

Closing the revolving door between the justice system, prison and homelessness

Submission to Victoria's Criminal Justice System

Inquiry

September 2021

Contents

| | |
|---|-----------|
| Executive summary and ten recommendations | 3 |
| 1. Reducing reliance on the justice system in responding to homelessness | 9 |
| 1.1 Decreasing enforcement-based approaches to homelessness: Victorian Protocol for Responding to People Experiencing Homelessness in Public Places | 11 |
| 1.2 Police powers and use of discretion..... | 13 |
| 1.3 Decriminalising public space offences | 14 |
| 1.4 More effective approaches to fines and homelessness | 17 |
| 2. Diverting people experiencing housing insecurity out of the criminal justice system | 24 |
| 2.1 Homeless Court: therapeutically responding to people experiencing homelessness in the justice system | 24 |
| 2.2 Preventing criminalisation through access to integrated legal services..... | 26 |
| 2.3 Better access to the Criminal Justice Diversion program | 28 |
| 3. Closing the revolving door between prisons, the justice system and homelessness | 30 |
| 3.1 Reforming bail laws to ensure people experiencing homelessness are able to access bail | 30 |
| 3.2 Community Correction Orders – creating a more client-centred, responsive and flexible approach.... | 34 |
| 3.3 Preventing homelessness and increasing reintegration for people exiting prison | 37 |
| Annexure 1 - Proposed Victorian Protocol for Responding to People Experiencing Homelessness in Public Places | 43 |
| Annexure 2 - Proposed Pocket resource for Sheriff's Officers | 47 |



Executive summary and ten recommendations

Through Justice Connect Homeless Law's (**Justice Connect**) work as Victoria's specialist homelessness legal service, we clearly see how laws, policies and practices disproportionately impact people facing homelessness. Homelessness increases the likelihood that you will end up in the criminal justice system, and makes it harder to get out.¹ Victoria's current reliance on the justice system to respond to homelessness effectively criminalises social and health issues for the most vulnerable in our community and creates a further burden on an already stretched system.

The Parliamentary Inquiry into Victoria's Criminal Justice System (**Inquiry**) presents a unique opportunity to ensure that people are diverted away from the justice system and to make prison an option of last resort. In this submission, Justice Connect draws on 20 years of frontline service delivery and direct client insights which emphasise the benefits of early intervention and service-based approaches to reduce justice-system interactions and prevent homelessness, particularly during and after COVID-19. Our recommendations draw on evidence from providing intensive legal and social work assistance to Victorians with complex vulnerabilities, as well as our leadership and engagement across the community and legal sectors.

Reducing reliance on the justice system in responding to homelessness (Part 1)

Due to their public visibility, people experiencing homelessness are at a greater risk of being fined or charged for low-level offending related to homelessness and poverty.² Justice Connect has helped thousands of Victorians facing homelessness to resolve overwhelming fines and charges for what we call 'public space offences', including being drunk in public, begging and conduct on public transport.

By intervening earlier, we can reduce reliance on the justice system and improve pathways out of homelessness, including by:

- Creating and implementing a Victorian Protocol for People Experiencing Homelessness in Public Places as a framework for police and enforcement officers to use discretion and cautions (rather than fines and charges) for offences directly related to homelessness;
- Ensuring better and more accountable policing practices, including by reviewing and publicly reporting on the use of police powers, particularly related to searches and move-on directions, and resourcing an effective and independent police oversight body;
- Building on the Victorian Government's leadership in abolishing the offence of public drunkenness as an opportunity to engage in a wholesale review of the *Summary Offences Act 1966* (Vic) (**Summary Offences Act**) and decriminalise other public space offences, particularly begging; and
- Implementing fairer approaches to fines and homelessness, including through reform to the special circumstances test for infringements, binding enforcement review decisions from Fines Victoria, and making Work Development Permits available for court fines.

