Impact of the Victorian Government's COVID-19 response on vulnerable communities

submission to

Inquiry into the Victorian Government's Response to the COVID-19 Pandemic

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a community legal centre
incorporating the Darebin Community Legal Centre

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To the Committee Secretariat,

We are grateful for the opportunity to participate in this inquiry process, and for varied opportunities that have presented to provide briefings from the community legal sector to the government in relation to impacts on the communities we serve, who are facing the burdens of the pandemic and associated measures within a frame of significant economic, social and health-based disadvantage. We are encouraged by the collaborative environment across health, housing, social services, justice, police, local government and state government sectors, in which shared concerns are able to be raised and addressed.

We commend the government on investments to house people experiencing homelessness and exiting prison, to provide enhanced income support, freezes on mortgages and prohibitions of evictions, to stem the tide of Victorians experiencing homelessness, investments in mental health, and investments in family violence services. Our work would be untenable if the economic and social impacts of the pandemic directives were not buffered to this extent, and we are well aware of the devastating health and social impacts that can easily settle upon hundreds of thousands of Victorians if their basic needs are no longer able to be met by stable income and housing. All measures recognising the importance in a public health pandemic environment of framing and adjusting responses by reference to known social determinants of health and centralised risk factors are commended.

We observe that social determinants of health and risk factors are not static and for many, the COVID conditions have amplified the impact of particular or intersecting determinants, such as stress, addiction/ drug or alcohol dependence, diagnosed psychiatric cognitive and/ or physical disability, income, lack of safe housing, criminalisation, social exclusion, discrimination, vulnerability to violence. Through the course of our work, we have sought to draw attention to other communities with high vulnerability to infection, adverse outcomes including fatalities, and with complex health and social conditions, as well as literacy barriers, requiring flexibility in approaches to further the global objectives of public health.

These communities include women and children experiencing family violence, people with long term alcohol and drug dependence, people who are formally classified as homeless (even where temporary accommodation has been provided), people living in sometimes crowded dwellings including in high rise housing estates, people with limited literacy in English, people serving prison sentences, people living in extreme poverty without access to government supplementary income, people dependent on frontline social and health services to meet their basic needs, as well as people diagnosed with psychiatric or cognitive conditions.

We raise these matters at the outset as we believe the State Government has the opportunity to play a central role in humanising Victorian's approach to the health of all residents, and to show leadership in relation to issues such as family violence, homelessness, social inequity, and complex disability.

Background to Fitzroy Legal Service

Fitzroy Legal Service (FLS) provides legal services (advice casework community legal education court appearances systemic advocacy) in the following substantial areas of law – tenancy, employment, family violence, family law, crime, infringements, victims of crime. All areas of our legal practice have been impacted and adapted as the community and justice sector respond to departmental directions supporting recovery from the pandemic. We provide services to approximately 5,000 Victorians per annum, and our Law Handbook Online is the most relied upon legal resource in the state. FLS currently continues to provide all primary services, including through health justice partnerships in the areas of infringements, offending related to drug use, prisoner's rights, and family violence/family law.

We have participated in the operation of the COVID policing portal, targeted community legal education on departmental directives, dissemination of multi-language materials, participation in local and state-wide collectives of agencies to enhance responsiveness, and briefings to peak bodies in the legal and non-legal sector. We wish to identify that this submission seeks to address only a portion of the issues arising in the context of the pandemic, and in particular, those issues that we believe had not received adequate attention to date, being impacts on marginalised communities serviced by the Drug Outreach Lawyer Program ('DOL').

Specifically excluded from the scope of this submission are the detail of concerns that have been conveyed by community in relation to the lock down of the public housing estate towers. We note those events are the subject of an independent inquiry process that will provide an opportunity for the government to receive feedback and reports directly from community/community groups of their experiences as well as submissions from civil liberties/human rights organisations on questions of law and interpretation.

We do however submit that based on anecdotal reports, there are ongoing concerns in relation to the impacts of large-scale policing operations on people's sense of security, safety and inclusion, and that the clear communication in language of relevant information to enhance legal and health literacy must be achieved. We further submit that based on anecdotal reports, human rights implications relevant to children, disability, elderly people, mental health raise considerations that might require intensive assessment by the department operationally as that material should by and large be in their possession at the time of decision making. The entry of COVID into housing estates and other condensed forms of residence is not an unexpected event and every preparation should be made to ensure appropriate supports and flexibilities are available and communicated to meet the requirements.

