



Submission to the Inquiry into Victoria's Criminal Justice System

Reducing the criminalisation of women in Victoria

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About Smart Justice for Women

Smart Justice for Women (SJFW) is a subcommittee under the broader Smart Justice Coalition coordinated by the Federation of Community Legal Centres Victoria Inc.

SJFW includes members from the Community Legal Sector, Aboriginal Community Controlled Organisations, Community Services Sector, Legal Assistance Sector, academia and other organisations with an interest in reducing the criminalisation of women in Victoria.

The role of SJFW is to reduce the criminalisation of women in Victoria by:

- Advocating for law reform, policy change and structural change;
- Influencing community attitudes and promoting social change;
- Providing leadership and expertise on issues impacting on women's criminalisation;
- Establishing a consultative body on issues impacting on women's criminalisation;
- Promoting information, knowledge, evidence and resource sharing between members; and
- Fostering a collaborative approach to service delivery within the legal assistance sector and across a range of sectors.

Terminology

SJFW takes an inclusive approach to the term 'women', in recognition of the ongoing discrimination and disadvantage experienced by gender diverse people in the justice system, to include people who identify as women, as trans or non-binary, or do not identify with any gender.

Acknowledgements

SJFW pays our deepest respect to traditional owners across Victoria, in particular, to all Elders past, present and emerging. We also acknowledge all Aboriginal and Torres Strait Islander people in Victoria and pay respect to the knowledge, cultures and continued history of all Aboriginal and Torres Strait Islander Nations.

SJFW acknowledges that responses to the criminalisation of women will be most effective and safe for women if they are informed and developed in partnership with women with lived experience of the criminal justice system.

This submission is on behalf of the following SJFW members:

Federation of Community Legal Centres Victoria Inc

Law and Advocacy Centre for Women

Djirra

Victorian Council of Social Service

Whitelion

Drummond Street Services

TaskForce Community Agency

Council to Homeless Persons

Mental Health Legal Centre

Youthlaw

Centre for Innovative Justice, RMIT University

Women's Health Victoria

Women and Mentoring

Justice Connect

Jesuit Social Services

Centre for Excellence in Child and Family Welfare

VACRO

Victorian Alcohol and Drug Association

Womens' Legal Service Victoria

Social Security Rights Victoria

Court Network

Centre for Health, Law and Society, La Trobe University

Domestic Violence Victoria

Flat Out

Fitzroy Legal Service

WEstjustice

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Background

Women have specific, gendered pathways to criminalisation and imprisonment that are different to men. Between 70 to 90 per cent of women in prison have experienced trauma and abuse prior to entering prison, including family violence and sexual abuse¹. Women in prison have higher rates of mental ill-health, substance abuse and homelessness.² Women are also less likely to have committed violent offences and are more likely to be criminalised due to issues associated with drug dependence or poverty.³ As a minority in the criminal justice system, women are often dealt with by systems and processes that are not responsive to their particular needs.

The majority of women in Australian prisons are parents, with 85 per cent having been pregnant at some point in their lives, and 54 per cent having at least one dependent child.⁴ The inter-generational impacts of this are immense, with children of parents who have been imprisoned much more likely to be involved in the criminal justice system themselves. Children whose mothers are in prison are more likely to have disrupted education, poor health and unstable housing, all of which are factors that heighten the risk of a child or young person entering child protection or the criminal justice system.⁵ Accordingly, issues around the criminalisation and imprisonment of women also concern the rights of children, the obligations of governments to act in the best interest of children, and the cultural rights of women and children.

For a number of years, women have been the fastest growing cohort in Australian prisons. Between 2009 and 2019, the female prison population in Australia increased by 64 per cent, compared with 45 per cent for males.⁶ Aboriginal and Torres Strait Islander women are grossly over-represented in these figures, with 33 per cent of women in Australian prisons identifying as Aboriginal or Torres Strait Islander.⁷ In Victoria, the

¹ H Johnson, *Drugs and Crime: A study of incarcerated female offenders*, Research and public policy series, 2004; Justice Health & Forensic Mental Health Network, *2015 Network Patient Health Survey report*, 2017; M Wilson et al, *Violence in the Lives of Incarcerated Aboriginal Mothers in Western Australia*, SAGE Open, January 2017.

² Australian Institute of Health and Welfare, *The Health of Australia's Prisoners*, July 2020.

³ Crime Statistics Agency, *Characteristics and offending of women in prison in Victoria*, 2012-2018, November 2019.

⁴ Australian Institute of Health and Welfare, *The Health of Australian Prisoners*, 2018, pp. 14 and 72.

⁵ J Sherwood et al, *Reframing Space by Building Relationships: Community Collaborative Participatory Action Research with Aboriginal Mothers in Prison*, 2013, p.83, 85.

⁶ Australian Institute of Health and Welfare, *The health and welfare of women in Australia's prisons*, November 2020.

⁷ Ibid.

number of women in prison almost doubled between June 2007 and June 2019.⁸ The imprisonment rate for Aboriginal women almost tripled during the same period.⁹ These figures represent a significant failing in terms of reaching the National Closing the Gap target of reducing the rate of Aboriginal and Torres Strait Islander people in custody by at least 15 per cent by 2031. SJFW recognises the leadership of Aboriginal and Torres Strait Islander communities and organisations in advocating for reform to address this, and the importance of Aboriginal self-determination in determining and implementing reforms that will impact their communities.

There is an urgent need to reform the criminal justice system to make it more responsive to the needs of women, and to stem the growth in the female prison population. To this end, SJFW has identified key reforms required in order to reverse the increasing incarceration and criminalisation of women.

⁸ Corrections Victoria, *Annual Prisoner Statistical Profile*, June 2019.

⁹ Ibid.

Key Facts and Statistics

Women and the Criminal Justice System

- Aboriginal and Torres Strait Islander women are imprisoned at 21 times the rate of non-Aboriginal and Torres Strait Islander women.¹⁰
- The ways that women become engaged in the criminal justice system and are imprisoned are different to men.
- Women are more likely to have experienced trauma prior to entering prison. Between 70 to 90 per cent of women in prison have been victims of violence and abuse.¹¹
- Women in prison have higher rates of mental ill-health, substance use and homelessness compared to men.¹²
- Women are less likely than men to have committed violent offences.¹³
- Women are more likely than men to be criminalised due to issues associated with drug dependence, including drug offending, theft and property offences.¹⁴
- The majority of women in Australian prisons have children, with 85 per cent having been pregnant at some point in their lives, and 54 per cent having at least one dependent child.¹⁵
- 33 per cent of women in prison in Victoria had an acquired brain injury prior to entering prison, compared to 2 per cent of the general Australian population.¹⁶
- The high numbers of women in prison undermines the cultural rights of Aboriginal women and their children.
- Placing women in prison has ongoing inter-generational impacts.

¹⁰ Change the Record Coalition, *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment*, May 2017.

¹¹ H Johnson, *Drugs and crime: A study of incarcerated female offenders*, Research and public policy series, 2004; Justice Health & Forensic Mental Health Network, *2015 Network Patient Health Survey report*, 2017; M Wilson et al, *Violence in the Lives of Incarcerated Aboriginal Mothers in Western Australia*, SAGE Open, January 2017.

¹² Australian Institute of Health and Welfare, *The Health of Australia's Prisoners*, July 2020.

¹³ Crime Statistics Agency, *Characteristics and offending of women in prison in Victoria, 2012-2018*, November 2019.

