

**FITZROY LEGAL SERVICE INC. SUBMISSION TO THE LEGAL AND SOCIAL ISSUES
COMMITTEE INQUIRY INTO HOMELESSNESS IN VICTORIA (MARCH 2020)**



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ACKNOWLEDGEMENTS

We acknowledge that our offices are located on the lands of Wurundjeri People of the Kulin Nation whose sovereignty was never ceded. We pay our respects to their Elders past, present and emerging.

We are grateful to our clients, colleagues and community for trusting us with their stories and for granting us permission to use and share their experiences in this document.

This submission was co-authored by Sophie L'Estrange, Laura Button, Jill Faulkner, Karen Fletcher, and Megan Pearce for Fitzroy Legal Service.

A NOTE ON CASE STUDIES

The case studies in this submission are drawn from the work of the Fitzroy Legal Service. All names and some identifying details have been changed.

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SUMMARY OF RECOMMENDATIONS

Recommendation 1

That the Victorian Government fund construction of 30,000 new social housing properties over the next eight years, including at least 20,000 new government owned and managed public housing properties.

Recommendation 2

That the Victorian Government adopt a “Housing First” policy that progressively removes restrictions on transitional and social housing eligibility for psychosocial disability, drug and alcohol dependency and criminal record and increase health, welfare and community support for tenants in these situations to establish stable homes from which they can rebuild their lives and care for their families.

Recommendation 3

That laws that expressly or indirectly criminalise homelessness be repealed and replaced with housing, health and welfare responses with priority given to:

- Repealing the offence of begging in s 49A of the Summary Offences Act 1966 (Vic)
- Ensuring the intended repeal of the offence of drunk in public is fully implemented and replaced with an appropriate public health response in consultation with impacted communities. Any public health response must include immediate access to safe and stable housing for people experiencing or at risk of homelessness.
- Amending offences related to move on directions, obscene language and drunk and disorderly offences in ss. 4, 6, 14, 16, 17, 17A of the Summary Offences Act 1966 (Vic) so as to not criminalise this conduct where that person commits the offence due to homelessness or other related vulnerabilities such as mental illness or addiction.

Recommendation 4

That Victoria Police consider cautions as a first option for people where the offending is directly linked to their homelessness

Recommendation 5

That the Victorian Government divert people experiencing homelessness from the criminal justice system by:

- Amend s 59 of the Criminal Procedure Act 2009 (Vic) to remove the requirement that the prosecution consent to the Criminal Justice Diversion Program, so that the court has the power to determine whether, on balance, diversion is appropriate in each case.
- Empowering the court to vacate pleas of guilty where it becomes apparent, after a plea has been entered, that diversion would have been the most appropriate outcome.

Recommendation 6

That where diversion is not possible or appropriate, the Victorian Government promote access to therapeutic justice options for people experiencing homelessness, for example through expanding the Assessment and Referral Court.

Recommendation 7

That family violence support services be required to inquire into the family violence histories of women respondents to FVIOs who approach them for accommodation and other family violence support including by interview.

Recommendation 8

That the Victorian Government build on its existing program to provide pre-paid weekly myki passes to people experiencing homelessness either by:

- providing free public transport for holders of healthcare cards, and/or
- issuing an operational directive to Authorised Officers not to fine people they reasonably believe to be experiencing homelessness.

Recommendation 9

That the Victorian Government properly fund existing specialist homelessness outreach services to respond to call-outs from members of the public or people experiencing homelessness.

Recommendation 10

That the Victorian Government implement (including through training) a Protocol for responding to people experiencing homelessness that:

- requires Victoria Police and other enforcement agencies to avoid unnecessary interactions with people experiencing homelessness
- ensures that where interactions do occur they are appropriate and respectful

Recommendation 11

That the Victorian Government develop and implement a public awareness campaign so that members of the public call organisations with capacity to properly respond to people experiencing homelessness (coupled with expanding the capacity of those organisations to in fact respond)

Recommendation 12

That the Victorian Government pass legislation that reclassifies as summary offences criminal conduct that should be considered less serious, such as breaching bail conditions, possession of drugs for personal use, theft of property below a certain value and public nuisance.

Recommendation 13

That the Bail Act be amended to include a provision similar to s3B(3) whereby the lack of accommodation or adequate accommodation may not be a reason to refuse bail.

Recommendation 14

All prisoners on reception – and particularly prisoners on remand and serving sentences under 12 months - should be given access to community-based housing advocacy to assist them to maintain housing for themselves and their dependents.

Recommendation 15

Housing Victoria should develop policies directed to assisting all prisoners in all prisons – and particularly prisoners on remand and serving sentences under 12 months – to maintain housing for themselves and their dependents while in prison.

Recommendation 16

Prisoners and their advocates and case workers should be able to access clear information about government-funded post-release housing programs and housing support services, the prisons in which they operate and the applicable eligibility criteria.

Recommendation 17

Prisoners who apply and are assessed as eligible for post-release housing should be placed on waiting lists to ensure transparency, equity of access and to facilitate planning to meet housing need.

Recommendation 18

The committee require the DHHS and Corrections Victoria to provide data and give evidence about:

- the number of parents on remand or serving a custodial sentence whose children are the subject of a protection order
- the proportion of children of parents in prison who have an allocated child protection worker
- what efforts, particularly in the form of contact, are made to promote relationships between children on protection orders and women in prison.

Recommendation 19

That the Victorian Government redirect funding from prisons to public housing.

1 INTRODUCTION

1.1 Fitzroy Legal Service

Fitzroy Legal Service ('FLS') was established in 1972 and is one of the oldest community legal centres in Australia. In 2019 we merged with the Darebin Community Legal Centre and now operate from three offices across Fitzroy, Reservoir and the Neighbourhood Justice Centre in Collingwood. We are governed by a community board of management and receive recurrent funding from state and federal community legal services programs and project funding from a range of public and benevolent institutions.

FLS provides criminal, family, family violence and generalist legal services to socially and economically disadvantaged clients with a particular focus on people stigmatised and criminalised due to poverty, homelessness, childhood abuse, family violence, trauma, drug use, psycho-social disability, contact with the criminal justice system and incarceration.

To increase access for this group we provide outreach legal services at a range of locations including alcohol and other drug services such as needle & syringe programs and the Medically Supervised Injecting Room; specialist youth, mental health and LGBTIQ services; a statewide Prison Advice Line; and Family Violence and generalist duty lawyer services at the Neighbourhood Justice Centre in Collingwood and the Heidelberg Magistrates Court.

In 2018/19 we assisted 238 clients who identified as homeless at intake. This number does not reflect clients at risk of homelessness. Many more of our clients have been or will be homeless during the course of their lives.

In addition to our practice areas, FLS also runs targeted programs and projects in which high proportions of our clients are experiencing homelessness or at risk of homelessness. Case studies from these programs are included below and in the body of this submission.

Drug outreach lawyer program ('DOL')

Our drug outreach lawyers assist individuals with legal problems related to drug use. They work closely and collaboratively with members of the community and relevant health agencies to promote rehabilitation, focusing on harm minimisation and areas of high need. Many of our clients through this program have histories of homelessness which intersect with and compound their drug use related legal problems.

