by community legal centres 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.

²⁴ AIHW, Aboriginal and Torres Strait Islander people: a focus report on housing and homelessness (2019), 46.

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Given the Victorian 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 community legal centres that provide vital assistance and representation for tenants.

RECOMMENDATION

10. The Victorian Government must help tenants exercise their rights and support implementation of the new rental reforms by adequately funding and supporting community legal centres.
11. The Victorian Government must ensure Aboriginal people have access to adequately resourced and culturally safe integrated and holistic services, by increasing funding to providers such as the Victorian Aboriginal Legal Service (VALS).

Ensure International Students Have Equal Rights and Support

Living and studying in another country can be difficult. Although international students generate \$11.8 billion in revenue and support almost 79,000 Victorian jobs²⁵, they are routinely exploited by landlords.

Unscrupulous landlords regularly take advantage of students and rent out beds in unregistered rooming houses, often in city apartment buildings. These students are considered homeless as they live in unsafe and overcrowded conditions. They are often charged excessive fees and 'security deposits' and in many cases, six or eight students sleep on bunk beds in one room, or live in spaces where curtains are used as partitions. They live without privacy and clean living spaces, let alone a place to study.

We know that these living conditions are fundamentally unsafe, particularly given the recent concerns about the use of combustible cladding on so many apartment buildings. However, students are often unable to leave as landlords routinely refuse to return their security deposits which often total thousands of dollars. Programs such as the International Students' Accommodation Legal Service run by Westjustice and funded by Study Melbourne work to help students stand up for their rights and get their deposits back so they can leave unsafe living conditions.

RECOMMENDATIONS

12. Study Melbourne should protect international students by increasing funding to community legal centres across Victoria.

Cut the Link Between Family Violence and Homelessness

Everyone should be safe in their own home, and no one should have to stay in an unsafe situation simply because they have nowhere else to go. Housing and family violence are connected at a fundamental level; family violence causes homelessness and a lack of housing can cause or prolong a cycle of family violence. Family violence is the leading cause of homelessness among children in Australia.²⁶ Of the almost 290,000 clients who sought help from Specialist Homelessness Services in 2017-18, 42 per cent (or 121,000) clients

²⁵ Government of Victoria, 'International Student Numbers Soar in Victoria' (2019), <<https://www.premier.vic.gov.au/international-student-numbers-soar-in-victoria/>>.

²⁶ Mission Australia, 'Out of the shadows – Domestic and family violence: a leading cause of homelessness in Australia', (2019), p. 6.

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were experiencing domestic and family violence²⁷ and 34 per cent (or nearly 42,000) of these were children.²⁸ Although 30 per cent of these people needed long-term housing, only four per cent received it.²⁹ We know that preventing family violence and homelessness is essential, particularly because experiencing these issues as a child can lead to trauma and intergenerational cycles of homelessness, socioeconomic disadvantage or violence.³⁰

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.

No one should have to choose between being homeless and staying in a violent relationship, yet, we know that family violence and homelessness are unfortunately closely linked for victim-survivors. A woman leaving a violent relationship often faces further difficulty finding somewhere to live if they do not have identification documents, an independent rental history, a good credit rating or access to finances when they escape.

Family violence survivors who are facing homelessness can come into contact with the child protection system if they have difficulty finding safe and stable housing for themselves and their children. Once child protection is involved, parents experiencing homelessness or living in transient situations will often not be allowed to retain custody of their children or visitation rights unless accommodation is secured. Family violence victim-survivors who manage to access crisis accommodation usually only receive three nights in a motel or rooming house that is often unsafe and unclean, before once again having no safe place to sleep. This sort of crisis accommodation means that women often return to a violent partner because they have nowhere else to go, or end up on the streets.

Community legal centres often see how family violence pushes victim-survivors into homelessness and how a lack of housing can deter victim-survivors from leaving violent relationships. Community legal centres recognise the need for seamlessly integrated legal and social work services that can prevent homelessness by helping families to avoid eviction and deal with complex life issues. It is vital that Aboriginal and Torres Strait Islander people, the LGBTI+ community, culturally and linguistically diverse women including those on

²⁷ Mission Australia, 'Out of the shadows – Domestic and family violence: a leading cause of homelessness in Australia', (2019), p. 6.

²⁸ Mission Australia, 'Out of the shadows – Domestic and family violence: a leading cause of homelessness in Australia', (2019), p. 6; Australian Institute of Health and Welfare, 'Specialist Homelessness Services annual report 2017-18' Australian Institute of Health and Welfare, (2018), Specialist Homelessness Services annual report 2017-18 (2018).

²⁹ ²⁹ Mission Australia, 'Out of the shadows – Domestic and family violence: a leading cause of homelessness in Australia', (2019).

³⁰ Campo, M. (2015), Children's exposure to domestic and family violence: Key issues and responses (CFCA Paper No. 36 – December 2015), Melbourne: CFCA, Australian Institute of Family Studies; Mission Australia, 'Out of the shadows – Domestic and family violence: a leading cause of homelessness in Australia', (2019), p. 13.

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temporary visas, people living in regional communities and people with disabilities have access to specially trained and culturally safe services.³¹

RECOMMENDATIONS

13. The Victorian Government must break the cycle of family violence by increasing housing stock for both victim-survivors escaping violent relationships and perpetrators of violence so that they can engage with services and reduce the risk of reoffending.
14. The Victorian Government must prevent homelessness by supporting victim-survivors of family violence to access culturally safe integrated legal and social services and increasing funding to community legal centres.