We mention these matters as a significant example of the manner in which the impact of the COVID pandemic is experienced differentially dependent on socio-economic circumstances; naturally it is vital that lessons learnt in one environment in relation to global benefits/harms/risks are rapidly translated to the next in order to take all appropriate steps to prevent loss of life should future circumstances arise requiring rapid responses.

The Drug Outreach Lawyer Program

Relevantly for the purposes of this submission, FLS has operated the DOL program for over 20 years, providing specialist legal services for Victorians whose engagement with the legal system is underpinned by drug use. This program provides health/ social support and improved access to justice for highly marginalised community members through partnerships with YSAS, Uniting ReGen, North Richmond Community Health, Living Room, Co-health, Odyssey House, Quinn House, supporting clients through a wide catchment of metro Melbourne. The content of this submission incorporates perspectives from partner agencies, case work and affected communities.

The DOL program supports people whose drug or alcohol dependence/use/addiction underpins their engagement with legal processes. Historically and currently our primary focus is to provide holistic adapted services to meet the extremely complex needs of our clients – poverty, mental health, homelessness, compromised cognitive function, inter-generational trauma, victimisation, experiences of child sexual assault and family violence. The DOL program seeks to bridge access to justice through integrated health justice partnerships that streamline supports to clients facing legal proceedings in a flexible and highly focussed way. The DOL program through partnerships is also focussed on supporting young people and clients strongly engaged in recovery.

The public health pandemic & people who use drugs and/or alcohol

From the outset of the public health pandemic, the DOL program has been focussed on the disproportionate impacts of the pandemic on communities impacted by severe poverty, marginalisation, and stigma – circumstances inclusive of primary or secondary homelessness, disability (including mental illness diagnosis), substance use disorder, entrenched reliance on primary health and other frontline support services, compromised health and social circumstances.

Of particular concern to DOL has been the particular health characteristics common of some of the communities we work with. In partnership with various health partners we confirm the following basic features common for community members with drug use disorders: people with drug and alcohol use disorders have increased rates of infections and reduced immune system functioning (including as a result of hepatitis C and HIV);[1] cardiovascular and disease rates are significantly high in people who use methamphetamine,[2] heroin,[3] and alcohol use disorder can lead or contribute to cardiovascular disease and/or high blood pressure;[4] kidney

[1] H. Friedman, C. Newton & T.W. Klein, 'Microbial infections, immunomodulation and drugs of abuse,' *Clinical Microbiology Reviews* 16, no. 2 (2003): 209-219.
[2] S. Darke, J. Duflou, J. Lappin & S. Kaye. 'Clinical and Autopsy Characteristics of Fatal Methamphetamine Toxicity in Australia.' *Journal of Forensic Sciences* 63, no. 5 (2018): 146-471.
[3] W.H. Frishman, A. Del Vecchio, S. Sanal & A. Ismail. 'Cardiovascular Manifestations of Substance Abuse: Part 2: Alcohol, Amphetamines, Heroin, Cannabis and Caffeine.' *Heart Disease (Hagerstown, Md.)* 5, no. 4 (2003): 253-71.
[4] Alcohol and Drug Foundation, 'Alcohol' (https://adf.org.au/drug-facts/alcohol/, 26 February 2020).

damage is strongly associated with methamphetamine use,[5] and heroin and other intravenous drug users are at greater risk of acute kidney injury;[6] liver cirrhosis and pancreatitis commonly co-occur with alcohol use disorder;[7] people with alcohol use disorder are also more likely to experience pneumonia, tuberculosis (TB), respiratory syncytial virus (RSV) infection, and acute respiratory distress syndrome (ARDS);[8] research also indicates that people with mild and borderline intellectual disabilities are at a higher risk than the general population of developing a substance use disorder;[9] alcohol and drug use disorders are one of the leading causes of acquired brain injury;[10] it is more common than not that a person will have co-occurring substance use disorder and a psycho-social disability.[11]