Diverting people experiencing housing insecurity out of the criminal justice system (Part 2)

People experiencing homelessness are overrepresented in the justice system, often for offences directly related to their experience of homelessness. In the last year, 67% of Justice Connect's criminal law clients identified as having slept rough and 100% reported having mental health issues.³

Access to integrated social, health and legal supports is critical to reduce recidivism and divert people out of the system as early as possible. Three key opportunities to achieve this include:

¹ Law Council of Australia, *The Justice Project Final Report - Part 1: People who are Homeless* (Final Report, August 2018) 4 ('**Justice Project Final Report**') <<https://www.lawcouncil.asn.au/files/webpdf/Justice%20Project/Final%20Report/People%20who%20are%20Homeless%20%28Part%201%29.pdf>>.

² Justice Project Final Report (n 1) 24.

³ Justice Connect, *Under One Roof: Rapidly responding to the increased legal needs of Victorians experiencing homelessness during COVID-19* (Report, May 2021) 5 <<https://justiceconnect.org.au/wp-content/uploads/2021/08/Under-One-Roof-12-month-snapshot-May-2021.pdf>>. See also <https://justiceconnect.org.au/our-services/homeless-law/courting-justice/>



- Creating a specialised Homeless Court to provide a therapeutic response and intervene earlier to exit people experiencing homelessness into appropriate support services;
- Investing in integrated legal services to reduce the emergence of new legal issues and increase the potential for positive and long-term outcomes for clients; and
- Providing greater access to diversionary programs such as the Criminal Justice Diversion Program.

Closing the revolving door between prisons, the justice system and homelessness (Part 3)

Between 2010 and 2020, the number of people imprisoned in Victoria has grown by approximately 57%,⁴ and the number of Aboriginal and Torres Strait Islander people has nearly tripled.⁵ Over half of people in prison expect to be homeless on release,⁶ and if people in prison exit into homelessness, they are twice as likely to return to prison within the first nine months of release.

This evidence is supported by insights from Justice Connect’s Closing the Revolving Door Prison Project (**Prison Project**),⁷ which holistically works towards breaking the links between prison, housing insecurity and the justice system. Of the 160 people in Victorian prisons assisted through the Prison Project over the last three years, 69% had experienced previous homelessness, and 58% had previously been incarcerated.

With imprisonment in Victoria costing around \$118,000 per person each year,⁸ it has never been more vital to close the revolving door between prisons, the justice system and homelessness, including by:

- Amending the current bail laws to ensure that more people don’t end up in prison for minor offences;
- Creating better alternatives to imprisonment through a more flexible, responsive and therapeutic approach to Community Correction Orders; and
- Greater investment in safe, suitable and affordable housing and integrated supports to prevent homelessness and increase reintegration for people exiting prison.

Ten recommendations to break the links between the justice system, prison and homelessness

Throughout this submission, we share stories and direct quotes from 24 former clients, and make ten recommendations to break the links between the justice system, incarceration and homelessness.

TEN RECOMMENDATIONS TO BREAK THE LINKS BETWEEN THE JUSTICE SYSTEM, PRISON AND HOMELESSNESS

1. Create a Protocol for people experiencing homelessness in public places

To reduce justice system interactions for people experiencing homelessness, Justice Connect recommends:

- a. implementing a Protocol for responding to people experiencing homelessness for enforcement agencies, which would:
 - (i) avoid unnecessary, enforcement-based interactions with people experiencing homelessness;
 - (ii) ensure that where interactions do occur, they are appropriate and respectful;
 - (iii) support enforcement officers to use their discretion and consider alternative options to fines and charges when interacting with people experiencing homelessness; and
 - (iv) train and equip enforcement officers to make referrals to appropriate services as an alternative to fines and charges.

⁴ See ‘Corrections Statistics: Quick Reference’, *Corrections Victoria* (Web Page, 30 June 2020) <<https://www.corrections.vic.gov.au/prisons/corrections-statistics-quick-reference>>.

⁵ Department of Justice and Community Safety - Corrections Victoria, Annual Prisoner Statistical Profile 2009-10 to 2019-20 (December 2020) www.corrections.vic.gov.au/annual-prisoner-statistical-profile-2009-10-to-2019-20.