Support Migrants, Refugees and Asylum Seekers to Stand Up for Their Rights

People who are new to Australia need support to thrive, but many face exploitation and abuse in their own relationships. Cases of family and domestic violence are even more complicated when a victim-survivor's visa is tied to that of an abusive partner or family member. This means that victim-survivors on temporary visas often face the difficult choice between staying in an abusive relationship or becoming homeless if they want to escape.

Although our laws should make things easier rather than harder for people experiencing family violence, Australia's visa and migration system strongly discourages people from reporting family violence. Women from refugee and asylum seeker backgrounds often depend on their violent partner financially and for their visa. A woman and her children can be refused a visa on cancellation grounds if her abuser is the family's primary visa holder or applicant. It can also be particularly difficult for these victims of family violence to seek help from family violence and legal services.

The refugee determination process can take several years to be finalised, and cuts to government payments have made it even harder for vulnerable people to leave abusive situations and access housing. Even if a victim-survivor can get away from an abusive relationship and navigate the system in a language they do not speak, there is a major shortage of emergency and ongoing secure accommodation for victims of family violence and their children.

Azra's Story

Migrant woman trapped in abusive relationship given wrap-around support to escape

Azra attended an appointment with a Women's Legal Service Victoria (WLSV) social worker following an internal referral from a WLSV lawyer. Azra migrated to Australia from Turkey with her husband in 2009 and experienced ongoing physical, sexual, emotional and financial abuse from her husband. Azra speaks limited English while her husband speaks fluent English and runs two small businesses in Melbourne. All businesses and property were in his name and Azra's husband socially isolated her, telling her that she had no rights in Australia and no one would help or believe her because she couldn't speak English.

Azra's two adult children no longer lived in the family home. Azra's husband subjected her to daily put-downs, threats and exploitation, and made her work in the businesses for no pay while receiving only a small

³¹ Mission Australia, 'Out of the shadows – Domestic and family violence: a leading cause of homelessness in Australia', (2019), p. 6.

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allowance to maintain the household expenses. Azra's husband sexually abused her throughout their marriage, and when Azra made contact with WLSV she was experiencing frequent panic attacks, depression and anxiety. She had no family or social supports in Australia and remained living in the family home because she feared having nowhere else to go.

The WLSV lawyer and social worker supported Azra to understand her legal options and explore the social welfare supports available to her. Azra made an appointment with her local GP and was prescribed anti-depressants. The WLSV social worker accompanied Azra to her local Centrelink office and helped her to apply for a crisis payment, stressing the urgency of her situation. Because of the high risk of violence from Azra's husband, a collaborative decision was made to delay family law proceedings until Azra was out of the family home.

While Azra waited several weeks for her Newstart Allowance claim to be approved, her husband cut off all financial support and she was unable to afford her prescription medication. Azra felt hopeless, her mental health deteriorated significantly and she was involuntarily hospitalised. She was discharged from hospital with nowhere to go and returned to the family home. The WLSV social worker referred Azra to a family violence crisis service which placed her in motel accommodation for one week, but Azra then returned to the family home as she had no ongoing housing option and was on a waitlist for refuge accommodation.

Because of the value of her husband's property, Azra did not meet Victoria Legal Aid's financial guidelines. WLSV referred Azra to a private law firm for assistance with family law and obtaining a Family Violence Intervention Order. Azra's husband was now aware of her plans to separate and continued to emotionally abuse and intimidate her. Azra attained a Family Violence Intervention Order but an exclusion clause was not granted so Azra and her husband cohabitated at the family home. The WLSV social worker supported Azra until she was placed in a refuge through the family violence crisis service, almost two months after her initial contact with them.

Azra was placed on the priority list for an Office of Housing property and at last contact in December 2018, she advised that she was living in transitional housing and was hoping to move into a permanent Office of Housing property soon.

It is important that temporary visa holders including asylum seekers have access to culturally safe accommodation services that can provide interpreting services and meet their needs. Family violence needs to be better recognised and accommodated by the visa application system, and practical measures introduced, including allowing family violence victims to access the documents in their own file without the consent of their abuser under the *Freedom of Information Act 1982* (Cth), and exempting victim-survivors from having to provide a residential address to make a visa application when they are in crisis accommodation.

Homelessness among migrants, asylum seekers and refugees is a complex issue and is being addressed by several of our specialist community legal centres, including Refugee Legal and Asylum Seekers Resource Centre. We encourage the Inquiry to read their submissions and recommendations on this issue.

RECOMMENDATIONS

15. The Commonwealth government must ensure family violence is better recognised and accommodated by the migration system, and introduce practical measures such as:
 - a. allowing family violence victim-survivors to access the documents in their own file without the consent of their abuser under the *Freedom of Information Act 1982* (Cth); and
 - b. exempting victim-survivors from having to provide a residential address to make a visa application when they are in crisis accommodation.

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Support Young People at Risk of Homelessness in Schools

A core component of preventing homelessness among young people is to support them to stay in school and intervene early to ensure they have a stable and safe place to live. We know that children who become disengaged at school are more likely to become homeless and fall into the quicksand of the criminal legal system. In many cases, children and young people experiencing homelessness desperately want to stay engaged with school but lack the resources and support to do so. We know that many children and young people experiencing homelessness struggle to pay for public transport to and from school and incur daily fines.

Too often, children who cannot afford a uniform or clean their clothes are suspended and expelled from school instead of being supported to stay. Students who are suspended or expelled from school can struggle to find another school to attend, and end up feeling alienated, undervalued and resentful of authority, which makes their interaction with the criminal legal system much more likely. Instead of punishing them, we need to intensively support young people to stay in school and engage with communities to work out what they need to support their children and manage social, structural and mental health issues.

