



Strong communities are safe communities





VCOSS Submission to the Inquiry into
Victoria's Criminal Justice System

September 2021

The Victorian Council of Social Service is the peak body of the social and community sector in Victoria.

VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups and individuals interested in social policy.

In addition to supporting the sector, VCOSS represents the interests of Victorians experiencing poverty and disadvantage, and advocates for the development of a sustainable, fair and equitable society.

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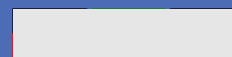
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A fully accessible version is available online at vcoss.org.au/policy/



VCOSS acknowledges the traditional owners of country and pays respect to past, present and emerging Elders.

This document was prepared on the lands of the Kulin Nation.



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Introduction

The Victorian Council of Social Service (VCOSS) welcomes the opportunity to make this submission to the Legal and Social Issues Committee's *Inquiry into Victoria's Criminal Justice System*.

A key focus of our work at VCOSS is to advocate for change that will enable Victorians to live a good life.

Good lives are lived in strong, connected communities, where people have a safe and stable place to call home, timely access to health care and social support, the opportunity to participate in education, training and employment, and have agency over their own lives.

Strong communities lead to safe communities. If people experience social exclusion, inequality and disadvantage, and cannot access the support they need, they are at risk of engaging in antisocial or offending behaviours.

The Victorian Government has instituted many progressive social policy reforms that positively shift the dial for Victorians. However, in the criminal justice space, a range of reforms unnecessarily criminalise or incarcerate people and entrench disadvantage and exclusion. The most notable example is the 2018 bail reforms that have driven an alarming increase in the number of people in prison on unsentenced remand.

The Legal and Social Issues Committee has a track record of contributing to progressive evidence-based policy reform in Victoria. Prison has been found to be an ineffective and expensive way to respond to criminal behaviour or to keep communities safe. This Inquiry provides an opportunity to support transformational change by championing recommendations that address the root causes of offending.

Summary of recommendations

Acknowledge social justice as a key pillar of criminal justice

Protect Victorians against poverty

- Create pathways to employment for disadvantaged jobseekers, including people at risk of or who have been justice-involved.
- Advocate to the Commonwealth Government to strengthen the social safety net, including:
 - An increase to the rate of JobSeeker from \$44 per day to at least \$65 per day and ongoing indexation of payments in line with wage movements at least twice per year.
 - Reforms to the Fair Work Act 2009, to support Victorians to have a secure and decent living by improving protections for insecure and casual workers and independent contractors.

Eliminate disadvantage by shifting to a wellbeing economy and adopting justice reinvestment

- Reorient Victoria to a wellbeing economy and embed this approach through the introduction of wellbeing budgeting and the delivery of wellbeing budgets.
- Adopt a justice reinvestment framework that enables place-based pilot programs, coordinates funding and governance arrangements and builds shared evidence on effective practice.

Prioritise the critical role of housing in preventing criminalisation and reoffending

- Build 60,000 new public and community homes by 2031 to ensure all Victorians have access to affordable and secure homes.
- Leverage housing as a protective factor against justice involvement by ensuring new public and community homes are accessible for people who at risk of or are justice-involved. Specifically:
 - The Victorian Government's investment in new public and community homes should deliver appropriately diverse stock (size, rooms, capacity to accommodate dependents, carers and other supports)
 - Housing and support should be provided separately so that renters can exercise choice and control.

- Consumer Affairs Victoria should work with community to establish a mechanism to monitor the implementation of reforms under the *Residential Tenancies Act 1997 (Vic)* and provide targeted supports to renters who experience barriers to exercising tenancy rights.
- Leverage the role of housing in reintegration and recovery after justice involvement by:
 - Establishing a “no exits into homelessness” policy from prison, youth justice and other justice settings, incorporating a housing first model of support.
 - Providing supported accommodation and court integrated services for people on bail and community corrections orders.
- Developing and implementing a protocol for Victoria Police and other enforcement agencies to prevent the criminalisation of people experiencing homelessness, per recommendation 29 of the *Final Report of the Homelessness Inquiry*.

Give people the health and social support they need in their communities

- Ensure community sector organisations have the capacity to deliver effective early intervention supports and the right supports that respond to people at risk of criminalisation or who have complex needs by:
 - Reflecting the true cost of service delivery in government contracts, including adequate annual funding indexation.
 - Providing more stable funding by increasing standard contract periods in community services to at least five years, and preferably seven years, in line with the recommendations of the Productivity Commission report on Human Services.
 - Investing in workforce planning, resourcing and capability building.

Improve access to justice with early legal assistance

- Provide adequate funding to community legal centres to meet demand.
- Providing ongoing funding for effective integrated legal services and partnerships, including health-justice partnerships.

Address overrepresentation of women, people with disability, children and young people, First Nations people and victims of crime

- **Women**
 - Ensure community services are adequately resourced to prioritise early intervention and voluntary support to reduce the risk of criminalisation.
 - Resource community sector agencies to deliver supports that prioritise establishing trusted relationships with women seeking help, including training in trauma-informed

and intersectional support and the need to overcome stigma and discrimination towards criminalised women.

- **People with disabilities**
 - Develop a comprehensive disability screening and data collection strategy, broken down by disability type, to apply to all people who encounter any stage of criminal justice system procedure (including police, courts and prison).
 - Complete and evaluate the Communication Intermediaries Pilot Program and consider making the program available in all courts.
- **First Nations Peoples**
 - Enable and empower Aboriginal families, communities, and organisations to address systemic overrepresentation in Victoria's criminal justice system.
- **Children and young people**
 - Raise the minimum age of criminal responsibility to 14 in all circumstances
 - Make detention the option of last resort for all children and young people
 - Establish and resource an integrated support continuum that addresses the causes and risks associated with child offending
 - Enable and empower Aboriginal families, communities, and organisations to support children in culturally safe and appropriate ways.
- **Victims of crime**
 - Establish a more coherent Victim Support System and integrate Victim Support into existing community services.
 - Resource community legal centres to provide assistance to victims of crime with VOCAT matters.