¹⁴ Ibid.

¹⁵ Australian Institute of Health and Welfare, *The Health and Welfare of Women in Australia's Prisons*, November 2020.

¹⁶ M Jackson et al, *Acquired Brain Injury in the Victorian Prison System*, Corrections Victoria Research Paper Series 4, 2011.

Victoria's Increasing Numbers of Women in Prison

- For a number of years, women have been the fastest growing cohort in Australian prisons.
- Aboriginal and Torres Strait Islander women are grossly over-represented in these figures, with 33 per cent of women in Australian prisons identifying as Aboriginal or Torres Strait Islander.¹⁷
- The number of women in Victorian prisons has more than doubled over the past decade,¹⁸ with the number of Aboriginal women in prison more than tripling.¹⁹
- The increase in the number of women being held in Victorian prisons has been largely driven by an increase in the remand population.
- In June 2019, 46 per cent of women in Victorian prisons were on remand (unsentenced) as compared with 25 per cent in 2007.²⁰
- More than half of the female prison population is currently on remand. At 30 June 2021, 221 of 411 women in prison were unsentenced.²¹
- A key driver of this increase has been recent changes to the *Bail Act 1977* (Vic) which were introduced in 2018. This was a significant reform to the criminal justice system designed in response to acts of horrific violence perpetrated by men, but which is having a disproportionate impact on women.
- As a consequence of the bail reforms, the net has been cast so wide that vulnerable people, in particular women, charged with relatively minor offences are now spending unnecessary time on remand while awaiting the outcome of their legal proceedings.
- This has had a particularly damaging impact on women, who with even short periods on remand may be separated from children, housing and other community supports.

¹⁷ Australian Institute of Health and Welfare, *The Health and Welfare of Women in Australia's Prisons*, November 2020.

¹⁸ Crime Statistics Agency, *Characteristics and offending of women in prison in Victoria, 2012-2018*, November 2019.

¹⁹ Ibid.

²⁰ Corrections Victoria, *Annual Prisoner Statistical Profile*, June 2019.

²¹ Corrections Victoria, *Monthly Time Series Prisoner and Offender Data*, July 2021.

Summary of Recommendations

Bail Reform

1. Repeal the reverse-onus and double uplift provisions of the Bail Act and provide a presumption in favour of bail unless there is a specific and immediate risk to the safety of another person.
2. Adopt a gendered and culturally appropriate approach to determining 'risk' to community safety that takes into account the specific disadvantage and marginalisation experienced by women.
3. Ensure that women are not refused bail due to homelessness or a lack of social and affordable housing. Investment is required to ensure all women have access to safe, stable and affordable housing that meet their specific needs.
4. Reclassify, as summary offences, those low-level offences that are often committed by women due to their poverty, disadvantage and marginalisation, including drug offences, theft and property offences, and public nuisance and unlawful assembly.
5. Improve police responses to women charged with low-level offending, including increased use of charging on summons, review of police decisions, and transparency around police bail decisions.

Sentencing

1. Review the sentencing hierarchy and Community Corrections Orders to provide additional options for community-based treatment and rehabilitation that is tailored to the specific needs of women.
2. Require decision-makers to consider the unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples as part of the sentencing process, and require training to be undertaken by decision-makers to ensure the appropriate implementation of these considerations.
3. Increase therapeutic sentencing practices and the use of structured sentence deferral to deliver tailored, rehabilitative outcomes.
4. Abolish short sentences whilst providing safeguards against 'sentence creep,' to ensure that women are not imprisoned for short periods of time disrupting their support system, including employment, education, caring responsibilities and housing. This should be referred to the Victorian Law Reform Commission for consideration.

5. Take into account the significant increase in numbers of women on remand in Victoria when considering reforms to sentencing.
6. Adopt a harm-reduction approach to drug-related offending that prioritises rehabilitative and community-based responses.
7. Include a person's caring responsibilities as a specific consideration in sentencing, requiring decision-makers to consider the impact of a sentence on dependent children.

Parole

1. The purpose of parole for women should be to support their rehabilitation and reintegration into the community, including reunification with their children.
2. Ensure that women are not refused parole due to homelessness or a lack of social and affordable housing. Investment is required to ensure all women have access to safe, stable and affordable housing that meet their specific needs. Women who are eligible for parole and provide their consent should be automatically put on the priority waiting list for social housing.
3. The Adult Parole Board should automatically consider whether women are suitable for parole at the earliest eligibility date. Women need to be provided with appropriate and accessible support throughout the application process, and decision-makers should take into account the reasons for any non-completion of a rehabilitation or other program while in prison.
4. The Adult Parole Board should cease to be exempt from the *Charter of Human Rights and Responsibilities Act 2006* (Vic), be bound by the rules of natural justice, and allow for applicants to be legally represented.

Policing

1. Divert funding for policing into community services, including front-line health services and Aboriginal and Torres Strait Islander community controlled organisations.
2. Reduce the over policing of Aboriginal and Torres Strait Islander communities in Victoria, taking into account the need to address systemic racism and the discrimination and racism inherent in policing practices in Victoria.
3. Increase transparency, accountability and oversight of police, including through a robust and independent system for effective oversight of police complaints and misconduct and proper implementation of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT).

4. Improve responses to victims of family violence who are misidentified by police as the primary aggressor, resulting in increased criminalisation of women who are victim-survivors of family violence.
5. Increase opportunities for women to engage in pre-charge and diversionary programs, including gender-informed and culturally appropriate programs and making diversion available at the instance of a Magistrate without the need for the consent of police or prosecutors.
6. Increase transparency and accountability of police in regard to their charging practices and bail decisions, including a new requirement for police to always provide reasons when refusing to grant bail
7. Minimise the role of police in the response to public drunkenness and instead implement a health-based response to public drunkenness that is properly funded and resourced, and based on co-design and consultation with community organisations and health services, including Aboriginal and Torres Strait Islander communities.
8. Adopt a health-based, harm-reduction approach in responding to drug use, and reinvest resources for the law enforcement response into community-based health and treatment services for drug use.

Housing

1. Ensure that women are not criminalised due to a lack of affordable and social housing and the increased risk of entering or re-entering the criminal justice system due to homelessness.
2. Ensure that all housing provided to women – social, affordable and private housing – is aimed at ensuring that women have a home, and should meet accepted community standards of what constitutes a home.
3. Ensure that women have access to housing that is stable and secure, including security of tenure or an ongoing lease agreement and tenancy rights.
4. Take into account the specific needs of women regarding safety and childcare in meeting their housing needs, including the provision of housing that is safe and free from violence, has appropriate space, is appropriate for children and is culturally appropriate.
5. Empower women to exercise control over their own lives, including by keeping the provision and management of their housing separate from their access to supports, and ensuring that no single organisation has an undue level of influence over a woman's life.
6. Empower women to make their own choices about where they live, who they live with and who comes into their home and when.

Support System

1. Ensure that supports are responsive to women's needs at the first risk of criminalisation.
2. Ensure that supports are accessible and sustained to enable women to reconnect with their community and to reduce the risk of reoffending.
3. Ensure that supports are safe and respectful of the specific needs of women engaged with the criminal justice system, including the adoption of trauma-informed and integrated practice across the service system.