Empower Young People to Stand Up for Their Rights

Young people cannot thrive if they cannot stand up for their rights. We can prevent children and young people from becoming homeless and having negative interactions with the legal system by ensuring that they are empowered to avoid problems with the law. By providing culturally safe legal advice and teaching students about their rights and responsibilities around issues such as tenancy, infringements and family violence, students gain knowledge that empowers them to avoid homelessness and get a fair outcome if any legal problems arise. School lawyer programs provide this by embedding a lawyer within a 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, homelessness, fines, employment and consumer law problems. Importantly, they also provide community legal education to staff, students and families on high impact issues such as family violence, cyber bullying, online safety and interactions with police and protective services officers. These programs support children and families and help avoid crisis situations that can lead children into homelessness and also help children to access the Centrelink youth homelessness allowance and wipe unfairly incurred debts from their record.

The Sporting Change Program

Helping young people to understand the law and promoting positive engagement with the legal system

Sporting Change is a preventative community development program that helps young people to engage constructively in their community and in society. Run by the Springvale Monash Legal Service, the program combines sports activities and legal education to help young people understand the law and provides legal advice to young people within a school setting.

This highly innovative program has shown early signs of success in having the power to educate, inform and empower young people, to understand their legal rights and responsibilities, and to foster social cohesion and profound social change.

Young people that are more informed and can meaningfully engage in the justice system that surrounds them experience enhanced social cohesion. Sporting Change teaches young people how understanding their

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rights and responsibilities informs their behaviour and how to engage constructively in potentially negative situations.

Sporting Change's school lawyer helps to educate young people on the legal system's broader implications. Although seeking the assistance of a lawyer may be considered the pointy end of the legal journey, for many young people, access to justice is a foreign and 'un-relatable' concept. Through Sporting Change, children and young people learn the impact that the legal system has on everyone's life and the many times they will interact with it each day, including at work, school and while taking public transport. They also learn the consequences of breaking the rules.

By providing this knowledge, Sporting Change gives young people the opportunity and the tools they need to identify potential legal issues and get help before they escalate.

Programs like Sporting Change empower children to avoid interacting with the legal system in a negative way throughout their lives. We need to move beyond short-term or one-off programs and provide ongoing community-designed and led solutions that support young people regardless of where they live and prevent them from experiencing homelessness or entering the criminal legal system.

RECOMMENDATIONS

16. The Victorian Government must support children to thrive and avoid experiencing homelessness or becoming trapped in the criminal system by funding integrated legal assistance and community services programs.

Give Young Couch Surfers Stability and Support

Having a couch to sleep on is not the same thing as having a home. Every day, young people are forced into homelessness and have to 'couch surf' for a number of personal and systemic reasons, including family conflict, violence at home, intergenerational poverty, inadequate social security provisions, migration challenges and inadequate infrastructure.³²

Couch surfing is a hidden and complex form of homelessness, particularly for young people aged 15 to 17 years old who are not yet adults but are considered too old to be given the same level of protection as young children.³³ Many young people cannot stay at home due to safety concerns but do not recognise that they are homeless or have trust in the system, so they end up staying for short periods of time on someone's couch. These children routinely fall through the cracks in the homeless support, child protection and family violence systems and are left to fend for themselves.

Young people need support, stability and a safe place to live, but while many young people see couch surfing as their best option, many do not have access to enough support and infrastructure because of where they live. A lack of youth refuges, financial resources and support networks can cause a young person to become stressed, socially isolated and disengaged from school³⁴, all of which can make it harder to find stability and stop experiencing homelessness.

³² WEstjustice, 'Couch Surfing Limbo – Legal, Policy and Service Gaps Affecting Young Couch Surfers and Couch Providers in Melbourne's West' (2017), p. 21 < https://www.westjustice.org.au/cms_uploads/docs/westjustice-couch-surfing-limbo-report.pdf >.

³³ WEstjustice, 'Couch Surfing Limbo – Legal, Policy and Service Gaps Affecting Young Couch Surfers and Couch Providers in Melbourne's West' (2017), p. 6 < https://www.westjustice.org.au/cms_uploads/docs/westjustice-couch-surfing-limbo-report.pdf >.

³⁴ WEstjustice, 'Couch Surfing Limbo – Legal, Policy and Service Gaps Affecting Young Couch Surfers and Couch Providers in Melbourne's West' (2017), p. 6 < https://www.westjustice.org.au/cms_uploads/docs/westjustice-couch-surfing-limbo-report.pdf >.

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We refer the Inquiry to the recommendations outlined in Westjustice's Couch Surfing Limbo Report.³⁵

Support People Experiencing Mental Illness to Avoid Homelessness

Most Victorians know someone who has experienced mental illness and the challenges that has brought to their lives. The effects of mental illness can be complex and we know that mental illness is frequently both a cause and consequence of homelessness. People experiencing mental illness are often evicted for struggling to pay their rent due to difficulties finding flexible employment, low government support payments for those unable to work, or behaviours caused by their illnesses. People who struggle to access or retain housing because of mental illness often fall directly into homelessness.

Legal issues that are not addressed early can snowball, and become a crisis situation that directly leads to homelessness. 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.³⁶

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 seen by YouthLaw 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 poor mental health. 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.

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 all need support to thrive, but many people with mental health issues end up living on the street where they are more likely to be arrested. Because of this, people with a mental illness are disproportionately represented in the legal system and need early legal intervention support to prevent this. Having early access to a community lawyer can make a crucial difference to people experiencing mental illness and homelessness, as

³⁵ Westjustice, 'Couch Surfing Limbo – Legal, Policy and Service Gaps Affecting Young Couch Surfers and Couch Providers in Melbourne's West' (2017), p. 6 < https://www.westjustice.org.au/cms_uploads/docs/westjustice-couch-surfing-limbo-report.pdf >.