Through the DOL Program, our own experiential knowledge informs us that approximately 80% of our clients have a diagnosed mental illness, 50% are homeless, cognitive impairment is a substantially common condition, experiences of overdose and pneumonia are also extremely common (causing lung scarring and respiratory function damage), and the general conditions in which our clients are endeavouring to survive are deeply challenging on multiple and pressing psychological and physical fronts. Approximately 20% of DOL clients identify as being from an ATSI background, and 30% from a refugee background. As a result of lock down conditions, the DOL program has made significant efforts to stay connected with on the ground perspectives of our most vulnerable client base,[12] whereby issues of increased visibility, targeting, health fears, uncertainty (health and legal literacy related, accommodation related, and social service related), targeting for move on directions and infringements, and severe exacerbation of mental health conditions have been consistently relayed to us.[13] The pandemic impacts have been felt keenly by a community that is deeply reliant on regular access to frontline services, not only for health services, but for social connection in a societal structure where many feel they have otherwise been forgotten or rejected, at best.

We are grateful for the opportunities we have had to relay some of our concerns to government agencies, ministers and peak bodies. We wish to acknowledge some of the positive impacts of the government's responses on the community, including routine provision of face masks, endeavours to supply telephones to assist in access for the most marginalised, outreach health services, and perhaps most centrally, the provision of temporary housing for homeless communities and people exiting prison. We also wish to advise that the flexibility of

[5] AMA Position Statement Methamphetamine 2015; Turning Point Methamphetamine Treatment Guidelines 2019; Gurel, Ali. 'Multisystem Toxicity after Methamphetamine Use.' *Clinical Case Reports* 4, no. 3 (2016): 226-27.

[6] M. Mallappallil, J. Sabu, E.A. Friedman & M. Salifu. 'What Do We Know about Opioids and the Kidney?' *International Journal of Molecular Sciences* 18, no. 1 (2017): 223; J. Scott, D.M. Taylor & C.R.K. Dudley. 'Intravenous Drug Users Who Require Dialysis: Causes of Renal Failure and Outcomes.' *Clinical Kidney Journal* 11, no. 2 (2017): 270-74.

[7] S. Simet & J. Sisson. 'Alcohol's Effects on Lung Health and Immunity.' *Alcohol Research* 37, no. 2 (2015): E1-E10.

[8] S. Simet & J. Sisson. 'Alcohol's Effects on Lung Health and Immunity.' *Alcohol Research* 37, no. 2 (2015): E1-E10.

[9] N. Van Duijvenbode & J. VanDerNagel. 'A Systematic Review of Substance Use (Disorder) in Individuals with Mild to Borderline Intellectual Disability.' *European Addiction Research* 25, no. 6 (2019): 263-282.

[10] Health Vic, 'Acquired brain injury and alcohol and drug use' Victorian State Government (web page); Better Health, 'Acquired brain injury' Victorian State Government (web page).

[11] Select Committee on Mental Health, Parliament of Australia, *A National Approach to Mental Health – From Crisis to Community* (First Report, 30 March 2006) ch 13; ictorian Department of Human Services, *Dual Diagnosis: Key directions and Priorities for Service Development* (Report, 01 May 2007, Victorian State Government).

[12] This has been achieved through collective meetings with peers and peer workers during the course of the pandemic.

[13] Reported through the course of those meetings which were hosted by FLS.

reporting obligations under corrections orders through telephone reporting, counselling and the like, have been of benefit to enabling compliance for some cohorts of clients as reported by partner agencies. We also wish to confirm that the pressures on alcohol and other drug services have been significant, with increased self-referrals for support, and concerns for any breaches that may arise as a result of delays not within the power of the criminalised person. We cite as extremely important the reports of delays in access to detoxification facilities and rehabilitation services. We further note and report that we have been advised of increased self-referrals in contexts of family violence, and alcohol use, including where child protection notifications are a feature. In this context, we believe the decision not to allocate additional funding to meet those needs requires further examination.[14]

However, our concerns for marginalised and criminalised communities have been substantially borne out by the reports over the course of the pandemic. During recent months reports have been consistently made by community members living in and around housing estates of intimidating police presence. In the Yarra region, which rates third as the highest demographic for the issue of infringements, it is no secret that policing operations have focussed on 'breaking' the drug market including during the course of the pandemic. We note reports of arrests and patrols escalated just prior to the announcement of the extension of the Richmond MSIR and the second site. Each search, arrest, prosecution for low level offending, to the extent they occurred during the public health pandemic records a risk management episode, should in our submission be analysed in the context of global harm reduction and public health principles. The exposure of scores of police and those arrested and processed, including those remanded, seems to have been out of step with other operational approaches to controlling transmission and supporting those with complex health and housing needs. Anecdotally, these trends continue intermittently, and drug use markets have from time to time moved fluidly away from services to accommodate policing operations.[15]

Given the vulnerability of the prison population to transmission also, sensible risk management in our submissions demands a wise, discretionary approaches to possession and use, which can be legitimately framed within Australian policy as essentially health conditions.