Co-located Legal Services, Collingwood Neighbourhood Justice Centre

FLS has two lawyers co-located with other services at the Neighbourhood Justice Centre ('NJC') in Collingwood. The NJC is the venue for a Magistrates' Court, and also provides integrated support services, including in mental health, housing, drug and alcohol addiction, financial counselling, family violence, men's behaviour, and homelessness.

FLS duty lawyers at the NJC say homelessness is "the single biggest obstacle" to achieving therapeutic outcomes for our clients because:

- *There are very few places available in housing programs available to clients and the eligibility criteria are narrow, complex and confusing. It is very common for our clients to be ineligible for all housing programs. It's very hard to get clients into the available programs. For example, the Atrium bail housing program is not available to clients who are charged with or convicted of drug trafficking offences – even where the charges are contestable or low level. There needs to be more housing options available for people with drug dependency with more tolerance and support for people at risk of relapse – a "housing first" model rather than a model that excludes the most disadvantaged. Clients with stable housing are in a much better position to deal with mental health and drug and alcohol issues and to defend criminal charges, pay fines and comply with community corrections and treatment orders.*
- *Clients experiencing homelessness are at serious risk of failing to appear on a court date because of their homelessness and related mental illness, drug and alcohol use and general chaotic and even violent life circumstances. We can easily contact a client with a stable home to prepare for their court appearance. Clients experiencing homelessness often don't have a phone, have difficulties keeping their phone charged and often can't afford to buy phone credit. Some of our clients have had their phone stolen while sleeping rough or in a homeless refuge. Failure to appear at court is a breach of bail and a criminal offence in itself. If a client fails to appear for court twice or more – even where their substantive charge is as minor as shoplifting a food item – they often are remanded into prison because there is a presumption against bail unless they can show "exceptional circumstances" – a very high bar.*

Rachel and Her Children

Rachel and Her Children is a pilot child-focused family violence legal service targeted to primary-carer victim survivors of family violence who are experiencing homelessness. The project, in which a

lawyer works collaboratively with a Child Support Worker, commenced in 2019 as a partnership between Fitzroy Legal Service and Save the Children.

The need for the project was identified as a result of our family violence services and, in particular, the experience of one of our clients, Rachel*:

Rachel came to Australia on a spouse visa in March 2017. Before coming to Australia, she and her five children (aged five to 15 years) lived in an African country and saw Rachel's husband just once a year. Throughout the relationship, Rachel's husband was emotionally, financially, physically and sexually abusive towards her. The violence worsened when Rachel and the children came to Australia.

In October 2017, after being in Australia for 3 months, Rachel's husband locked her out of their apartment, and threatened to kill her if she did not leave without her children. Neither Rachel nor her husband were on the apartment lease. The property was leased by one of her husband's friends. Rachel was forced to leave. She contacted SafeSteps Family Violence Response and was taken into the refuge system.

Rachel was 5 months pregnant when she sought refuge and had not seen a doctor about her pregnancy. She was referred to FLS for help with housing, Centrelink, her visa, family violence protection and parenting arrangements under family law.

She was able to obtain a Family Violence Intervention Order but the Court did not include the children as protected persons because she was homeless and the refuge in which she was staying could not accommodate all her children. The children remained with her husband, despite the family violence. They had never lived without their mother prior to this.

A family law application for the children to be returned to her was not possible as she did not have housing to accommodate them and they could not be housed at the refuge.

Eventually the two youngest children were returned to Rachel's care at the refuge, leaving the elder children with the husband. The siblings had never been separated prior to this.

FLS lawyers were frustrated that they were unable to use the law to assist Rachel and her children because of lack of case management and housing. It was this case that led to the development of the pilot project, Rachel and Her Children.

The emerging findings of the Rachel and Her Children pilot indicate that the inaccessibility of housing is a major issue for women and children who are victim survivors of family violence that can only be solved through provision of stable, long term housing. There is a particular barrier for migrant and refugee clients, clients who are the primary carer of a child or children, and clients who do not have employment or have barriers in obtaining employment (for example have infants or young children in their care, or have immigration law or visa issues) in securing accommodation when fleeing from their home in crisis.

Below is the experience of a current (and de-identified) client:

Mary

Mary came to Australia from an African country and is now an Australian Citizen. She does not speak much English and needs an interpreter. The interpreter must be from interstate as she is known in her community and is very afraid of being found by her former partner. Mary has eight children. The youngest is an infant and the eldest is 20 years of age. The two eldest are from her first marriage. The six youngest are from the relationship with her current husband from whom she is now separated due to serious family violence. Seven of her children are under 18.

Mary had to flee from the relationship, and the house she owns, with all her children after serious incidents of family violence which led to the eldest child being stabbed by her former partner. Initially she was not permitted to separate from him on instruction of her cultural community leaders, but she had since been given permission, as they conceded that there was a legitimate risk of her or the children being killed if they remained in the relationship.

The police issued a Family Violence Intervention Order protecting her and six of the children. She and the children are terrified to return to the house Mary owns in her sole name, and have been couch surfing across two friends' houses. The eldest children stay at one house and the youngest with her. Mary says her ex-partner is breaching the FVIO and actively surveilling and trying to locate her. Mary is not working and cannot afford a private rental. She also has a Centrelink debt that she does not understand that is in excess of \$100,000. This debt affects her ability to obtain housing support. Mary cannot understand what the bank is telling her about her mortgage and property, but she is trying to sell her home as she cannot return to it.

Mary did not understand the terms of her FVIO or how to report breaches. She is now connected with a family violence case manager and the Rachel and Her Children Child

Support Worker for intensive support and assessment. The two workers are able to identify gaps in the service system for Mary and her children. The FLS lawyer is able to advise her on her family violence, property and debt issues. Despite this assistance, as it stands, Mary and her children remain effectively homeless.

Women Transforming Justice project ('WTJ')

WTJ is a partnership with the Law and Advocacy Centre for Women ('LACW') and Flat Out Inc (a housing support agency for women leaving prison and their children) to provide integrated and gender-specific legal services and welfare support to women applying for bail. A significant proportion of women supported by WTJ are homeless or at risk of homelessness.

The project has also created the Women's Leadership Group ('WLG') to provide training, support, and other opportunities for women with lived experience of incarceration to advocate for incarcerated women.

Prison advocacy program

Our prison advocacy lawyer provides legal advice, information and advocacy to prisoners and their families in Victoria – including a telephone advice service. The program assists clients in matters of prison law such as bail and parole where access to housing is a consistent barrier to successful applications.

1.2 The focus and structure of this submission

Given our expertise, this submission focusses in particular on how criminalisation and incarceration:

- are impacting on the scale and nature of homelessness in Victoria (term of reference 1)
- operate as social, policy and economic factors that impact on homelessness (term of reference 2)
- warrant particular responses to address the cycle of criminalisation, homelessness and incarceration (term of reference 3).

Every day we see how the criminalisation of people experiencing or at risk of homelessness leads to their incarceration. Once a person has been in prison, it is incredibly difficult to break free of the cycle of homelessness, criminalisation and incarceration. The daily reality for many of our clients is

backed-up by a 2015 large-scale study of 1500 income support recipients flagged by Centrelink as “homeless or at risk of homelessness”.¹ The study found that:

“Across every measure homelessness is higher among respondents who have prior or current contacts with the criminal justice system, especially incarceration”.²

In other words, contact with the criminal justice system – particularly imprisonment – is one of the single most significant factors associated with homelessness.