Reform the laws that are causing the most harm

- Encourage the use of discretion for low-level offending or bail offences.
- Encourage police and prosecutions to use diversion where possible.
- Make use of non-custodial options for low-level offending or bail offences.
- Base bail decision-making on a single test (that of, 'unacceptable risk').
- Reinstate the presumption that parole would be granted at the earliest eligibility date unless there was a compelling reason why this should not occur and require that the Adult Parole Board be more transparent and accountable in its decision-making.

Reduce the harms associated with justice system involvement

Make interactions with the justice system safe, respectful and accessible

- Embed safety, respect and inclusivity in justice system interactions by requiring all justice system personnel to undergo training in the following:
 - Trauma-informed practice
 - Disability awareness
 - Cultural awareness and safety
 - Identifying and responding to family violence
- Consult with the community to determine the need for a judicial diversity strategy to facilitate the appointment of judges, magistrates and tribunal members from diverse backgrounds, including gender and cultural and linguistic diversity, varied lived experiences and from diverse legal practices, including the community legal sector.

Prioritise the health and safety of all Victorians in police practice

- Commit to the adoption and implementation of a health-based, harm-minimisation response to drug use.
- Increase Victoria Police members' knowledge of local service networks to undertake warm referrals and continue to improve the use of PACER and the Victoria Police e-Referral Program (VPer) for referrals to local service providers.
- Establish an independent body to hear complaints and investigate police misconduct.

Create more problem-solving and diversionary courts

- Continue to establish problem-solving, specialist and diversionary courts across Victoria, using data to prioritise responses in areas of most need.

Ensure people leave prison for good

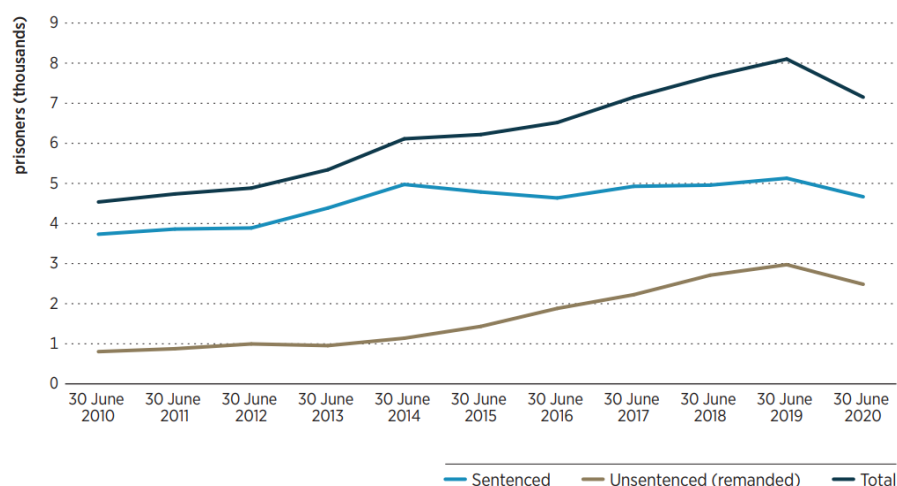
- Produce publicly available information on the health and social outcomes of people who enter and leave prison, that links service use data from Department of Health, Department of Families, Fairness and Housing, Department of Justice and Community Safety, and Corrections Victoria.

- Improve the interface between the National Disability Insurance Scheme and Corrections Victoria to ensure people with disabilities can access appropriate and continuous supports.
- Improve the interface between forensic and community based mental health and alcohol and other drug treatment to ensure continuity of care.
- Establish a prison exit program that comprises a whole-of-government approach, led by Department of Health, to providing sustained supports for people returning to the community from prison.

Acknowledge social justice as a key pillar of criminal justice

Victoria’s justice system is built around equal principles of deterrence, rehabilitation, punishment, and community safety. However, a law and order, tough on crime rhetoric fuelled by media has seen successive governments implement criminal justice system reforms that rely on punitive responses to antisocial behaviours and offending. The most stark example of this is our ever-increasing incarceration rate (see table below).

Overview of all prisoners by legal status in Victoria’s corrections system as at 30 June 2010–2020



Source: Corrections Victoria, Table 1.8, *Annual Prisoner Statistical Profile 2009–10 to 2019–20*, December 2020, <<https://www.corrections.vic.gov.au/annual-prisoner-statistical-profile-2009-10-to-2019-20>> accessed 29 January 2021.

The overreliance on punishment is a narrow conception of justice and as the Victorian Ombudsman stated in 2015, prison is an ineffective and expensive way to respond to criminal behaviour or to keep communities safe.¹

Instead, social justice principles should be used to guide criminal justice system reform. The concept of social justice acknowledges that individuals are embedded in, and shaped by, their social environment. If social inequality and exclusion drive people to engage in antisocial or offending behaviours, then a collective, whole-of-government and community response is required to prevent crime, and to intervene early to prevent further harm.

¹ Victorian Ombudsman, *Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria*, September 2015, p 2.

Protect Victorians against poverty

RECOMMENDATIONS

- Create pathways to employment for disadvantaged jobseekers, including people at risk of or who have been justice-involved.
- Advocate to the Commonwealth Government to strengthen the social safety net, including:
 - An increase to the rate of JobSeeker from \$44 per day to at least \$65 per day and ongoing indexation of payments in line with wage movements at least twice per year.
 - Reforms to the Fair Work Act 2009, to support Victorians to have a secure and decent living by improving protections for insecure and casual workers and independent contractors.

Social inequality and exclusion, in the form of social, economic or intergenerational disadvantage, limited education and employment opportunities and poor health and wellbeing, is a risk factor for antisocial and offending behaviours. Eliminating social exclusion requires intervention at the population, community and neighbourhood levels.

Poverty is the most stark example of social inequality. Thirteen (13) per cent of Victorians currently live in poverty.² Poverty exists in every Victorian community, with rates highest in regional and rural Victoria. Poverty stops people living healthy and happy lives. It can lead to isolation, to children disengaging from school, and to poor physical and mental health.

