

Closing the Revolving Door

Scoping holistic legal needs of Victorians exiting prison

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1. Executive summary

1.1 Holistically responding to unmet post-release legal needs

Justice Connect's Closing the Revolving Door Prison Project (**Closing the Revolving Door Project**) is a collaborative and innovative model, which focuses on preventing homelessness for people in prison by providing access to integrated legal services. It aims to avoid people exiting prison into homelessness, with a view to increasing community reintegration and reducing the risk of reoffending.

Based on Closing the Revolving Door Project's learnings and current research, we know that for people exiting prison, access to holistic legal, housing, education, employment, social and health supports are vital to successful reintegration. However, while some post-release support services exist for non-legal needs, there are far fewer avenues of support for legal needs and even fewer integrated services.¹ In response to this unmet need, Justice Connect undertook this scoping study to assess opportunities to provide best-practice, wrap-around legal help for people released from prison. In this report, references to people released from prison include people on straight release, on bail, on a community corrections order (**CCO**) and on parole.

This scoping study involved an in-depth review of the national and international literature, as well as consultations with a range of stakeholders, including specialist legal service providers, post-release support providers and people with lived experience of incarceration. Through this scoping process, Justice Connect has explored:

- the legal and non-legal needs of people exiting prison;
- the current post-release service environment;
- barriers to people accessing services post-release; and
- best practice service delivery models.

1.2 Key findings

In combining the insights we have gained from a review of the literature, consultations with organisations and speaking with people with lived experience of incarceration, Justice Connect's key findings include:

- **Housing insecurity is a major factor in a person re-entering the prison system.** In our consultations, safe and stable housing was cited as one of the most immediate and important needs post-release, and continued to pose issues later in the post-release experience.
- **People exiting prison face a range of needs that change significantly over time.** Through Justice Connect's engagement with people who have lived experience of incarceration and frontline workers, it has been made clear that specific issues arise at particular points on the post-release journey. Primary needs of people that require addressing immediately post-release from prison, included: housing, substance dependence and mental health issues, criminal law and Centrelink support and advocacy. Secondary post-release needs that prevailed further down the track, included: child custody matters, housing insecurity, previous family violence and family law related issues, employment, and debts and other financial issues.
- **Legal and non-legal needs are inter-related, and can have significant flow on effects if left unresolved.** The absence of safe housing for instance was seen as a precursor to other legal needs arising, including further criminal activity, breach of parole and difficulties accessing children. Similarly, fines, debts, discrimination and lack of access to employment were seen as significant barriers to reintegration that could generate further issues in other areas.
- **People are often overwhelmed by the multitude of complex reintegration issues post-release.** Prison involves a dramatic interruption to a person's life, and those who have been released are required to manage a complicated and overwhelming process to re-establish themselves in the community. This process includes finding housing, engaging with various government agencies and health care providers, establishing (or re-establishing) family and community connections, managing finances, compliance with parole or CCO conditions (if applicable), and ideally, finding employment.
- **Consistency and continuity of support is crucial.** A key theme in our consultations with both stakeholder organisations and people with lived experience of incarceration was the importance of continuity and

¹ Justice Connect (formerly PILCH), *Prisoners Scoping Study: Investigating the Feasibility of a PILCH Civil Law Program for Prisoners* (Report, 2012) 11.



longevity in service delivery. When asked what was the key thing that would keep them engaged with a service, "consistency" and "continuity" were cited by half of the women in prison who answered the question.

- **The use of a trusted caseworker or social worker is key to building trust and engagement with people exiting prison.** Stakeholder organisations commented that the greatest success in ensuring ongoing engagement was when a caseworker was involved, who could assist in generating trust in lawyers in-turn.
- **Flexible service models are needed to increase access to services and overcome barriers to engagement.** The ability to engage in outreach and meet the specific needs of individuals can help overcome barriers to accessing and engaging with services.
- **A gendered lens needs to be applied.** Women and men face different challenges exiting prison, and any post-release needs and services need to be gender-responsive and tailored, taking into account structural drivers of incarceration and barriers to reintegration.
- **Integrated, holistic service models are critical to identify legal and non-legal issues, access legal help and navigate the justice and service systems.** Based on the consultations and research, an integrated, wrap-around service was generally seen as the best model to manage the complex, multiple-needs of people post-release. As those exiting prison often experience "clusters" of problems that are rarely purely legal in nature, the co-location or integration of legal and non-legal services provides better access and assist in addressing underlying causes through referral to other support services.

1.3 Recommendations

Justice Connect is well-placed to expand its existing services to people in prison by establishing a more-targeted post-release project. This will be particularly significant given the increased, community-wide pressures caused by the coronavirus (**COVID-19**) public health pandemic. The focus of the project would be assisting people exiting prison to holistically resolve legal problems, so that their reintegration into the community on release is smoother and their likelihood of re-offending is reduced.

Building on our experience from over six years of frontline work in prisons, our evidence-based scoping process, and the specific expertise of Justice Connect team members, our project would incorporate the following elements:

- **Integration** – creating embedded partnerships with pro bono lawyers, post-release services and frontline community workers to holistically address legal and non-legal needs;
- **Client-centred** – developing and implementing a model that is customised to the key needs of people exiting prison as its primary focus, so that our services are relevant and appropriate to their legal needs, including gender-responsiveness;
- **Consistency and continuity** – offering recognisable and consistent support through specialised caseworkers and a team of specialised lawyers for the duration of transition, from prior to exiting prison to successful community reintegration;
- **Flexibility** – making sure that support is provided in a model that is adapted to the needs of the client, including location and modes of communication;
- **Assertiveness** – maintaining regular and structured contact to identify new legal needs as they arise;
- **Capacity building** – ensuring that pro bono lawyers are well equipped to provide appropriate and high-quality services to this client group, and that prison support workers and other support services are equipped with effective resources and referral pathways to legal help.

This report shares detailed learnings and direct insights from our scoping study, which support these recommendations for a new project to best-increase access to legal services and achieve social justice for Victorians on their release from prison.



About Justice Connect

In the face of rising unmet legal need, Justice Connect designs and delivers high-impact interventions that increase access to legal support and progress social justice.

We believe in a fair and just world where people and communities are supported to engage with and fully participate in our legal and social system and avoid the negative impacts on their wellbeing or organisational health that flow from unresolved legal problems.

Justice Connect Homeless Law

Justice Connect Homeless Law (**Justice Connect**) is Victoria's specialist free legal service for people experiencing or at risk of homelessness. Justice Connect staff work closely with pro bono lawyers to provide intensive legal representation (including ongoing casework, negotiations, court and tribunal appearances and advice) to homeless or at risk Victorians. Since 2001, Justice Connect has been outreach-based and client-centred, and from 2010, we have added depth to our practice by integrating staff social workers, allowing us to holistically address clients' legal and non-legal needs under one roof.

In 2019-2020, Justice Connect:

- Provided an integrated combination of specialised legal representation and social work supports to Victorians who are experiencing or at risk of homelessness through 639 new client files;
- Scaled our eviction prevention reach by helping 5107 unique users through our digital product, 'Dear Landlord: Self-help tools and resources for Victorian renters';
- Strategically prioritised our impactful and innovative work with three key cohorts facing housing insecurity: women and their children, particularly in the context of family violence, people in prison, and people sleeping rough;
- Deepened our partnerships with cross-sector allies, including through co-locations and embedded partnerships with community-based health and homelessness services, particularly with cohealth, Launch Housing and Sacred Heart Mission – Journey to Social Inclusion and GreenLight; and
- Collaboratively advocated for the best-practice implementation of Victoria's rental reforms, and a fairer, more effective and accessible fines system, along with using casework and client evidence to raise national awareness about the need for more social housing and the risks of criminalising homelessness.

In the last 12 months, Justice Connect has also directly prevented 152 clients and their families from being evicted into homelessness. Based on findings by the Australian Housing and Urban Research Institute, this equates to over \$4.4 million worth of savings to the Victorian Government and wider-community, through avoiding increased health, justice and welfare services costs.

In addition to our integrated model of service delivery, which focuses on early intervention and preventing legal issues escalating to crisis point, Justice Connect uses the evidence from our direct casework to inform systemic change aimed at stopping homelessness before it starts and reducing the negative impact of the law on people experiencing homelessness.



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We particularly want to thank the people with lived experience of imprisonment who had the courage to share their invaluable insights and expertise with us. We hope that this work contributes to prioritising the voice of people with lived experience in service design and delivery, along with systemic advocacy, to close the revolving door between prisons and homelessness.



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2. Justice Connect's work with people in prison

2.1 Previous scoping study and outcome

Following an increase in requests for assistance from people in prison and the closure of the Prisoners' Legal Service Victoria (PLSV), Justice Connect (formerly PILCH) conducted a project in 2010-2011 which considered the legal need of people in prison, existing legal issues and services, and access and barriers to legal assistance. PILCH's Report (2012) found that, "there was significant unmet need in civil law assistance for prisoners".²

The civil law issues identified fell into two categories: (1) those concerned with conditions of incarceration (conditions of detention issues); and (2) those legal problems generally experienced by marginalised and disadvantaged people (poverty law issues).

In 2014, Justice Connect established the Debt and Tenancy Legal Help for Prisoners Project in response to the high level of these unaddressed civil legal needs faced by Victorian people in prison. In its first two years, the Debt and Tenancy Legal Help for Prisoners Project assisted 228 people in prison with debt, tenancy or infringement issues, assisted 43 people to keep their housing upon release from prison and helped 87 people in prison resolve outstanding debt issues. The Debt and Legal Help for Prisoners Project also informed Homeless Law of the systemic factors that contribute to the revolving door between prison and homelessness.

2.2 Current Closing the Revolving Door Project

Building on learnings from Justice Connect's Debt and Tenancy Legal Help for Prisoners Project, Justice Connect developed the Closing the Revolving Door Project, which focusses on breaking the cycle between imprisonment, homelessness and the justice system. This is a collaborative and innovative model of providing legal services that focusses on preventing homelessness and addressing housing debt through access to legal and non-legal services. It aims to keep people in prison housed with a view to supporting reintegration and reducing reoffending post-release. This Project has achieved this by providing people in prison with intensive legal assistance and pathways to post-release supports, which sustain housing and remove barriers to accessing safe, post-release housing.

In the first two years of the Project:

- 113 people in Victorian prisons were offered specialist legal help to sustain tenancies or resolve housing debts
- 86% of finalised legal matters were successfully resolved
- 58 people with complex needs were assisted to avoid eviction into homelessness
- \$94,734.50 in housing debts were successfully waived.

For people in prison who experience a range of unmet legal and social needs, maintaining or accessing housing with wrap-around supports is fundamental to long-term reintegration. The Project continues to prioritise sustaining and securing housing post-release.

² Ibid.



3. Objectives and methodology

3.1 Why are we conducting this study?

The objective of this study is to broaden the Closing the Revolving Door Prison Project by scoping the opportunities to provide bespoke integrated legal and non-legal help for people who have been released from prison. As part of this broader scoping work, the research in this Report is intended to inform Homeless Law of the current unmet legal and non-legal needs of this group, with a view to developing a best practice model to meet those needs. The focus of this Scoping Study and Report is to identify further opportunities to provide best-practice impactful, integrated services for people after they exit prison.

3.2 Methodology

This Scoping Study involved desk-based research including an in-depth review of the national and international literature, as well as consultations with a range of stakeholders, including specialist legal service providers, post-release support providers and people with a lived experience of incarceration.

These consultations were focussed on understanding and mapping the unmet legal and non-legal needs of people after they have been released from prison, as well as best practice service models and any barriers to accessing services.

The research can usefully be split into three separate but related topics:

1. Legal need
2. Non-legal need
3. Current and best practice service delivery models.

Review of the literature

Justice Connect reviewed Australian and international literature to analyse legal and non-legal need, service delivery models and the potential associated challenges. This research has been cited in this report and for a full list of literature reviewed, see the Appendix.

Our research of the literature focussed on these five key areas:

1. The key legal needs of people released from prison, based on evidence from Australia and where relevant, internationally.
2. The key non-legal needs for people released from prison, in Australia and where relevant, internationally.
3. Legal services currently available for people released from prison, both nationally and internationally.
4. Integrated legal and non-legal supports for people released from prison both nationally and internationally, including any evidence regarding eligibility (i.e. how accessible these programs are and to whom) and any evidence regarding their effectiveness and impact.
5. The links between imprisonment and homelessness in Victoria and Australia, particularly looking at the importance of housing in reducing recidivism for people released from prison.