Until recently Victoria had one of the lowest rates of imprisonment in Australia. That began to change from around 2008 and since 2013 rates have escalated alarmingly, particularly amongst women and Aboriginal people. Corrections Victoria data shows that between 2008 and 2018:

- the number of people received into Victorian prisons has more than doubled (from 5,362 in 2007/08 to 11,321 in 2017/18; a 111 per cent increase).
- the number of women entering Victorian prisons each year has more than tripled (from 516 in 2007/08 to 1614 in 2017/18; a 213 per cent increase).
- the number of Aboriginal women imprisoned increased by more than 750 per cent. Seventeen percent of the 1614 women sent to prison in Victoria in 2017/18 were Aboriginal women.³

The strength of the connection between homelessness and incarceration means that:

- laws, policies and programs that aim to reduce the number of people in Victorian prisons should also reduce homelessness **and**
- initiatives that respond to Victoria's housing and homelessness crisis should be effective in reducing the rapidly rising numbers of prisoners in Victoria.⁴

Accordingly, this submission is divided into the following parts:

¹ Andrew Bevitt et al, ‘Journeys Home Report No. 6: Complete Findings from Waves 1 to 6’ (Report, Australian Government Department of Social Services, May 2015): A longitudinal survey-based study managed by the Melbourne Institute of Applied Economic and Social Research for the Australian Government Department of Social Services between 2011 and 2014.

² The study has some limitations. People not in receipt of income support were excluded from the outset by its restriction to recipients of Commonwealth income support. People in prison or another institution on a long-term basis at the commencement of the study were excluded as out of scope. Around three thousand Centrelink recipients were initially approached to voluntarily participate and over half declined to participate.

³ Department of Justice and Regulation Corrections Victoria ‘Annual Prisoner Statistical Profile 2006-07 to 2017-18’ (Report, June 2018).

⁴ Ibid 1, 65.

- *Part 2 Context* provides a brief outline of the extent and nature of the housing and homelessness crisis in Victoria.
- *Part 3 Criminalisation of homelessness* describes how people experiencing homelessness or at risk of homelessness are criminalised and driven into contact with the criminal justice system and makes specific recommendations for change.
- *Part 4 The cycle of homelessness, criminalisation and incarceration* examines the inextricable links that entrench the spiral between homelessness and incarceration and makes specific recommendations for change.
- *Part 5 Homes not prisons* makes recommendations about appropriate housing solutions for criminalised people.

We have collaborated with our colleagues at the Federation of Community Legal Centres and at other community legal centres who, by agreement, are canvassing in more detail other aspects of community legal practice including areas in which we have expertise, namely family violence, family law, tenancy and victims of crime compensation. We have had the benefit of reading the following submissions and endorse their recommendations:

- Inner Melbourne Community Legal Centre
- Flat Out Inc
- Youth Law
- Tenants Victoria

2 CONTEXT

2.1 Shortage of social housing

Victoria spends just \$92.02 per capita annually on social housing (public and community housing combined). This remains the lowest level of social housing expenditure in Australia and less than 60% of the national average.⁵

The waiting list for social housing is predicted to reach 100,000 people in 2020.⁶ Even “priority” cases – including people who are experiencing homelessness or at serious risk of homelessness – will

⁵ Productivity Commission, Australian Government, *Report on Government Services* (Report, January 2020).

⁶ Victorian Public Tenants Association, Submission to the Victorian Government, *2020-21 Victorian State Budget* (October 2019).

not be permanently housed for years⁷ if ever. People categorised as ‘non-priority cases’ can wait over ten years to be housed.

2.2 A crisis in crisis accommodation

In the absence of public or community housing the only alternative for many of our clients is crisis accommodation, which is also in short supply. In early 2019 the Northern and Western Homelessness Networks – a coalition of 50 specialist homelessness and family violence services in Melbourne’s north and west – reported that there were only 423 crisis beds for people experiencing homelessness or family violence across Victoria.⁸ According to their report:

“When those beds are full, agencies are completely dependent on the private housing system and they use the limited funds they have available to access low end hotels and private rooming houses.”

Although brokerage to pay for crisis accommodation in the private sector has moderately increased in recent years, the report contains disturbing testimonies from service users that this accommodation (usually in cheap motels, hostels and rooming houses) is often unsanitary and unsafe, particularly for parents caring for children. The report’s findings echo feedback from our own clients who commonly choose a return to homelessness, or to a violent relationship, over unsafe and unclean motels or rooming houses. Clients have also reported violence, threats, drug trafficking and other problems in private premises commonly used for crisis accommodation. Our experience with WTJ shows us that this is particularly the case for women with children. The end result is still homelessness but millions of dollars in government money goes to private providers of substandard accommodation.

Moreover, people can experience significant barriers to accessing housing support services in Victoria. Despite the establishment of a central access point, access to crisis and emergency accommodation remains fractured and confusing – different charities and community organisations run housing support services and programs, which are in turn funded through different government departments and agencies, and governed by complex and sometimes conflicting policies and criteria for entry. It is also not uncommon for criminalised people to be excluded – including from family violence refuges – because of a criminal history and/or drug or alcohol issues. Navigating this

⁷ Ibid.

⁸ Northern and Western Homelessness Networks, *A Crisis in Crisis: The appalling state of emergency accommodation in Melbourne’s north and west* (Report, 2019) 3.

complex system is particularly difficult for the very people it is supposed to benefit: homeless and incarcerated people without access to phones or the internet.

Recommendation 1: That the Victorian Government fund construction of 30,000 new social housing properties over the next eight years, including at least 20,000 new government owned and managed public housing properties.

Recommendation 2: That the Victorian Government adopt a “Housing First” policy that progressively removes restrictions on transitional and social housing eligibility for psychosocial disability, drug and alcohol dependency and criminal record and increase health, welfare and community support for tenants in these situations to establish stable homes from which they can rebuild their lives and care for their families.

3 CRIMINALISATION OF HOMELESSNESS

It is unsurprising, given the context outlined above, that Victoria is facing a homelessness crisis. In this part of our submission, we describe how people who are homeless are criminalised and driven into contact with the criminal justice system. In our experience, people experiencing homelessness are criminalised through:

- the enforcement of laws that directly or indirectly criminalise acts inherent to homelessness
- the prosecution of ‘survival crimes’
- the current system of enforcing fines and infringements
- police as primary responders to homelessness

Laws that criminalise people experiencing homelessness do so either directly or indirectly.⁹ Laws that directly criminalise do so by expressly criminalising acts inherent to homelessness. These include the crime of begging, council laws prohibiting camping in public places, and the City of Melbourne’s homelessness operating protocol.¹⁰ Express laws are sometimes enforced through crackdowns or blitzes. Recent examples include the 2017 crackdown on rough sleepers in the CBD in

⁹ Lucy Adams, ‘Criminalising Homelessness: Why Enforcement is Not the Answer’ *Australian Broadcasting Corporation* (online, 8 August 2017) <<https://www.abc.net.au/religion/criminalising-homelessness-why-enforcement-is-not-the-answer/10095534>>

¹⁰ *Summary Offences Act 1966* (Vic), s 49A; *Activities Local Law 2019* (City of Melbourne, Vic), cl 2.8; City of Melbourne, ‘*Operating Protocol / Policy Operating Statement*’, cl 2, 3, 4, 5.

preparation for the Australian Open and the Operation Minta¹¹ blitzes enforcing prohibitions on begging.¹²

Laws that indirectly criminalise people experiencing homelessness do so through neutral laws that have a disproportionate impact on them or that are enforced differently against them. These laws affect people who are visibly homeless because of their poverty and/or their day-to-day life takes place in public and include public urination,¹³ sexual exposure when bathing or getting dressed in public view,¹⁴ drinking alcohol in public,¹⁵ being drunk and disorderly, using offensive language, public nuisance,¹⁶ being moved on¹⁷ or public transport and other infringement offences.