At the population level, having an adequate income is a critical protection against poverty. Our national safety net is currently failing to provide that protection. For example, Victorians reliant on the base rate of the JobSeeker income support payment live well below the poverty line. – For example, a single person without children is \$166 per fortnight under the poverty line.

² VCOSS, *Every suburb, every town: mapping poverty in Victoria*, November 2018

Another critical protection against poverty is secure work. Employment participation contributes to individual and community well-being. Stable paid employment provides people with an income and contributes to their sense of identity and wellbeing. It enables people to put a roof over their head and pay for food, transportation, clothing, energy, childcare, health care, and access to information technology.

Not every Victorian has the security of stable employment. There are high rates of unemployment and underemployment concentrated in some groups, including young people, people who have been early school leavers, Aboriginal people, people with disabilities, people from culturally and linguistically diverse communities, people with enduring health issues (including drug and alcohol or chronic health conditions), and people who have a criminal record.

VCOSS considers that creating pathways to participation for disadvantaged jobseekers is a key element of effective prevention, early intervention and reintegration.

The Victorian Government is already playing an important role through Jobs Victoria. The investment in new non-punitive, place-based supply-side measures – for example, mentors, advocates and counsellors – is already supporting many disadvantaged jobseekers into work, including Victorians who have had justice-system involvement.

Additionally, through the Jobs Victoria Fund, a successor to the Working for Victoria Fund, DJPR is continuing to invest in demand-side measures, through the provision of targeted, tiered wage subsidies to employers (albeit at a significantly lower rate of subsidy than Working for Victoria).

VCOSS urges sustained Victorian Government investment in employment support for disadvantaged jobseekers and initiatives that support the creation of high-quality jobs.

For those in work, the *Fair Work Act 2009* (Cth) is the most prominent lever to strengthen employment protections for all workers. Significant reforms are needed to ensure that all workers in Australia can access the minimum employment rights to ensure that they can not only meet their basic needs but can flourish and fully participate in life.³

The pandemic has reinforced that minimum employment entitlements benefit not just individuals, but the whole community. The Victorian Government can advocate that the

³ VCOSS, *A secure and decent living – VCOSS Submission to the Senate Inquiry into Job Security*, April 2022.

Commonwealth reform the *Fair Work Act 2009* to improve protections for insecure and casual workers and independent contractors.

Eliminate disadvantage by shifting to a wellbeing economy and adopting justice reinvestment

RECOMMENDATIONS

- Reorient Victoria to a wellbeing economy and embed this approach through the introduction of wellbeing budgeting and the delivery of wellbeing budgets.
- Adopt a justice reinvestment framework that enables place-based pilot programs, coordinates funding and governance arrangements and builds shared evidence on effective practice.

Victoria can also take steps to eliminate social inequality and exclusion by reorienting the state's economy to a wellbeing economy. In broad terms, wellbeing economies put the pursuit of key social outcomes – like delivering the basic needs for food, housing, health, safety and a good education – on par with the pursuit of good balance sheets. Governments are required to clearly articulate specific social goals and match them with concrete targets and timelines, then publicly report on progress at set intervals. These are embedded through the delivery of wellbeing budgets.

Justice reinvestment is a proven approach to tackling community and neighbourhood level disadvantage that is highly compatible with wellbeing budgeting. Justice reinvestment involves re-directing resources that would normally be spent on prisons towards local, community-based initiatives that prevent people from engaging in offending behaviours. A justice reinvestment approach uses data to identify need and provides local communities with the resources, time and space to come together and build resilience and cohesion to make the local area safer, smarter and healthier.

The Maranguka Justice Reinvestment Project in Bourke, New South Wales, is one of the most successful examples of justice reinvestment. Historically, the town has had crime rates well above the NSW average, and consistently experiences the highest recorded crime rates in NSW for domestic violence, sexual assault and breach of bail.

An evaluation conducted after five years found that incidences of domestic violence had dropped by about a quarter and reoffending had reduced. A third more young people are finishing high school. Other results include:

- a 38% reduction in charges across the top five juvenile offence categories
- a 14% reduction in bail breaches
- a 42% reduction in days spent in custody.⁴

The Victorian Government should work with communities to identify areas of need in Victoria where a justice reinvestment pilot would be effective. To help guide this work, and ensure the efficient and equitable use of resources, the Government should establish a justice reinvestment framework. As well as coordinating funding and providing a foundation for strong governance arrangements, the framework would be an enabler for building shared evidence on effective practice.

Prioritise the critical role of housing in preventing criminalisation and reoffending

RECOMMENDATIONS

- Build 60,000 new public and community homes by 2031 to ensure all Victorians have access to affordable and secure homes.
- Leverage housing as a protective factor against justice involvement by ensuring new public and community homes are accessible for people who at risk of or are justice-involved. Specifically:
 - The Victorian Government's investment in new public and community homes should deliver appropriately diverse stock (size, rooms, capacity to accommodate dependents, carers and other supports).
 - Housing and support should be provided separately so that renters can exercise choice and control.

⁴ KPMG, *Maranguka Justice Reinvestment Project – Impact assessment*, November 2018.

- Consumer Affairs Victoria should work with community to establish a mechanism to monitor the implementation of reforms under the *Residential Tenancies Act 1997 (Vic)* and provide targeted supports to renters who experience barriers to exercising tenancy rights.
- Leverage the role of housing in reintegration and recovery after justice involvement by:
 - Establishing a “no exits into homelessness” policy from prison, youth justice and other justice settings, incorporating a housing first model of support.
 - Providing supported accommodation and court integrated services for people on bail and community corrections orders.
- Developing and implementing a protocol for Victoria Police and other enforcement agencies to prevent the criminalisation of people experiencing homelessness, per recommendation 29 of the *Final Report of the Homelessness Inquiry*.

Safe, stable and affordable housing plays a critical role in **preventing** contact with the criminal justice system, **reducing** contact with the criminal justice system and **supporting** successful reintegration for people following contact with the justice system.