⁶ Australian Institute of Health and Welfare, *The health of Australia’s prisoners 2018* (Report, 30 May 2019) 13 (**‘AIHW Report’**).

⁷ See ‘Closing the Revolving Door prison project’, *Justice Connect* (Web Page) <<https://justiceconnect.org.au/our-services/homeless-law/tenancy-legal-help-for-prisoners/>>.

⁸ Australian Productivity Commission, *Report on Government Services 2021* (Report, January 2021) part C table CA.4.



2. Ensuring better and more accountable police practices

To ensure greater accountability in relation to policing and reduce justice system interactions for people experiencing homelessness, Justice Connect recommends:

- a. Reviewing the use of police powers, particularly related to search and move-on powers, including through consultation with people who have lived experience and specialised support professionals. This would improve police engagement with people sleeping rough and prioritise service-based responses to homelessness.
- b. Ensuring that police data on searches and move-on directions is recorded, analysed and publicly reported.
- c. The Victorian Government properly resource an effective and independent police oversight body.

3. Decriminalise public space offences

To reduce the disproportionate risk of minor criminal charges on people experiencing homelessness, Justice Connect recommends:

- a. Repealing the offence of begging in s 49A of the *Summary Offences Act 1966 (Vic)*.
- b. Ensuring the intended repeal of the offence of public drunkenness (s 13 of the *Summary Offences Act 1966 (Vic)*) is implemented, along with creating an appropriate public health response model in consultation with impacted communities.
- c. Reviewing the *Summary Offences Act 1966 (Vic)* with a view to decriminalising other public space and outdated offences.

4. Decrease the burden of fines on people experiencing homelessness

To reduce the burden of fines on people experiencing homelessness and their contact with the justice system, Justice Connect recommends:

- a. Amending the *Fines Reform Act 2014 (Vic)* to make an enforcement cancellation decision by Fines Victoria final and binding on an enforcement agency, while permitting demerit points following successful enforcement review to still be recorded in certain circumstances.
- b. Amending the nexus test to require that a persons' special circumstances contributed to the offending conduct, and incorporate people with significant and long-standing special circumstances.
- c. Expanding the Work and Development Permit scheme to include court fines.
- d. Amending the *Sentencing Act 1991 (Vic)* to align the approach to infringements and court fines under the Time Served Scheme, in particular to ensure that time on remand is included and applications can be heard post-release for court fines.
- e. Amending the *Fines Reform Act 2014 (Vic)* so that the different options to address fines are only extinguished after an enforcement warrant has been executed, or in the alternative, so that the time to address a seven-day notice is extended to 28 days.
- f. Requiring a proposed 'pocket resource' to be provided by Sheriff's Officers when issuing all seven-day notices (see **Annexure 2**) so that people with complex needs understand their options and can take action to address their fines.

5. Create a dedicated Homeless Court

To achieve better outcomes for people experiencing homelessness in the justice system, Justice Connect recommends:

- a. Creating a dedicated Homeless Court to provide a therapeutic response and intervene earlier to exit people experiencing homelessness into appropriate support services.

6. Increase access to integrated legal services

Integrated legal services play a critical role in exiting people out of the justice system and achieving long-term housing outcomes for people experiencing homelessness. Justice Connect recommends:

- a. Investing in client-centred and integrated legal services to help people facing homelessness successfully access, navigate and exit the justice system.



7. Improve access to the Criminal Justice Diversion Program

To improve and increase access to diversion for people experiencing homelessness, Justice Connect recommends:

- a. Amending section 59 of the *Criminal Procedure Act 2009 (Vic)* to remove the requirement that the prosecution consent to the Criminal Justice Diversion Program, so that the Court has the power to determine whether diversion is appropriate on balance in each matter.
- b. Implementing an option for courts to vacate pleas of guilty where it becomes apparent, after a plea is entered, that Diversion is the most appropriate outcome.