Recent experiences of clients of the FLS Drug Outreach Lawyer Program illustrate the vulnerability of clients experiencing homelessness to police searches and criminal charges because of their visibility on the street or sleeping in their car:

- *A client experiencing homelessness who using a kitchen knife to cut up tomatoes was charged with possessing a controlled weapon.*
- *Clients experiencing homelessness with valuable items amongst their belongings, such as an expensive necklace that was a 21st birthday present or a watch handed down from their grandfather, have been charged with possession of property suspected of being stolen.*
- *Clients who are drug users and homeless are more vulnerable to police searches because of their visibility. If police see a syringe or other drug equipment among their belongings, on the street or in their car, they will conduct a search and, if drugs are found, charge our them with drug possession. If the client is on bail they will also be charged with breach of bail and, almost certainly, face imprisonment.*

We welcome the Victorian Government's announcement in August 2019 that the offence of public drunkenness will be repealed and replaced with a health response.¹⁸ To be effective, any health

¹¹ Council to Homeless Persons, 'Why the criminalisation of begging does not help the problem' (Web page, 4 August 2015) < <https://chp.org.au/why-the-criminalisation-of-begging-does-not-help-the-problem/> >; Justice Connect, *Asking for change: calling for a more effective response to begging in Victoria* (Report, 2018).

¹² Many people caught up in Operation Minta failed to appear at their hearing date and warrants were subsequently put out for their arrest. See *Ibid*.

¹³ *Activities Local Law 2019* (City of Melbourne, Vic), cl 2.1(e).

¹⁴ *Summary Offences Act 1966* (Vic), s 19.

¹⁵ Local councils have varying prohibitions on the consumption of liquor in public places. For example, *Ibid* 13, cl 3.1.

¹⁶ *Crimes Act 1958* (Vic), s 320.

¹⁷ *Ibid* 14, ss 6, 13, 14 and 17 respectively.

¹⁸ Department of Premier and Cabinet (Vic), 'New Health Based Response to Public Drunkenness' (Media release, 22 August 2019).

response to public drunkenness must ensure that people who are homeless or at risk of homelessness have immediate access to safe and stable accommodation.

We urge the Victorian Government to go further and also decriminalise the offence of begging, and replace it with a community and service-based response that includes immediate access to safe and stable accommodation where necessary.

Recommendation 3: That laws that expressly or indirectly criminalise homelessness be repealed and replaced with housing, health and welfare responses with priority given to:

- **Repealing the offence of begging in s 49A of the Summary Offences Act 1966 (Vic)**
- **Ensuring the intended repeal of the offence of drunk in public is fully implemented and replaced with an appropriate public health response in consultation with impacted communities. Any public health response must include immediate access to safe and stable housing for people experiencing or at risk of homelessness.**
- **Amending offences related to move on directions, obscene language and drunk and disorderly offences in ss. 4, 6, 14, 16, 17, 17A of the Summary Offences Act 1966 (Vic) so as to not criminalise this conduct where that person commits the offence due to homelessness or other related vulnerabilities such as mental illness or addiction.**

3.1 Survival crime

Survival crime can include theft¹⁹ (food, clothing, medical needs, money), trespass²⁰ (squatting or other attempts to seek shelter or privacy), or possession of illicit substances²¹ (self-medication and/or untreated health issue of substance use disorders). Many people who are experiencing homelessness, or are at risk of homelessness, engage in survival crime.

It is our experience that there is often a gendered aspect to survival crime in that women may be coerced into engaging in criminal acts through the context of an abusive and controlling relationship. In such relationships the safety and the wellbeing of a woman is not valued equally and she is often used as the front person for a crime: a woman may be perceived by her coercive partner to be less conspicuous, likely to be treated less severely by police and the courts, or she has a shorter criminal history than her partner. Coercion by a male partner is also more likely where a woman's drug

¹⁹ Ibid 16, s 72.

²⁰ Ibid 14, s 19(e).

²¹ *Drugs, Poisons and Controlled Substances Act 1981 (Vic)*, s 73.

addiction is emotionally and logistically dependent on that partner. In our experience women are frequently the person who is tasked with taking the risks of purchasing drugs, selling drugs, or stealing. Family violence and survival crime work together here to intensify the criminalisation of women experiencing homelessness.

Case Study – Caroline

Caroline grew up in a family where her father was violent to her mother. Caroline says, “He was the boss of the house”. When Caroline was introduced to drugs her world changed. She felt like life was fun, she had found a “crew” to belong to and started to build the self-confidence that had suffered at the hands of her father. Caroline left home and says “when I no longer lived at home I always lived with a boyfriend”. She lived in a tent for five months, caravan parks, cars, abandoned houses and drug dens. Her relationship to drugs intensified and she got involved in crime - often coerced to participate by her boyfriend. Drugs and homelessness led to further criminalisation.

Recommendation 4: That Victoria Police consider cautions as a first option for people where the offending is directly linked to their homelessness

Recommendation 5: That the Victorian Government divert people experiencing homelessness from the criminal justice system by:

- **Amend s 59 of the Criminal Procedure Act 2009 (Vic) to remove the requirement that the prosecution consent to the Criminal Justice Diversion Program, so that the court has the power to determine whether, on balance, diversion is appropriate in each case.**
- **Empowering the court to vacate pleas of guilty where it becomes apparent, after a plea has been entered, that diversion would have been the most appropriate outcome.**

Recommendation 6: That where diversion is not possible or appropriate, the Victorian Government promote access to therapeutic justice options for people experiencing homelessness, for example through expanding the Assessment and Referral Court.

3.2 Misidentification of women as primary aggressors in family violence incidents

Family violence, homelessness and criminalisation can combine to harm women in other perverse ways. For example, one in two women identified by police as the primary aggressor in a family violence incident are misidentified and are in fact the victim survivor.²² Even when they are misidentified, many women consent to having an Family Violence Intervention Order ('FVIO') taken out against them by their partner or police to avoid further involvement with courts or police or retribution from an abusive partner. Under an FVIO, women can be excluded from their home and made homeless. Anecdotal evidence suggests that women often return to their home to avoid sleeping rough or to see their children and end up charged with the criminal offence of breaching the order. We understand there are a range of policy initiatives, including by Victoria Police, to address the risk that victim survivors of family violence will be misidentified as perpetrators.²³

The homelessness and family violence sectors also have a role to play. When a woman has been identified as a perpetrator of family violence and a "respondent" to an FVIO, most family violence support and emergency accommodation services deem them ineligible for assistance, including emergency housing. It is our experience that these services can fail to properly examine a women's individual circumstances and can be unaware of significant histories of coercion and control in their relationships and possible misidentification. Rather, women are automatically deemed ineligible and unable to access the support they need to avoid homelessness.

Recommendation 7: That family violence support services be required to inquire into the family violence histories of women respondents to FVIOs who approach them for accommodation and other family violence support including by interview.