As VCOSS told this Committee in the *Inquiry into Homelessness in Victoria*:

- People experiencing homelessness, particularly people sleeping rough, are subject to punitive, enforcement-based responses to their circumstances. This includes fines and charges for public space offences, such as begging, camping and conduct in public spaces, including on public transport.
- Justice system involvement is a driver of homelessness. Imprisonment affects people’s ability to maintain their housing. Preventing people from imprisonment enables them to sustain their housing, continue engagement with health and social services, and stay connected to their natural supports in their communities.

- In the absence of a ‘no exits into homelessness’ policy, more than half (54 per cent) of people leaving prison exit without stable housing in place.⁵ This contributes to the revolving door between prison and crisis homelessness services, and long-term, entrenched homelessness.

The Victorian Government’s *Big Housing Build* is a welcome and much needed investment in social and affordable housing. However, most of the growth in this program is through community housing, which may not be accessible to people who are justice-involved or who have been criminalised.

To ensure that housing is provided for those most in need, VCOSS recommended that the Victorian Government invest in a pipeline of new social housing stock, comprising both public and community housing, under the yet to be finalised *Ten Year Strategy for Social and Affordable Housing*.

Further, the Victorian Government should consider additional support and resources required for community housing providers to make allocations to people who are justice-involved or who have been criminalised. The Victorian Government can facilitate this by quarantining a portion of future stock for people involved in the justice system and by inviting bids from or incentivising the community housing sector to deliver specialist housing.

All new public and community homes should be designed to prioritise safety (including cultural safety and freedom from violence), and be made accessible, with appropriate space to accommodate children/dependents and/or the provision of necessary supports. For people who have been criminalised, it is necessary for housing and support to be provided separately to ensure that people can exercise choice and control over their own life, without their housing provider having an undue level of influence (for example, VCOSS members note poor outcomes for people they support when Corrections Victoria is both the housing and support provider).

A third of all Victorians rent homes in the private market, including many who would be eligible for public and community housing but who do not have access due to supply constraints. People who are at risk of, or who have experienced, justice involvement face unique challenges in the private market, including unaffordability, poor quality or unsuitable

⁵ Australian Institute of Health and Welfare, *The health of Australia’s prisoners 2018*, May 2019, p viii.

homes, and stigma and discrimination, and may face challenges with meeting their tenancy obligations that place them at risk of eviction.

An ambitious suite of renting law reforms commenced in March this year, which make renting fairer through changes including more secure tenure and protections against evictions. The Victorian Government should work with community to establish a mechanism to monitor implementation of the reforms and consider any additional protections or supports that might be required to ensure people who are justice involved can maintain private rental housing.

Give people the health and social support they need in their communities

RECOMMENDATIONS

Ensure community sector organisations have the capacity to deliver effective early intervention supports and the right supports that respond to people at risk of criminalisation or who have complex needs by:

- Reflecting the true cost of service delivery in government contracts, including adequate annual funding indexation.
- Providing more stable funding by increasing standard contract periods in community services to at least five years, and preferably seven years, in line with the recommendations of the Productivity Commission report on Human Services.
- Investing in workforce planning, resourcing and capability building.

As the Victorian Ombudsman noted in a 2015 investigation, there is a clear link between disadvantage and justice system involvement.⁶

⁶ Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria*, September 2015, p 2.

This investigation, along with a growing body of research in recent years, highlights that people who become justice involved or criminalised often face a range of health and social issues that may not be identified, or, if identified, have not been treated,⁷ when they encounter the justice system. For example:

- 40 per cent of people entering prison reported mental ill-health.⁸ Due to the capacity constraints of the community based mental health system, prison is often the first time a person identifies and is treated for mental illness.
- 65 per cent reported using illicit drugs in the previous year.⁹ People who use drugs experience significant barriers to accessing voluntary treatment due a lack of capacity and coordination between supports provided in community versus in the corrections system.
- A third of people entering prison had a high-school education level of year 9 or lower.¹⁰
- A third reported a chronic health condition that affected participation in daily activities, while almost half reported moderate disability.¹¹ Further, the Victorian Ombudsman identified people with cognitive disabilities as an overrepresented cohort in Victoria's prisons.¹²
- A third of people entering prison had been homeless in the last month, while more than half expected to be homeless when released.¹³
- 75 per cent of people in prison had been in before, which reiterates concerns that prison has limited efficacy and impact in relation to rehabilitation.¹⁴

Providing the support people need early in their communities is a critical way to prevent people from becoming involved in the justice system. At a workshop to inform this submission, VCOSS members noted the following features of effective early intervention practice when working with people who have been criminalised or who have complex, co-occurring needs:

- Build relationships of trust.
- Collaborate across a range of services, including with police.

⁷ Royal Commission into Victoria's Mental Health System, *Final Report Volume 1: A new approach to mental health and wellbeing in Victoria*, February 2021, p 355.

⁸ Australian Institute of Health and Welfare, *The health of Australia's prisoners 2018*, May 2019, p vi.

⁹ *Ibid* p vii.

¹⁰ *Ibid* p vii.

¹¹ *Ibid* p 77.

¹² Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria*, September 2015, p87.

¹³ Australian Institute of Health and Welfare, *The health of Australia's prisoners 2018*, May 2019, p viii.

¹⁴ *Ibid*, p vi.

- Provide support that responds holistically to the person's intersecting needs, including considerations of their family and social environments.
- Embed cultural awareness and safety and trauma-informed practice.
- Acknowledge and seek to reduce stigma and discrimination.
- Use peer/lived experience workforces to provide supports.

However, due to short-term and precarious funding, as well as disruptions arising from critical but sometimes uncoordinated sector reforms, workers and agencies may not have capacity to deliver supports that prioritise these features. As a consequence, people face barriers getting the support they need at the earliest opportunity, and may instead only access support when facing crisis, or critically, never access support before becoming justice-involved. The Victorian Government can effect transformational change by providing fairer funding and longer-term contracts, as well as enhancing the way concurrent, intersecting flagship reforms are implemented. There is an opportunity for enhanced coordination and integration of key reforms.

Noting that many people currently involved in Victoria's criminal justice system present with mental health and AOD issues, Government must address barriers to accessing community-based mental health and AOD support.