³⁶ 80 per cent of Youthlaw Clients and 100 per cent of Mental Health Legal Centre clients are experiencing a mental health condition.

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well as their families and children. Evidence shows that homelessness³⁷, financial stress³⁸, family violence³⁹ and other legal problems⁴⁰ can cause mental health problems or be exacerbated by them.

Early community legal support can prevent mental illness from resulting in homelessness. 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 complex and interconnected life and legal issues so that they can then recover and move on.

For a community where everyone has a chance to grow and thrive, people experiencing mental illness need access to wrap-around community legal and social services to prevent them from becoming homeless. These services need to provide a tailored response to their needs and include legal assistance and representation, medical care, social care, housing and employment services.

RECOMMENDATIONS

17. The Victorian Government must break the cycle between mental illness and homelessness by increasing funding to integrated services that can address legal and social issues early and prevent people from falling into homelessness.

Support Older People to Stay in Their Homes

Everyone 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. This can lead to older people being forced into homelessness or increase the risk of them becoming homeless.⁴¹ 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.⁴² Community legal centres such as Eastern Community Legal Centre and Seniors Rights Victoria work to prevent elder abuse and help older Victorians avoid homelessness, protect their rights and restore 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. Community lawyers are well-placed to recognise these issues and work with essential services to put a stop to exploitative behaviour that leads to homelessness.

³⁷ Australian Housing and Urban Research Institute, *Housing, Homelessness and Mental Health: Towards Systems Change* (2018), 13.

³⁸ 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.

³⁹ 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.

⁴⁰ 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.

⁴¹ Mission Australia, 'Ageing and homelessness: solutions to a growing problem', (2017), p. 22, <<https://www.missionaustralia.com.au/publications/position-statements/homelessness/741-ageing-andhomelessness-solutions-to-a-growing-problem/file>>.

⁴² Seniors Rights Victoria, 'Your Rights', < <https://seniorsrights.org.au/your-rights/>>.

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We know that older women are the fastest growing group of people experiencing homelessness. While there are a range of reasons that can push women into homelessness, such as family violence or unemployment, it is often systemic factors that leave women financially disadvantaged. We know that 40 per cent of older single retired women live in poverty and experience economic insecurity.⁴³ Long-term systemic issues such as wage inequality and the fact that many women have significantly lower levels of superannuation than male partners after raising children can leave women financially vulnerable.⁴⁴

While family violence services such as crisis accommodation have traditionally focused on women with young children, more housing and support services need to be available for older people escaping abuse.⁴⁵

RECOMMENDATIONS

18. The Victorian Government must support older people to leave abusive relationships by increasing the amount of suitable accommodation and funding community legal services to advocate on their behalf.

⁴³ Women in Super, 'The Facts About Women and Super' <<https://www.womeninsuper.com.au/content/the-facts-about-women-and-super/gjumzs>>.

⁴⁴ An older woman generally retires with 47 per cent less superannuation than a man and on average lives five years longer – see Women in Super, 'The Facts About Women and Super' <<https://www.womeninsuper.com.au/content/the-facts-about-women-and-super/gjumzs>>; Mission Australia, 'Ageing and homelessness: solutions to a growing problem', (2017), <<https://www.missionaustralia.com.au/publications/position-statements/homelessness/741-ageing-andhomelessness-solutions-to-a-growing-problem/file>>.

⁴⁵ McFerran, L, 'It could be you: Female, single, older and homeless', (2010), Homelessness NSW and Older Women's Network NSW Inc; Mission Australia, 'Out of the shadows – Domestic and family violence: a leading cause of homelessness in Australia', (2019), p. 26.

SECTION 2: STOP CRIMINALISING HOMELESSNESS

SECTION 2: STOP CRIMINALISING HOMELESSNESS

People who are experiencing homelessness need support to recover and thrive rather than being thrown in jail or fined for living on the streets. We know the infringements system is broken and disproportionately impacts upon people experiencing homelessness, while also increasing the risk of homelessness for people experiencing financial hardship.

It is time to commit to a health-based response to homelessness that empowers people to recover and thrive, instead of the current model that punishes people who are struggling and criminalises ordinary daily activities for those living on the street.

Jim's Story

Man experiencing homelessness charged for carrying knife to prepare food

St Kilda Legal Service (SKLS) client Jim had been rough sleeping on the streets of Melbourne for two years after travelling from interstate, hoping to find work.

Jim and other people sleeping rough were camped in an inner city park. When Jim was not at the camp, he would take various items with him on his person because he had found in the past that items left unattended could be stolen. Jim carried a backpack around with him whenever he had to go somewhere, with all his possessions inside, including cooking gear and clothing.

One day while heading to a nearby homelessness service to access a meal program, police saw the handle of a pocket knife sticking out of a side pocket on Jim's backpack and stopped Jim to conduct a field interview regarding the offence of possessing a controlled weapon without lawful excuse. Jim explained to police that this knife was used to prepare food, and showed police his other cooking and camping gear.

Police did not accept Jim's explanation and proceeded with the prosecution, issuing Jim an on-the-spot infringement notice. Jim later lost the infringement notice because he had nowhere secure to keep important paperwork. After persistently attending homelessness services every day, Jim obtained crisis accommodation. While in crisis accommodation Jim was able to tell a support worker about this outstanding matter which by this time was at the enforcement stage, and was referred to SKLS for assistance.

For people who are sleeping rough, weapon and dangerous article offences have a disproportionate impact, and means that people living their lives in public spaces have their ordinary daily activities criminalised because of their context and location. SKLS argued in this case, and has done so for many similar cases, that there was a lawful excuse for Jim possessing the knife.