Consultations

Between October 2019 and June 2020, Justice Connect consulted with a range of Australian organisations involved in providing legal and non-legal services to people in prison and those who have been released. Wherever possible, stakeholder consultations were conducted in person. However, with the onset of COVID-19, some of the more recent consultations were conducted by telephone. For a full list of the organisations we consulted with, see the Appendix.

Justice Connect also consulted with approximately 15 women who were incarcerated at the time of the consultation and four women who had prior lived experience of incarceration. Consultations with the women who were incarcerated was conducted in person and by way of written survey for nine of those women. Consultations with women with a prior lived experience of incarceration were conducted by telephone due to the COVID-19 pandemic.



These consultations focussed on understanding and mapping the unmet legal and non-legal needs of people released from prison. We were also particularly interested in the distinctions between the immediate needs post-release and the needs which arise further down the track.

Justice Connect intends to use these scoping findings to develop a best practice integrated legal service model, which is targeted at meeting both the immediate post-release needs of people released from prison (primary needs), such as support in criminal law, family law and social services; as well as the more long-term post-release needs (secondary needs) including access to education, employment and community-based supports.

A list of the questions we asked respondents to our consultations are in the Appendix.

3.3 Parameters

Justice Connect delivers legal services using pro bono legal services. It delivers civil law legal services through its pro bono clinics and limited criminal law assistance through its Courting Justice integrated program. Any expansion of Justice Connect's services will need to conform to these parameters.

This study considers how Justice Connect might expand its pro bono legal services to complement existing services it provides to people in prison and the broader cohort supported by Justice Connect's Homeless Law program. We recognise that the contributions of pro bono law firms are not and should not be a substitute for properly publicly funded legal services. Therefore, in the event that Justice Connect were to expand the services it provides, we do not consider that this would obviate the need for additional and dedicated free civil law services dedicated to people in or exiting prison.

The establishment of a targeted post-release program will also be dependent on existing pro bono capacity and Justice Connect's internal resources.



4. Post-release legal and non-legal needs

Decades of increasingly punitive "law and order" measures have resulted in a dramatic rise in Victoria's prison population. 1761 people were incarcerated in 1980 as against 7082 in December 2020, down from a peak of 8101 in 2019 prior to the COVID-19 pandemic.³ Per capita incarceration rates are at levels not seen since the late 19th century,⁴ despite Victorian rates of crime dropping over the last five years.⁵ The rate of women in Victoria entering prison each month has increased three-fold over the past decade.⁶ This is particularly concerning as women's offending is often low-level and there are a range of circumstances that contribute to their criminalisation and incarceration, including homelessness, poverty, family violence, untreated health problems and substance use.⁷ Further, Aboriginal and Torres Strait Islander women are 21 times more likely to be incarcerated than non-Indigenous women.⁸

This incarcerated population overwhelmingly suffers from longstanding and entrenched disadvantage. A 2015 Victorian Ombudsman report found that "the average prisoner, male or female, did not complete high school, was unemployed at the time of committing the crime and had a history of substance abuse".⁹ A 2018 Australian Institute of Health and Welfare study found that 33% of prison entrants were homeless in the four weeks before entering prison.¹⁰ The first facet of our research was directed to the legal and non-legal needs of this growing and vulnerable population. Our findings draw considerably on existing research, as well as our stakeholder consultations.

4.1 Legal needs

People exiting prison face a wide variety of legal problems. In our research and consultations, criminal law, family law, housing, debt, employment and immigration issues were consistently identified as legal problems affecting those who had exited prison, and which were amplified by the experience of incarceration. This section provides an overview of those problems and how they affect people post-release.

Criminal law

Criminal law related matters were identified as a significant issue for people who had exited prison. In a survey conducted with post-release case workers (**Post-release survey**), 91% said that criminal law issues affected their clients. Re-offending was a common problem, with many of those we spoke with emphasising that problems with integration and lack of supports post-release resulted in a return to former patterns of behaviour or old associates. This in turn contributed to further re-offending and reincarceration. As some of the people with lived experience of incarceration explained:

"[Post-release] I was getting hooked straight back to the people that were part of the problem"

"Post-release, it's not a matter of getting caught, but more a matter of what am I going to get caught for"

In a 2019 Queensland longitudinal study of 1035 women released from custody between January 2013 and January 2014, 23% of the studied cohort reoffended in the first three months, 36% reoffended in the first six months, and 49% reoffended in the first year, highlighting the criminal law issues faced by the post-release population due to a heightened re-offending risk.¹¹ There is also the disproportionate use of prosecution against Aboriginal people.¹²

³ 'Victoria's Prison Population 1871 to 2019', *Sentencing Advisory Council*; Department of Justice and Community Safety – Corrections Victoria, 'Monthly Prisoner and Offender Statistics 2020-21' *Corrections, Prisons & Parole*.

⁴ 'Victoria's Imprisonment Rates 1871 to 2019', Sentencing Advisory Council (Web Page).

⁵ Australian Bureau of Statistics, *Recorded Crime – Offenders, Australia, 2018-19* (Catalogue No 4519.0, 15 March 2019).

⁶ Fitzroy Legal Service and the La Trobe Centre for Health, Law and Society, Melbourne, *A Constellation of Circumstances: The Drivers of Women's Increasing Rates of Remand in Victoria* (Report, July 2020) 6 ('A Constellation of Circumstances').

⁷ *Ibid* 7.

⁸ *Ibid*.

⁹ Victorian Ombudsman, *Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria* (Report, September 2015) 2. See also Centre for Policy Development, *Partners in Crime: The Relationship between Disadvantage and Australia's Criminal Justice Systems* (Report, December 2020).

¹⁰ Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2018* (May 2019) viii.

¹¹ Kathleen De Rooy, Sarah Bennet and Michelle Sydes, 'Women Released from Custody: Investigating Risk Factors and Reoffending' (2019) 63(13) *International Journal of Offender Therapy and Comparative Criminology* 2239, 2252. See also the study by Huebner et al which found that 40% of their studied cohort reoffended in the first year: Beth M Huebner, Christina Dejong, and Jennifer Cobbina 'Women Coming Home: Long-Term Patterns of Recidivism' (2010) 27 *Justice Quarterly* 225, 232.

¹² Centre for Innovative Justice, *Women Transforming Justice: Final Evaluation Report* (December 2020) 24 ('Women Transforming Justice').



Issues around compliance with conditional release, including parole, also came up as a key issue that leads to reincarceration. In the Post-release survey, parole was identified by all case workers surveyed as a problem for at least a few of their clients. As one person with lived experience of incarceration noted:

"Parole is very hard and a small relapse and you end up back."

The Australian Law Reform Commission has suggested that standard conditions of parole can be particularly difficult for Aboriginal and Torres Strait Islander people to comply with, due to potential clashes with cultural obligations and attempts to reconnect with family and community, as well as issues connected with remoteness, substance abuse, mental health issues and poor literacy skills.¹³ Compliance with Community Corrections Orders (CCOs) is another issue, with only 57.4% of CCOs successfully completed in 2019-2020.¹⁴

Similar to parole conditions, bail conditions can also often be unnecessarily prescriptive. This can create issues for those who have exited prison and face charges which pre-date their incarceration, or have subsequently re-offended. Bail conditions can include curfews, restrictions on contacting certain persons, requirements to reside at a certain address and restrictions on certain activities such as driving a vehicle or consuming alcohol.¹⁵ In reality, these "standard conditions" can create significant compliance issues, can be inadvertently culturally insensitive or may fail to take into account barriers that people on bail frequently experience.¹⁶ In particular, research suggests that Aboriginal and Torres Strait Islander people are disproportionately affected by bail laws and restrictions and are less likely to be granted bail compared to non-Indigenous people.¹⁷

Additionally, evidence shows that women face a 'constellation of circumstances' that are disadvantageous when making an application for bail, including access to housing, personal relationships and family support, mental health and alcohol and drug supports. Alarming, the 'risks' that are more likely to be associated with women when assessing bail applications are a product of their disadvantage and marginalisation, rather than any community safety concern.¹⁸ This was acknowledged in a Victorian Parliamentary Inquiry, where the Committee acknowledged women were being held in remand or having their release postponed *purely* because of lack of housing.¹⁹ In 2019, almost 9 out of 10 women incarcerated were un-sentenced.²⁰ Women being held on remand or short sentences have different post-release needs.²¹

Further, if women are granted bail, parole or CCO's with conditions attached they face additional barriers to compliance, including caring responsibilities, higher rates of mental health²² and substance abuse,²³ unstable housing and family violence.²⁴ In circumstances where the necessary supports for people released on bail are often unavailable because of barriers like funding or rural access, these prescriptive conditions have been identified²⁵ as problematic and "set[ting] up offenders to fail".²⁶ As one person with lived experience of incarceration noted:

"When I did get out of offending behaviour, it was despite the system not because of it"

This can have a compounding impact. Failure to comply with bail conditions can result in a person returning to custody or may prevent a person from obtaining bail in the future if they reoffend.²⁷ This presumption against bail for people who have previously breached their bail conditions is especially problematic when the original offence is

¹³ Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* (Report, 2017) [5.41].

¹⁴ Australian Government Productivity Commission annual report on Government Services 2021, 8 Corrective Services data tables (January 2021), available at: 8 Corrective services - Report on Government Services Productivity Commission (pc.gov.au).

¹⁵ *Bail Act 1977* (Vic) s 5AAA(4).

¹⁶ Law Council of Australia, *Prisoners and Detainees* (Final Report, August 2018) 59, 61, 64.

¹⁷ *Ibid* 61.

¹⁸ Fitzroy Legal Service et al, *A Constellation of Circumstances* (n 6) 4.

¹⁹ Drug and Crime Prevention Committee, Parliament of Victoria, *Inquiry into the Impact of Drug-Related Offending on Female Prisoner Numbers* (Parliamentary Paper No 371 2010).

²⁰ Based on data reported in Department of Corrections. Prisons and Parole, Monthly Prisoner and Offender Statistics 2020-21; Fitzroy Legal Service et al, *A Constellation of Circumstances* (n 6) 6.

²¹ Eileen Baldry & Ruth McCausland, 'Mother Seeking Safe Home: Aboriginal Women Post-Release' (2009) 21(2) *Current Issues in Criminal Justice*, 288-301.

²² Centre for Innovative Justice, *Women Transforming Justice* (n 12) 33,.

²³ *Ibid* 33.

²⁴ Fitzroy Legal Service et al, *A Constellation of Circumstances* (n 6) 28.

²⁵ Australian Law Reform Commission, *Pathways to Justice - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, 28 March 2018).

²⁶ Legal Aid ACT, *The Justice Project: A National Blueprint for Justice for All*, Submission No 115 to the Law Council of Australia, 2017 Justice Project (9 October 2017) 64.

²⁷ Law Council of Australia, Submission No 108 to the Australian Law Reform Commission, *Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (6 October 2017) 9, 59.



minor.²⁸ This is particularly concerning in the case of women, who are generally involved in low-level offending²⁹ and are faced with a 'constellation of circumstances' that can make it more difficult to comply with bail conditions.³⁰

Family law and child custody issues

In our consultation with stakeholder organisations and people with lived experience of incarceration, respondents, particularly women, consistently identified family law issues, particularly access to children, as one of the highest priority legal problems facing those exiting prison.³¹ As one respondent explained:

“Getting access to my kids was a massive issue when I got out and I’m still fighting this now years down the line”

Four of the nine women in prison we surveyed identified "seeing my kids" as one of the main problems they would face upon exiting prison. This is echoed in the literature. In the Australian Institute of Health and Welfare's (AIHW) survey of the health of Australia's prison population, 38% of survey respondents reported having children in the community who were dependent on them for their basic needs, with this rate significantly higher amongst women.³² The AIHW survey concluded that the majority of women in the criminal justice system are mothers and 85% of female survey respondents reported that they had been pregnant at some stage in their lives.³³ In 2018, approximately 65 percent of un-sentenced women and 70 percent of sentenced women reported having children.³⁴ Further, these women are more likely to be single parents, and to be socioeconomically disadvantaged than those in the community.³⁵

In a 2008 study of the legal needs of those in prison, family law issues were also highlighted as a prevalent concern, with respondents reporting issues including difficulties associated with not knowing where their children were on release, loss of custody due to incarceration, or long-standing child-access issues which people wished to rectify on their release.³⁶

The consequence of separating mothers from their children, even for short periods of time, can be devastating for all individuals involved.³⁷ In the Centre for Innovative Justice's final evaluation report, the percentage of women who had primary responsibility for the care of dependent children dropped significantly between 2012 and 2018.³⁸ This may point to the increasing rates of child removal experienced in Aboriginal communities as well as restrictions on women regaining custody of their children post-release.³⁹ This is particularly traumatising for Aboriginal women, who describe the removal of children as the most significant injury to their health and social and emotional wellbeing.⁴⁰ Further, research indicates that women are returning to custody at a higher rate if they had been separated from their children.⁴¹ In this context, the need for appropriate legal and service support to assist with family reunification cannot be overstated.⁴²

Stakeholder organisations noted that despite the importance of these issues to many people exiting prison, they lacked experience or knowledge of referral organisations to provide information or assistance to help tackle these problems. In the Post-release survey of prison caseworkers, family law and child custody issues were identified by seven of ten respondents as "the most difficult legal issue to refer". With one respondent noting "[f]amily law is often the most common and complicated".