As this Committee noted in the *Inquiry into the Use of Cannabis in Victoria*, the AOD sector is underfunded and faces significant workforce shortages.¹⁵ Despite the crossover between the AOD and the mental health service systems, the two systems are uncoordinated, which creates issues for services users. VCROSS welcomes the Victorian Government's commitment to establish a state-wide mental health and AOD service to promote clinical cooperation between the two systems. However, with significant investment already committed to reform the mental health system in line with the recommendations of the Royal Commission into Victoria's Mental Health System, the Victorian Government will need to undertake robust modelling of AOD service demand, and plan and resource services to address workforce issues that may arise with mental health system reform.

¹⁵ Parliament of Victoria, *Inquiry into the use of Cannabis in Victoria – Final Report*, August 2021, p 78.

Improve access to justice with early legal assistance

RECOMMENDATIONS

- Provide adequate funding to community legal centres to meet demand.
- Providing ongoing funding for effective integrated legal services and partnerships, including health-justice partnerships.

People most vulnerable to legal problems often have fewer skills and resources to deal with them without assistance. Targeted legal assistance, delivered at the right time and the earliest possible opportunity, can help resolve problems that can otherwise escalate, leading to more problems, greater disadvantage and higher costs.

Community justice partnerships put lawyers into places where people can access them easily during their everyday lives, such as community health services, family violence services or schools. People experiencing legal problems are more likely to confide in a GP, a social worker or their teacher than go to a lawyer.

Embedding lawyers in community settings gives people a chance to address their legal needs before they spiral out of control. It means non-legal professionals receiving information from someone can work with lawyers to jointly address that person's needs.

Community legal centres have experienced a surge in demand since the start of the pandemic, at the same time as courts are experiencing significant backlogs in hearing matters. The Victorian Government should work with the community legal sector to model future demand and fund the sector to meet this demand. Further, per the recommendations of the *Access to Justice Review*, the Victorian Government should provide ongoing funding for integrated legal and non-legal supports, to address service gaps and silos, and ensure Victorians can access more effective legal help.

Address overrepresentation of women, people with disability, children and young people, First Nations people and victims of crime

Women

RECOMMENDATIONS

- Ensure community services are adequately resourced to prioritise early intervention and voluntary support to reduce the risk of criminalisation.
- Resource community sector agencies to deliver supports that prioritise establishing trusted relationships with women seeking help, including training in trauma-informed and intersectional support and the need to overcome stigma and discrimination towards criminalised women.

A majority of women who become justice-involved have experienced trauma, including childhood and adult victimisation, sexual abuse, involvement with child protection, and family violence.¹⁶

These experiences of gendered violence can drive women to engage in offending behaviour, for example, self-medicating with illicit drugs or resisting violence through physical force, resulting in and being misidentified as the predominant aggressor. These experiences place women at risk of criminalisation and create barriers to accessing services that can respond to trauma or complex needs.¹⁷

While the implementation of the *Royal Commission into Family Violence* recommendations have improved both specialist and mainstream services responses to victim survivors of family violence, there is a need for increased resourcing of primary prevention and long-term recovery supports.

Further to these recommendations, VCOSS is a member of the Smart Justice for Women Coalition and we endorse the recommendations it has made to this Inquiry to address the overrepresentation of women in Victoria's criminal justice system.

¹⁶ Centre for Innovative Justice, *Leaving Custody Behind – Issues Paper*, July 2021, p 23.

¹⁷ *Ibid*, p 24.

People with disabilities

RECOMMENDATIONS

- Develop a comprehensive disability screening and data collection strategy, broken down by disability type, to apply to all people who encounter any stage of criminal justice system procedure (including police, courts and prison).
- Complete and evaluate the Communication Intermediaries Pilot Program and consider making the program available in all courts.

People with disabilities are overrepresented in the criminal justice system, as victims, accused persons, defendants and witnesses.

The *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* heard that overrepresentation can be attributed to issues including:

- limited access to appropriate support services and housing
- lack of disability awareness and identification by services and institutions
- early life factors
- historical trauma
- recidivism
- lack of diversionary options
- barriers to access to justice and
- barriers to reporting and investigating violence, abuse, neglect and exploitation.

People with disabilities also experience the “criminalisation of disability”, when conduct associated with people’s impairment, health condition or trauma are interpreted as difficult or defiant behaviours, leading to disproportionate interactions with police.¹⁸

Currently, there is no consistent approach to screening for people with disabilities at any stage of criminal procedure. Implementing a systemic approach to disability screening would

¹⁸ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Overview of responses to the Criminal Justice System Issues Paper*, December 2020, p 3.

inform more appropriate responses in policing, courts and prison. In particular, screening for disability provides an opportunity to engage community-based services as a more appropriate alternative to custody.¹⁹

The Victorian Government has implemented a Communication Intermediaries Pilot Program trial to assist victims of crime and witnesses with communication difficulties to give evidence to police and in court. While there have been some constraints with implementing this program remotely during the COVID-19 restrictions, Government should commit to completing the trial, and consider making the program available in all courts if successful.

First Nations Peoples

RECOMMENDATIONS

- Enable and empower Aboriginal families, communities, and organisations to address systemic overrepresentation in Victoria's criminal justice system.

Victoria Police are reluctant to collect and release data on policing practices between different cultural or linguistically diverse groups.²⁰ Despite this, a significant body of evidence indicates that Aboriginal and Torres Strait Islander people are less likely to be provided with opportunities for diversion²¹, more likely to be charged with public nuisance offences²² and more likely to be targeted for offences such as being drunk in a public place²³.

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, must be acknowledged and immediately addressed, and any reforms must be led by Aboriginal and Torres Strait Islander communities.

¹⁹ Australian Human Rights Commission, *People with disability and the criminal Justice System*, 20 March 2020, p 30.

²⁰ 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.

²¹ N Papalia, *Disparities in Criminal Justice System Responses to First-Time Juvenile Offenders According to Indigenous Status*, May 2019.

²² Sentencing Council Queensland, *Connecting the Dots*, March 2021.

²³ Australian Bureau of Statistics, *Prisoners in Australia* (2018) Table 1.