Bail Reform

The increase in the number of women being held in custody in Victoria has been largely driven by an increase in the remand population. In June 2019, 46 per cent of women in Victorian prisons were on remand (unsentenced) as compared with 25 per cent in 2007.²² At 30 June 2021, 221 of 411 women in prison were unsentenced.²³

SJFW attribute the exponential and unprecedented growth in the number of women on remand in custody to the 2013 and 2018 legislative reforms to the *Bail Act 1977* (Vic) (Bail Act), which introduced:

- In 2013, new offences of contravening a conduct condition of bail and committing an indictable offence while on bail; and
- In 2018, the significant expansion of the reverse onus tests for bail, with higher thresholds applying to minor offences through the creation of a new ‘show compelling reasons’ test and a much wider application of the ‘show exceptional circumstances’ test.

We acknowledge that bail reform is a politically sensitive issue in Victoria and that the reforms made occurred in the context of heightened public concern following the Bourke Street tragedy on 20 January 2017. However, far too often, SJFW bears witness to the unintended consequences of these legislative changes for vulnerable women, particularly Aboriginal and Torres Strait Islander women.

Data confirms that women on remand are in most cases, not the subject of the serious violent charges that the reverse onus tests sought to address. Of unsentenced women remanded in custody in Victoria:

- almost one-third had drug offences as their most serious charge; and
- over 35 percent were charged with theft (including shop theft), fraud or other property related offences.²⁴

Housing large numbers of unsentenced women in custody for these types of offences is an expensive holding pattern, costing the Government \$391.18 per woman, per day.²⁵

²² Corrections Victoria, *Annual Prisoner Statistical Profile*, June 2019.

²³ Corrections Victoria, *Monthly Time Series Prisoner and Offender Data*, July 2021.

²⁴ Ibid.

²⁵ Australian Institute of Criminology, *How much does prison really cost? Comparing the costs of imprisonment with community corrections*, 2018, p. 40.

Spending time remanded in custody frequently interrupts important protective factors and opportunities for recovery and rehabilitation that may address underlying causes for offending behaviours: community supports, including mental health intervention is interrupted; stable housing is generally put at risk; employment or job readiness programs are paused.

Most devastatingly for many women, being remanded in custody results in their children being removed from their care. Most women in Australian prisons have children – with over half having at least one dependent child.²⁶ Children removed from their mothers on remand are placed in the care of family members, kinship carers or into state care. This is traumatic for mothers and children alike – and for many, sets in motion a damaging trajectory.²⁷

An increasing number of children are being removed from the care of Aboriginal and Torres Strait Islander women given that they are over-represented in Victoria's prison system.

SJFW calls for immediate action to:

1. Reform the reverse-onus provisions of the Bail Act

SJFW calls for the Bail Act to be urgently reviewed in light of its disproportionate impact on women in the criminal justice system. Specifically, we call for urgent changes to the Bail Act to:

- repeal the reverse-onus provisions;
- provide a presumption in favour of bail unless there is a specific and immediate risk to the safety of another person;
- include a specific provision in the Bail Act that a person may not be remanded for an offence that is unlikely to result in a sentence of imprisonment; and
- remove any 'double uplift' provisions from the Bail Act that propel persons accused of low-level offending into the highest threshold for bail.

The Bail Act could be amended to repeal the reverse onus tests and replace them with a single test – unacceptable risk. This would mean that the Bail Act provides for a presumption in favour of bail unless there is a specific and immediate risk to the safety

²⁶ Australian Institute of Health and Welfare, *The Health and Welfare of Women in Australia's Prisons*, November 2020.

²⁷ Victorian Government, *Youth Justice Strategic Plan 2020-2030* found that over 40 per cent of children and young people in contact with the youth justice system are the subject of current or previous child protection intervention (p. 9).

of another person. The Victorian Law Reform Commission recommended this approach in 2007.²⁸

2. A gendered and culturally-competent understanding of the concept of 'risk'

A key consideration in bail decision-making is the concept of 'risk,' and in particular whether a person applying for bail presents an unacceptable risk of further offending, failing to comply with conditions of bail, endangering the safety or welfare of any person, or interfering with witnesses.

The concept of risk is gendered. The risks that women present with during applications for bail are more likely to be indicators of disadvantage and marginalisation, in particular around housing instability and impoverishment, rather than risks to community safety.²⁹ In addition to this, the assessment of risk by decision-makers, including when informed by the application of risk assessment tools, contain cultural biases that disadvantage Aboriginal and Torres Strait Islander people.³⁰

Bail decision-making should be primarily concerned with the risk that the person poses to the safety and welfare of the public, or to a particular person, and whether or not that particular risk is unacceptable, rather than the risks associated with a woman's impoverishment, marginalisation, housing instability or culture. In other words, considerations relating to 'risk' should not be equated with decisions relating to 'need'. Issues such as homelessness, mental health and other vulnerabilities are more effectively addressed through investment in community-based supports.

3. Homelessness should not be a precursor to the refusal of bail

Lawyers working in the remand court have identified lack of secure housing as the biggest barrier women face when applying for bail.³¹ The overwhelming need for a stable address places many women, at a greater risk of being remanded in custody. This is

²⁸ Victorian Law Reform Commission, *Simplifying the Bail Act*, 2007.

²⁹ E Russell et al, *A Constellation of Circumstances – The Drivers of Women's Increasing Rates of Remand in Victoria*, July 2020.

³⁰ A Day et al, *Assessing violence risk with Aboriginal and Torres Strait Islander offenders: consideration for forensic practice*, June 2019.

³¹ E Russell et al, *A Constellation of Circumstances – The Drivers of Women's Increasing Rates of Remand in Victoria*, July 2020.

exacerbated by the high rates of homelessness and housing instability faced by criminalised women, often due to family violence.³²

There must be greater investment in safe, suitable and affordable housing options for women, in particular those at risk of criminalisation, in order to ensure that prison does not become an alternative to housing. Specific housing should be made available for women on remand or at risk of criminalisation, and supported accommodation must be available for women with underlying mental health or disability support needs. No woman should be refused bail because she does not have access to a home.

4. Reclassify offences relating to poverty and drug dependence

A key driver of women's criminalisation and increasing imprisonment is the categorisation of certain offences related to survival and/or poverty as 'indictable offences'. This include shop thefts or petty thefts, and offences relating to alcohol and other drug use.

Approximately one-quarter of unsentenced women received into prison in 2018 were charged with drug use and possession offences involving methylamphetamine.³³ This is a significant increase from 2012, when only 5 per cent of unsentenced women were charged with possessing or using that drug.³⁴

Reclassifying these offences, which are symptomatic of underlying issues of ill-health and impoverishment, as summary offences would invite a different response that is properly directed towards diversion and rehabilitation rather than further criminalisation through a punitive sentencing process. In addition, it would remove these matters as a trigger for the double uplift provisions and the reverse onus tests in the Bail Act.

It is our position that the following offences should be re-classified as summary offences:

- Theft, where the theft in question relates to property below a certain value³⁵

³² Domestic and family violence is the main reason that women and children leave their home in Australia. See eg. Australian Housing and Urban Research Institute, *Housing, homelessness and domestic and family violence: What's the policy issue?* March 2020.

³³ Crime Statistics Agency, *Characteristics and Offending of Women in Prison in Victoria 2012-2018*, November 2019.

³⁴ Ibid.

³⁵ Crimes Act 1958 (Vic), s 74.