A Health-Based Response to Public Drunkenness

When our friends or family are unwell or struggling, we want them to get the help they need instead of being marginalised and punished. Every year, people are criminalised because of drug dependencies and alcoholism and pushed into the criminal legal system, instead of towards the medical and social services they need to recover.

SECTION 2: STOP CRIMINALISING HOMELESSNESS

Aboriginal and Torres Strait Islander people in Victoria have long been disproportionately affected by public-drunkness laws⁴⁶ and are 10 times more likely to be targeted by police.⁴⁷ This situation is felt even more acutely by people experiencing homelessness, who are criminalised and punished for behaviour that would be legal if they had their own home, such as having a glass of wine.

We applaud the Andrews Labor Government for acknowledging the need to decriminalise public drunkenness and replace it with a health-based response.⁴⁸ This is a significant shift in policy which must lead to an equally significant change in practice on the ground so that intoxicated people receive treatment instead of time in a jail cell. 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 they may have, including homelessness, mental illness and family violence.

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. Victoria 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 when they are ready to leave. Taking a health-based approach benefits communities by ensuring people receive tailored wrap-around support.

Police are not a substitute for a doctor for people who are unwell and prison is not a substitute for housing. We call on the Victorian Government to commit to taking a truly health-based approach to public drunkenness and avoid criminalising people for living on the streets.

RECOMMENDATIONS

19. The Victorian Government must 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, and repealing relevant offences in the Summary Offences Act 1966 (Vic), including:
 - Section 13: Person found drunk
 - Section 14: Persons found drunk and disorderly
 - Section 16: Drunkards behaving in riotous or disorderly manner
20. The Victorian Government must prevent people from interacting with the legal system by increasing funding for alcohol and other drugs treatment programs.

Repeal Outdated Public Space Offences

Just as people who are experiencing homelessness and disadvantage have been disproportionately affected by public drunkenness laws, many have also faced the devastating impact of other public space offences. People experiencing homelessness are far more likely to receive fines and charges simply because they are forced to live their private life in a public space. Not only are these infringements incurred because people are

⁴⁶ State of Victoria, 'New Health-Based Response To Public Drunkenness' (2019), < <https://www.premier.vic.gov.au/new-health-based-response-to-public-drunkenness/>>.

⁴⁷ 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).

⁴⁸ 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 2: STOP CRIMINALISING HOMELESSNESS

experiencing homelessness, their effects are also magnified by the fact that those charged have no fixed address. 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.⁴⁹

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 footpaths and obscene language have a similarly negative impact on people who experience homelessness, and do nothing to help them.

Michelle's Story*

Accepting a Christmas gift lands woman in court

Michelle attended the Inner Melbourne Community Legal (IMCL) office with her support worker. Michelle had been living with her uncle but soon fell into homelessness. Michelle experiences extreme anxiety and depression and has also been diagnosed with a liver disease. She was engaged with numerous support workers, including for alcohol and drug counselling.

Michelle had been charged with the offence of gathering alms. Michelle was sitting in the Bourke Street Mall with her dog watching a busker, homeless and with nowhere else to go. It was Christmas time and a stranger approached Michelle and generously gave her a Christmas card, a coffee, face wipes and some coins.

Michelle didn't realise that accepting this gift was a criminal offence and that she was being watched by security contractors at City of Melbourne's Safe City Camera Program. Security called police who attended the Mall and charged her on the spot.

Michelle was not actively asking passers-by for anything. She didn't have a sign or poster asking for contributions. She was charged with an offence for merely sitting by the side of the street and receiving face wipes and coins from a kind passer-by.

At Court, the police refused to drop this charge. Michelle was in tears when she realised that they would be pursuing it. Her best option to have the matter resolved was to plead guilty, rather than proceeding to a hearing, as it was likely the matter would be found proven and dismissed that day. IMCL represented Michelle in a guilty plea where the matter was found proven and dismissed by the Court, without a conviction.

The case exacerbated Michelle's pre-existing anxiety, and needlessly used prosecution resources in obtaining an unconditional dismissal. It is arguable that the justice system did not gain a result in the public interest from prosecuting this crime.

Michelle still has the Christmas card which she received that day, wishing her a better 2019.

***This case study was submitted in Inner Melbourne Community Legal's submission to the Inquiry into Homelessness in Victoria**

Instead of criminalising people, we should be supporting organisations to help people in need. We call on the Victorian Government to repeal these offences and develop and fund an integrated health-based response.

⁴⁹ 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>>.

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This is particularly important as many people charged with committing public order offences are experiencing homelessness as well as mental health and other complex problems that need support and treatment instead of punishment through the criminal legal system. Having a criminal history can also prevent people from transitioning out of homelessness as they struggle to access accommodation services and family violence refuges.

We need to move away from an outdated police response to homelessness and instead support and empower people to get their lives back on track. This approach reduces harm as well as the cost and burden of putting a person through the criminal system.

RECOMMENDATIONS

21. The Victorian Government must develop and fund an overarching mental health and alcohol and other drugs framework that embeds a health-based response and works to address intersecting issues.
22. The Victorian Government must 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 5: Obstruction of footpath
 - Section 6: Directions to move on
 - Section 17: Use of obscene, indecent, threatening language and behaviour etc in public
 - Section 17A: Disorderly conduct
 - Section 49A: Begging or gathering alms

Reinstate the Special Circumstances List

We all know how irritating it can be to receive a fine, but for people who are already in financial hardship, a fine can be a crippling financial hurdle. 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.

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. Similarly, a person riding a train at night to stay warm in winter may receive a fine for not having a valid ticket, and then also receive several further financial penalties for not being able to pay the initial fare. 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 homelessness, family violence, intellectual impairment, 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

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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 Newstart.

Emily approached her local community legal centre after she had been issued with five fines between July 2012 and 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.