Children and young people

RECOMMENDATIONS

- Raise the minimum age of criminal responsibility to 14 in all circumstances
- Make detention the option of last resort for all children and young people
- Establish and resource an integrated support continuum that addresses the causes and risks associated with child offending
- Enable and empower Aboriginal families, communities, and organisations to support children in culturally safe and appropriate ways.

Currently, children as young as 10 can and do experience the full force of the criminal justice system.

When a child demonstrates anti-social or offending behaviour, an opportunity emerges for appropriate social supports to make a positive intervention in their life. Responses to child offending should:

- Be child-centred, strengths based and trauma-informed. This includes responding to the holistic needs of the child, the underlying causes of their offending, and the needs of their family/natural supports;
- Comply with Australia's international human rights obligations and the Victorian Charter of Human Rights and Responsibilities;
- Assume shared accountability and responsibility for offending, on the basis that the majority of child offending is a consequence of the failings of the institutions intended to support the child;
- Commit to addressing the overrepresentation of Aboriginal and Torres Strait Island children and young people, Culturally and Linguistically Diverse children and young people, and young people who have been involved with out-of-home care.

Supports should be provided across an integrated continuum, prioritising and investing in prevention, early intervention and therapeutic and restorative justice as the most effective ways to respond to child and young offending/re-offending.

VCOSS believes that a system-wide response is required to tackle the systemic failings which underpin children's involvement in the justice system. There is a need to better integrate policies and practices across child and family welfare, education, disability, health, police, legal and youth justice systems. Community should be involved in design and implementation, including Aboriginal and culturally diverse communities. This would increase the effectiveness of interventions by addressing community-identified problems, drawing on existing community strengths and resources, and being culturally responsive.²⁴

Reorienting responses to child offending from punitive to therapeutic will require a significant boost in funding for effective programs. This can be achieved by adopting a framework that ensures equitable funding for programs across the continuum and better integration between systems. Presently, a significant barrier to protecting children from offending and reoffending is the lack of access to an appropriate program that meets their needs and is a proportionate response to the nature of their offending behaviour.

Aboriginal and Torres Strait Islander children are over-imprisoned, making up about 60 per cent of the young children in youth justice facilities, despite being only about 5 per cent of the population (aged 10-17).²⁵ Aboriginal and Torres Strait Islander peoples continue to experience the ongoing impacts of colonisation, trauma, dispossession and racism. The over-incarceration of Aboriginal and Torres Strait Islander children and young people is both a result of this ongoing trauma and exacerbates it.

In Aboriginal and Torres Strait Islander communities, the planning, design and implementation of alternative justice responses should be community-led.

Further to our recommendations, VCOSS is a member of the Smart Justice for Young People Coalition and we endorse the recommendations it has made to this Inquiry to address the overrepresentation of children and young people in Victoria's criminal justice system.

²⁴ K Richards, L Rosevear and R Gilbert, *Promising interventions for reducing indigenous juvenile offending: Brief 1*, Australian Institute of Criminology, March 2011.

²⁵ Australian Institute of Health and Welfare, *Youth detention population in Australia 2018*, December 2018.

Victims of crime

RECOMMENDATIONS

- Establish a more coherent Victim Support System and integrate Victim Support into existing community services.
- Resource community legal centres to provide assistance to victims of crime with VOCAT matters.

A 2012 literature review on the 'victim-offender overlap' identified studies reporting that more than half of victims of crime become offenders and vice versa.²⁶ This is a higher rate for women in the justice system, where between 70 to 90 per cent of women in prison are victim-survivors of family violence, sexual abuse or child abuse.

Supporting victims to recover in a way that is therapeutic and does not contribute to further trauma can prevent victims from becoming perpetrators.

Since the 2018 review of the *Victims of Crime Assistance Act*, some improvements have been made to victim support, including the establishment of a welcome new financial assistance scheme. However, victims continue to experience barriers to accessing support, due to the complexity in navigating the range of assistance options available.

As the Centre for Innovative Justice noted in their Victim Services Review, victims of crime should be supported to find and access assistance and be empowered to make informed decisions about which assistance would meet their needs. This could be achieved by establishing a more coherent and effective Victim Support System, comprising coordination of existing victim services into a single model that victims can step through as their needs change over time, as well as improved access through digital service delivery and improved integration of victim assistance in existing community services,²⁷ including community legal centres.

²⁶ W G Jennings et al, *On the overlap between victimisation and offending: A review of the literature, Aggression and Violent Behaviour*, 2012, p 17.

²⁷ Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review*, November 2020, p 14.

Reform the laws that are causing the most harm

RECOMMENDATIONS

- Encourage the use of discretion for low-level offending or bail offences.
- Encourage police and prosecutions to use diversion where possible.
- Make use of non-custodial options for low-level offending or bail offences.
- Base bail decision-making on a single test (that of, 'unacceptable risk').
- Reinstate the presumption that parole would be granted at the earliest eligibility date unless there was a compelling reason why this should not occur and require that the Adult Parole Board be more transparent and accountable in its decision-making.

Over the past decade, a range of reforms to Victoria's criminal law have been implemented that increase punitive approaches to offending and restrict judicial discretion:

- A significant investment of \$2 billion in police has led to an additional 3,135 police officers over five years²⁸
- In 2013 and 2018, changes to the *Bail Act 1977 (Vic)* created significant barriers to accessing bail.
- Successive changes to sentencing have increasingly restricted judicial discretion and increased sentences of imprisonment, including an increase in mandatory sentencing and less community-based approaches
- Parole reforms have made it increasingly difficult for offenders to be granted parole.

These reforms have not made our community safer. The *Bail Act 1997(Vic)* reforms introduced a reverse onus test, intended to capture serious, violence offenders. Instead, the changes have had a disproportionate impact on women who have engaged in low-level, non-violent offending, in particularly Aboriginal and Torres Strait Islander women, and

²⁸ Victorian Government, 'Record Recruitment Drive Boosts Police Numbers', Media release, 15 July 2019 <https://www.premier.vic.gov.au/record-recruitment-drive-boosts-police-numbers/>

people experiencing homelessness, and has resulting in the alarming increase in the number of people incarcerated on unsentenced remand. Consistent with a long-standing recommendation by the Victorian Law Reform Commission, the Victorian Government should repeal the reverse onus test and replace it with a presumption in favour of bail unless there is a specific and immediate risk to the safety of another person.