Some of the frontline workers we consulted indicated people who had exited prison would benefit from obtaining legal advice in relation to family law issues and the effect of incarceration upon parental rights and responsibilities. In particular, legal advice may be of benefit in collating documents and evidence which may assist in supporting access and custody arrangements.

²⁸ Law Council of Australia, *Prisoners and Detainees* (Final Report, August 2018) 19. See also Don Weatherburn, *Arresting Incarceration: Pathways out of Indigenous Imprisonment* (Aboriginal Studies Press, 2014) 59, 96.

²⁹ Centre for Innovative Justice, *Women Transforming Justice* (n 12) 25.

³⁰ Fitzroy Legal Service et al, *A Constellation of Circumstances* (n 6).

³¹ See also Anne Grunseit, Suzie Forell and Emily McCarron, 'Taking Justice into Custody: The Legal Needs of Prisoners' (Research Paper, Law and Justice Foundation of NSW, 2008) 181.

³² Australian Institute of Health and Welfare, (n 10) 72.

³³ *Ibid* 73.

³⁴ Centre for Innovative Justice, *Women Transforming Justice* (n 12) 31.

³⁵ Australian Institute of Health and Welfare, (n 10) 72.

³⁶ Grunseit et al (n 31) 87-89.

³⁷ Australian Institute of Health and Welfare (n 10) 72

³⁸ Centre for Innovative Justice, *Women Transforming Justice* (n 12) 32.

³⁹ *Ibid* 32.

⁴⁰ *Ibid*.

⁴¹ Aron Shlonksy et al, *Literature review of prison-based mothers and children programs: Final report* (The University of Melbourne, Save The Children Australia and Peabody Research Institute 2016); Centre for Innovative Justice, *Women Transforming Justice* (n 12) 32.

⁴² Centre for Innovative Justice, *Women Transforming Justice* (n 12) 32.



Family violence

Legal problems relating to family violence were often commonly cited as issues facing those exiting prison, both for victim-survivors and perpetrators. Most of the women we consulted cited family violence as a factor prior to incarceration and remained a factor post-release. As one person with lived experience of incarceration noted:

“Family violence was my main issue before and after prison”

Two of the nine women in prison we surveyed identified that family violence was a reason they may not be able to stay in their housing upon release.

For perpetrators of family violence, the risk of breaching family violence intervention orders either intentionally or inadvertently poses a reincarceration risk. In Victoria in 2018, there was a total of 60,311 breaches of orders. Of these, breach of family violence orders comprised two thirds of all breaches (67.6% or 40,744 offences). Between 2008 and 2018, the number of family violence order breaches increased at a rate of 393.2% (32,483 offences).⁴³

Two stakeholders we consulted with highlighted this as an issue, with one post-release service provider noting that some of their clients did not understand what their intervention orders said, and so ended up breaching the order and returning to prison. Additionally, there are concerns that family violence policing practices are having a counterproductive effect in some contexts,⁴⁴ with Women’s Legal Service Victoria reporting that 57 percent of women originally named as perpetrators on family violence intervention order applications were actually found to be victim/survivors.⁴⁵

Housing and tenancy issues

Housing issues facing people who have exited prison are complex and multi-faceted.

In the first instance there is the issue of access to housing. A 2018 AIHW study found that 33% of prison entrants were homeless in the four weeks before entering prison.⁴⁶ Prison serves to amplify these pre-existing housing issues, with there being a recognised association between incarceration and subsequent homelessness.⁴⁷ In a study of 26 people who had exited prison in NSW, nine indicated that they “slept rough” or were “on the streets” the first night after being released from prison. Each of these nine participants who slept rough had been released after a short prison sentence (less than 12 months) or remand.⁴⁸ Prison can cause people to lose their social housing, be cut off from social housing wait lists while in prison, or be unable to apply for social housing because of uncertainty about release date.⁴⁹ Additionally, access to housing is arguably the most significant barrier to women seeking bail.⁵⁰ A Victorian Parliamentary Inquiry also identified the lack of adequate housing as the most overwhelming problem faced by women in the criminal justice system.⁵¹ Concern was also expressed during consultations that people in prison can be offered public housing while in prison which they have to reject, which results in further waitlisting.⁵²

As noted by some of the people with lived experience of incarceration we consulted:

“I left prison and I basically stepped into a void, there was nothing”

“I didn’t have housing when I got out and I just didn’t know what I was going to do. That was my biggest problem and it meant I had no autonomy and was reliant on friends and my connections prior to prison, and that’s not always a great place to land after prison”

⁴³ ‘Spotlight: Breaches of orders - The Impact of Legislative Changes’, *Crime Statistics Agency Victoria* (Web Page, 2018).

⁴⁴ Centre for Innovative Justice, *Women Transforming Justice* (n 12) 24.

⁴⁵ Women’s Legal Service and Monash University, ‘Officer, she’s psychotic and I need protection’: police misidentification of the ‘primary aggressor’ in family violence incidents in Victoria (2018).

⁴⁶ Australian Institute of Health and Welfare (n 10) viii.

⁴⁷ Eileen Baldry et al, ‘Ex-Prisoners, Homelessness and the State in Australia’ (2006) 39(1) *The Australian and New Zealand Journal of Criminology*, 2-3; Julie Moschion and Guy Johnson, *Homelessness and Incarceration: A Reciprocal Relationship?* (2019) 35 *Journal of Quantitative Criminology* 855, 858-9.

⁴⁸ Louis Schetzer and Streetcare, *Beyond the Prison Gates: The experiences of people recently released from prison into homelessness and housing crisis* (Report, June 2013).

⁴⁹ Grunseit et al (n 31) 68-9.

⁵⁰ Fitzroy Legal Service et al, *A Constellation of Circumstances* (n 6) 23.

⁵¹ Drug and Crime Prevention Committee, Parliament of Victoria, *Inquiry into the Impact of Drug-Related Offending on Female Prisoner Numbers* (Parliamentary Paper No 371, 2010).

⁵² See also Law Council of Australia, *Prisoners and Detainees* (Consultation Paper, August 2017) 12.



The AIHW study found that 54% of people in prison expected to be homeless on release from prison.⁵³ Three of the nine respondents to our in-prison survey said they did not expect to have housing upon their release.⁵⁴ Of the five people who did expect to have housing on release, two thought that they might lose that housing straight after release and one thought they might lose it six months later.⁵⁵ Family violence and the fact that they were staying with family and friends were the most common reasons respondents identified for believing they would not be able to stay in their housing. In the Post-release survey of caseworkers, 75% of respondents identified accessing housing as an issue for most clients.

Temporary absence policies apply in most Australian jurisdictions. These policies allow public housing tenants (and some community housing tenants) on short sentences or remand to pay reduced rent while they are temporarily absent from their property, and are essential to minimising the number of people exiting prison into homelessness.⁵⁶ However, the national trend of focusing on maintaining tenancies during a short remand period, but moving to evict those with longer sentences, falls short of addressing the impact of homelessness on people post-release.⁵⁷

In the private rental context, legal issues arising for people post-release include a failure to notify landlords prior to incarceration, leading to an arrears in rent, utilities and possible rental "blacklists" which can limit access to future rentals.⁵⁸

Whether in public housing or a private tenancy, the impact of not being able to secure housing has a compounding impact. In a recent article, Parastou Hatami argued that housing instability and homelessness for people released from prison can create a multitude of further legal and non-legal issues including breach of parole conditions, loss of possessions, a reduction in the ability to address other issues such as drug use, education and employment, the inability to obtain custody of children and a general inability to reintegrate and rehabilitate.⁵⁹ The availability of safe and affordable housing is also central to women's reunification with children.⁶⁰

Most worryingly, a lack of access to housing has a well-established link with recidivism. A 2006 study in Victoria and NSW found that people who had previously been incarcerated were more than twice as likely to return to prison within nine months of release if they were homeless.⁶¹ A 2018 Law Council of Australia report concluded that access to secure, safe housing post-release from prison is an "important enabler in avoiding recidivism for many prisoners and detainees post-release".⁶²

Consumer Debts

A 2008 NSW Law and Justice Foundation study concluded that "virtually all" of the people in prison interviewed indicated they were in debt, with some of those debts pre-dating incarceration and some accruing as a result of being in prison.⁶³ In an earlier study of those who had exited prison across Victoria and New South Wales, over half of those surveyed reported having debt outstanding.⁶⁴ Common consumer debts experienced by people exiting prison include credit card debts, phone debts, bank debts, utility debts, rent to buy debts and car loan debts.⁶⁵

As one person with lived experience of incarceration we consulted with explained:

"I came out to bad credit which was down to other debts and outstanding bills to electricity companies from before I went into custody... I come out to huge debt because prior to going in, things could get quite crazy because I had a drug habit and so my utilities were not something I was looking at so prior to going in ... so by the time you come out and you are clean and trying to get it together, it's quite a big fork in the road and quite tricky to deal with that"

⁵³ Australian Institute of Health and Welfare (n 10) viii.

⁵⁴ The ninth respondent did not answer this question.

⁵⁵ Two people did not answer the question.

⁵⁶ For a summary of the position in each jurisdiction see Parastou Hatami, *Housing is a Human Right: Exiting Prison into Homelessness* (2019) 252 *ETHOS Law Society of the ACT Journal* 40, 45.

⁵⁷ *Ibid* 44.

⁵⁸ *Ibid* 70-1.

⁵⁹ *Ibid* 44.

⁶⁰ Centre for Innovative Justice, *Women Transforming Justice* (n 12) 32.

⁶¹ Eileen Baldry et al, 'Ex-Prisoners, Homelessness and the State in Australia' (n 47) 24.

⁶² Law Council of Australia, *Prisoners and Detainees* (Final Report, August 2018) 4.

⁶³ Grunseit et al (n 31) 76.

⁶⁴ Eileen Baldry et al, *Ex-Prisoners and Accommodation: What Bearing do Different Forms of Housing Have on Social Reintegration?* (Final Report No 46, August 2003) 14.

⁶⁵ Financial Counselling Australia, *Double Punishment: How People in Prison Pay Twice* (Report, May 2018) 13; Grunseit et al (n 31) 76-7.



Another respondent similarly reported \$6800 in utilities debt upon exiting prison. Imprisonment exacerbates the difficulties of repaying debt, both for financial reasons (i.e. due to a lack of income or access to Centrelink in prison) and practical reasons (i.e. debts accruing because of a lack of ability to communicate with parties outside the prison), resulting in substantial debt burdens for many people exiting prison.⁶⁶

As with many of the legal issues identified in this section, some research suggests that debts pose a recidivism risk. A 1999 report by the Queensland Prisoners' Legal Service, *Prison and Debt: Does Debt Cause Crime*, found that 49% of people in prison had committed a crime in order to repay a debt.⁶⁷

Government debts

Debts owed to government agencies can pose even greater difficulties than consumer debts. In its 2018 report *Double Punishment*, Financial Counselling Australia (FCA) highlighted debts to government agencies, such as the Child Support Agency (CSA), Centrelink, Department of Housing, and the Australian Tax Office (ATO) as some of the most common debts that burden people who have been released from prison.⁶⁸ These debts are not subject to the same protections that apply when credit is obtained commercially, and come with distinct repayment difficulties.⁶⁹ For example, if CSA is not contacted when a person is imprisoned, the debt accrues and cannot be bankrupted, resulting in debts of up to \$100,000.⁷⁰ Centrelink debts in particular are problematic, as they result in automatic deductions from already limited income.⁷¹ These deductions can result in a loss of up to 35% of a person's Centrelink allowance,⁷² compounding the financial disadvantage suffered following a person's release.