The Special Circumstances List 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 and receive a conviction. 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

23. The Victorian Government must help Victorians experiencing homelessness or other disadvantage access justice by reinstating the Special Circumstances List in the Melbourne Magistrates' Court.

An Infringements Family Violence Scheme That Works

People who are experiencing family violence and are at risk of homelessness should not be forced to pay fines that are unfairly incurred, often by their violent partner. Not only do these unfair fines extend the effects of family violence, they also increase the risk of homelessness for victim-survivors. 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 victim-survivors 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.

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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 to prove a 'direct, causal or temporal nexus'. This delay completely undermines the scheme and stops it from operating in the way it was intended. It also increases the risk of homelessness for people who are financially crippled by fines that they should not have to pay. The scheme must be able to work effectively to protect the rights of family violence survivors and reduce the risk of them experiencing homelessness.

RECOMMENDATIONS

24. The Victorian Government must ensure the Infringements Family Violence Scheme works as intended and that applications are processed quickly, with requests for further information made within 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. Victorian taxpayers end up footing the bill for imprisoning people while individuals often lose their homes and custody of the children that need them. Instead of pushing people into homelessness for fines they cannot pay, 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 instead of diverting money away from buying food and paying rent, people experiencing homelessness, acute financial hardship, mental illness, an intellectual disability and victims of family violence can pay off their fines by completing courses, receiving medical treatment, attending drug and alcohol counselling and other unpaid work.

This program provides people with the help they need and helps to prevent homelessness but 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 its ability to prevent homelessness 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

25. The Victorian Government must support Victorians to thrive by significantly increasing funding for sponsors of Work and Development Permits and increase funding for community legal centres that support the scheme's operation.

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Communities are stronger when they support people who are struggling and empower them to thrive. People who fall through the cracks and experience homelessness or prison often face lifelong consequences and enter a cycle of disadvantage that is also experienced by their children and grandchildren.

For too long, people experiencing homelessness, mental illness and socio-economic disadvantage have been criminalised and put in a prison cell instead of getting the help they need. Similarly, people thrown into prison are often completely unsupported to transition back into society and instead end up sleeping on the streets or reoffending to feed themselves. This revolving door between housing insecurity and prison helps no one and carries a significant cost for individuals, families and society as a whole. Far too often, children of people experiencing homelessness or interacting with the criminal legal system are placed in out-of-home care, which greatly increases their own risk of becoming homeless and being charged with a criminal offence.

The work done by the social, health and legal assistance sectors cannot deliver sustainable and positive outcomes if their clients have nowhere to live. We call on the Victorian Government to take a long-term view and break the cycle between prison and homelessness, especially for people dealing with complex issues.

Keep Children Out of Prison to Prevent Homelessness

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. In many cases, these children are experiencing homelessness such as couch surfing or unsafe living situations. These children are often forced to commit survival crimes such as stealing food, which makes them far more likely to come into contact with the police.

We know that children and young people who are criminalised and interact with the legal system are more likely to fall into homelessness for a variety of reasons, including social exclusion and difficulty finding work with a criminal record, the consequences of mental illness and trauma developed behind bars, and their increased likelihood of reoffending.

Although Aboriginal and Torres Strait Islander children do not commit more crimes than other children in our community, they are policed more⁵⁰ and are more likely to be held on remand without conviction.⁵¹ Because of this, Aboriginal and Torres Strait Islander children are 25 times more likely to be behind bars than other children⁵² and are therefore more likely to experience homelessness.

Putting children in jail exposes them to a damaging prison environment instead of giving them the support they need to break out of the cycle of homelessness, poverty and intergenerational disadvantage. Putting children in prison significantly increases their chance of experiencing depression and the risk of suicide⁵³ and makes it much more likely that they will continue to cycle between prison and homelessness. While the

⁵⁰ 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.

⁵¹ Amnesty International Australia, A Brighter Tomorrow: Keeping Indigenous Kids in the Community and Out of Detention in Australia (2015) 31.

⁵² ABS, Report on Corrective Services (2017).

⁵³ Commonwealth, Royal Commission into the Protection and Detention of Children in the Northern Territory, Final Report (2017).

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

Children who are doing it tough need guidance and support in a safe and trusted environment instead of being thrown in jail when we think they are acting out. Prison has a profoundly negative impact on children and young people and the younger a child is when they enter the prison system, the higher chance they have of reoffending⁵⁴ and being trapped in a cycle of homelessness. Raising the age of criminal responsibility will reduce crime and, with it, the risk of children experiencing homelessness throughout their life. Evidence shows that focusing on rehabilitation results in lower rates of recidivism⁵⁵, and that for every year a child stays out of prison, the risk of reoffending decreases by 18 per cent.⁵⁶

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.

The effects of being behind bars stay with a child for life and make it more likely that they will experience homelessness and mental illness⁵⁷ in later life. Routine prison practices such as strip searches, isolation and restraint are damaging to children who have most often already fallen through the cracks and been subjected to trauma and abuse before entering. Of the young people behind bars in Parkville and Malmsbury, 67 per cent

⁵⁴ 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.

⁵⁵ 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.

⁵⁶ Sentencing Advisory Council, Reoffending by Children and Young People in Victoria (December 2016) 26.

⁵⁷ Barry Holman and Jason Ziedenberg, The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities (28 November 2006) Justice Policy Institute.

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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.⁵⁸

To prevent further homelessness among children, the Victorian Government should invest in diversion and rehabilitation programs instead of funding more prison beds, and commit to offering greater housing, health and educational opportunities for children.