8. Reform bail laws to ensure people experiencing homelessness are able to access bail

To ensure that more people experiencing homelessness can access bail, Justice Connect recommends:

- a. Repealing the reverse-onus provisions in the *Bail Act 1977 (Vic)* and creating a presumption in favour of bail for all offences, unless there is a specific and immediate risk to the safety of another person.
- b. Including a specific provision in the *Bail Act 1977 (Vic)* that a person may not be remanded for an offence that is unlikely to result in a sentence of imprisonment.
- c. Extending initiatives such as the Court Integrated Services Program and other bail support programs across Victoria.

9. Create a more responsive, client-centred and flexible approach to Community Correction Orders

To maximise the effectiveness and accessibility of Community Correction Orders, Justice Connect recommends:

- a. Creating a more responsive, client-centred and flexible approach to Community Corrections Orders across Victoria with built-in supports to increase compliance and completion rates.
- b. Investing in specialised and therapeutic programs to better support people with specific complexities.

10. Close the revolving door between prisons and homelessness

To close the revolving door between people in or exiting prison and homelessness, Justice Connect recommends:

- a. Increasing supply of social housing with supports for people in the justice system.
- b. Increasing access to housing workers in prison so that Victorians have better community reintegration outcomes.
- c. Resourcing pre and post-release integrated legal services that support a person to access and maintain housing on release from prison.
- d. Improving and lengthening post-release support options, and resourcing rapid rehousing in safe accommodation for Victorians leaving prison, so that there are no exits into homelessness.



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 2020–2021, 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 661 new client files;
- Scaled our eviction prevention reach by helping 30,428 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 or exiting prison, and people sleeping rough;
- Deepened our community and health justice partnerships, particularly through integrated co-locations and digital initiatives with frontline homelessness and health organisations, including Launch Housing, cohealth and Sacred Heart Mission – Journey to Social Inclusion and GreenLight; and
- Collaboratively advocated in the context of COVID-19 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 181 clients and their families from being evicted into homelessness. Based on findings by the Australian Housing and Urban Research Institute (**AHURI**), this equates to over \$5.3 million worth of savings to the Victorian Government and wider-community, through avoiding increased health, justice and welfare services costs.⁹

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.

⁹ The estimated annual cost to government services of an individual experiencing homelessness is \$29,450 higher than for the rest of the Australian population. See Kaylene Zaretzky and Paul Flatau, *The cost of homelessness and the net benefit of homelessness programs: a national study* (Final Report No 218, Australian Housing and Urban Research Institute, December 2013) 14 <https://www.ahuri.edu.au/__data/assets/pdf_file/0007/2032/AHURI_Final_Report_No218_The-cost-of-homelessness-and-the-net-benefit-of-homelessness-programs-a-national-study.pdf>.



Acknowledgements

Justice Connect thanks all of our government and philanthropic supporters, along with our partner law firms and pro bono lawyers, whose significant contributions continue to generate positive outcomes for Victorians who are experiencing or at risk of homelessness, and shapes our recommendations for reform.

Justice Connect particularly recognises our partner law firms for their generous legal research support, and the high-quality work of secondees **Tatum Joseph** and **Cameron Inglis (MinterEllison)** during their time with Justice Connect. We also acknowledge our colleagues in the legal assistance, homelessness and community-service sectors for consultations in relation to this submission.

We have shared de-identified Justice Connect client stories and direct insights throughout this submission, which have informed and given light to our recommendations, and we thank them for their valuable contributions.

Justice Connect Homeless Law

PO Box 16013
Melbourne VIC 8007
DX 128 Melbourne
T +61 3 8636 4408
F +61 3 8636 4455
justiceconnect.org.au

Cameron Lavery

Manager and Principal Lawyer
T +61 3 8636 4412
E cameron.lavery@justiceconnect.org.au

Samantha Sowerwine

Principal Lawyer
T +61 3 8636 4470
E samantha.sowerwine@justiceconnect.org.au

Michael McKenna

Senior Criminal Lawyer
T +61 8636 4430
E michael.mckenna@justiceconnect.org.au



1. Reducing reliance on the justice system in responding to homelessness

This submission builds on Justice Connect's appearance and evidence at the public hearing of the Inquiry on 20 September 2021.