Rehabilitation should be prioritised as the primary factor for any sentencing decision. The sentencing hierarchy should also be reviewed to provide additional options for community-based treated and rehabilitation. VCOSS supports the recommendation by the Victorian Aboriginal Legal Service (VALS) for a new requirement that courts take into consideration the unique systemic and background factors affecting Aboriginal and Torres Strait Islander people.

The Victorian Government should reinstate the presumption that parole would be granted at the earliest eligibility date unless there was a compelling reason why this should not occur. Further, Adult Parole Board decisions should be more transparent and subject to public accountability.

Reduce the harms associated with justice system involvement

The criminogenic effects and other long-term trauma and disadvantage associated with justice system involvement is well documented.

Until prevention and early intervention are prioritised and adequately resourced, change will be required to reduce harm for those that do encounter the criminal justice system. We acknowledge the inherent tension between therapeutic approaches and the carceral nature of the criminal justice system. Despite this, steps can be taken to make contact with the justice system a more positive and less harmful intervention in people's lives.

Make interactions with the justice system safe, respectful and accessible

RECOMMENDATIONS

- Embed safety, respect and inclusivity in justice system interactions by requiring all justice system personnel to undergo training in the following:
 - Trauma-informed practice
 - Disability awareness
 - Cultural awareness and safety
 - Identifying and responding to family violence
- Consult with the community to determine the need for a judicial diversity strategy to facilitate the appointment of judges, magistrates and tribunal members from diverse backgrounds, including gender and cultural and linguistic diversity, varied lived experiences and from diverse legal practices, including the community legal sector.

As previously discussed, many people who encounter the justice system have experienced disadvantage, vulnerability and trauma. All criminal justice system personnel – including police, courts and service providers – must have capability to provide safe and respectful responses to those they interact with.

The Blue Knot Foundation suggests that trauma-informed practice could be incorporated into the justice system by ensuring all personnel have training to apply the following core principles²⁹:

1. Basic knowledge of the impacts of stress on the brain and body.
2. Consistent emphasis on safety, trustworthiness, choice, collaboration and empowerment (emphasis on doing with rather than for or to).
3. Consistent emphasis on the way in which a service is provided (i.e. the 'how' as much as the 'what'; the context in which services are delivered, not just what the service is).
4. Consistent emphasis on what may have happened to a client, rather than what is 'wrong' with client/s.
5. Recognition that 'difficult' behaviour and/or 'symptoms' may be the product of coping mechanisms and attempted self-protection in light of prior adverse experiences. If not seen through the lens of trauma, client behaviour is 'often and inappropriately labelled as pathological, when [it] should instead be viewed as adaptations a person has had to make in order to cope with life's circumstances'.
6. A 'strengths-based' approach which acknowledges people's skills, notwithstanding the enormity and effects of overwhelming experiences with which they may be struggling ('Recognising and promoting resilience is also a fundamental component of effective trauma-informed work').

Additionally, justice system personnel should be required to regularly undertake training in:

- Disability awareness
- Cultural awareness and safety
- Identifying and responding to family violence.

Community organisations have deep and broad knowledge of the challenges and barriers faced by people who may be vulnerable or experiencing disadvantage and justice-involved, and have established, trusted relationships with community. We stand ready to assist justice system workforces to develop their skills in this area.

The capacity of judges and magistrates to ensure fair hearing and safety for alleged offenders can also be improved by establishing a judicial diversity strategy, as the UK recently introduced.

²⁹ Blue Knot Foundation, *Trauma and the law: Applying trauma-informed practice to legal and judicial contexts*, 2016, p 5.

As the former High Court Justice Michael McHugh said - "when a court is socially and culturally homogenous, it is less likely to command public confidence in the impartiality of the institution."³⁰

There is strong interest amongst VCOSS members in the Victorian Government developing a strategy to increase diversity amongst judges and magistrates – including cultural and linguistic diversity, a range of gender identities, diversity of lived experience and personal background, and diversity of legal experience, especially by appointing more judges and magistrates from the community legal sector – to increase trust in the institution, and to ensure differing perspectives across the system. VCOSS encourages the Victorian Government to consider this positive proposal, and to explore it further with communities through a public consultation process.

Prioritise the health and safety of all Victorians in police practice

RECOMMENDATIONS

- Commit to the adoption and implementation of a health-based, harm-minimisation response to drug use.
- Increase Victoria Police members' knowledge of local service networks to undertake warm referrals and continue to improve the use of PACER and the Victoria Police e-Referral Program (VPer) for referrals to local service providers.
- Establish an independent body to hear complaints and investigate police misconduct.

The criminalisation of people who are vulnerable or disadvantaged is inextricably linked to police practice.

The decriminalisation of public drunkenness and the implementation of a new health-based model demonstrates an approach that prioritises the health and safety of Victorians and is a welcome shift away from a reliance on punitive, police-led responses. The Victorian Government should commit to the adoption and implementation of a health-based, harm-

³⁰ Former High Court Justice Michael McHugh in a speech to the Western Australian Law Society, 2004.

minimisation response to drug use, and explore further opportunities for drug decriminalisation.

Victoria Police can also incorporate more community policing approaches into police practice, including establishing better connections with local community organisations.³¹ For example, VCOSS members acknowledge good outcomes for community when police use the Police, Ambulance and Clinical Early Response (PACER) model in first responses. In this model, police have wide discretion to draw on clinicians – including social workers, lawyers and advocates – when first attending callouts for incidences involving public nuisance, drug and alcohol use and mental health episodes. However, our members note that due to this wide discretion, there are inconsistencies in the use of the model. It relies greatly on individual police members' relationships with local service providers.