RECOMMENDATION

26. The Victorian Government must reduce rates of reoffending and bring Victoria into line with world standards by raising the age of criminal responsibility to 14.
27. The Victorian Government must prevent children from experiencing lifelong trauma and resulting homelessness by developing a plan to close children's prisons.
28. The Victorian Government must ensure that Aboriginal children and youth have access to culturally safe legal services by increasing funding for Aboriginal Community Controlled Organisations and culturally safe legal services such as the Victorian Aboriginal Legal Service (VALS).

Divert People Away From the Criminal Legal System as Early as Possible

We know that people who enter prison are more likely to become homeless and that the periods of homelessness they experience last longer. There are a variety of reasons for this, including loss of housing, employment and family, as well as mental health conditions that push people onto the streets. It is important that we break the cycle between homelessness and entering prison and divert people away from the legal system as early as possible so that they can get their lives back on track.

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.⁵⁹ 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 including homelessness support and increases people's chances of being gainfully employed and securing safe and stable housing. This empowers them to break the link between housing insecurity and the criminal legal system and move on with their lives. The use of diversion should be prioritised and should be assessed based on the merits of each case, without the need for the consent of the prosecution.

RECOMMENDATION

29. The Victorian Government must empower the court to determine whether diversion is appropriate in each case by amending s 59 of the Criminal Procedure Act 2009 (Vic) and removing the requirement that the prosecution consent to the Criminal Justice Diversion Program.

⁵⁸ Youth Parole Board, 'Annual Report 2018-19', p. 29.

⁵⁹ Department of Justice, 'Court Diversion Program Evaluation Overview – Final Report' (2004) 6.

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Prevent Unintended Impacts of Bail Reforms on Women

Women who have experienced homelessness, trauma and abuse need the support of their community to recover and thrive. We know that women placed on remand are more likely to become homeless for a range of reasons, including losing their housing, jobs and support networks. Most women entering prison are mothers with children who depend on them⁶⁰ and we know that children of people who enter prison are six times more likely to spend time in prison themselves.⁶¹

Recent reforms to the bail system have made it more likely that women will spend time behind bars, increasing their risk of homelessness. Although a significant proportion of crimes committed by women is low level and related to trauma and disadvantage, many women are behind bars due to bail reforms that were intended to keep people charged with violent crimes locked away.⁶² This means that women charged with low level offences such as shoplifting are being held on remand under laws intended to apply to people charged with murder, rape, drug trafficking and terrorism offences.⁶³ 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.⁶⁴ Bail 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 and break the cycle between prison and homelessness.

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

⁶⁰ Australian Institute of Health and Welfare, 'The health of Australia's prisoners 2018' (2018), p. 14.

⁶¹ Victorian Ombudsman (2015) Investigation into the rehabilitation and reintegration of prisoners in Victoria Office of the Victorian Ombudsman, Melbourne, 2.

⁶² Stathopoulos, Mary; Quadara, Antonia; Fileborn, Bianca; et al, 'Addressing women's victimisation histories in custodial settings', Australian Institute of Family Studies (2012), p. 8.

⁶³ 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.

⁶⁴ Crime Statistics Agency, Characteristics and offending of women in prison in Victoria, 2012-2018, 2019.

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for young Aboriginal adults. However, Celeste did not present for her plea hearing and there are now warrants for her arrest.

Far too many women are spending many more months on remand waiting for their court date than the actual sentence that they could receive for their alleged crime. 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.⁶⁵ Nearly two-thirds of women remanded in 2017 were released without receiving a sentence⁶⁶, and 41 per cent served a sentence of less than one year.⁶⁷ While it cost taxpayers approximately \$120,000 per year to keep just one woman in prison⁶⁸, the cost to the women and their families was immeasurable, and often led to them losing their jobs, housing and even their children.⁶⁹ Like all of us, these women need a number of basic factors to avoid offending and reoffending, including a home, income security, connection with their children and being free from alcohol, drugs, violence and abuse.⁷⁰

The Victorian Government needs to amend bail laws that are having a devastating impact on women and their families and ensure they are targeting serious offending. The government should work to prevent homelessness by keeping women out of prison and funding legal services that help women apply for bail and avoid spending longer amounts of time in remand than they would if they were to receive a sentence.

RECOMMENDATIONS

30. The Victorian Government must reform bail laws to ensure they are targeting serious offending, and stop locking up women who should not be in prison.
31. The Victorian Government must 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.

Provide Wrap Around Support to Women in the Criminal Legal System

Women's interactions with homelessness and the criminal legal system are intrinsically linked. Community legal centres tell us that women are often refused bail and placed on remand because they do not have a stable address, which makes it much more likely that they will lose their job and housing they do have while waiting for their court date. Similarly, women who have served their time and are applying for parole often have to remain behind bars because they do not have a house to go to.

Having a safe and secure place to live is fundamental, particularly for those who have children and are trying to move on with their lives. Women interacting with the legal system need seamless wrap-around support that prevents them from entering prison and works with those already serving time to be well-placed to recover and thrive when they are released

Do Not Put Women in Prison Because They Are Homeless

⁶⁵ Corrections Victoria (2019) Annual Prisoner Statistical Profile 2006-07 to 2017-18 Victoria. Department of Justice, Melbourne.

⁶⁶ Corrections Victoria, 'Women in the Victorian Prison System', Department of Justice and Community Safety (2019), p. 13.

⁶⁷ Corrections Victoria (2019) Annual Prisoner Statistical Profile 2006-07 to 2017-18 Victoria. Department of Justice, Melbourne.

⁶⁸ Corrections Victoria, 'Corrections statistics: quick reference' (2018).

⁶⁹ Ella Baker Centre for Human Rights, 'Who Pays? The True Cost of Incarceration on Families' (2015), p. 7.

⁷⁰ Women's Health Victoria, 'Spotlight on Incarceration and Women's Health' (2018), p. 1.