- Handling stolen goods, where circumstances indicate the offending relates to survival/poverty³⁶
- Obtaining property by deception, where circumstances indicate the offending relates to survival/poverty³⁷
- The common law offences of public nuisance and unlawful assembly³⁸
- Possess drug of dependence³⁹

5. Decisions around charging and remanding practices by police

Police are responsible for a significant number of decisions that impact on the bail and remand process. These decisions are often not subject to review and can have far-ranging consequences for women, especially in light of the consequences that arise as a result of breaching bail conditions.

Accordingly, SJFW calls for:

- Greater use by police of 'charge and summons' (a notice requiring a person to come to court) when charging someone with low-level offences, as opposed to placing a person on bail;
- Where a person is placed on bail by police rather than summonsed to appear, an automatic review of the decision by police and the bail conditions, when a matter is first listed at court, to ensure bail conditions are reasonable;
- Greater transparency in the decision-making process used by police and bail justices when they refuse bail; and
- Greater use by police of their discretion to grant bail where the accused person is a vulnerable adult or Aboriginal person.

³⁶ Crimes Act 1958 (Vic), s 88.

³⁷ Crimes Act 1958 (Vic), s 81.

³⁸ Crimes Act 1958 (Vic), s 320.

³⁹ Drugs, Poisons and Controlled Substances Act 1991 (Vic), s 73.

Sentencing

Prison is not a safe place for women. There are inherent risks to the physical and mental health of women posed by the prison environment, particularly given the high rates of prior victimisation, trauma and mental ill-health suffered by the overwhelming majority of women in Australian prisons.⁴⁰ Rehabilitation should be prioritised as the primary factor to consider in sentencing.

With these principles in mind, SJFW calls for the following reforms in relation to sentencing:

1. Review of the sentencing hierarchy and Community Corrections Orders

The current range of sentencing options under the *Sentencing Act 1991* (Vic) (Sentencing Act) is not broad enough to address the wide range of circumstances of women who come before the courts. In particular, there is only one community-based sentencing option – the Community Corrections Order (CCO). If the Court will not impose a CCO because a person has breached an earlier CCO, or if Corrections Victoria assess that a person is not suitable for a CCO, the next step ‘up’ in the ‘sentencing hierarchy’ is imprisonment. If the Court deems that a CCO is not warranted, the next step ‘down’ in the sentencing hierarchy is a fine. There is no intermediate sentencing option with a focus on rehabilitation.

It is vitally important that the sentencing regime includes options for community-based treatment and rehabilitation that are better tailored to the individual circumstances of women. These options need to take into account the nexus between trauma, prior victimisation (in particular family violence), homelessness and women’s criminalisation. It is particularly important to understand the impact that these negative experiences can have on the ability of women engaged in the criminal justice system to comply with the current CCO regime. Otherwise, these women are often being set up to fail.

If a person is identified as not having complied with the conditions of a CCO, a more collaborative, problem-solving response should be adopted. This should include considering options for additional support and/or a review of the CCO’s conditions. The instigation of breach proceedings should be a last resort.

⁴⁰ H Johnson, *Drugs and crime: A study of incarcerated female offenders*, Research and public policy series, 2004; Justice Health & Forensic Mental Health Network, *2015 Network Patient Health Survey report*, 2017; M Wilson et al, *Violence in the Lives of Incarcerated Aboriginal Mothers in Western Australia*, SAGE Open, January 2017.

Sentencing options must also respond to the over-representation of women with disabilities in the criminal justice system. The use of Justice Plans must also allow for greater flexibility, both in relation to their implementation and compliance, and around the criteria for eligibility. The current practice requiring a diagnosis of intellectual disability to have been made prior to a person turning 18 is unnecessarily rigid and exclusive. The intersection between mental health, substance use and cognitive impairment must be better understood so that it becomes the foundation for tailoring treatment that is appropriate to the individual, rather than a barrier that excludes people from particular treatment programs.

2. Specific consideration of Aboriginality in sentencing

The increasing over-representation of Aboriginal women in Victoria's prison system, and in the criminal justice system more generally, gives rise to the need for specific consideration to be given to a person's Aboriginality in sentencing. In particular, consideration must be given to:

- cultural identity;
- the individual's connection to community, country and kinship;
- the underlying drivers of Aboriginal women's criminalisation, such as inter-generational trauma, historical and contemporary community circumstances, and historical and contemporary government policies;
- the individual's strengths as well as the strengths of her community; and
- culturally-appropriate community based options and programs relevant for the sentencing decision.

Accordingly, we join with the Victorian Aboriginal Legal Service in calling for:

- Amendments to section 5(2) of the *Sentencing Act* to require courts to take into consideration the unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples;
- Regular face-to-face cultural competence training for Judges and Magistrates, to enhance their ability to comply with amended section 5(2) of the *Sentencing Act*; and
- Self-determined initiatives to improve sentencing outcomes for Aboriginal people, such as the introduction of Aboriginal Community Justice Reports,⁴¹ along with ongoing, sustainable funding.

⁴¹ Victorian Aboriginal Legal Service, *Aboriginal Community Justice Reports Project*, Information Sheet, Accessed August 2021.

3. Increase in therapeutic sentencing practices and the use of structured sentence deferrals

There are real alternatives to the traditional process of sentencing that can deliver tailored, rehabilitative outcomes that benefit the individual and the community as a whole. Therapeutic sentencing options and practices, such as structured and supported deferral of sentences, can provide support to women while in the community and reduce the likelihood that they will be sentenced to a term of imprisonment once their matters are finalised.

SJFW calls for investment in community-based and voluntary programs which operate in more flexible ways and include outreach support. These are particularly important in the context of criminalised women's experiences of therapeutic sentencing practices and court programs, given their additional caring responsibilities and almost universal experiences of trauma.

4. The abolition of short sentences

On average, women are serving shorter prison sentences than men.⁴² Women are most likely to be charged with drug-related offences, assault and property offences (other than burglary),⁴³ which typically result in shorter sentences.

Even brief periods of time in custody are detrimental to women.⁴⁴ Short sentences disrupt crucial support systems such as employment, caring for children or family, and most importantly, housing.

Of particular concern is the effect of short-term incarceration on Aboriginal and Torres Strait Islander women. Aboriginal and Torres Strait Islander people are more likely to be sentenced to short terms of imprisonment than their non-Indigenous counterparts.⁴⁵ Furthermore, over one-fifth of Aboriginal and Torres Strait Islander people in Australian prisons are serving sentences of less than 12 months with a median time spent on remand of 2.7 months.⁴⁶ This suggests Aboriginal and Torres Strait Islander people are being incarcerated for relatively minor or repeat low-level offences.

⁴² Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria*, September 2015.

⁴³ Corrections Victoria, *Women in the Victorian Prison System*, January 2019.

⁴⁴ E Baldry, *Women in transition: From prison to...*, *Current Issues in Criminal Justice*, November 2019 pp. 253-267.

⁴⁵ Australian Bureau of Statistics, *Prisoners in Australia*, December 2020.

⁴⁶ Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*, July 2017.

For these reasons, it is SJFW's position that short sentences should be abolished. However, this must be accompanied by safeguards to protect against 'sentence creep' where a person is sentenced to a greater period of imprisonment than would otherwise be warranted in order to overcome the abolition of short sentences. There must also be investment in adequate and appropriate community-based options that can be used instead of short sentences.

These issues should be referred to the Victorian Law Reform Commission for consideration, to ensure that the process is informed by thorough research, evidence from other jurisdictions, and input from stakeholders.

5. Connection between bail laws and sentencing practice

Any consideration of abolition of short sentences, and of sentencing reform generally, must also include reform to Victoria's current bail laws.