Victoria Police members should be required to increase their knowledge of and relationships with local service providers. Further, they should make better use of models like PACER and increase their use of both warm referrals and e-referrals to engage services providers in their responses.

Without adequate training to engage with vulnerable members of the community (as discussed in the previous section), poor justice outcomes may emerge for those who are subject to over-policing and misuse of police power. Police who do abuse the trust of Victorians and undermine the integrity of the justice system must be held accountable. Existing accountability mechanisms are failing to change systemic behaviour or build community confidence in police. The Victorian Government should implement a system of independent investigation of police misconduct.

Create more problem-solving and diversionary courts

RECOMMENDATIONS

- Continue to establish problem-solving, specialist and diversionary courts across Victoria, using data to prioritise responses in areas of most need.

³¹ M Segrave and J Ratcliffe, *Community Policing: A descriptive overview*, March 2004.

The Victorian Government can invest in more specialist problem-solving and diversionary courts to reduce crime and prisoner numbers. Where traditional, adversarial approaches fail, problem-solving courts deal with the behaviours causing offending, and they work: Drug Court recidivism rates are 34 per cent lower.³² The Victorian Drug Court should be expanded to keep people out of prison through treatment and rehabilitation. Similarly, the Neighbourhood Justice Centre has significantly improved community order compliance and reduced recidivism.³³ Offenders appearing before the Neighbourhood Justice Centre (NJC) are less likely to reoffend and has cut Yarra area crime rates by 12 per cent in two years.

The establishment of the Specialist Family Violence Court in Shepparton and the expansion of the Drug Court to Shepparton and Ballarat are welcome initiatives to ensure access to justice and problem-solving approaches for regional and rural Victorians.

The Victorian Government can use data and population health planning to prioritise responses in areas across Victoria with most need. For example, despite having one of the highest rates of family violence in Melbourne, there is not a Family Violence Court in or near Broadmeadows. Data-driven planning would also inform the resourcing and integration of specific community services that would assist the Court response.

³² KPMG, Magistrates' Court of Victoria, *Evaluation of the Drug Court of Victoria*, 2014, p. 4.

³³ S Ross, *Evaluating neighbourhood justice: Measuring and attributing outcomes for a community justice program*, 2015, p. 5.

Ensure people leave prison for good

RECOMMENDATIONS

- Produce publicly available information on the health and social outcomes of people who enter and leave prison, that links service use data from Department of Health, Department of Families, Fairness and Housing, Department of Justice and Community Safety, and Corrections Victoria.
- Improve the interface between the National Disability Insurance Scheme and Corrections Victoria to ensure people with disabilities can access appropriate and continuous supports.
- Improve the interface between forensic and community based mental health and alcohol and other drug treatment to ensure continuity of care.
- Establish a prison exit program that comprises a whole-of-government approach, led by Department of Health, to providing sustained supports for people returning to the community from prison.

The current approach to managing people exiting prison means that people who leave prison are punished well beyond their sentence. This is indicated by:

- Over half of people leaving prison expect to be homeless when released
- 90 people who died of heroin overdose in 2017 had recently left prison (including 10 within the first seven days of release)
- Children of people who have been incarcerated are six times more likely to become incarcerated than their peers.

Better outcomes for people leaving prison begins with access to appropriate health and social supports in prison. Currently, there is no publicly available, linked data on people who move through Victoria's prisons, which constrains efforts to make system improvements. As

Coroner Hawkins recommended in a recent investigation,³⁴ the Victorian Government should make this data available to support reform.

Despite a high prevalence of people with disabilities in Victoria's prisons, there are barriers to accessing the National Disability Insurance Scheme and necessary disability supports. The Victorian Government should improve the interface between the NDIS and justice system across Victorian prisons, and better co-ordinate and integrate service systems to ensure all people with disability are fully supported while in prison and when transitioning out of prison.

Further, the Government should develop a protocol to identify whether people entering prison are NDIS participants, or are potentially eligible to be participants, and facilitate access requests at the earliest opportunity, in partnership with the Commonwealth government and NDIA.

Corrections Victoria offer a range of transitional planning and support programs, including through Assessment and Transition Coordinators and the ReLink, ReConnect and ReStart programs. These programs provide vital transitional planning and support to people exiting prison and provide an opportunity to understand and map a person's needs in relation to housing and other supports upon release.

However, only 20 per cent of people leaving prison have access to any supports from Corrections Victoria pre- and post-release.³⁵ Further, there are significant gaps in discharge planning, support and continuity of care when people are released that prevent successful reintegration and recovery.

In Norway, people leaving prison are provided with a range of supports under the "Reintegration Guarantee", which includes support to obtain housing, work, school, health care debt counselling, and includes a framework to coordinate all government and community stakeholders involved in providing supports.³⁶ The success of this model is demonstrated by their status of having one of the lowest recidivism rates in the world, at 20 per cent,³⁷ compared to 44 per cent in Victoria.³⁸

³⁴ Coroners Court of Victoria, *Finding into death without inquest (Shae Harry Paszkiewicz)*, February 2021.

³⁵ *Ibid.*

³⁶ Confederation of European Probation, ***Norwegian Reintegration Guarantee aims to provide ex-prisoners the right tools for resocialization.***

³⁷ BBC, ***How Norway turns criminals into good neighbours.*** July 2019.

³⁸ Sentencing Advisory Council, ***Released prisoner returning to prison.*** 2020.

The Victorian Government should establish a program modelled on the Norwegian “Reintegration Guarantee”, that incorporates the following principles:

- Planning for release should begin long before leaving prison
- Housing must be a key component of prison transition, using a Housing First approach (a Housing First approach ensures that housing provision is not conditional upon addressing other health and well-being issues. Engagement with support services cannot be a pre-requisite to maintaining housing).
- Supports must be sustained (at stepped levels of intensity depending on changing needs over time) to enable reintegration and recovery
- A range of therapeutic and practical supports should be provided, targeted to meet the specific needs of the person

VCOSS supports Coroner Hawkins’ recommendation that the Department of Health adopt formal responsibility for improving the health outcomes of people leaving prison and should coordinate housing and other social supports with Department of Families, Fairness and Housing.