Like consumer debts, government debts, particularly housing debts, can accrue while in custody posing significant issues on release. As one of the people we consulted with lived experience of incarceration described:

"Prior to going into prison ... there was issues such as drugs going on and I had friends stay over who were drug users using the property and they knew I had gone into custody and it became a kind of den and it got trashed when I was in prison because they broke in and doors were taken off, the carpet was wrecked.

Luckily, I could prove that happened after I went into custody, but it still became my debt because [the Director of Housing] said I had given them access to the property which wasn't always the case because they did break in, but I ended up with \$4,000 of debt and I was responsible for the debt.

I didn't go through VCAT to fight it because it felt like a huge process and so I didn't end up doing that at that time because of what was going on. So, I had to pay it back \$30 per week before I was offered another property"

At the time, the existence of this housing debt prevented the respondent from accessing another social housing property which in turn impacted her parole eligibility. Victorian public housing policies have now changed such that public housing debt is no longer a barrier to accessing a new property, however department policy is to still enter a payment arrangement with any tenant with such a debt which can pose an ongoing financial burden.⁷³

Fines and infringements

In a 2011 NSW study of incarcerated people, 136 participants were found to have an average of \$8569 owed to the NSW State Debt Recovery Office for outstanding infringement notices, court fines and court costs.⁷⁴ Two of the nine people in prison we surveyed reported that "dealing with fines" was one of the main problems facing them when they left prison. In the VACRO survey of post-release case workers, all respondents identified fines as an issue for at

⁶⁶ Grunseit et al (n 31); Financial Counselling Australia (n 65)17-21.

⁶⁷ Anne Stringer, Prisoners Legal Service Inc, *Prison and Debt: Does Debt Cause Crime?* (Report, 1999).

⁶⁸ Financial Counselling Australia (n 65)13. See also Eileen Baldry et al, *Ex-Prisoners and Accommodation: What Bearing do Different Forms of Housing Have on Social Reintegration?* (n 64).

⁶⁹ Financial Counselling Australia (n 65) 13.

⁷⁰ Ibid 13-14.

⁷¹ Ibid 14.

⁷² Ibid 14.

⁷³ Department of Health and Human Services, *Public Housing Allocations Operational Guideline: Offers of Housing Policy* (1 January 2019).

⁷⁴ Kristy Martire et al, *Financial Sanctions and the Justice System: Fine Debts among New South Wales Prisoners with a History of Problematic Substance Use* (2011) 44(2) *Australian & New Zealand Journal of Criminology* 258, 266.



least a few of their clients, with one caseworker reporting that fines were an issue for all of their clients, and two reporting that was the case for most of their clients.

In Victoria, options exist to "call in" outstanding fines while a person is in prison under the time served schemes in place for both infringements,⁷⁵ and court fines.⁷⁶ In theory, this scheme is designed to allow most people to exit prison with no outstanding fines. According to one support organisation consulted working with people in the Dame Phyllis Frost Centre, this program has the result that fines are not a prominent post-release issue.

Another community legal centre advised however that they are aware of issues with people in prison not receiving the relevant paperwork to "call in" their fines as a result of frequent moves between prisons. They understood this particularly impacted male prison populations. There were also reports of people not signing the relevant documentation because they did not understand it, some Magistrates taking overly restrictive approaches to the application of the scheme, and delays in calling in more complicated court fines, all of which mean that many people still exit prison with outstanding fines.

Such fines pose similar issues to outstanding debts, compromising a person's ongoing financial stability and potentially resulting in the seizure of assets.

Discrimination in employment

There are established links between employment and reduction in reoffending. Employment's financial benefits also help counteract the debt and housing issues otherwise prevalent in the post-release prison population, which, as outlined above, have their own collateral effects.

Accessing employment however poses a significant challenge. People who have exited prison have the highest rates of unemployment of any group in Australia.⁷⁷ A major barrier to accessing employment is discrimination. It is unlawful to discriminate on the ground of a person's criminal record under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth),⁷⁸ unless "it is an inherent requirement that an employee does not have a criminal record".⁷⁹ Despite this prohibition, 4% of all complaints received by the Australian Human Rights Commission in the 2019-2020 reporting period were on the basis of criminal record discrimination.⁸⁰ Respondents to interviews in a 2008 NSW study also reported being discriminated against in employment post-release. This was particularly an issue for people who lived in small towns who may be known locally for their criminal record.⁸¹

One organisation we consulted with noted that employment discrimination was a large issue, and was looking to expand its services to provide assistance in that area. In the Post-release survey of caseworkers, nine identified discrimination as a legal issue experienced by clients.

Migration

For people in prison who are in Australia on a visa, incarceration can give rise to significant immigration problems. This was identified as a key legal problem facing people post-release by one stakeholder organisation we consulted, with that organisation highlighting that this issue was particularly prevalent amongst people of African heritage.

A period of incarceration of 12 months or more enlivens the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs' (**Minister**) power to cancel an existing visa or refuse to grant a visa.⁸² The Minister may also refuse to grant or cancel a visa on other bases contained in the "character test" which means there is still a risk of visa cancellation for people with sentences of less than 12 months.⁸³

If a person's visa is cancelled while in prison, they will not be released into the community and will instead be taken to immigration detention at the end of their incarceration.⁸⁴ A person remains in prison or immigration detention even while a review into the Minister's decision is on foot.⁸⁵

⁷⁵ *Fines Reform Act* (Vic) ss 171A, 171B.

⁷⁶ *Sentencing Act 1991* (Vic) ss 16, 16A.

⁷⁷ Eileen Baldry et al, *A Future Beyond the Wall: Improving Post-release Employment Outcomes for People Leaving Prison* (Final Report, February 2018) 3.

⁷⁸ *Human Rights and Equal Opportunity Commission Act 1986* (Cth); *Human Rights and Equal Opportunity Commission Regulations 1989* (Cth), reg. 4(a)(iii)); Grunseit et al (n 31) 67.

⁷⁹ Human Rights and Equal Opportunity Commission, *On the Record: Guidelines for the Prevention of Discrimination in Employment on the Basis of Criminal Record* (Report, 2005), 13.

⁸⁰ Australian Human Rights Commission, *2019-20 Complaint Statistics* (2020) 8, 37

⁸¹ Grunseit et al (n 31) 66.

⁸² *Migration Act 1958* (Vic) s 501.

⁸³ *Ibid.*

⁸⁴ *Ibid* s 501(3A).

⁸⁵ Victoria Legal Aid, *Mandatory Visa Cancellations* (Web Page, 2017).



Accordingly, migration legal problems are primarily an issue for people while still in prison, as this is when they will most likely be notified of the proposed cancellation of their visa and be required to respond. However, migration legal problems may also exist for people following their incarceration if:

- they have been released into immigration detention;
- they were only notified of the cancellation of their visa at the end of their sentence;
- if they have been refused the grant of a further visa due to their incarceration; or
- if they face other migration issues that directly or indirectly flow from their time in prison.

4.2 Non-legal needs

People exiting prison face an overwhelming number of non-legal issues in areas such as health, social security and employment, as well as more general issues around disconnection and isolation, lack of basic living and coping skills and dealing with alcohol or substance dependence.⁸⁶

Inadequately addressing these in conjunction with legal issues can serve to compound difficulties with re-integration post-release.

Health

As highlighted by the recent 2018 National Prisoner Health Data Collection Report,⁸⁷ people in prison, and by extension those exiting prison, experience mental and physical health disorders at a greater rate than those of the general community.⁸⁸

People in prison have higher rates of mental health conditions, chronic disease, communicable disease, acquired brain injuries, tobacco smoking, high-risk alcohol consumption, recent illicit drug use, and recent injecting drug use than the general population.⁸⁹ Some of these issues are only formally diagnosed once a person is incarcerated, with 24% of people formerly in prison reporting being diagnosed with a health condition in prison, with the most common conditions being cardiovascular disease, musculoskeletal conditions, diabetes and communicable diseases.⁹⁰

Evidence shows that women in contact with the criminal justice system face higher rates of mental health issues and substance abuse than their male counterparts.⁹¹ In Victorian prisons, research indicates that over 90% of Aboriginal women presented with a form of mental illness.⁹² Crucially, trauma and abuse has been identified as a driving factor in women's experiences of criminalisation⁹³ and an underlining cause of many other presenting issues, such as poor mental health and substance abuse.⁹⁴ Aboriginal women also experience collective, intergenerational trauma from dispossession of land, disruption of culture, removal of children and systemic racism.⁹⁵ In this context, post-release programs must be designed in a gender responsive way that considers the multiple, interrelated support needs and centre the reality of trauma as a defining aspect of criminalised women's lives.⁹⁶

There are a number of socio-economic factors that can then worsen the health of people who have exited prison, including homelessness, parental imprisonment, education and unemployment. All of the people with lived experience of imprisonment we consulted with stated they had mental health and drug dependency issues both prior to and post incarceration.

“Rehab became my home when I was on bail, I had nowhere else to go, it was either jail or rehab really”

“Because I was heavily in denial and still using (drugs) recreationally, I couldn't access any insight into my life”

⁸⁶ Schetzer and Streetcare (n 48). For more detailed consultations on non-legal issues post-release and insights from people with lived experience, see Chapter 5.

⁸⁷ Australian Institute of Health and Welfare (n 10) 7.

⁸⁸ Ibid 137.

⁸⁹ Ibid 4.

⁹⁰ Ibid 124.

⁹¹ Centre for Innovative Justice, *Women Transforming Justice* (n 12) 33.

⁹² Ibid 34.

⁹³ Ibid 43.

⁹⁴ Ibid 44.

⁹⁵ Ibid 37.

⁹⁶ Marie Segrave & Bree Carlton, 'Women, Trauma, Criminalisation and Imprisonment' (2010) 22(2) *Current Issues in Criminal Justice*, 287-305.



These health issues greatly intersected with how people engaged in services, with many women who had previously been incarcerated disclosing to us they were unable to engage with services post-release on account of their mental health and drug problems.

Release from prison is a complex time for people who have been incarcerated. Issues related to relationships, housing, health, employment and alcohol and other drug use can potentially result in trauma and emotional distress upon or shortly after release.⁹⁷ The likelihood of harmful substance use and other risk-taking behaviours also increases post-release.⁹⁸

“I remember just standing there, I was so overwhelmed and I had tears streaming down my face and I’m not usually like that at all and I almost wanted to curl up into a ball and go back into prison”

One post-release support service we consulted reported that 60% of their clients had mental health issues. The risk of suicide for people recently released from prison is over six times as high as the risk of suicide in the general population, and people released from prison are more likely to die within the first 28 days after their release from prison than within the remainder of the first year following their release.⁹⁹

Importantly, if continuity of health care is not in place post release, positive developments in a person's health during their incarceration can be negated, and the risk of reoffending may increase.¹⁰⁰ As people are not eligible to use Medicare or the Pharmaceutical Benefits Scheme while incarcerated, immediate access to Medicare post-release is essential in ensuring continuity of health care. Despite this need, a 2018 study found that only 64% of people in prison reported that they would have a valid Medicare number or card immediately upon release from prison.¹⁰¹

Social security

Social security payments are essential to assist people rebuild their lives following a period of incarceration and assist in reducing the potential for re-incarceration. In a survey conducted by AIHW, 78% of people in prison reported expecting to receive Centrelink payments following release.¹⁰²

Accessing those payments, however, poses significant challenges. Six of the nine people in prison we surveyed identified accessing Centrelink as one of the main problems they would face upon exiting prison. This was echoed in the VACRO study of post-release case workers, where 66% of respondents reported accessing Centrelink as a problem for most clients and 33% reporting it was an issue for a few clients.