According to the Sentencing Advisory Council, 'Victoria's increasing remand population is indirectly affecting sentencing outcomes. Time spent on remand seems to increase the likelihood that a court will ultimately impose a sentence of imprisonment.'⁴⁷

The increasing use of 'time-served' sentences and of remand more generally can result in unfairness to the accused person and can undermine their prospects of rehabilitation.

Any reform of Victoria's sentencing regime must occur alongside a review of the current bail laws that have triggered the largest increase in Victoria's remand population and the use of 'time-served' sentences.

6. A harm-reduction approach to drug-related offending

Approximately one-quarter of unsentenced women received into prison in 2018 were charged with drug use and possession offences involving methylamphetamine.⁴⁸ This is a significant increase from 2012, when only 5 per cent of unsentenced women were charged with possessing or using that drug.⁴⁹

The increase in women's drug-related offending underscores the need for rehabilitative approaches to sentencing. Rehabilitation is most effective when delivered through community-based, culturally appropriate, assertive outreach programs or through residential rehabilitation with a community provider.

⁴⁷ Sentencing Advisory Council, *Time Served Prison Sentences in Victoria*, February 2020.

⁴⁸ Crime Statistics Agency, *Characteristics and Offending of Women in Prison in Victoria 2012-2018*, November 2019.

⁴⁹ Ibid.

The fusion of rehabilitation with surveillance and control in a prison environment and/or when delivered within a strict abstinence framework, undermines the effectiveness of rehabilitation, especially where substance use is a result of prior trauma and victimisation.

SJFW therefore advocates for a rehabilitative approach to drug-related offending that is community-based, health-driven and based on harm-reduction principles.

7. Caring responsibilities as a specific consideration in sentencing

The majority of women in Australian prisons have children, with 85 per cent having been pregnant at some point in their lives, and 54 per cent having at least one dependent child.⁵⁰ Eighty per cent of Aboriginal and Torres Strait Islander women in prisons are mothers.⁵¹

Women are overwhelmingly the primary carers of children, as well as carers for the sick and elderly in their community. When women are imprisoned, even for short periods, the impacts ripple throughout families and communities and have long-term effects. The Australian Human Rights Commission noted that ‘mothers that are prisoners can impact family relationships and can lead to their children suffering from emotional and behavioural problems’.⁵²

Children whose mothers are in prison are more likely to have disrupted education, poor health and unstable housing, all of which are factors that heighten the risk of young person entering child protection or the criminal justice system.⁵³ For example, young people on child protection orders are 27 times more likely to be under a youth justice supervision order in the same year.⁵⁴

SJFW strongly advocates for the inclusion of a specific provision in the Sentencing Act requiring decision-makers to consider the impact of the imposition of a term of imprisonment on dependent children. This is in line with recent research, which argues that the best interests of the children of people who offend should always be a

⁵⁰ Australian Institute of Health and Welfare, *The Health and Welfare of Women in Australia's Prisons*, November 2020.

⁵¹ J Sherwood et al, *Reframing Space by Building Relationships: Community Collaborative Participatory Action Research with Aboriginal Mothers in Prison*, 2013.

⁵² Australian Human Rights Commission, *Human Rights and Prisoners*, 2009.

⁵³ J Sherwood et al, *Reframing Space by Building Relationships: Community Collaborative Participatory Action Research with Aboriginal Mothers in Prison*, 2013.

⁵⁴ Australian Institute of Health and Welfare, *Young People in Child Protection and Under Youth Justice Supervision 2013-14*, 2016.

significant factor to be weighed in the sentencing process.⁵⁵ This would also align with the UN Convention on the Rights of the Child, which requires in Article 3(1) that the best interests of the child is the primary consideration in all actions concerning children.

⁵⁵ T Walsh et al, *Sentencing parents: The consideration of dependent children*, Adelaide Law Review, 2016, pp. 135-161.

Parole

The number of women granted parole has fallen dramatically over the past decade, both as a percentage of women released and in overall numbers. In 2006/7, 26 per cent of women released from prison in Victoria were released on parole, that is, 123 of the 480 women released.⁵⁶ By 2018/19, only 4 per cent of women released from prison in Victoria were released on parole, that is, 70 of the 1802 women released.⁵⁷

Numerous barriers exist to prevent women being able to access parole once they have served their non-parole period in custody. These barriers include lack of access to stable accommodation and the unavailability of programs in custody. In addition, following the *Review of the Parole System in Victoria*, carried out by Ian Callinan AC in 2013, the onus for making an application for release on parole was placed onto the individual applicant, effectively abrogating the State's responsibility for advance planning and preparation for parole applications and placing this instead on the individual.

When coupled with intensive case management delivered by well-resourced support services, parole can provide a valuable opportunity for women to reintegrate into the community after time in custody and reduce their risk of reoffending. Conversely, women who complete their full sentence in custody without time on parole are often released back into the community with few supports, which increases the risk of harm both to the individual and to the community.

SJFW calls for the following reforms:

- 1. The purpose of parole for eligible women should be to support their rehabilitation and reintegration into the community**

According to the Adult Parole Board, the purpose of parole is to “promote public safety by supervising and supporting the transition of offenders from prison into the community”.⁵⁸ This purpose can only be achieved by properly supporting women's rehabilitation.

Public safety is promoted not by creating barriers to release on parole, but by providing women the support they need to live safely, stably and without offending in the community after prison. Evidence indicates that the most effective results are produced when this support is provided by community-based services, rather than an extension of the criminal justice system through courts or Corrections Victoria. Measures to

⁵⁶ Corrections Victoria, *Annual Prisoner Statistical Profile 2006-07 to 2018-19*.

⁵⁷ Ibid.

⁵⁸ Adult Parole Board, *Parole Manual*, June 2020.

reduce harm to the community should take into account the harm caused to families and children when mothers and carers are in custody.

Our position is that:

- Women on parole should be supported by well-resourced and appropriate services that are delivered by community-based providers, rather than Corrections Victoria.
- These services must be culturally competent, informed by Aboriginal and/or Torres Strait Islander people and gender-informed, including being responsive to the needs of non-binary and gender diverse people.
- Parole should be focused on support, rehabilitation and reintegration rather than surveillance and control.
- The unique opportunities for women in being granted parole – including being reunited with their children – should be central to policy and decision-making about parole.

2. Lack of availability of social and affordable housing should not be a barrier to women being granted parole

The Adult Parole Board requires that parole applicants have an address of “suitable and stable accommodation” before they will consider an application for parole.⁵⁹ Victoria’s lack of social and affordable housing is a huge barrier for women applying for or being granted parole. This is exacerbated by further barriers that many women face due to family violence in the home, caring responsibilities, and higher rates of homelessness and unstable housing prior to entry into prison.

Our position is that:

- Women who are eligible for parole and provide their consent should be automatically put on the priority waiting list for social housing when they start preparing their parole application.
- There should be increased investment in social and affordable housing options that are specifically targeted to women in the criminal justice system, including those exiting prison.
- No woman should be refused parole because she does not have access to a home.

⁵⁹ Adult Parole Board, *Parole Manual*, June 2020.

3. Parole applications should occur at the earliest eligibility date

Prior to 2015, there was a presumption that parole would be granted at the eligibility date unless there was a compelling reason why this should not occur. Since 1 April 2015, the onus has instead been on the person applying for parole to make the necessary application. This change was triggered largely in response to violent offending committed by men who had been released on parole.