3.3 Fines and infringements

Fines and infringements unfairly affect people experiencing or risk of homelessness by penalising both acts inherent to homelessness or poverty and the inability to pay those penalties. As well as creating and exacerbating poverty, fines and infringements are a gateway into the criminal justice system: when people do not pay their fine, this is a criminal offence and the matter can quickly make its way to court. Infringement offences can be disclosed on a criminal record check, which can in

²² Madeline Ulbrick and Marianne Jago, 'Policy Paper 1 "Officer she's psychotic and I need protection": Police misidentification of the 'primary aggressor' in family violence incidents in Victoria' (Research paper, Women's Legal Service Victoria and Monash University, July 2018).

²³ For a detailed discussion of the issue and appropriate responses see: No To Violence, 'Predominant Aggressor Identification and Victim Misidentification' (Discussion paper, 21 November 2019).

turn create significant barriers to a person's employment opportunities making it harder escape homelessness.

3.3.1 Avoiding fines and infringements in the first instance

We strongly support initiatives that help people experiencing homelessness to avoid being fined in the first instance. Accordingly, we commend the Victorian Government's decision to implement a trial program to provide people experiencing homelessness with pre-paid weekly and monthly myki passes. The 12-month trial began in October 2018 and allows homelessness support organisations to purchase mykis at a discounted rate and then distribute them to their service users. We have been advised by staff at Public Transport Victoria that there has been no directive to cease its operation.

We strongly support the intention of this scheme. However, to access the mykis people must firstly be engaged with a registered service and secondly, they must report back to that service as often as weekly to be given a new myki card. Given the day-to-day instability that is often connected with homelessness, this can be logistically impossible for many people.

To ensure this initiative is accessible for its intended beneficiaries, we urge the Victorian Government to consider making public transport free for people experiencing homelessness. This could be simply be free public transport for holders of healthcare cards or operational directives to Authorised Officers not to fine people they reasonably believe to be experiencing homelessness.

Recommendation 8: That the Victorian Government build on its existing program to provide pre-paid weekly myki passes to people experiencing homelessness either by:

- **providing free public transport for holders of healthcare cards, and/or**
- **issuing an operational directive to Authorised Officers not to fine people they reasonably believe to be experiencing homelessness.**

3.3.2 Other measures to improve the fines system

Fitzroy Legal Service, like many community legal centres, assists many people struggling with the burden of fines and infringements. We have had the benefit of reading the comprehensive submissions prepared by Inner Melbourne Community Legal Centre and Justice Connect. Both submissions made strong recommendations that we consider would significantly reduce the

likelihood of people experiencing or at risk of homelessness being criminalised as a result of fines and infringements, specifically:

- Reducing or eliminating the thresholds people experiencing homelessness need to meet in order to have their fines or infringements waived in circumstances where their homelessness has substantially contributed to the imposition of the fine in the first instance.
- Reinstating the the Special Circumstances List at the Melbourne Magistrates' Court and extending it to other Magistrates' Court locations in Victoria.
- Introducing a system of 'proportional' or 'concession-based' fines, whereby the financial amount of the penalty imposed is linked to a person's income or capacity to pay.

3.4 Alternatives to police

People who are visibly homeless are often criminalised because members of the public turn to police to respond to people perceived as having difficult, challenging, or anti-social behaviours. This usually occurs when a person, in addition to being homeless, is also experiencing a psychosocial disorder and/or is affected by alcohol or other drugs. Through our extensive work with criminalised people, we see that police presence and intervention often escalates rather than improves a situation, especially for those with previous trauma from police interactions. For many of our clients, this results in additional criminal charges (resist police, property damage, assault), arrest and imprisonment.

There would be a significant reduction in the criminalisation of homelessness if police were not the default first responders for people experiencing homelessness who need assistance. Achieving this requires:

- existing specialist homelessness outreach services to be properly funded to respond to call-outs from the public or people experiencing homelessness
- police to divert appropriate requests to attend to these specialist services.
- a public awareness campaign so that members of the public are aware of and contact appropriate homelessness support services instead of police.

Recommendation 9: That the Victorian Government properly fund existing specialist homelessness outreach services to respond to call-outs from members of the public or people experiencing homelessness.

Recommendation 10: That the Victorian Government implement (including through training) a Protocol for responding to people experiencing homelessness that:

- **requires Victoria Police and other enforcement agencies to avoid unnecessary interactions with people experiencing homelessness**
- **ensures that where interactions do occur they are appropriate and respectful**

Recommendation 11: That the Victorian Government develop and implement a public awareness campaign so that members of the public call organisations with capacity to properly respond to people experiencing homelessness (coupled with expanding the capacity of those organisations to in fact respond)

4 THE CYCLE OF HOMELESSNESS, CRIMINALISATION AND INCARCERATION

4.1 The relationship between criminalisation, imprisonment and homelessness

As outlined above, once a person has been criminalised, it can be very difficult to escape the cycle of incarceration, homelessness and further criminalisation.

In the following sections, we make recommendations to address specific links between homelessness and incarceration at three points in the criminal justice system: at the point of applying for bail, on incarceration and on release from prison.

4.2 Homelessness and bail

4.2.1 The presumption against release on bail for low level offending

Victoria has some of the strictest bail laws in Australia. In 2013, amendments were made to Victoria's *Bail Act 1977* (Vic) (the Bail Act) that introduced two new offences: *Offence to contravene*

*certain conduct conditions and Offence to commit indictable offence whilst on bail.*²⁴ People charged with these offences were required to meet a stricter test to get bail.

Then, in 2018, further amendments to the Bail Act following Justice Coghlan's 2017 review ('the Bail Act amendments') significantly expanded the circumstances in which people charged with certain offences must satisfy a court that there are either compelling reasons or exceptional circumstances to justify their release on bail.²⁵

Clients experiencing homelessness can be required to prove the very high bar of “exceptional circumstances” because of a series of technical or procedural breaches of bail or other orders including failures to report or appear at court for reasons directly related to homelessness. It is significant to note that prior to the Bail Act amendments, the exceptional circumstances test was reserved for people charged with murder, manslaughter, treason and the most serious drug offences.

In particular, if a person is on bail for an offence listed in schedule 2 to the Bail Act - which includes an indictable offence committed on bail or a Community Corrections or other order, - and commits a further indictable offence on bail or an offence against the Bail Act (this includes failing to attend court or breaching a condition of bail) they must satisfy a magistrate that there are exceptional circumstances justifying their release on bail.²⁶

Case study: Arthur

Arthur is a recent client of FLS at the Neighbourhood Justice Centre. He has a long history of homelessness, mental health problems and drug use, but had stable accommodation with his partner for three years. Following a Family Violence Intervention Order that excluded him from the property, he became homeless again. He went back to the apartment with his partner's consent to sleep, and was charged with breaching the IVO. He was then sleeping rough in a local park, and missed the first mention date for his breach charge, resulting in a warrant. After having the warrant executed, he returned to court and pleaded guilty to the breach, a minor drug possession charge, and failing to answer bail, and he was placed on a sentence deferral to engage with drug treatment. He then missed court again and another warrant was issued.

²⁴ *Bail Act 1977 (Vic)*, ss30A and 30B.

²⁵ *Bail Amendment (Stage One) Act 2017 (Vic)*; *Bail Amendment (Stage Two) Act 2018 (Vic)*.