Centrelink payments are automatically cancelled upon entry to prison. The ability to re-start these payments or access Crisis Payments can be impeded by lack of identification upon release, lack of education on how to engage with government agencies, lack of access to transitional or throughcare caseworkers and no access to early expedited social security payments.¹⁰³ A particular issue that was identified was Centrelink being closed at the time of release, particularly where a person has no prior warning of their release such as when they are released from Court. As one person with lived experience of incarceration described:

“I was released on a Friday afternoon meaning I couldn't access Centrelink until Monday”

When it comes to actually dealing with Centrelink, both the organisations and people with lived experience of imprisonment we consulted were unanimous. Centrelink was seen as combative, insensitive and purposely difficult. One of the people with lived experience of imprisonment we spoke with said, “...they are so obstructive and almost designed to be obstructive”. In fact, dealing with Centrelink post-release was seen as such a difficult task, many of those we consulted simply did not engage with them at all.

⁹⁷ Ibid 149.

⁹⁸ Ibid.

⁹⁹ Ibid 156.

¹⁰⁰ Ibid 149.

¹⁰¹ Ibid 153.

¹⁰² Ibid 20.

¹⁰³ Maria Borzycki, *Interventions for Prisoners Returning to the Community* (Australian Institute of Criminology Report, 2005) 34-5, 38-9; Council of Australian Governments, *Prison to Work* (Report, 9 December 2016) 35.



One person with lived experience of incarceration told us she could not engage with Centrelink for five years post-release and ended up living under the radar to survive. An inability to navigate the bureaucracy and understand what was being required of them often resulted in non-compliance and created even more problems. Many of the frontline workers we consulted with stated they would not allow their clients to engage with Centrelink without an appropriate advocate.

“The only time I felt ok about going to the Centrelink building was with Frontyard....it was a whole different experience and it changed the whole dynamic I guess”

One of the organisations we consulted with noted that even when people were able to engage with Centrelink, there was a significant delay in the money actually arriving which caused problems in the interim. They also reported that people struggled to meet Centrelink's conditions when they had only recently exited prison.

Access to Crisis Payments, an important additional support for people who have recently been released from prison, is also difficult. The Australian Law Reform Commission (ALRC) has recommended that to be more effective, eligibility for Crisis Payments should not depend on an individual being currently eligible for income support as this results in a long registration process before receipt of a Crisis Payment is possible.¹⁰⁴ This delay undermines the Crisis Payment's very purpose, which is to provide immediate access to funds for those in crisis. The ALRC's recommendation has not been adopted, however.

It has also been argued that the Crisis Payment is insufficient in aiding people upon release from prison.¹⁰⁵ Crisis Payments amount to only one week of a person's Centrelink payment, and as such may be of only limited assistance for those who may have only minimal personal effects and may need to purchase clothing, food, personal hygiene products and access accommodation upon release.

Employment opportunities

Employment is one of the most important reintegration needs of people upon release from prison given its capacity to alleviate many of the other issues faced by people who have recently exited prison. Four of the nine people in prison we surveyed reported "finding a job" as one of the main problems they would face on leaving prison. Four of the stakeholder organisations we consulted with identified "employment" as a major issue facing their clients. Only 22% of surveyed prison discharges in the AIHW study had paid employment organised to start within two weeks of release of prison. That figure was 5% for women exiting prison.¹⁰⁶

As noted above, there is widespread consensus that employment following release reduces the recidivism risk.¹⁰⁷ As one person with lived experience of incarceration noted:

“If I had a job or something to come out to and give me some structure and purpose, that would have stopped me from making more mistakes and going back into prison”

In Eileen Baldry et al's report into mechanisms to improve post-release employment outcomes, the authors identified the following programs and services which may help address this need:¹⁰⁸

- participation in VET and education programs while still in prison;
- support with job searching, resumes and applications and interview skills;
- partnerships with employers willing to employ people released from prison.

The authors concluded that the most effective approach was a throughcare approach "which provides post-release and post job placement support with case managers who are realistic but optimistic, who are empathic, non-

¹⁰⁴ Australian Law Reform Commission, *Family Violence and Commonwealth Laws – Improving Legal Frameworks* (Report No 117, 2011) 9.11.

¹⁰⁵ Public Interest Advocacy Centre, *Nothing More than Chicken Feed: The Inadequacy of Centrelink's Crisis Payment for Released Prisoners and People Fleeing Domestic Violence* (Report, 7 November 2007).

¹⁰⁶ Australian Institute of Health and Welfare (n 10) 19.

¹⁰⁷ Eileen Baldry et al, *A Future Beyond the Wall: Improving Post-release Employment Outcomes for People Leaving Prison* (n 77)13.

¹⁰⁸ Ibid 6-7, Eileen Baldry, 'Women in Transition: From Prison to...' (2010) 22(2) *Current Issues in Criminal Justice*, 253-267.



judgmental and understanding of the difficulties faced by ex-prisoners in finding employment".¹⁰⁹ Negative outcomes were reported where services placed an over-emphasis on monitoring or meeting *jobactive* contract obligations, including by placing people into inappropriate jobs to meet targets which can have negative flow on impacts.¹¹⁰

4.3 Summary of legal and non-legal issues raised in consultations

SOURCE	LEGAL ISSUES	NON-LEGAL ISSUES
<p>People in prison <i>DPFC consultations with approximately 15 women in prison (with nine completing written surveys)</i> <i>One-on-one consultations with women with lived experience of incarceration from The Leadership Program (5)</i></p>	<ul style="list-style-type: none"> • Criminal matters • Social Security • Child custody issues • Family Violence • Housing issues • Acquiring ID documents • Fines and Infringements 	<ul style="list-style-type: none"> • Centrelink • Dealing with government agencies • Drug dependency • Mental health • Education • Employment
<p>Stakeholders <i>(DPFC, DHHS, VACRO, Jesuit Social Services, Djirra, Centre for Innovative Justice, MHLC, Group Consultation*</i> <i>*(Law and Advocacy Centre for Women (LACW), Flat Out, Centre for Innovative Justice, Darebin Community Legal Centre, Fitzroy Legal Service)</i></p>	<ul style="list-style-type: none"> • Criminal matters • Family violence • Housing issues • Employment • Fines and Debts • IVOs • Immigration 	<ul style="list-style-type: none"> • Centrelink • ID issues • Dealing with government agencies • Drug and alcohol issues • Mental health support
<p>Research of the literature <i>(See Appendix)</i></p>	<ul style="list-style-type: none"> • Criminal matters • Family Law • Banking, Finance and Consumer Law • Claims and Compensation • Disability • Social Security • Housing and tenancy 	<ul style="list-style-type: none"> • Education • Employment • Health • Access to housing • Rehabilitation • Centrelink

4.4 Primary and secondary post-release needs

Primary post-release needs

In our consultations with people with lived experience of incarceration and frontline workers, it was apparent that there were particular issues which arose at specific points on the post-release journey. Many of the service providers we consulted noted their concerns that the immediate post-release period is the highest risk period for people who have exited prison (for self-harm, recidivism¹¹¹ and death) and yet it is the time when the majority of people will be disconnected from any formal contact with service providers.¹¹² As those with lived experience of incarceration we consulted with also explained:

“When I was first released within that first 3 months was really key for me because things happen really quickly e.g. partner coming back who’s still using, children and custody issues meaning DHHS involvement and there’s a heap of issues around that that’s going to bring up a lot and many just can’t deal with it”

“The first week or two post-release are just confusing and feeling overwhelmed”

¹⁰⁹ Ibid 7.

¹¹⁰ Ibid.

¹¹¹ De Rooy, Bennet and Sydes, 'Women Released from Custody: Investigating Risk Factors and Reoffending' (n 11) 2251–3.

¹¹² Council of Australian Governments (n 103) 35.



“Leaving prison was a big deal and I basically needed time to decompress and I was unwillingly on a conveyer belt to nowhere, I’d come out of a process and didn’t have anything to step into”

“Immediate post-release needs are different to needs that arise down the track”

Our consultations also highlighted how these issues are exacerbated by mental health issues and pre-existing drug dependency problems which hinder engagement with services, resulting in disengagement or difficulty accessing services:

“Getting to appointments is hard too. Just not in the right frame of mind.”

“I was really fragile and just couldn’t do it”

Five of the nine people in prison we surveyed cited being "too overwhelmed" as a primary barrier to accessing services, with another two citing "no point trying". Targeting these health issues at an early stage is therefore pivotal in addressing other immediate post-release needs.

In our consultations, safe and stable housing was cited as one of the most immediate and important needs post-release. The absence of safe housing was seen as a precursor to other legal issues arising down the track, including further criminal activity and difficulties accessing children. In our consultations with those with lived experience of incarceration, respondents emphasised how an absence of safe housing led them to return to the houses of friends and family where criminal activity, particularly drug use, was ongoing, leading to a cycle of repeat offending:

“I didn’t have housing and didn’t know what I was doing. That was the biggest problem for me and that meant the housing I did have gave me no autonomy and I was heavily reliant on friends and connections prior to prison and that’s not the best plan because I getting hooked back into the same problems as before”

“[I had] [h]ousing issues from before custody and these resulted in being re-arrested as I was living in a drug den”

“If I’d been released back to my environment, I would have gone back to where I was before”

This theme is echoed in the literature. In a report for the Law and Justice Foundation of NSW, Grunseit, Forell and McCarron, proposed that many people in prison may have "burnt their bridges" with their support networks, or they may be hesitant to go to those people for help upon re-entry into the community, which may leave them to rely on networks associated with their criminal offences, and therefore undermine their attempts to reintegrate in the community and re-establish their lives.¹¹³

For women exiting prison where family violence was an issue prior to incarceration, being released with limited housing options resulted in an impossible choice between homelessness or an immediate resumption of that family violence:

“I came out of prison to my violent partner at home and I was like, is this going to be my life?”

In our consultation with stakeholder organisations and people with lived experience of incarceration, respondents, particularly women, consistently identified family law issues, particularly access to children, as one of the highest priority legal problems facing those exiting prison.¹¹⁴ As one respondent explained:

¹¹³ Grunseit et al (n 31) 115.

¹¹⁴ Ibid, 181.



“Getting access to my kids was a massive issue when I got out and I’m still fighting this now years down the line”

Four of the nine women in prison we surveyed identified "seeing my kids" as one of the main problems they would face upon exiting prison. The process of regaining access and reunification with children was key, but once again access to housing and supports was critical to enable this.

Support in dealing with government services such as Centrelink was also seen as a key immediate post-release legal and non-legal need. In particular, lack of access to identification after release is a major barrier to accessing other services in the immediate post-release period. All of the people with lived experience of incarceration we consulted found dealing with Centrelink an unnecessarily difficult experience. Bureaucratic hurdles and assistance being conditional on compliance made engagement difficult for those exiting prison where proper support was not in place.

In summary, the most immediate post-release needs identified were:

- Drug and mental health support
- Housing support
- Family law (child custody and family violence) support, Criminal law support, Social Security/Centrelink support and advocacy.

Secondary post-release needs

Approximately six to twelve months post-release, our consultations revealed a changed set of post-release needs. Issues relating to employment, debt and other financial matters came more into play at this point, as did ongoing child custody matters, previous family violence and other family law related issues.

Healthcare, although also a pressing issue, was seen by some as a secondary issue that would be dealt with once some of the more pressing matters had been resolved.

“For me as time went by and I had settled into my new life, I then felt able to start dealing with issues such as getting my kids back and focussing on my health.”

It was also noted in our consultations that the six to twelve-month post-release mark tends to be when support workers withdraw and parole finishes. This was described as a challenging time on the post-release journey, leaving the person feeling vulnerable and more tempted to either re-offend or relapse into drug use. As one person with lived experience of incarceration explained:

“When workers start to pull out after 6 or 12 months and you don’t have that support, that leaves you vulnerable because you don’t have the structure anymore (when parole finishes) and it all tends to happen around the same time, so you lose your support workers and your parole finishes and here you are and things start to rear up again, if you don’t have the support systems in place”

One stakeholder organisation explained that the 18 month post-release mark was the point at which many people were likely to have criminal law issues again.

Housing needs also change over time. In a recent longitudinal empirical survey, Julie Moschion and Guy Johnson found that primary homelessness was relatively low in the period immediately following release from prison, with people often staying with parents or relatives in the five months following release. Primary homelessness then spiked at the six month mark, and further increased at the 12 month mark, before declining again.¹¹⁵ The authors concluded that "families play a crucial role in the immediate post-release stage, but ... former prisoners wear out their welcome. With few housing options available to them, and limited social, cultural and economic resources to draw on, they often end up in precarious accommodation arrangements".¹¹⁶

¹¹⁵ Julie Moschion and Guy Johnson, *Homelessness and Incarceration: A Reciprocal Relationship?* (2019) 35 *Journal of Quantitative Criminology* 855, 874-5.