Women in prison face multiple barriers in applying for parole including lack of knowledge of the parole system and of their rights, administrative delays, and the lack of access to relevant programs or assessments. This is reducing the opportunities for women to even apply for parole, let alone make a successful application.

Our position is that:

- There should be a presumption that an application for parole will be made at the earliest eligibility date.
- The State is better resourced and equipped to undertake the administrative processes required for parole applications to progress. Accordingly, these applications should occur automatically, rather than women in prison bearing the onus of applying.
- Women in prison should be supported in these applications through the availability of independent information and education around parole processes, and timely access to programs and assessments, especially where these are a pre-requisite for consideration of parole.
- The government should be obliged to provide access to mandated programs in a timely manner.
- Where mandated programs have not been completed in prison, this should not be an automatic barrier to parole being granted. Decision-makers should have regard to the reasons for non-completion, including the availability of the programs, and their appropriateness for the individual having regard to factors including the cultural safety of the programs and their delivery.

4. Charter compliance and natural justice

The Parole Board should:

- cease to be exempt from the operation of the *Charter of Human Rights and Responsibilities Act 2006* (Vic);⁶⁰
- be bound by the rules of natural justice;⁶¹ and
- allow for applicants to be legally represented.

Benefits would include the following:

- encouraging positive participation in the parole process;
- increasing community confidence in the decisions of the Parole Board by improving transparency;
- increasing levels of acceptance of parole decisions;
- better serving the purposes of parole, in particular supporting rehabilitation and reintegration, reducing likelihood of reoffending; and
- reducing the risk of discriminatory practices that could impact on Aboriginal and Torres Strait Islander applicants.

In addition, the 'double punishment' provision contained in section 77C of the *Corrections Act 1986* (Vic) should be repealed. This provision provides that the Adult Parole Board has discretion to direct that some or all of the period during which a parole order that is cancelled, or taken to be cancelled, was in force, is regarded as time served in respect of the prison sentence,. This should be replaced by a new provision which provides that time served on parole, prior to a parole order being cancelled, counts as time served.

⁶⁰ *Charter of Human Rights and Responsibilities (Public Authorities) Regulations 2013* (Vic) at r5 (a) lists the Adult Parole Board as being exempt from the operation of the Charter.

⁶¹ *Corrections Act 1986* (Vic) at s 69(2) states that the Adult Parole Board is not bound by the rules of natural justice in exercising its functions.

Policing

Women's increasing criminalisation is inextricably linked to policing practices. The over-policing of Aboriginal and Torres Strait Islander communities, the criminalisation of poverty through the policing of activities such as begging and homelessness, and the criminalisation of health issues including mental ill-health and alcohol and other drug use, places vulnerable women in a cycle of increasing criminalisation and police contact, and on a trajectory towards imprisonment.

Additionally, current practices in relation to policing family violence often lead to the misidentification of women as primary aggressors in family violence incidents, and/or a response from police that criminalises victims.

Acknowledging that policing of communities varies between different communities, different locations, and in particular between metropolitan and regional areas, and that the reform process must engage with people in these communities who are subjected to discriminatory policing practices, SJFW calls for the following reforms to policing:

- 1. Funding should be diverted from policing into community services including front-line health and Aboriginal and Torres Strait Islander community organisations**

Increased funding for police does not equate to an increase in public and community safety. Investment in housing, health and community services to prevent vulnerable cohorts coming into contact with police, and refocusing police efforts to respond to significant offending rather than policing crimes that are committed due to poverty or drug dependence, will have a much more significant and long-lasting impact on community safety.

- 2. Action must be taken immediately to address the over policing of Aboriginal communities in Victoria**

Numerous studies demonstrate that Aboriginal and Torres Strait Islander people are less likely to be provided with opportunities for diversion⁶², more likely to be charged with public nuisance offences⁶³ and more likely to be targeted for offences such as

⁶² N Papalia, *Disparities in Criminal Justice System Responses to First-Time Juvenile Offenders According to Indigenous Status*, May 2019.

⁶³ Sentencing Council Queensland, *Connecting the Dots*, March 2021.

being drunk in a public place⁶⁴. However, Victoria Police are reluctant to collect and release data on policing practices between different ethnic and cultural groups.⁶⁵

Our position is that:

- We acknowledge that both historic and contemporary relationships between police and Aboriginal communities have been fraught, and a commitment to addressing systemic racism and ending impunity is crucial for moving towards a more just, equal and safe future for everyone.
- Discrimination and racism in policing practices, particularly in relation to Aboriginal and Torres Strait Islander communities, must be acknowledged and immediately addressed through reforms to increase police accountability.

3. Increase police accountability

Increasing transparency and oversight in relation to police practices must include:

- establishment of an effective and independent mechanism for the investigation of complaints against police;
- proper implementation of OPCAT in relation to treatment and conditions in police custody, including the establishment of an National Preventive Mechanism whose operations, policies, frameworks and governance are culturally appropriate and safe for Aboriginal people; and
- greater education and training of police members about issues relating to the criminalisation of women and Aboriginal and Torres Strait Islander communities, including training on racial discrimination.

4. Improving responses where a victim has been incorrectly identified as a perpetrator of family violence

The Royal Commission into Family Violence raised concerns about the misidentification of the predominant aggressor in family violence situations and its associated impact on women.⁶⁶ A small study conducted by Women's Legal Service Victoria in 2018 revealed

⁶⁴ Australian Bureau of Statistics, *Prisoners in Australia (2018)*, Table 1.

⁶⁵ M McGowan and C Knaus, 'Essentially a cover-up': why it's so hard to measure the over-policing of Indigenous Australians, *The Guardian*, 13 June 2020.

⁶⁶ Royal Commission into Family Violence, *Summary and Recommendations*, March 2016.

that of the 55 female clients named by police as respondents to intervention orders, 32 were incorrectly identified.⁶⁷

The misidentification of women as the predominant aggressor in family violence situations leads to the criminalisation of family violence victim-survivors, compounding their distress and trauma.

Our position is that Victoria Police should implement the following reforms, in consultation with Women's Legal Service Victoria, Victoria Legal Aid, Community Legal Centres and family violence services:

- A clear and transparent protocol needs to be developed for Victoria Police that sets out the process for someone to raise a concern that a party may have been misidentified.
- Victoria Police should develop and implement a process for the review of all Family Violence Intervention Order applications where the risk of misidentification of the primary aggressor is higher, including Aboriginal and Torres Strait Islander women and culturally and linguistically diverse women.
- Victoria Police should use greater discretion to withdraw Family Violence Intervention Order applications where there is misidentification and Victoria Police should develop guidance for members to assist with determining whether to withdraw.
- Victoria Police should develop guidance for considering the withdrawal of related criminal charges where misidentification has occurred and for family violence diversion (where unconditional withdrawal of charges is not appropriate).
- There should be specific training for Victoria Police to improve understanding of the gendered nature and dynamics of family violence and coercive control, and the contexts which contribute to women's victimisation.

We note that other improvements are also needed across the criminal justice system to improve responses where a victim has been incorrectly identified as a perpetrator of family violence, including improved responses to misidentification by courts, the legal profession, child protection and government departments.

⁶⁷ Women's Legal Service Victoria, *Snapshot of police family violence intervention order applications*, January – May 2018.

5. Opportunities for women to engage in pre-charge programs and diversionary programs should be increased

Diversion programs offer a pathway away from further criminalisation and access to treatment and rehabilitation. Diversion programs can address the underlying issues that are causing interactions with police. However, the limited opportunities for women to engage in these programs, and the ability of police to refuse diversion, undermines its effectiveness.