²⁶ *Bail Act 1977 (Vic)*, s 4A.

Because Arthur was on deferral bail for a Bail Act offence, when his new warrant was executed he was in the Exceptional Circumstances bail category, and was unable to get bail, in part because he has no stable accommodation. He wasn't able to engage with the drug treatment service he was referred to, because he was going to be remanded in custody. He pleaded guilty to a further bail offence and ultimately received a more punitive sentence than would have been the case if he had successfully engaged in treatment. As Arthur's lawyers, we were unable to resist the warrants being issued because we had no way of contacting him and getting him to attend court.

Many survival offences and other charges that are disproportionately brought against clients experiencing homelessness – such as theft, drug possession or public nuisance – are indictable offences. Moreover, our experience is that in the absence of other supports, particularly outreach support, homelessness can compromise a person's ability to meet their bail conditions. This means that the criminalisation of homelessness works not only to disproportionately bring people experiencing homelessness before the courts but has also increased the number of our clients who – now subject to the stricter tests for obtaining bail – are denied bail and imprisoned on remand. Our experience is echoed in recent research conducted by the Crime Statistics Agency into women in prison in Victoria, which found that in 2012, less than 40 per cent of women on remand would have been subject to a stricter bail test, compared to nearly 80 per cent in 2018.²⁷

We consider that a feasible legislative solution to this would be to reclassify offences commonly associated with homelessness, such as breach of bail conditions, possession of drugs for personal use, theft of property below a certain value and public nuisance, so that they do not trigger the strong presumptions against bail.

Recommendation 12: That the Victorian Government pass legislation that reclassifies as summary offences criminal conduct that should be considered less serious, such as breaching bail conditions, possession of drugs for personal use, theft of property below a certain value and public nuisance.

²⁷ Samantha Walker, Paul Sutherland and Melanie Millsteed, 'Characteristics and offending of women in prison in Victoria' (Research paper, Crime Statistics Agency, November 2019) 28.

4.2.2 Homelessness as “unacceptable risk”

A bail decision maker must refuse bail if there is an unacceptable risk that the accused person would, amongst other things, endanger the safety or welfare of others, commit an indictable offence while on bail, interfere with witnesses or obstruct the course of justice, or fail to surrender into custody.²⁸ In making their decision, a bail decision maker must also consider the accused person’s ‘surrounding circumstances’²⁹ – which includes a person’s ‘home environment.’³⁰

Although ‘home environment’ does not expressly mean ‘adequate accommodation’ or homelessness, it is the experience of our service and across the criminal justice system that a client’s homelessness can be a determining factor in refusing bail. Research in NSW has found that people experiencing homelessness are less likely to be granted bail.³¹

A person’s experience of homelessness is not an ‘unacceptable risk.’ Homelessness as a factor of life that can hugely impact a person’s ease in moving through life, but in of itself it does not make someone a greater risk than others. Homelessness should not impact a person’s access to liberty. The Act prohibits decision makers from refusing bail to children on the sole grounds that they do not have adequate, or any, accommodation³² however, there is no similar protection for adults.

Recommendation 13: Include in the Bail Act a provision similar to s3B(3) whereby the lack of accommodation or adequate accommodation cannot be used as a reason to refuse bail.

4.3 Losing housing while incarcerated

Under the *Residential Tenancies Act* a landlord may evict a tenant once they have been in arrears for 14 days. When a person enters into custody, Centrelink payments cease and/or that person is no longer earning income from employment – resulting in the accumulation of rental arrears or missed mortgage payments and risk of eviction from, or forced sale of, their home. This risk is especially present for people who have less social and community support to assist them and their families while in custody.

²⁸ *Bail Act 1977* (Vic), s 4E(1).

²⁹ *Ibid*, ss 4E(3)(a), 4A(3), and 4C(3).

³⁰ *Ibid*, s 3AAA.

³¹ Susan Ayres, Kyleigh Heggie, and Abillio e Almeida Neto, ‘Bail Refusal and Homelessness Affecting Remandees in New South Wales’ (Research publication No 50, Corrective Services N.S.W, July 2010).

³² *Ibid* 28, s 3B(3).

Women’s Housing Ltd, who work with women at Dame Phyllis Frost Centre, can help women with rental arrears payments. However, the agency is restricted to assisting women who have already fallen into arrears, which can impact their capacity to preventatively help women maintain housing.

Justice Connect Homeless Law also operates an integrated service for people in prison. In the last 12 months, that service has been able to directly prevent 29 clients in prison from being evicted from their homes into homelessness. This has also meant a cost saving of \$854,000 to the health, justice, and welfare systems.

We strongly support community-based advocacy initiatives that can help people in prison to maintain their housing.

Recommendation 14: All prisoners on reception – and particularly prisoners on remand and on sentences under 12 months - should be given access to community-based housing advocacy to assist them to maintain housing for themselves and their dependents.

Recommendation 15: Housing Victoria should develop policies directed to assisting prisoners – and particularly prisoners on remand and serving sentences under 12 months – to maintain housing for themselves and their dependents while in prison.

4.4 Homelessness on release from prison

Almost 11,000 people were discharged from Victorian prisons in 2017/18 – 9,241 men and 1,539 women.³³ The number of people discharged from Victorian prisons each year has more than doubled in the last ten years³⁴

According to the Australian Institute of Health and Welfare’s (‘AIHW’) 2018 report on *The Health of Australia’s Prisoners*, more than half of prisoners discharged from prison will be homeless when they are released, either to rough sleeping or short-term crisis accommodation.³⁵ More than 5,500 people a year are therefore being discharged from prison to homelessness in Victoria. This is a significant – and increasing – annual contribution to the state’s homeless population and should be addressed as part of any strategy to reduce homelessness.

³³ Ibid 3, table 3.10.

³⁴ Ibid 3, table 3.10.

³⁵ Australian Institute of Health and Welfare, ‘The health of Australia’s prisoners 2018’ (Report, Australian Government, 30 May 2019).

In their 2015 *Investigation into the rehabilitation and reintegration of prisoners in Victoria* the Victorian Ombudsman found:

- 1.7% of prisoners had access to housing through the two state government programs specifically for ex-prisoners – 41 places in the *Corrections Housing Pathway Initiative* and 40 in the *Corrections Victoria Housing Program*
- 20% of discharged prisoners received any form of post-release support
- 22% of male prisoners and 44% of female prisoners were still homeless even after a period of supported accommodation on release³⁶

Our experience in the FLS Prison Advocacy Program is that this situation has not improved. There remains a very small number of post-release housing places. There is very little information publicly available about the availability of, and eligibility criteria for, post-release housing. In addition, our prison clients report it is also very difficult to access information from inside prison about post-release housing options. This is because there are so few beds available and providers impose extremely narrow eligibility criteria in order to prevent being swamped by the demand.

There are also significant barriers to securing long-term in the private housing sector. People leaving prison have not earned income for the duration of their incarceration and their debts have often increased. Moreover, private landlords are permitted to request criminal histories with rental applications and have, in effect, total discretion to refuse to rent to a formerly incarcerated person on that basis. Gaps in rental histories, such as periods of incarceration or when a person has no fixed address, lower the chances of successful applications.

In the absence of sufficient post-release housing, affordable rentals or social housing many housing support agencies contracted to provide transitional support to prisoners provide only very short-term crisis accommodation—motels, private rooming house or backpackers hostel paid for with government-provided brokerage funds managed by the agency.