¹¹⁶ *Ibid.*



Accordingly, providing comprehensive case management in the lead up to a person's release and throughout their long-term transition is important to address a person's primary and secondary needs and prevent relapses into previous activity. This is particularly challenging for people cycling through prison on short sentences or remand, who may not have the opportunity to connect with supports in the transition process, including women who are more likely to be in prison on short sentences or remand.¹¹⁷ As one stakeholder explained: "the critical times are just before and just after release. However, to establish sustainable reintegration requires at least two years for many". Services need to be able to adapt to these changing needs over time.

The most common secondary post-release needs were identified as:

- Employment assistance
- Family law (child custody and family violence) support
- Criminal law assistance
- Health
- Addressing debt and finances issues
- Housing support.

4.5 The gendered nature of reintegration

Research and consultations highlighted the different challenges faced for men and women exiting prison. Post-release programs and planning tend to be focussed on men given they are the majority of people imprisoned in Australia.¹¹⁸ This means that the particular factors impacting on the criminalisation of women are not always considered in the development and delivery of post-release services. Many women are on short sentences and remand which require different post-release needs,¹¹⁹ and do not centre the reality of trauma as a defining aspect of criminalised women's lives.¹²⁰

In addition, even where women-specific policies and programs are developed, some argue that they have limited impact given the premise remains the same problematic success-related assumptions that have failed to adequately serve mainstream prisoner populations, focused on individual responsibility rather than the structural drivers of incarceration for women.¹²¹

Our consultations with women with lived experience highlighted these gendered needs, with family violence, access to children and mental health all arising as key issues in the ability to successfully reintegrate. It is clear that any post-release service provision must take into account these gendered needs and provide a gender-responsive service that factors in the specific experiences of criminalised women.

¹¹⁷ In June 2020, there were a total of 404 women in Victorian prisons. This includes 56.9% of women who had been sentenced and 43.1% of women who were unsentenced. Of the women sentenced, 24.8% were on short sentences (under 12 months). See Corrections Victoria statistics at Department of Justice and Community Safety – Corrections Victoria, 'Prisoner and offender statistics' *Corrections, Prisons & Parole* (Web Page).

¹¹⁸ Baldry, 'Women in Transition: From Prison to...' (n 108) 253-267.

¹¹⁹ Baldry & McCausland (n 21) 288-301.

¹²⁰ Segrave & Carlton (n 96) 287-305.

¹²¹ Bree Carlton & Marie Segrave, "Rethinking women's post-release reintegration and 'success.'" *Australian & New Zealand Journal of Criminology*. 2016;49(2):281-299.



5. Service delivery

It is well-established that people exiting prison benefit from support to transition into the community. Extended periods in prison can impact upon an individual's capacity for independent living. Short periods in prison can be just as disruptive, particularly in the case of women - "even one day in prison can derail a woman's life – she may lose her house, her job, her children, her connections to support services."¹²² Prisons are highly controlled environments and as such many people experience significant challenges in returning to the community, which are compounded by the social disadvantage and complex needs which pre-date incarceration, including drug and alcohol use. Many of the people with lived experience of incarceration we spoke with described reintegration as one of the most challenging aspects of post-release and unreasonable expectations exacerbated their already fragile mental health.

The second facet of our research was directed towards assessing the challenges and gaps present in the current post-release service system and current service delivery models, with a view to Justice Connect developing a best practice model to meet those needs. This part first considers the current post-release service delivery environment. It then considers existing barriers to accessing services and best practice service delivery characteristics and models which can help overcome some of those barriers and inform future development of programs by Justice Connect.

5.1 Current post-release service environment

The following is a non-comprehensive review of major post-release supports currently in place in Victoria, noting that there are a large number of supports and services available to address particular support needs such as substance dependence, mental health, housing, family violence and other needs which are not included.

ReConnect and ReStart

Corrections Victoria is responsible for the two primary post-release social support programs, ReConnect¹²³ and ReStart.¹²⁴ Both programs are delivered by contracted providers, being Jesuit Social Services (**JSS**), the Australian Community Support Organisation (**ACSO**) and the Victorian Association for the Care & Resettlement of Offenders (**VACRO**) which each service different geographic regions. These services are complemented by the ReGroup and ReLink pre-release programs.¹²⁵

ReConnect offers targeted (up to four weeks) and intensive (up to 12 months) reintegration outreach services for a limited cohort of those exiting prison.¹²⁶ The service assists people with housing and material supports, family reunification, referrals to specialist health and wellbeing services, economic and social participation, and parole or community order compliance. People engaged with the ReConnect program may be eligible for transitional housing support through the Corrections Victoria Housing program or brokerage support through the Corrections Victoria Brokerage Program, noting that there is a real shortage of transitional housing in Victoria and most brokerage will only cover the cost of a short stay in a low-cost hotel

The ReStart program is directed to those serving short sentences or those released from remand who are assessed as having high reintegration needs. The service provides three months of post-release outreach support. Neither program involves the provision of integrated legal services.

We consulted with both VACRO and JSS as part of this scoping study. Both organisations identified the challenge of escalating demand and insufficient resources to meet that demand, and expressed concern about the number of people who did not receive intensive post-release support as a result of strict eligibility criteria introduced to prevent the services becoming overwhelmed.

¹²² Hayley Gleeson, *Jamming the Revolving Door of Women in Prison, Jill Prior is putting a new spin on Lady Justice* (3 February 2020) ABC Online News <<https://www.abc.net.au/news/2020-02-02/jill-prior-lacw-legal-centre-women-prison/11803104>>.

¹²³ See <<https://jss.org.au/what-we-do/justice-and-crime-prevention/reconnect/>>; <<https://www.vacro.org.au/reconnect>>.

¹²⁴ See <<https://www.corrections.vic.gov.au/release/transitional-programs>>.

¹²⁵ Ibid.

¹²⁶ The service is limited to serious violence or sex offenders, members of Aboriginal and Torres Strait Islander communities, women and those assessed to have high transitional needs.



Community Legal Centres

There is no dedicated prison or post-release legal service in Victoria, however, Fitzroy Legal Service operates the Prison Advocacy Program, which provides a phone line, and legal advice and representation to people in prison about a variety of civil law problems relating to their detention, as well as parole.¹²⁷ The Mental Health Legal Centre operates Inside Access, which provides free civil legal services and other support services to people with cognitive impairment and mental health issues in correctional and forensic facilities in Victoria.¹²⁸ Those who have exited prison can access generalist legal services through CLCs if they meet the eligibility criteria. Some of these services, including Justice Connect's existing Homeless Law program, the Law and Advocacy Centre for Women and West Heidelberg Community Legal Service involve some level of integrated support.¹²⁹

Since February 2020, the Victorian Aboriginal Legal Service (**VALS**) has operated the Baggarrook program which provides support to six highly vulnerable Aboriginal and Torres Strait Islander women as they transition from prison. The service incorporates support from allied non-legal organisations and provides transitional housing to all participants.¹³⁰

Culturally specific programs

Yawal Magadjina is a culturally tailored mentoring program for Aboriginal people in prison. The program commences in prison and involves cultural mentorship by Elders and Respected persons. Post-release support is then provided following release.¹³¹

The Islamic Council of Victoria delivers the Muslim Connect program which provides Muslim people in prison with pre and post-release mentoring support and referral coordination to other services. It coordinates with the National Zakat Foundation to provide bond and rent brokerage, crisis accommodation and food vouchers.¹³²

Other programs

Flat Out is a dedicated assertive outreach and advocacy service for women who have had contact with the criminal justice and/or prison system in Victoria. They focus on homelessness and housing support, as well as providing assistance navigating the alcohol and other drug, mental health, family violence, disability, and child and family support sectors.¹³³ Generalist support is otherwise available to those who have exited prison through the range of social support organisations operating in Victoria.

5.2 Barriers to accessing services

Prison involves a dramatic interruption to a person's life, and those who have been released are required to manage a complicated process to re-establish themselves in the community. People who have been released from prison are required to find accommodation, engage with various government agencies, connect with health care providers and manage multiple health appointments, establish (or re-establish) family and community connections, manage finances, possibly comply with parole conditions and ideally find employment.

The services that do assist people who have exited prison are stretched, resulting in strict eligibility criteria that exclude all but the most vulnerable, creating a significant supply-side barrier to people accessing support. Conversely in some instances, some people are also excluded from services for being too complex. This was a consistent theme in our stakeholder consultations, with respondents emphasising the many people who fell through the cracks through lack of resources.

Even where services exist there are often multiple barriers experienced by people who have exited prison to access, or maintain access, to these services. Some of these barriers are direct such as eligibility criteria, age, distance and costs involved in travelling to a service. Others are nuanced and tend to be incidental to the prevailing circumstances of people at the point of release. The effect is that people are unable to make use of the services that are available.

¹²⁷ <https://www.fitzroy-legal.org.au/prison_law_advice_line>.

¹²⁸ <<https://mhlc.org.au/inside-access/>>.

¹²⁹ <<https://bchs.org.au/services/whclegalour-legal-services/>>.

¹³⁰ <<https://www.vals.org.au/baggarrook/>>.

¹³¹ <<https://www.corrections.vic.gov.au/release/transitional-programs>>.

¹³² <<https://www.icv.org.au/services/muslim-connect-program>>.

¹³³ <<http://www.flatout.org.au/individual-support-and-advocacy>>.



Poor mental health and drug dependency

As discussed above, a universal theme in our consultations was the problem of poor mental health or drug dependency serving as a barrier to accessing help and support from services. As one person with a lived experience of incarceration told us:

“If I was using drugs, I wouldn’t call anybody and then I would need help with a warrant because I didn’t attend court.”

“I had many support workers during my life but my own issues prevented me from engaging”

Even if people engage with services, mental health issues can make physically accessing those supports difficult, with a number of respondents to our consultation noting that public transport was an anxiety-inducing environment for many people who had recently exited prison.

Fear, stigma and previous negative experience

Stigma and fear of being pre-judged was also commonly cited as a de-facto barrier to accessing assistance from government agencies post-release, especially accessing assistance from Centrelink. Much of this fear derived from previous negative experiences which affected future access with services.

“Previous negative experiences will be with me forever and that’s riskier because people won’t reach out for support”

Many of those we consulted with spoke of services being overly judgmental of people who had been incarcerated and making incorrect assumptions about the person on that basis.

“There’s a lot of practitioner stigma and how you should be as opposed to how you are”

“Fear of judgment and fear of things getting worse so it gets easier to sweep things under the rug and put your head in the sand”

Another theme was the fear that if a person told a government agency that they were struggling with aspects of their life (such as drug use), this would be used against them and would result in losing custody of children. This fear often resulted in total disengagement from services. As one woman with a lived experience of incarceration told us:

“I reached out for help when I thought I was at risk of relapsing and I’ve got a 7 year old so I wanted to reach out and get some support and have a chat with someone and so I went in and had an appointment and that night, I got a bang on the door and it wasn’t the police, it was DHHS and they put me through the ringer and made me go for urines every 2 days and I do understand, but I would never reach out for that support again”

“There’s a lot of fear that regulations and systems coming down on you if you ask for help or reach out from services and if you’ve had that happen, that will be with you forever”

Compliance issues

Issues in relation to compliance and meeting services' criteria for ongoing support was also described as a major barrier to engaging with services. Many of those we consulted highlighted that services would often withdraw support if the person couldn't engage on the terms set out by the service, and that this lack of flexibility made it challenging to engage. Often there was an interdependent relationship between strict compliance and the availability of support, again resulting in disengagement from those who were not able to fulfil these levels of compliance post-release.



“Many [services] automatically have an opinion of who you are, what you are and expecting levels of compliance when it’s not possible to meet”

“If you take one thing off a really heaped plate, it can make a difference, particularly around compliance”

Unrealistic expectations about navigation of multiple services

The complex bureaucracy of post-release services was seen as particularly problematic in circumstances where they were seen to involve an expectation of a certain skill set and level of education that many people who had been in prison often just did not have.

“I don’t think services understand that we cannot respond in an orderly functioned way and they expect a certain skill base in using the services and the level at which we have to interact with them, makes it so difficult”

This contributes to compliance and engagement issues (see above), where unrealistic expectations by services set people up to fail in meeting their obligations.