The Courts and legal profession have through the course of this year engaged in work to ensure remand populations were reduced to the greatest extent feasible, safety measures in prisons to prevent infection were enhanced, and a series of decisions were handed down in relation to both bail and sentencing proceedings indicating the importance of COVID as a consideration in the operational administration of justice and balancing risk/fairness to the affected person.[16]

We further note the recent release of crime statistics paints a picture consistent with our supposition of targeting by virtue of stigma, poverty, homelessness, substance dependence, with the top LGA's as follows: Melbourne (n=662), Greater Dandenong (n=343), Yarra (n=314),

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[14] M. Boseley, 'A miracle if anyone got clean – Australia's drug users fight for treatment during the pandemic', *The Guardian*, 28 September 2020; VAADA Media Release Federal Budget: 'Failure to meet AOD treatment needs ominous for the future,' 7 October 2020.

[15] C. Zagon, Almost two hundred drug traffickers arrested in Richmond near safe injecting facility, Nine News, 22 May 2020; C. Zagon, Nearly two hundred traffickers arrested in drug riddled Melbourne suburb, MSN 22 May 2020

[16] For example: *Rowson v Secretary*, *Department of Justice & Ors* [2020] VSC 236, *DPP v Bourke* [2020] VSC 130, *Brown (aka Davis) v The Queen* [2020] VSCA 20, *R v Wills* (unpublished) (25/03/2020), *DPP v Morey* [2020] VCC 320, *DPP v Tennison* [2020] VCC 343, *DPP v Politopoulos* [2020] VCC 33860 VR 410.

Frankston (n=306), Casey (n=267).[17] We note there is no coherence with heightened concentration of infection, and no meaningful way to attach prosecutions to the proliferation of breaches of the law. We further note that 65% of people who have been issued with infringements to date have a history of criminalisation, and that of the 14% of offenders concurrently processed by police for another type of offence, the most commonly recorded offence was drug possession.[18]

Where responsibilities to manage public health is outsourced extensively to police and protective services officers carrying broad discretion and limited health training, we suggest that it is vital that global health objectives remain at all times in view, and that cultures of fear prejudice and punishment are not permitted to cause undue harm to some of the most vulnerable residents of Victoria. We know from experience in advancing public health objectives, both as a service and participants in civic society, that with or without a legislative underpinning, coercive models focussed on curtailing liberty and rights can result in perverse outcomes that cause disproportionate harm and tragic outcomes.

Case studies

> *X had attended the MSIR from Frankston. X is an intermittent user and therefore at risk of overdose.*

> *X attends the MSIR as a safety measure and to access dental services. At the time of X's attendance, the directives in place permitted .... X was approached by PSOs who were concerned he was showing signs of having the COVID virus. X explained he had been at the MSIR and had used heroin.*

> *X was arrested and an ambulance was called. He was transported to hospital. On the way to the hospital he was sedated as he was agitated. He awoke in the hospital in a special unit and was released. The introduction of sedation into his system would have increased his risk of overdose.*

> *L was issued with a COVID infringement fine on departure of the MSIR. The fine was issued because he had travelled in excess of 5 km to access the service.*

> *N was issued with three infringements in the space of two days. N does not have stable housing (temporary emergency COVID housing & long term homeless) and is drug dependent. N had been in the vicinity of a primary health service that is his primary source of social support and medical support.*

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[17] S. Rmandic, S. Walker, S. Bright & M. Millsteed, 'Police-recorded crime trends in Victoria during the COVID-19 pandemic', Crime Statistics Agency Victoria, Number 10, September 2020

[18] Ibid.

F was stopped by police on three occasions for not wearing a mask. F has a diagnosis of severe schizophrenia. On the third occasion F's bail was revoked and he was remanded.