A particular problem arises for people seeking release from prison on parole, whose applications are often refused or not considered by the Victorian Adult Parole Board because of “an absence of suitable, stable accommodation, as precarious or unsuitable accommodation can be a major risk factor for re-offending.”³⁷ What we see in practice is that prisoners otherwise eligible for parole spend many years in prison beyond their eligibility date because they cannot secure appropriate housing.

³⁶ Victorian Ombudsman, ‘Investigation into the rehabilitation and reintegration of prisoners in Victoria’ (Report, Victorian Government, September 2015).

³⁷ Adult Parole Board Victoria, ‘Annual Report 2018-19’ (Report, Victoria State Government) 25.

Edward

Edward is a prisoner in his seventies who is serving a 12-year head sentence with eligibility for parole after eight years. He contacted the FLS Prisoner Advice Line for assistance with his parole application. Edward's parole eligibility date had passed and he had been told he was suitable for parole because there was a very low risk of him reoffending. But the Adult Parole Board would not consider his application until he could nominate a suitable permanent address for vetting by Community Corrections. Edward had no housing on the outside and no family or friends able to provide permanent accommodation.*

Edward had applied for public housing more than a year before his parole eligibility date and was placed on the Victorian Housing Register but was told he could not be placed on the "priority" list for social housing (waiting list 2-3 years) because he was accommodated in prison and therefore not currently "homeless".

Edward asked to be considered for the Corrections Victoria Housing Program (specialist housing for prisoners on parole) but was advised that the program was not available at his prison.

Edward spoke to a charitable organisation contracted to provide reintegration housing services at the prison. He was told they could only assist prisoners to find housing at their "full time" release date, not for parole. This is because the organisation has no housing stock and can only provide temporary accommodation. They confirmed the Adult Parole Board required an applicant to nominate permanent housing and would not grant parole to a rooming house. The organisation was therefore only able to assist prisoners with housing at the completion of their full sentence, not on parole. Edward would have to remain in prison for a further four years and they may be able to refer him to a rooming house or other crisis accommodation at that time.

If, as the parole board and the Victorian Government accepts, "precarious or unsuitable accommodation can be a major risk factor for re-offending" it does not make sense to release 5,500 prisoners a year to homelessness at the completion of their sentence. Moreover, the cost of incarcerating a prisoner in Victoria is currently \$317.90 per day.³⁸ Providing public housing, even with comprehensive health and welfare support, would cost a fraction of that amount. We make specific

³⁸ Ibid 5, table 8A.18.

recommendations about enhancing the availability of housing for criminalised people in Part 5 of this submission. The below recommendations relate in particular to barriers experienced by our clients in accessing existing post-release housing programs.

Recommendation 16: Prisoners and their advocates and case workers should be able to access clear information about government-funded post-release housing programs and housing support services, the prisons in which they operate and the applicable eligibility criteria.

Recommendation 17: Prisoners who apply and are assessed as eligible for post-release housing should be placed on waiting lists to ensure transparency, equity of access and to enable planning to meet housing need.

4.5 Effects of incarceration on children

The connection between homelessness and Victoria's rising prison population also has significant implications for children. The majority of people incarcerated in Victoria are parents. Data from 2014 shows that in Victoria 71% of imprisoned women and 53% of imprisoned men were parents. Recent Crime Statistics Agency data shows that between 2012 and 2018, the proportion of women who reported being a parent remained at around 65 per cent for women on remand and 70 per cent for women who had been sentenced.³⁹ Aboriginal women are even more likely to be parents: in 2012 it was reported that 80% of Koori women in Victorian prisons were parents.⁴⁰

Women are both more likely to have parental or primary carer responsibilities than men⁴¹ and are less likely to have a partner to look after their children while in custody.⁴² Through our work we know that when women are incarcerated, even for short periods, they often lose care of their children. A recent study by the Crime Statistics Agency highlights the impact of rising numbers of women cycling through prison, finding that the proportion of unsentenced and sentenced women who reported being the primary carer for their children decreased respectively from 26 per cent in 2012 to 12 per cent in 2018 and 34 per cent in 2012 to 25 per cent in 2018.⁴³

³⁹ Ibid 27, 15.

⁴⁰ Victorian Equal Opportunity Human Rights Commission, 'Unfinished Business: Koori women and the justice system' (Report, Victorian State Government, 2013).

⁴¹ Lorana Bartels and Antonette Gaffney, 'Good practice in women's prisons: A literature review' (Technical and Background paper, Australian Institute of Criminology, 2011).

⁴² Ibid 36.

⁴³ Ibid 27, 15.

There is no public data on the number of incarcerated parents whose children are the subject of a protection order or in out of home care. We do know, however, that Victoria's growing women's prison population is correlated with increasing number of children in out of home care.

A recent report by the Commission for Children and Young People presented data that showed that between 2009 and 2018,⁴⁴ the number of children in out of home care increased from 3767 to 7863.⁴⁵ This is an increase of 108 per cent.⁴⁶ Over the same period, the number of Aboriginal children in out of home care increased from 687 to 2027, an increase of nearly 200 per cent.⁴⁷

Over the same time period, the women's prison population increased from 282 women in prison on 30 June 2009 to 566 women in prison on 30 June 2018.⁴⁸ This is an increase of 100 per cent. The Aboriginal women's prison population increased by 280 per cent over the same time period (from 20 women in 2009 to 76 women in 2018).⁴⁹

The link between women's imprisonment and children being in out of home care was also noted by the Crime Statistics Agency:

'the fact that remanded women in this study were progressively more likely to have a history of spending time in custody and that they were decreasingly likely to report being the primary carer for their children may be indicative of the impact of cumulative imprisonment on their family structures'.⁵⁰

Through our experience, we know that providing women with safe and stable accommodation will contribute significantly to breaking the cycle of women's incarceration and in turn, staunching the flow of Victoria's children into out of home care. However, there appears to be no publicly available wide scale analysis of the links between homelessness, Victoria's increasing prison population and rising numbers of children in out-of-home care.

Recommendation 18: The committee require the DHHS and Corrections Victoria to provide data and give evidence about:

- **the number of parents on remand or serving a custodial sentence whose children are the subject of a protection order**

⁴⁴ The data presented relates to the out of home care population on 31 December of each year.

⁴⁵ Commission for Children and Young People, 'In our own words: Systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system' (Report, November 2019) Appendix 29.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid 3, table 1.2.

⁴⁹ Ibid, table 1.2.

⁵⁰ Ibid 27.

- the proportion of children of parents in prison who have an allocated child protection worker
- what efforts, particularly in the form of contact, are made to promote relationships between children on protection orders and women in prison

5 HOMES NOT PRISONS

5.1 More public housing

The prison system is struggling to cope with the increased numbers and the Victorian Government has responded by injecting billions of dollars into prison construction,⁵¹ in stark contrast to continued low spending on social housing.⁵²

These spending priorities must be reversed. Ultimately, increasing the availability of public housing in Victoria is the only solution to ending the cycle between homelessness and incarceration.