Our position is that:

- There should be greater access to and resourcing of diversionary programs delivered by community-based providers, in particular for drug-related charges.
- Options for diversionary programs should include gender-informed and culturally-appropriate programs that take into account the different pathways towards criminalisation for women and the barriers to access they may face in relation to particular programs.
- The requirement for Victoria Police or prosecutions to consent to a diversion should be removed from the *Criminal Procedure Act 2009* (Vic).
- As recommended by the Chief Magistrate, the granting of the diversion program should be a matter for the discretion of the magistrate and not be subject to veto by the prosecution.⁶⁸

6. Police should be held accountable for their charging practices and bail decisions

There is a lack of transparency around police decisions to proceed with criminal charges and to grant or refuse bail where they have discretion to do so. These decisions are fundamental in the context of the increasing number of women on remand in Victoria's prison system.

There should be greater transparency and independent oversight of police practices and decision-making, specifically around:

- the decision to initiate charges by way of bail rather than summons;
- the decision to not grant bail from the police station;
- considerations of an accused person's vulnerabilities as defined in the Bail Act and the consideration of section 3A; and
- bail conditions that are attached to police bail.

⁶⁸ Magistrates' Court of Victoria, *Annual Report 2015-16*, September 2016, p.14.

Police should also be required to provide reasons for not granting bail from the police station when that option is legally available.

7. Public drunkenness should be decriminalised

We welcome the Victorian Government's move to decriminalise public drunkenness by November 2022, and acknowledge the central role of Aboriginal and Torres Strait Islander advocates in leading this reform.

However, we support the position of community advocates that police should not play a part in the response to public drunkenness.

In pursuing these reforms, our position is that the Victorian Government should:

- Establish a robust co-design process for the implementation of a health-based response to public drunkenness.
- Roll out a state-wide, culturally-appropriate public health model which is properly funded and resourced.
- Continue to consult with the Aboriginal community, particularly the families of Aboriginal people who have died in custody.
- Minimise the involvement of police in this model – police should only be engaged in the response to someone who is intoxicated where there is a serious and imminent risk of significant harm to that person or other people.
- Remove Protective Service Officers from being involved in any response.
- Ensure that there are robust safeguards in place to protect the health, safety and human rights of people who are being dealt with for public drunkenness.

8. Police should adopt a health response when dealing with drug use

Approximately one-quarter of unsentenced women received into prison in 2018 were charged with drug use and possession offences involving methylamphetamine.⁶⁹ This is a significant increase from 2012, when only 5 per cent of unsentenced women were charged with possessing or using that drug.⁷⁰

Unsentenced women who entered prison in 2018 had more extensive offending, drug use, victimisation and family violence histories compared to women who entered prison

⁶⁹ Crime Statistics Agency, *Characteristics and Offending of Women in Prison in Victoria 2012-2018*, November 2019.

⁷⁰ Ibid.

in 2012.⁷¹ However, there is no evidence that there was an increase in the seriousness of offending in this cohort. This suggests that it is the exacerbation of the underlying vulnerabilities to criminalisation, rather than an increase in the seriousness of women's offending, that is driving the increase in women's criminalisation and imprisonment.

The increase in women's drug-related offending underscores the need for rehabilitative approaches and a health-based response. Rehabilitation is most effective when delivered through community-based, assertive outreach programs or through residential rehabilitation with a community provider.

Reforms to the way in which drug use is policed and criminalised will have a significant impact in reducing women's criminalisation in Victoria.

Our position is that Victoria Police and the Victorian Government should:

- Commit to the adoption and implementation of a health-based, harm-reduction response to drug use.
- Reinvest resources that would have been spent on law enforcement, prosecution and incarceration into community-based health and treatment services.
- Consult with community-sector providers in implementing this response.

⁷¹ Crime Statistics Agency, *Characteristics and offending of women in prison in Victoria 2012-2018*, November 2019.

Housing

Women in Victoria are increasingly at risk of entering the criminal justice system due to a lack of affordable and social housing.⁷² A lack of affordable and social housing also means that hundreds of women in Victoria are at risk of being released from prison into homelessness each year.

As the number of women in prison in Victoria grows, the number of women being released into homelessness will continue to increase. In the context of COVID-19, housing issues will continue to escalate given the increase in women experiencing family violence by a current or former cohabiting partner since the start of the pandemic.

Women in Victoria should not be criminalised or released from prison into homelessness due to lack of housing. All Victorian women should have easy access to a safe, secure, stable and affordable home that meets their needs. Housing should empower women to make their own choices, exercise their rights, and have control over their own lives.

As per Housing First principles⁷³, and in recognition of housing as a basic human right, access to and retention of housing should not be conditional upon engagement with supports or run through Corrections Victoria.

SJFW calls for the following principles to be embedded in the housing response to women at risk of engaging, currently engaged or formerly engaged with the criminal justice system:

1. Women should not be criminalised due to lack of housing

A lack of affordable and social housing means that women are at increased risk of entering the criminal justice system due to homelessness. Women are also at increased risk of becoming homeless after leaving prison and then reoffending due to lack of housing.

⁷² Social housing is short-term and long-term rental housing owned and run by the government or not-for-profit agencies. It includes both public housing and community housing. It is for people on low incomes, especially those who have recently experienced homelessness or who have other special needs. There is no agreed definition of affordable housing in Australia. For the purposes of this document, affordable housing is housing where the cost is no more than 30 per cent of that household's net income. It is for people on very low, low and moderate incomes.

⁷³ D Padgett et al, *Housing First: Ending Homelessness, Transforming Systems, and Changing Lives*, November 2015.

Our position is that:

- All women should have a home to reduce their risk of entering the criminal justice system
- No woman should be refused bail because she does not have access to a home
- No woman should be released from prison into homelessness due to a lack of affordable and social housing
- No woman should end up in prison, or remain in prison, due to a lack of appropriate housing

2. All women should have a home

All housing provided to women – social, affordable and private housing – should be aimed at ensuring that women have a home and should meet accepted community standards of what constitutes a home.

Housing should:

- Be a person's home first and foremost
- Reflect the built form of Victoria's broader housing stock
- Be dispersed among the community (not centralised)
- Be diverse
- Not look like, or be designed as, a workplace for support providers or staff
- Aim to ensure that Aboriginal people living in Victoria achieve quality housing outcomes

3. All women should have access to housing that is stable and secure

It is important for women at risk of homelessness or recovering from homelessness, including for the recovery of victim-survivors of family or sexual violence, to have a home that is stable and secure.

Housing should:

- Have security of tenure or have the capacity to be permanent (i.e. capacity to enter into an ongoing lease agreement)
- Ensure residents can exercise tenancy rights over their home

4. All women should have access to housing that meets their needs

Women have particular needs regarding safety and childcare that should be taken into account in meeting their housing needs.

Housing should:

- Be safe and free from violence
- Have appropriate space (multiple bedrooms if needed)
- Be appropriate for children
- Meet the specific needs of trans and gender diverse communities
- Be appropriate and accessible for people with disabilities
- Be culturally appropriate (construction, location and support)
- Empower Aboriginal self-determination by being designed for and delivered by Aboriginal people

5. Housing should empower women to exercise control over their own lives

When a woman requires support in their own home, the provision and management of their housing should be separate from the provision and management of their supports.