R was stopped by police for being in the central business district. He told police and workers he was going to a cheap supermarket because that is where he used to be homeless and he knows what to buy. He was issued with an infringement. The infringement noted he 'looked like a drug dealer'. R knows this was racial profiling.

M had just been released from Port Phillip Prison. M was still in possession of a garbage bag of belongings, and is unlikely to have had any significant orientation on release (as the pandemic period had just commenced, front line services were closed, and even those in the social services sector had little knowledge on how to make effective referrals). M was standing on a corner near our service and police questioned him. He was issued with a COVID infringement fine for breaching directives. The matter was reported by a concerned citizen.

G attended the CBD to visit the pharmacist from whom he receives daily medication. G also attended a primary health service in the city which is one of his primary support services as a result of long-term homelessness. G was asked by police to move on the city when he stopped to check in with some other homeless people. He did so. A little later he checked in on a homeless person who was nodding off to see if they were ok. He was issued with a fine. G is an elder in his community, and has social duties and humanitarian duties that accompany that status.

B attended the train station to meet a friend who had just been released from custody. He went to assist his friend to find his way home. He was issued with a COVID infringement.

N has an acquired brain injury. He suffered a fall and has no recollection of how or why he received a COVID infringement.

P attended the central business district to attend the primary health service where he obtains support (social, psychological and material). Was issued with an infringement for being outside the 5 km radius. Has been placed in temporary accommodation but his established support services are outside the vicinity.

F has a significant mental illness. He is unable to recall how and why he received a COVID infringement.

> *Y has dementia and attended the hospital to visit a friend. Y was unable to explain coherently to police the reason for his presence at the hospital. Y was issued with a COVID infringement*

This is in no way a comprehensive list of infringements being dealt with by FLS. However, most of the individuals issued with infringements within FLS have been allocated to the DOL program in recognition that their underlying health condition is the primary cause of their engagement in legal processes.

We are aware that for the vast majority of DOL clients, and community members from analogous circumstances, legal help will not be sought until it has become a pressing issue because of imminent warrants or arrest. We note reports that internal reviews are currently being handled by the Traffic Camera Office despite public undertakings that every infringement issued in the State of Victoria would be personally reviewed by Victoria Police Deputy Commissioner Shane Patton.[19] We further note reports that no internal review submitted by a community legal centre or legal aid to date has resulted in a reversal of the initial decision.[20] Those reports are consistent with the experience of FLS practitioners. We further note that infringements, particularly infringements issued for vast sums of money that people in poverty have absolutely no way to pay are known to be a cause of extreme stress for many in the community.[21] We further note there is no formal is no preventative mechanism in place through DHHS or through Victoria Police for people to have their exemption from a direction recognised without a confrontation with police, which may be particularly stressful and unequal for a person with complex needs.

Sanctions on individuals for breaching laws generally require the issuing agency to meet a basic burden of proof. It was evident from the outset that this approach would not be adopted during the course of the pandemic, which would instead rely on the autonomy of police, relying on "common sense", and their experience in "knowing who was being truthful."[22] That such an approach provides a discretion of sufficient breadth that discrimination and prejudice cannot be avoided regardless of intentions of legislators is unquestionable. Why does it matter if we discriminate in this way during the course of a public health pandemic?

Under the I*nfringements Act 2006*, applications for consideration of special circumstances in relation to the issue of infringements may be sought on the basis of drug dependence, mental illness, and homelessness.[23] The directives of the department have identified that stay at home directions include people who have been provided with short term emergency accommodation. To our observation, it would seem the homelessness protocol has ostensibly

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[19] L.M. Beers, 'Victoria Police Deputy Commissioner confirms he will personally check every COVID 19 Fine', 7 News, 14 April 2020. T. Mills, 'COVID 19 Lockdown fines eroding public confidence top cop warns', *The Age*, 13 April 2020.

[20] R. Clayton, 'Victoria Coronavirus fines must be reviewed lawyers say,' ABC News, 30 September 2020.

[21] B. Saunders, A. Eriksson, G. Lansdell & M. Brown, 'An Examination of the Impact of Unpaid Infringement Notices on Disadvantaged Groups and the Criminal Justice System: Towards a Best Practice Model', Criminal Justice Consortium February 2013.