Service weariness and referral fatigue

In order to get the necessary support and assistance post-release, people are often referred to multiple agencies and services simultaneously. This is because services have historically not been designed or resourced in a way that allows them to holistically manage the needs of those who have recently been released from prison. As a consequence, if people want to fully address their various post-release needs, they need to engage with numerous services at various locations. This can exacerbate the overwhelming nature of the post-release experience.

This can be particularly problematic given the inherent vulnerabilities of many people who have been in prison, who are required to re-tell their story multiple times to multiple people in a way that can compound their trauma. Many of the people with lived experience of incarceration we consulted felt this prevented them from accessing the help they needed post-release:

“It took me 5 years to be able to properly engage with Centrelink”

“There are multiple issues and the fact that everything is so separate, it means there are mammoth tasks that need to be addressed and it feels like you are jumping through bureaucratic hoops”

“Too many services being involved at the time was overwhelming”

“You lose motivation having to go to different places, getting from here to there is just tiring”

“Going into services and regurgitating my story and my trauma and then going to the next one and regurgitating my trauma and story again stopped me from engaging”

Even within services, respondents reported that they had issues being referred between different workers:

“I wouldn’t ring the hotline because of what I’ve heard about them because your get shoved from this person to that and it just becomes going around in circles”

Lack of awareness of services

Lack of awareness of available services was also cited as an issue for those who had exited prison. This appeared to be a particular problem in the context of CLCs, with one stakeholder explaining that many people do not access the legal services offered by CLCs as they are not aware they exist. One person with lived experience of incarceration we consulted with also explained that she was not aware of her local CLC during her post-release



period. Five of the nine people in prison we surveyed answered "not sure where to go" as one of the main things that would stop them getting help. Overcoming this information gap is therefore crucial in ensuring the efficacy and impact of the services that are available.

Cultural safety and competence

One post-release support service we consulted with noted that service dropout rates for Aboriginal and Torres Strait Islander people were particularly high. A lack of cultural safety, with clients being spoken about, rather than with, was also highlighted as an issue in developing proper relationships with Aboriginal and Torres Strait Islander post-release clients by another stakeholder.

This was emphasised in the 2016 Council of Australian Governments "Prison to Work" Report which explained:

"The design and delivery of services and programmes for Aboriginal and Torres Strait Islander prisoners needs to take into account the historical context of dispossession, trauma and frequently tense relationships with authority figures that is central to the lives of many Aboriginal and Torres Strait Islander people."¹³⁴

Ensuring that culturally safe and appropriate support services are available for members of Aboriginal and Torres Strait Islander communities who have been released from prison is critical, particularly given the alarming rates of Indigenous incarceration across Australia.

Financial barriers

Due to their financial circumstances, people who have exited prison often do not have the funds to address their issues. This is particularly the case for legal needs. Free or heavily subsidised services provided by legal assistance organisations do provide support to many of the most disadvantaged at times of particular need during criminal proceedings (for example, at the time of bail application). However, according to Grunseit et al, "there is a sizeable group of people who are not wealthy, but have sufficient income or assets to render them ineligible for legal aid for their criminal matter".¹³⁵ As one person with lived experience of incarceration told us:

"On paper I looked like I was doing really well so I wasn't eligible for legal aid because I had too many assets but I couldn't afford my own lawyer"

Assistance for civil and family issues is often even harder to access. For example, Victoria Legal Aid reports that only 1,329 out of a total 34,681 grants of legal assistance in 2014-15 were for civil matters.¹³⁶ Overcoming these direct and de facto barriers is critical in designing any future service for people released from prison.

5.3 Best practice service delivery characteristics

In our research and consultation with stakeholders and people with lived experience of incarceration, the following key facets of effective service delivery were identified.

Throughcare and continuity of service delivery

Research into effective post-release support has for many years identified a throughcare model as the most effective method to ensure rehabilitation and integration into the community.¹³⁷ In the prison context, throughcare means providing comprehensive case management for a person in prison in the lead up to their release from prison and throughout their transition to life outside. Effective throughcare aims to make sure people who have exited prison receive the services they need for successful rehabilitation into the community. It is designed to start well before a person is released from custody, and then provides hands on, intensive support, especially at the moment of release.¹³⁸ As one respondent to our consultation noted, the "throughcare approach is most important in terms of

¹³⁴ Council of Australian Governments (n 103) 6

¹³⁵ Grunseit et al (n 31) 120.

¹³⁶ Victoria Legal Aid, *Means Test Review: Consultation Paper* (August 2016) 7.

¹³⁷ See, for example: Maria Borzycki and Eileen Baldry, *Promoting Integration: The Provision of Prisoner Post-release Services* (Australian Institute of Criminology Report, Trends & Issues in Crime and Criminal Justice, Report No 262, July 2003); Maria Borzycki, *Interventions for Prisoners Returning to the Community* (Australian Institute of Criminology Report, February 2005); Victorian Ombudsman, *Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria* (Report, September 2015).

¹³⁸ Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* (Discussion Paper 84, July 2017) 5.43.



establishing the working relationship and the plan prior to release. We know that longer term support works best but this is not currently funded".

Although theoretically throughcare is considered a best practice model, there can be significant breakdowns in the implementation, especially for women experiencing short episodes of incarceration. These problems can include lack of cooperation and information sharing between services, lack of appropriate housing, personal support, mental health, education and employment opportunities in the community.¹³⁹ One stakeholder we consulted with criticised the "in and out" nature of many post-release services, which fail to properly establish a plan for the variety of issues a person may face post-release.

In conjunction with the importance of a throughcare model, a key theme in our consultations with both stakeholder organisations and people with lived experience of incarceration was the importance of continuity and longevity in service delivery. When asked a key aspect which would make a person continue with a service, people with lived experience of incarceration responded:

"Trust and consistency in service, knows my story and knows what's going on. Continuity is so important"

"Having one person to deal with and continuity of service so you don't have to repeat your story over again. Saying it just once and if they are all in the same org, you're not repeating things"

When asked what the key thing that would keep them engaged with a service, "consistency" and "continuity" were cited by three of the six women in prison who answered the question. One stakeholder suggested that clients should be contacted every three months to assess whether new needs have arisen.

Integrated service delivery

Based on the consultations, an integrated, holistic service was generally seen as the best model to manage complex client needs. As those exiting prison often experience "clusters" of problems that are rarely purely legal in nature, the co-location or integration of legal and non-legal services often provide better access and assist in addressing underlying causes through referral to other support services. Integrated service delivery would also ideally help counteract de facto access barriers such as service weariness and referral fatigue. Research also suggests that due to the non-legal component of their problems, people experiencing disadvantage are just as likely to attend a non-legal service for assistance, which makes an integrated service better suited to assess and then address their problems.

The benefits of such a model were highlighted in our consultation process. Stakeholder organisations commented that the greatest success in ensuring ongoing engagement was when a social worker was involved, who could assist in generating trust in lawyers in turn. Another stakeholder noted that it was "too much [for people] if too many workers – there needs to be one worker instead of many".

Those with lived experience of incarceration also commented on the benefits of integrated service delivery, noting:

"If there were more places like that, a one stop shop, you could all the different things in the one day as well and not have to go everywhere, it makes things so much easier in that environment"

"Frontyard was great because it was a one stop shop, if I needed a doctor the doctor was there, if I needed some accommodation support, that was there, I ended up doing a course with them and did my placement with them"

"It would be great if you could have a one stop shop for everyone, for women, for adults"

"With a one stop shop, they've built the connections with the people they've worked with so they'll really be able to help"

¹³⁹ Baldry, 'Women in Transition: From Prison to...' (n 108).



Respect, relationship building and voluntariness

A key theme in our consultations with people with lived experience of incarceration was the importance of the attitude of those providing post-release services.

When asked what would make a person more likely to keep engaging with a service, responses included:

"[Workers] on a level and not always being too official and book bashers"

"Someone who doesn't look down on you"

"Non clinical and paper pushers. That can work in some situations but not with support workers"

"Non-judgemental and feeling the relationship is a bit more level"

"Down to earth caseworkers who are not 100% textbook. Heart in the right place and some sort of lived experience of those they're helping and the problems they are helping you with"

"I had a counsellor around that time who was kind. Unconditional kindness but it was very rare ... It has been individuals that have made the difference for me, not services that have made the difference"

Of the nine women still in prison we surveyed, three of the answers to the question "what is the one key thing that means you are likely to keep working with a service?" were "having a positive worker who doesn't judge you", "consistent worker that is friendly and that I get along with" and "good relationship with worker who can get things done" – highlighting the importance of the worker-client relationship in positive engagement.

Another stakeholder emphasised the importance of ensuring that services are delivered in a way where people's decisions and autonomy are respected, remarking: "[you] have to let people live their own lives, give them options and see what will happen, [they] will engage/come to you when they're ready. People know what is safest for them". This highlights the importance of voluntariness in engaging with community supports, and ensuring that there are no punitive responses to people for non-engagement or non-compliance.

Flexibility in mode of service delivery

There was no clear consensus in our consultation as to the single best means to deliver post-release services. Instead what was emphasised was the need to have flexibility in the mode of service delivery in order to best meet the needs of the client. One stakeholder organisation expressed the view that engagement issues with service providers were often because of a failure by the service provider to adequately facilitate contact and support clients where they were. Flexibility in service delivery can therefore help overcome that barrier.

Of particular importance to consultation respondents was how appointments took place and services were delivered. For some respondents for instance, speaking on the phone was anxiety inducing and brought up old traumas. However for others, it was travelling somewhere or meeting in an office that created heightened levels of anxiety. As some of the people with lived experience of incarceration explained in consultations:

"At that point I couldn't sit in an office and so [my worker] would let me do our sessions walking, so weekly we would walk"

"[I'm] keen on drop in model for structure but also over the phone would be great. Some people find it easier over the phone, some find that difficult ... Even ask the question at the outset, 'How would you prefer to interact?'"

"Need room to wiggle and flexibility around engagement"



"For me going straight into an appointment can be daunting so a phone call first because of my anxiety and then meet to build that trust and rapport"

"Not everybody is the same and what works for me won't work for the other"

There was also no consistent answer to the question "how do you like to receive help?" when we asked the question in our consultation with people in prison, with responses being a mixture of in person, outreach and phone service delivery, and an appointment or drop in model.

Service flexibility ideally helps overcome the compliance, education and service fatigue barriers set out above. It can also help contribute towards culturally safe service delivery.

Well-publicised services

As set out at above, one barrier to access is a simple lack of awareness of the availability of services.

Service providers reported that free telephone services, a presence in prisons prior to release and word of mouth were the best promotional tools. Other suggestions for engaging clients included distributing information flyers in prisons, being introduced by existing service providers, presenting information seminars to people in prison and liaising with Corrections and prison staff.

5.4 Service delivery models

Using examples from Australia and overseas, we have considered a variety of different service delivery models designed to deliver targeted legal services (and non-legal services in the case of integrated models) to particular cohorts.

The below sets out three potential service delivery models based on these examples:

- A dedicated "Legal Pod" program which provides long term (i.e. approximately three year) legal assistance for those exiting prison, designed to address legal problems as and when they arise by the same legal team;
- An integrated pre- and post-release program designed to provide intensive "wraparound" support to address the legal and non-legal needs of those exiting prison; and
- A health-justice partnership clinic model which provides dedicated legal services to those who have exited prison in conjunction with a dedicated health service.

Legal Pod programs

The concept of a "Legal Pod" was developed in Queensland by LawRight (formerly QPILCH) through extensive research and cross-sector consultation in relation to the links between homelessness and the child protection system. A Legal Pod is a long term (i.e. three-four year) program where a small team of lawyers (a "pod") forms a relationship with the client and provides ongoing legal support for the iterative legal issues that arise for the client over the course of the program.

The LawRight Legal Pod was directed towards those exiting state child protection care. The LawRight program closed in 2017 due to lack of funding.¹⁴⁰ The program was subsequently replicated in Victoria by Youthlaw.¹⁴¹

The Youthlaw Legal Pod provides legal services to young people aged 18-25 who are exiting out-of-home care (including foster care, kinship care or residential care). The program provides ongoing legal support for up to three years in areas including fines, debts, tenancy, government decisions, requests for records, victims of crime applications and discrimination. The service is built on the assumption that legal issues will continue to arise throughout the support period, and initially employs a "legal health check" to assess current legal needs.¹⁴² Each client is assigned a "pod" of three lawyers, including lawyers from pro bono law firms, who provide ongoing support.¹⁴³

¹⁴⁰ LawRight *Annual Report 2016-2017* (Report, 2017).