Safe, secure, and stable housing is a fundamental starting point for people to succeed in other parts of their life and avoid returning to prison. Safe and secure housing is the essential foundation from which people who have been criminalised and incarcerated can stabilise their lives and meaningfully address the drivers of their imprisonment. Safe and stable housing enhances people's prospects of obtaining and maintaining employment,⁵³ improving their physical and mental wellbeing and rebuilding family and community connections.⁵⁴ Stable housing is overwhelmingly important for mothers exiting prison as they cannot regain custody of their children until they have a suitable house.⁵⁵

We consider that the most effective way to provide the safe and stable housing that Victorians need is for the Victorian Government to undertake large scale investment in public housing and Aboriginal

⁵¹ Noel Towell, 'Victoria to spend an extra \$1.8 billion on jails', *The Age* (online, 24 May 2019) <<https://www.theage.com.au/national/victoria/victoria-to-spend-an-extra-1-8-billion-on-jails-20190524-p51qra.html>>

⁵² Royce Miller and Chris Vedelago, 'Prisons are booming as Victoria pays for its 'tough on crime' stance', *The Age* (online, 27 June 2019).

⁵³ Neha Swami, 'The Effect of Homelessness of Employment Entry and Exits: Evidence from the Journeys Home Survey' (Working paper, The University of Melbourne, February 2018).

⁵⁴ Queensland Productivity Commission, 'Inquiry into Imprisonment and Recidivism' (Report, Queensland Government, 1 August 2019).

⁵⁵ Australian Institute of Criminology, 'Interventions for Prisoners Returning to the Community' (Report, Attorney-General's Department, Australian Government, February 2005).

controlled housing to enable the rapid expansion of public housing stock to meet current and future demand.

FLS endorses the work of our colleagues in the housing and homelessness sectors to respond to Victoria's homelessness crisis. In particular we endorse calls for construction of 30,000 new social housing properties by the Victorian Government over the next eight years, including at least 20,000 new government owned and managed public housing properties.

Investment in public housing should be preferred to the current trend towards expanding the availability of community housing providers. Many of our clients live in housing owned by community housing providers. As a result, we regularly see how tenants of community housing providers have fewer rights than public housing tenants, particularly with respect to evictions, temporary absences and enforcement. Moreover, we understand that community housing can charge higher rents than public housing and community housing providers are not obliged to preference applications from priority housing groups such as people experiencing homelessness. For these reasons, an expansion of public housing – not community housing – should be central to all initiatives to address Victoria's twin crises of homelessness and incarceration.

Recommendation 19: That the Victorian Government redirect funding from prisons to public housing.

5.2 Integrated and community-based support to address the drivers of incarceration

Housing alone is not always enough. While we firmly believe that safe, long-term and supportive housing should be the first priority for people cycling through homelessness and incarceration, our experience suggests that many people will also need flexible, intensive and wrap-around support to address the drivers of their incarceration. These drivers typically include constellation of trauma, mental health problems, problematic drug use, unemployment and fractured connections with families and communities.

This is particularly true for women, who are disproportionately experience family violence and sexual assault in their childhood and adult lives. These experiences of trauma and violence leads to a cascade of complex mental health problems, drug use, violent relationships, homelessness and incarceration.

Case Study – Anna

Anna was criminalized at the age of 18. This came after many years of living with a mother with mental health issues. Anna describes returning home from school at 14 years to find her family had left the house. By 15, Anna had been placed in foster care – which she would escape from out of fear.

Anna found connection and relief from pain in drugs. This began a series of “survival crimes” that included stealing from shops and graduated to involvement in burglaries to support what became an addictive relationship with drugs.

Anna describes sleeping with people to “feel safe” on the streets and trafficking in sex to pay for drugs. She was sexually abused numerous times.

At 17 Anna became pregnant. Her partner was violent towards her and damaged their rental property which resulted in losing her accommodation and a tarnishing her rental history. With a one-week old baby and staying temporarily in a caravan park Anna asked Child Protection for help. Child Protection authorities responded by removing her child from her care. Anna returned to the only world she felt offered some connection. It was also a world fraught with obligations to participate in crime to support drug use. Anna became homeless and was arrested and incarcerated.

Anna says her first release from custody was linked to her involvement in Court Integrated Services Program, however with limited case management support this relationship failed to provide the resources to support change in Anna’s life. Her next application for bail was refused because she had no fixed address. She was finally bailed to a private “drug rehabilitation service” which was actually a well-known drug den.

Anna now reflects that drugs became the constant in her life and were inextricably linked to her homelessness and criminalisation. Like other women without a home, Anna dealt drugs to distance herself from using her body. She lived in a car or paid for hotel rooms with money from selling drugs. Selling drugs supported Anna’s drug use and kept her connected to like-minded people. Anna says: “I transgressed my own morals in that time, however I now understand I was living through my survivor’s brain as a consequence of the multiple and chronic traumas that had shaped my world from a young age”.

Through the WTJ project, we have seen first-hand how effective integrated, responsive and community-based legal and social support can be in helping women be released from custody and

take steps towards stabilising in the community. In 2019, WTJ provided 29 women on remand with a lawyer and assertive outreach worker to help them apply for release from custody. Nearly 80 per cent of these women were released into the community. It is significant that 93 per cent of these women were in unstable housing at the time of referral and 71 per cent indicated a need for support across 3 or more areas in their life, in particular problematic drug use, family violence and acute housing instability.

There is early evidence that the model of legal and assertive outreach support through WTJ is helping women get out of custody, however, the project's ability to support women to meaningfully stabilise their lives in the community and avoid reincarceration is significantly limited by the fact that women supported by the project are routinely accommodated in temporary or crisis accommodation.

Our experience suggests that 'Housing first' models would be effective in breaking the cycle of homelessness, criminalisation and incarceration. Housing first models involve prioritising access to secure, long term and supportive housing for people who have experienced long-term of entrenched homelessness and who often require support in relation to co-occurring mental health and substance misuse problems. Once a person's housing situation is stabilised, they can then meaningfully engage with intensive and ideally outreach-based support to address the underlying drivers of their drug use, mental health problems and related homelessness.

In contrast, we have concerns about any large-scale expansion of Corrections Victoria-funded bail and post-release accommodation for people on remand or released from prison. Anecdotal data from our clients and WTJ participants indicate that corrections funded and operated facilities are imposing strict curfews and other restrictions on residents – and some use intrusive security systems to monitor and enforce those requirements. Minor infractions, including drug and alcohol relapses, can result in residents being returned to custody and facing additional charges.⁵⁶ The risk is that prison-style security, regimentation and separation from community in housing for criminalised people who are not under sentence will cause many to revert to homelessness or unsafe accommodation.

Case study – Eva

Eva grew up in a controlling and authoritarian household. She became involved with drugs and left home to begin a journey of homelessness across many years. This involved sex work, dealing drugs

⁵⁶ These trends are also evident in some drug and alcohol rehabilitation services that accommodate prisoners on strict bail conditions.

and coercion to be involved in offending as part of an intense relationship to drugs. There were relationships with men that violated and abused Eva and whilst she did not call the police others did. Eva reflects that when the police have been involved in her life it has triggered another journey into homelessness. Eva's most valued accommodation across this journey was living in squats where she felt she had a degree of independence, could stake out a space of her own and felt she had safety because of the presence of others.

We understand and support efforts by Corrections to reduce the overcrowding of prisons. However, we consider that community-based, supportive and independent accommodation that emphasises community connection should be preferred. Where residents have high needs because of drug or alcohol or other health issues, those services should be provided in a therapeutic framework. Criminalised people should be supported to choose to build safe and satisfying lives outside prisons.