Housing should:

- Ensure that no one organisation has an undue level of influence over a person's life
- Enable a person to choose their support provider and change their support arrangements without this affecting their housing and vice versa

If supports are provided in conjunction with housing, these supports should be provided by appropriate organisations, including Aboriginal Community Controlled Organisations, should be offered in a regular and assertive way, and should be culturally appropriate.

6. Housing should empower women to make their own choices

Women should have a choice about where they live, who they live with, and who comes into their home and when, rather than this being determined by the housing or support provider.

Housing should:

- Support women to exercise agency
- Support family reunification

Support System

Women in Victoria's prison system are one of the most vulnerable groups in the community, with the majority experiencing homelessness, poverty, family violence, untreated health problems and drug dependence.⁷⁴ A significant number of women in prison have a disability.⁷⁵

The social and health support system can play a critical role in identifying and responding to these issues and preventing women from becoming criminalised and reducing the harms associated with justice-involvement.

The priority for any support system reform must be ensuring that women can access the support they need at the right time in the right settings.

The SJFW calls for the following support system reforms:

1. Supports must be responsive at the first risk of criminalisation

Many women in the criminal justice system have experienced mental health and alcohol or other drug ('AOD') issues but have not accessed supports before entering the criminal justice system. Providing support to address these issues early can prevent women from becoming criminalised.

Some women do not self-identify mental health or AOD issues, or do not seek support due to a lack of understanding of these service systems or due to stigma associated with treatment. For women who do seek support for mental health or AOD issues, there are often barriers to accessing treatment services, driven in part by how services are rationed, and how places are prioritised and allocated to service users, that results in less available places for people seeking support voluntarily.

The majority of women in prison have also experienced family violence⁷⁶ and may have entered the criminal justice system following a family violence incident. Providing support to girls and young women in family violence situations should be a priority to ensure that they do not go down a path of criminal offending.

⁷⁴ E Russell et al, *A Constellation of Circumstances: The drivers of womens' increasing rates of remand in Victoria*, July 2020, p 5.

⁷⁵ Australian Institute of Health and Welfare, *The Health and Welfare of Women in Australia's Prisons*, November 2020

⁷⁶ H Johnson, *Drugs and crime: A study of incarcerated female offenders, Research and public policy series*, 2004; Justice Health & Forensic Mental Health Network, *2015 Network Patient Health Survey report*, 2017; M Wilson et al, *Violence in the Lives of Incarcerated Aboriginal Mothers in Western Australia*, SAGE Open, January 2017.

Since the *Royal Commission into Family Violence in Victoria*, many sectors have improved their capability to identify and respond to family violence, including through the implementation of the multi-agency risk assessment and management framework (MARAM). However, there is more to be done to ensure services can identify family violence situations early, and provide appropriate support or referrals for women.

Police responses to family violence incidents should provide a critical point of intervention to identify and respond to support needs, but many police members still do not respond effectively to women in family violence situations, and instead contribute to criminalisation. For example, police may misidentify women as the primary aggressor in family violence situations, particularly Aboriginal and Torres Strait Islander women. They may lack understanding of, and capacity to respond to, offending behaviour that arises due to complex needs, family violence and trauma, or lack understanding of community-based, local service systems, and rely on cold referral to statewide agencies who may not be the appropriate service response.

Our position is that:

- Support services must be adequately resourced to prioritise early intervention, voluntary support to reduce the risk of criminalisation.
- Support services, including generalist and universal services, must be mobilised to identify risks and provide adequate referrals to specialist services.
- Victoria Police members must have capability to deliver gender sensitive and trauma-informed responses, have knowledge of local service networks to undertake warm referrals, and continue to improve the use of the Victoria Police e-Referral Program (VPer) for referrals to local service providers.

2. Supports must be accessible and sustained to reconnect with community and prevent reoffending

Women on average serve shorter sentences than men,⁷⁷ and there is a much higher proportion of women on remand.⁷⁸ As a consequence, many women in prison have limited or no access to rehabilitation and reintegration programs.⁷⁹ The majority of women in prison have experienced trauma due to being victim-survivors of family

⁷⁷ Crime Statistics Agency, *Characteristics and offending of women in prison in Victoria 2012-2018*, November 2019.

⁷⁸ Corrections Victoria, *Monthly Time Series Prisoner and Offender Data*, July 2021.

⁷⁹ Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria*, September 2015, p 94.

violence, sexual assault or child abuse⁸⁰, and incarceration itself is a significantly traumatising event. Despite this, there is a lack of therapeutic, gender-responsive and trauma informed support provided to women in prison.

After women leave prison, they are also at a heightened risk of violence and victimisation and require support more than ever. However, the supports provided when women exit prison are either inadequate or not sufficiently sustained. There is also poor coordination and a lack of continuity in supports between the criminal justice system and the community support system. Unfortunately, the lack of access to supports for women in prison and post-release often results in higher recidivism rates.

Our position is that:

- Women must have universal access to a therapeutic, trauma-informed model of case management, services, pre-release planning/throughcare, whether sentenced or on remand, that incorporates sustained, practical support for women to reestablish stability and connections with family and community.
- A whole-of-government approach, coordinated by Department of Health, must be implemented to coordinate services to address women's needs upon return to the community.⁸¹
- A “no exits into homelessness” policy must be implemented, to prevent women from becoming homeless when leaving prison.⁸² To support operation of this policy, housing support using a Housing First approach must be a key component of throughcare.

3. Supports must be safe and respectful of the specific needs of women engaged with the criminal justice system

There are a number of problems with the way that support services are currently funded and resourced which can impact on women's access to supports. Many agencies are funded to provide services that address individual or discrete issues, and may not be well-equipped to respond to the complex, co-occurring needs of women at risk of criminalisation or engaged with the criminal justice system. For example, many services

⁸⁰ H Johnson, *Drugs and crime: A study of incarcerated female offenders*, Research and public policy series, 2004; Justice Health & Forensic Mental Health Network, *2015 Network Patient Health Survey report*, 2017; M Wilson et al, *Violence in the Lives of Incarcerated Aboriginal Mothers in Western Australia*, SAGE Open, January 2017.

⁸¹ Jacqui Hawkins, Coroner, *Finding into death without inquest - COR 2017 6235*, February 2021, p 25.

⁸² Parliament of Victoria Legislative Council Legal and Social Issues Committee, *Inquiry into Homelessness in Victoria – Final Report*, March 2021, p 184.

do not operate in a trauma-informed way or provide culturally safe and appropriate services to women. Services also do not generally respond to a person's care or family responsibilities – children can often be invisible in these systems.

Women who have been criminalised also face challenges and barriers in accessing the support services they need. This can include the stigma of being criminalised or discrimination. Women who have been criminalised are also often mistrusting of support services due to previous experiences or trauma, and are less likely to access services independently or voluntarily.

Our position is that:

- Intake and screening processes should be reformed to ensure women with complex needs, trauma and family/caring responsibilities can access services.
- Support services must be resourced to work collaboratively and in a coordinated way across the services system, including having the resources to establish partnerships, warm referral pathways, and integrated services.
- Workers in support services must have the capacity to establish trusted relationships with women seeking their support, including training in trauma-informed and intersectional support and care and the need to overcome stigma and discrimination towards criminalised women.
- Aboriginal and Torres Strait Islander community-controlled organisations must be properly and sustainably funded, and generalist organisations must have capacity, to provide culturally safe supports.



Drummond Street Services