¹⁴¹ 'Care Leavers help', Youthlaw (Web Page) <<https://youthlaw.asn.au/free-legal-advice-for-young-people/legal-pod/>>.

¹⁴² Ibid.

¹⁴³ Youthlaw, *Annual Report 2019-2020* (Report, 2020) 16.



The LawRight Legal Pod was independently evaluated as providing high quality legal services, which a particular emphasis on the effectiveness of the "legal health check" as key to the program's success.¹⁴⁴

Intensive "wraparound" service re-entry programs

An alternative model is an intensive integrated support "wraparound" service designed to provide medium-term (i.e. one year) support pre and post-release for those exiting the prison system.

An example of such a service is the DJ Jail and Prison Advocacy Project (**JPAP**), a program run by the Disability Rights DC branch of University Legal Services based in Washington DC.

JPAP provides intensive support for formerly incarcerated residents of Washington DC who have been diagnosed with psychiatric disabilities. The program commences work with clients three to six months prior to their release, and provides ongoing support for up to six months post-release in conjunction with a primary mental health provider.

The JPAP program provides assistance with:

- assistance with applying for Medicaid, disability and other benefits while incarcerated;
- case management and advocacy;
- providing linkages to mental health, trauma, substance use disorder and other treatment providers;
- obtaining ID and other re-entry documents;
- providing connections to employers and job readiness programs;
- housing advocacy for homeless clients; and
- legal services including sentence mitigation, supervision disability accommodations and grievances.¹⁴⁵

In December 2020, JPAP commenced a Men's Re-entry Housing Pilot in conjunction with the re-entry housing provider The Nehemiah Project DC. The Re-entry Housing Pilot implements a housing first model which aims to provide 25 men involved in the JPAP program with housing by 30 September 2021.

Health Justice Partnership legal clinic model

An alternative model is to establish a dedicated legal clinic for those who have exited prison to attend and have their legal issues addressed. Such a clinic is similar to the dedicated prisoners' legal services which exist in Queensland and NSW,¹⁴⁶ but is directed specifically to post-release needs. Such a clinic could run independently, or in conjunction with a dedicated health provider as part of a Health Justice Partnership.

A non-prison specific equivalent program is the Health Justice Partnership run by West Heidelberg Community Legal Service, which provides integrated health and legal support to low-income and vulnerable residents of the Banyule area.¹⁴⁷

There is no dedicated post-release legal clinic in Australia. In the United States, Yale Law School runs a dedicated Legal Assistance Re-entry Clinic for people with criminal convictions to assist them with their re-entry. The clinic is staffed primarily by law students. The service assists with legal issues including:

- denials of housing subsidies due to criminal record;
- applications for pardons;
- employment discrimination based on criminal record;
- access to health care; and

¹⁴⁴ QPILCH Impact Report 2015-2016 (Report) 13-14.

¹⁴⁵ 'ULS – Disability Rights DC's Jail and Prison Advocacy Project', *DC Reentry Action Network (RAN)* (Web Page) <<https://dc-ran.org/members/uls-disability-rights-dcs-jail-and-prison-advocacy-project/>>.

¹⁴⁶ See *Prisoners Legal Service* (Web Page) <<https://plsqld.com/>>; 'Prisoners Legal Service', *Legal Aid NSW* (Web Page) <<https://www.legalaid.nsw.gov.au/what-we-do/criminal-law/prisoners-legal-service>>.

¹⁴⁷ 'Our legal services', *Banyule Community Health* <<https://bchs.org.au/services/whclegal/our-legal-services/>>.



- modification of child support obligations.¹⁴⁸

The clinic operates in a Health Justice Partnership with the Yale Medical School Health Justice Lab which operates a Transitions Clinic for individuals with chronic diseases who have been released from prison in the previous six months. The Transitions Clinic is staffed by a clinician and community health worker with a history of incarceration.¹⁴⁹ The clinic also has linkages with other community re-entry programs.¹⁵⁰

Service delivery models – opportunities

Though there are multiple views about the ideal service model for people exiting prison, all stakeholders were broadly supportive of Justice Connect's expansion of its services in this area. As discussed at section 5.3, there are some key best practice service delivery characteristics that provide a guide for the development of a Justice Connect project to people exiting prison.

In particular, any expansion of Justice Connect's services to people exiting prison would have to fit with Justice Connect's existing pro bono service model. Justice Connect's experience with pro bono models of legal service delivery to clients who experience marginalisation and disadvantage has shown us that pro bono resources are capable of delivering high-quality services to these cohorts. However, there are some challenges that would need to be managed.

A key focus of Justice Connect's pro bono models is developing expertise and building capacity among pro bono lawyers. This is particularly important for new areas of law (e.g. legal issues specific to recent prison releasees) and for specific client groups (e.g. people at risk of homelessness). Focused training and capacity building is necessary, however this is built into the model and Justice Connect can leverage the existing resources and support provided to pro bono lawyers.

In terms of continuity and flexibility in the service model, the pro bono model would need to be adapted to ensure that the service provided was able to effectively meet client needs. This issue would need to be carefully planned and considered in the service design process.

¹⁴⁸ 'Legal Assistance: Re-entry Clinic', *Yale Law School* (Web Page) <<https://law.yale.edu/studying-law-yale/clinical-and-experiential-learning/our-clinics/legal-assistance-re-entry-clinic>>; <<https://courses.law.yale.edu/courses/course/2858>> [is this second link correct?].

¹⁴⁹ 'Transitions Clinic' *The Health Justice Lab* (Web Page) <<https://www.healthjusticelab.org/programs>>.

¹⁵⁰ <https://courses.law.yale.edu/courses/course/2858>. [not sure this link is correct?]



6. Insights and learnings

6.1 Identifying the gaps in the service landscape

In combining the learnings we have gained from an exhaustive review of the literature, consulting with organisations and speaking with people with lived experience of incarceration, it is clear that there is significant unmet need for legal assistance for people exiting prison, particularly in relation to civil legal help.

There is a growing body of research and evidence that demonstrates the importance of addressing legal and non-legal issues prior to and after release from prison for successful re-entry into the community. In particular, outstanding legal issues post-release can increase the risk of homelessness, disadvantage and reoffending.

While there is general recognition of the value of providing support services to persons exiting prison to assist with reintegration and reduce the likelihood of recidivism, at present in Victoria such supports do not extend to legal services. Nevertheless there was general support among those consulted, for the proposition that legal services should be included in the support services offered to persons exiting prison.

Our review of transitional programs and reintegration services for people exiting prison identified a gap in terms of legal services and some potential opportunities to partner with other non-legal service providers to access the people exiting prison, noting that Justice Connect already works closely with a number of prison support providers in relation to our Closing the Revolving Door prison project. We recommend further exploring the possibility of partnership with such services in order to provide integrated services to support a person's re-entry upon release from prison.

6.2 Proposed integrated service model for post-release legal help

Justice Connect is uniquely placed to expand its existing services to people in prison by establishing a more targeted post-release project. This project builds on Justice Connect's long history of work with people experiencing homelessness and people in prison, as well as our partnerships with prison support services, prisons and the community legal sector. We have extensive expertise in integrated practice and the experience and relationships in the prison space to be able to develop and deliver an effective service. The focus of the project would be assisting people exiting prison to resolve legal problems so that their reintegration into the community upon release is smoother and their likelihood of re-offending is reduced.

Using what we know from over 5 years of work in prisons, our scoping work, plus individual Justice Connect staff members' relevant experience, Justice Connect recommends incorporating the following elements:

- **Integration** – creating embedded partnerships with pro bono lawyers, post-release services and frontline community workers to holistically address legal and non-legal needs;
- **Client-centred** – the model will be specifically developed and implemented with the needs of people exiting prison as its primary focus to ensure the services are relevant and appropriate to their legal needs, including gender-responsiveness;
- **Consistency and continuity** – offering recognisable and consistent support through specialised caseworkers and a team of specialised lawyers for the duration of transition, from prior to exiting prison to successful community reintegration;
- **Flexibility** – ensuring that support is provided in a model that is adapted to the needs of the client, including location and modes of communication;
- **Assertiveness** – maintaining regular and structured contact to identify new legal needs as they arise; and
- **Capacity building** – ensuring that pro bono lawyers are well equipped to provide appropriate and high quality services to this client group, and that prison support workers and other support services are equipped with effective resources and referral pathways to legal help.



Based on our research and consultations, we consider the following model is likely to be the most effective means of Justice Connect delivering legal help to people exiting prison using pro bono resources:

- Building on existing capacity, expertise and partnerships, Justice Connect would partner with a current post-release service provider to build our understanding of the legal and related issues faced by people exiting prison and deliver integrated legal and social work supports.
- Dedicated pro bono lawyers would provide outreach legal services, on behalf of Justice Connect, at existing Justice Connect clinic sites or via other preferred sites as identified by the client and the post-release service provider. In the context of COVID-19 and the increased use of digital and phone services, this could include video calls and tele-conferencing as preferred.
- The legal casework for people post-release would be limited to those poverty law issues already undertaken by Justice Connect, including: housing and tenancy; credit and debt; criminal law; and public space offences. Justice Connect would have responsibility for legal casework in the same way that the clinics currently operate. Partnerships and referral pathways for other areas of legal need would be developed to ensure all areas of legal need would be met.
- Justice Connect would appoint a dedicated project manager to intensively oversee our pro bono legal service delivery and target the legal needs of people post-release. The project manager would be responsible for liaising with the post-release service organisation, capacity-building the pro bono lawyers' knowledge of the relevant legal and non-legal issues, and monitoring the legal issues faced by clients.
- Justice Connect would use client and casework insights, stakeholder engagement and our relationships with Corrections, DFFH, industry, the prison sector and social services sector to extend our reach and impact through evidence-based systemic advocacy, breaking the cycle between prisons, homelessness and the justice system.
- Justice Connect would iterate the model, scope and method of our integrated services as we continue to learn and understand the needs of people during and after exiting prison. We will build flexibility into our service to potentially adapt and pivot how and what we deliver, as we develop deeper understanding. For example, given the identified gaps in post-release supports, we will explore the possibility of providing in-house non-legal support based on our existing integrated model with on-site social workers and caseworkers.



7. Appendix

7.1 Literature reviewed

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7.2 Stakeholders consulted

Approximately 15 women incarcerated at Dame Phyllis Frost Centre (with nine completing written surveys)

Four previously incarcerated women from the Women Transforming Justice Project through Fitzroy Legal Service

Centre for Innovative Justice

Corrections Victoria

Darebin Community Legal Centre

Department of Health and Human Services

Djirra

Fitzroy Legal Service

Flat Out

Jesuit Social Services

LawRight

Mental Health Legal Centre

VACRO

7.3 Consultation questions

We asked the following questions in our consultation with organisational stakeholders:

- What are the key areas of legal need for people exiting prison?
- What are the key areas of non-legal need for people exiting prison?
- Are people able to access services and supports to meet those needs? a. If yes, what are those supports? b. If no, why?
- What are the barriers for people to access help (legal and non-legal)?
- What kind of legal help or support is most effective for people post-release (e.g. what kind of models work well? Who is providing this well and why?).
- What kind of non-legal help or support is most effective for people post-release (e.g. what kind of models work well? Who is providing this well and why?)
- What are the key barriers to sustaining housing for people post-release?
- Would integrated legal and non-legal help be beneficial?
- Based on your experience, when is someone who has exited prison most likely to require legal and non-legal assistance?

We asked the following questions in our consultation with those with a prior lived experience of incarceration:

- What were the main problems you faced when you left prison?
- If you have a legal problem, or other kind of problems, where would you go for help?
- What is the main thing that would stop you from getting help?
- How would you like to receive help from services?
- What is the one key thing that means you are likely to keep engaging with a service?



- Did you have access to housing when you were released?

We asked the following questions in our consultation with women still in prison:

- What are the main problems when you leave prison?
- If you did have a legal problem, where did you go for help?
- What is the main thing that would stop you from getting help?
- How do you like to receive help?
- What is the one key thing that means you are likely to keep working with a service?
- Do you have access to housing when you are released?
- If you have housing when you are released, what are the main reasons that you might not be able to stay in that house?
- If you have housing post-release, when do you think you might be at risk of losing your housing?