[22] 'Social distancing rules', *The Guardian*, 30 April 2020 <https://www.theguardian.com/australia-news/2020/apr/30/social-distancing-rules-australia-coronavirus-laws-legal-illegal-state-physical-restrictions-new-guidelines-nsw-victoria-qld-queensland-act-sa-wa>.

[23] Section 22.

been suspended for the duration of the pandemic where temporary accommodation has been provided. However, the definition of homelessness that is legally accepted includes members of the public who are living in temporary crisis accommodation. We wish to point out that the expectation that long-term homeless communities would immediately be able to integrate into a new modality without extensive support is valiant but unrealistic. The issuing of multiple infringements is not to our way of thinking a meaningful response to that issue, and will merely clog court legal and health resources or worse, prison resources, as the recipients clearly have no means whatsoever to make payment, and would have multiple grounds for seeking to be excused from payment. It is entirely appropriate that a deeply compassionate and sensible approach of guidance is taken at all times to people with complex health and social needs. To our observation, it would also seem that the protocol on allowing free access to needle syringe programs has been ostensibly suspended, and that access to primary health services for drug users is routinely being treated as less than a medical reason to leave home. The fact that these medical services include the medically supervised injecting centre is also deeply concerning. There were over 500 deaths by overdose in Victoria in the 2019 reporting period.

Some relevant legal frameworks for global consideration

Perhaps most importantly, we are concerned that a culture of where the rule of law, and policing for community safety, should be held strong to in the present and into the future.

We submit that the operation of the *Public Health & Wellbeing Act 2008* (Vic), the *Charter of Human Rights and Responsibilities 2006* (Vic), the *Infringements Act 2006* (Vic), and policing protocols designed to promote equity and public health need to be integrated more coherently into all operationalisations of public health directives, and public functions, regardless of the agencies tasked with various roles. Naturally this is not a comprehensive list, but it is one we believe is being overlooked in the context of matters raised in this submission.

The stated purpose of the *Public Health and Wellbeing Act 2008* is to promote and protect public health and wellbeing in Victoria.[24] The objectives of the Act clearly enunciate Parliamentary recognition that '(a) the State has a significant role in promoting and protecting the public health and wellbeing of persons in Victoria; (b) public health and wellbeing includes the absence of disease, illness, injury, disability or premature death and the collective state of public health and wellbeing; (c) public health interventions are one of the ways in which the public health and wellbeing can be improved and inequalities reduced; (d) where appropriate, the State has a role in assisting in responses to public health concerns of national and international significance.' We further note that, in the context of these objectives, the objective of the Act as a whole 'is to achieve the highest attainable standard of public health and wellbeing by — (a) protecting public health and preventing disease, illness, injury, disability or premature death; (b) promoting conditions in which persons can be healthy; (c) reducing inequalities in the state of public health and wellbeing.' [25] Furthermore, the legislative instrument clearly identifies that '[i]f in giving effect to this Division alternative measures are available which are equally effective in minimising the risk that a person poses to public health,

[24] Section 1.

[25] Section 4.

the measure which is the least restrictive of the rights of the person should be chosen.[26] As such we submit the holistic global consideration of advancing public health, bearing in mind various contexts of inequity, is clearly advanced and necessitated by the legislative instrument on which all COVID responses are fundamentally reliant.

In addition, the *Charter of Human Rights and Responsibilities Act 2006* (Vic) makes clear that Victorians have the ostensible right to equality before the law, enjoyment of rights without discrimination, rights to equal and effective protection against discrimination (save where measures to address disadvantage are engaged.[27] Included in these responsibilities are Victoria Police, public officials, ministers – section 4. Section 38 of the Charter makes clear that it is 'unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right'[28], unless as a result of a statutory or a provision made by or under an Act of the Commonwealth or otherwise under law, the public authority could not reasonably have acted differently or made a different decision.'[29] Finally, section 32 identifies that all statutory provisions must be interpreted in a way that is compatible with human rights (unless specified exemptions apply).[30]

We believe the reliance on the public health pandemic circumstances, in combination with delegation of most public facing duties under the pandemic to Victoria Police, has resulted in an overall circumstance where criminalised, stigmatised, racialised, impoverished, and health compromised communities are unfairly and dangerously targeted. We strongly suggest actions are taken to ameliorate these impacts and that analysis is undertaken within a public health lens of the data that is emerging. We further place on record our complete opposition and grave concerns in relation to proposed sections 250 and 253 of the Omnibus Bill. We cite the statements of Liberty Victoria in this regard, and specifically, the following –