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People cannot break the cycle of crime and reoffending without a safe home to sleep in and access to education, training and mental health services.⁷¹ We know that a quarter of women who enter prison are homeless⁷², and at least 40 per cent are homeless when they are released⁷³, which makes it far more likely that they will reoffend.⁷⁴ At least 65 per cent of women in prison reported having a mental health condition⁷⁵ while 92.3 per cent of Aboriginal women in custody have a persisting diagnosis of mental illness.⁷⁶ Nearly a third of women had a history of self-harm⁷⁷, and in 2017, 69 per cent of female prisoners on remand had children.⁷⁸ This is particularly alarming as we know that the children of people who come into contact with the legal system are more likely to be imprisoned themselves and experience homelessness.

In many cases, women applying for bail do not have stable and suitable accommodation because they are experiencing family violence and cannot return to their home address. In the context of a bail application, the only accommodation available is crisis accommodation such as a motel. This is usually available for one or two nights, after which the woman must repeatedly present to a housing service to access short-term crisis accommodation while also seeking longer-term options.

Although bail should not be refused simply because a woman is homeless, our member community legal centres and social services regularly see women being refused bail because they do not have a stable place to live.

Elizabeth's Story

Access to supported accommodation supports a fresh start

Elizabeth is a young Aboriginal woman from regional Victoria. She has lived a transient life with involvement from child protection from an early age. With an intellectual disability and mental health issues, coupled with substance abuse as an adult, she was often placed in the 'too-hard' basket' by service providers.

Elizabeth came to Melbourne with a limited criminal history, but was charged with serious assault in the company of another person. She vehemently denied the charges, which were deeply offensive to her in the context of what she had experienced herself throughout her life. This made Elizabeth extremely agitated and heightened when dealing with people.

The work required by the Law and Advocacy Centre for Women (LACW) to find her appropriate accommodation was immense. Several housing providers rejected her applications. It was only through LACW's persistent, assertive advocacy on her behalf that a supported housing provider finally accepted her, and a successful bail application was made.

The importance of that secure, supported accommodation to the eventual outcome of her matter cannot be underestimated. The likely alternatives were that Elizabeth:

- ▼ remain in custody on remand, with her agitation and anger exacerbated by her situation, or
- ▼ be bailed without appropriate support, making it incredibly difficult for her to remain compliant with bail conditions or turn up each day to face her trial.

⁷¹ Maria Borzycki and Eileen Baldry, Promoting Integration: The Provision of Prisoner Post-Release Services (November 2017).

⁷² Corrections Victoria, 'Women in the Victorian Prison System' (January 2019).

⁷³ Victorian Ombudsman (2015) Investigation into the rehabilitation and reintegration of prisoners in Victoria Office of the Victorian Ombudsman, Melbourne.

⁷⁴ I Brunton-Smith and K Hopkins, The factors associated with proven re-offending following release from prison, 2013, p. 19.

⁷⁵ Australian Institute of Health and Welfare, 'The health of Australia's prisoners 2018' (2019).

⁷⁶ 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.

⁷⁷ Australian Institute of Health and Welfare, 'The health of Australia's prisoners 2018' (2019).

⁷⁸ Corrections Victoria, 'Women in the Victorian Prison System' (2019), p. 8.

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With the supported accommodation in place, Elizabeth was able to access services to address her underlying issues. She attended court each day of her trial and presented well. Ultimately, she was acquitted of all charges and was able to return to her supported accommodation to get on with her life.

The lack of suitable housing options available and willing to take Elizabeth in the first instance highlights the huge gap that exists in the sector for women, particularly criminalised women that present with co-occurring complex issues.

Support Women to Transition Out of Prison Into A Home

Women should not be released from prison into homelessness. Prisons with a rehabilitative culture and integrated wrap around services can provide people with opportunities for growth and prepare them to move on with their lives after release, so that they can avoid the revolving door between prison and homelessness. People are four times more likely to die in the first six months after being released from prison than after a year⁷⁹, which highlights the need for effective support to give people a fair chance to transition back into their community.

Historically, women have had access to far fewer support services than men leaving prison and 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.⁸⁰ As these challenges are made worse when support services are disjointed and not integrated, women in prison need access to integrated in-reach rehabilitation services that continue when they leave.

Although life does not simply stop when a person enters custody, people in prison lose their Centrelink payments, Medicare coverage and employment income. This means that they also often miss rental or mortgage payments and are evicted from their homes. This, coupled with the fact that many people lose social and community support while in custody, increases the risk that they will be released into homelessness.

The Victorian Government needs to adequately fund programs that set women in prison up for success when they are released by strengthening family relationships and support networks, employment and education services. It is essential that women leaving prison have access to safe and suitable accommodation that can support them to move on with their lives.

Stop Relying on Prison-Style Bail and Post-Release Accommodation

People who have been released from prison should be supported to move on with their lives and recover from the trauma that comes with being in custody. Many clients of community legal centres are placed in bail and post-release accommodation that is funded by Corrections. Although these people are not in prison, they are often subject to intrusive security systems, strict curfews, bars on the windows and separation from their communities. Breaches of accommodation rules can result in a swift return to custody.

While people on parole should be able to move on with their lives, this regimented environment causes many to go back to sleeping on the streets or in unsafe accommodation to regain the freedom to make their own decisions and control their lives. People leaving prison should have access to safe and secure housing, and it is not appropriate to use these 'bail houses' as a substitute for supported social housing.

RECOMMENDATION

⁷⁹ 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.

⁸⁰ Department of Justice and Regulation, 'Women exiting prison in Victoria: summary report of a post-release study by Monash University' (2016), p. 1.

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32. The Victorian Government must 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.