> The Bill does not specify what conduct may give rise to a "reasonable belief" that a person "is *likely* to refuse or fail to comply with" a direction. Again, police officers are not trained public health officials and will not have the expertise to determine the likelihood of a person's conduct presenting a public health risk.
>
> Further, the period of detention is not specified in the Bill and there is no oversight regulation built into this power. It is to be determined based on what the designated authorised person, including a police officer, considers and if they reasonably believe the person remains a 'high risk person'.
>
> The indefinite nature of these powers is exceptional and unlike other preventative detention regimes which contain fixed detention timeframes and strict oversight requirements. While these people have not committed any offence, they do not appear to have the right to challenge a decision to detain them – unlike people accused of criminal offences. Although they could seek judicial review of a decision, that is a costs jurisdiction which would make it difficult for people to challenge their detention.

[26] Section 112.
[27] Section 8. See also section 4 – duties on public authorities inclusive of Victoria Police.
[28] Section 38(1).
[29] Section 38(2).
[30] Section 32.

> The number of new COVID-19 infections have been coming down… Those numbers have decreased without the recourse to any of those powers, so it is unclear why the increased powers are now considered necessary.[31]

Conclusion

We are grateful for the opportunity to make frank submissions regarding our concerns for the health and wellbeing of the clients of the DOL program, and for the previous opportunities we have been afforded to do that. We also express gratitude once again for the varied opportunities that FLS as a whole has had to communicate impacts, and for actions that have been taken on behalf of marginalised and impoverished communities to date.

A final additional matter that we raise, is that the public messaging around policing and stay at home directions, in terms of authorities being experienced as 'safe' continues to play a crucial role in our clients experiencing family violence reaching out to authorities for support. Through our family violence program, we have pressing concerns in relation to the ability of women to provide instructions and access support without direct surveillance from perpetrators. Where there are publicised incidents of violence against women, we believe it is very important that leadership is shown to rebuild confidence in the sense of safety women may have in asking for support. This includes women with drug and alcohol dependence.

We further note a great deal of media has focussed on negative portrayals of women as breaching directives, that public commentary has proceeded despite sub judice status of matters. The overall impact of that messaging needs to be borne in mind in the context of a pandemic where violence against women and children is one of the most serious public health concerns presenting. It may be that government has some additional role to play.

Recommendations

(1) That pre-pandemic policing approaches to the extent they provided special protection to homeless community, people with drug dependence accessing services, and those with mental illness, be reintroduced through strong leadership and training on the relevance of those approaches to a public health pandemic environment.

(2) That infringement reviews supported by credible documentation relating to an established special circumstance under the *Infringements Act 2006* (Vic) be dealt with efficiently and flexibly in knowledge of the extreme psychological stress that accompanies debt.

(3) That a discretionary approach, informed by global public health standards, international human rights instruments, and consistent with the National Drug Strategy, is flexibly adopted in relation to use and possession, to the ends that

[31] Liberty Victoria, *Liberty Victoria Very Converned about Proposed New Power Introduced in the COVID-19 (Emergency Measures Bill)* <https://libertyvictoria.org.au/content/liberty-victoria-very-concerned-about-proposed-new-powers-introduced-covid-19-emergency> (17 September 2020).

episodes of arrest and remand are avoided to the greatest extent possible during the pandemic conditions and associated living conditions for Victorians.

(4) That legal literacy, health literacy, housing tenancy management support, and AOD and mental health support continue to be provided to people exiting prison, and to homeless communities.

(5) That people with substance use disorder are recognised as specifically vulnerable in public health terms both during the pandemic and generally, and attitudes/ policing approaches reflect that recognition to an improved degree.

(6) That training is provided to ensure that people attending health services including AOD services are not targeted or subject to discrimination, but rather are seen as accessing legitimate essential health supports along with other community members.

(7) That preventative detention powers are revoked/ abandoned immediately as enabling grave abuses of human rights in an environment where the public risk manifestly cannot justify their enforcement.

Thank you for your attention.

Yours faithfully

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