Due to living their lives in public places, people experiencing homelessness are at greater risk of being fined or charged for low-level offending related to homelessness and poverty.¹⁰ From recent research, four major themes emerge regarding the failure of the criminal justice system to consider the complex factors that underlie 'offending' by people experiencing homelessness, which results in the exacerbation of disadvantage, including:

- People experiencing homelessness, particularly visible homelessness, are the subject of targeted policing that produces over-criminalisation;
- There are significant barriers to justice for homeless people when they are required to appear before the criminal courts;
- Legal services for people experiencing homelessness are important, but lawyers can rarely do more than offer 'band-aid' solutions;
- The justice system imposes excessively punitive punishments on people experiencing homelessness, including bail denial, financial penalties that compound poverty, and prison terms that cause or entrench homelessness.¹¹

As seen through Lilly's story below,¹² relying on the justice system to respond to homelessness entrenches disadvantage, compounds homelessness and creates a further burden on an already stretched justice system.

¹⁰ Public Interest Advocacy Centre and Homelessness NSW, *Policing Public Space: The experiences of people sleeping rough* (Report, May 2021) <https://piac.asn.au/wp-content/uploads/2021/05/MIS0023_Policing-Public-Space-Report-PIAC_Web.pdf>; Justice Project Final Report (n 1) 24.

¹¹ In 2020, Justice Connect participated in an ARC Linkage Research project on the [Criminalisation of Poverty and Homelessness in Australia](#). Led by Professor Tamara Walsh from University of Queensland and Professor Luke McNamara from University of New South Wales, this collaborative research project is the first national study of how twenty-first century criminal laws and police powers impact on individuals experiencing poverty and homelessness. The project aims to use the data collected by Homeless Law and the other specialist homeless legal services across Australia to identify best practice policing and enforcement models, and to develop options for the reform of laws, policies and practices that contribute to people experiencing homelessness being criminalised. In particular, Homeless Law carried out twenty consumer consultations as part of our ongoing involvement in the project. See Luke McNamara et al, 'Homelessness and contact with the criminal justice system: Insights from specialist lawyers and allied professionals in Australia' (2021) 10(1) *International Journal for Crime, Justice and Social Democracy* 111 <<https://doi.org/10.5204/ijcjsd.1742>>.

¹² All client names in this Submission have been changed.



Homeless family violence victim-survivor helped to resolve criminal charges, secure safe housing & reconnect with her kids

Lilly experienced extensive family violence committed by multiple perpetrators, which resulted in serious health concerns, pushed her into homelessness and caused her to lose care of her two young children. When she first met with Justice Connect, Lilly was facing charges at the Magistrates' Court related to her drug dependency. Lilly's anxiety about going to court unsupported meant that she had failed to attend Court and a Magistrate had issued warrants on four separate occasions. Often in these circumstances, the system's response is to remand people in custody until their matter can be heard.

Lilly received specialised advice and ongoing representation through Justice Connect's criminal lawyer and non-legal supports from our Homeless Persons' Liaison Officer (**HPLO**) social worker, including helping Lilly to access court, facilitating transport and short-term housing, and offering direct assistance to feel more comfortable at her hearings, along with a supporting letter to the Magistrate. Due to intensive legal & social work advocacy, Lilly secured a 12 month undertaking without conviction, which was an immense relief to her.

Although Lilly had previously struggled to engage with community workers, the HPLO built genuine trust with her over six months, providing vital brokerage for essential needs, securing her a new driver's licence, actively referring her to alcohol and drug counselling and family violence case management, and helping her to make a priority public housing application. These holistic outcomes have given Lilly crucial safety and stability, empowering her to reconnect with her children and to prioritise her continued health recovery.

However there are several clear solutions which would reduce Victoria's current reliance on the justice system and improve pathways out of homelessness for Lilly and many other vulnerable community members, including:¹³

- Creating better frameworks for enforcement officers to use discretion and cautions (rather than issuing fines and charges to people where offending is directly related to homelessness) by implementing a Victorian Protocol for People Experiencing Homelessness in Public Places (Part 1.1);
- Ensuring better and more accountable policing practices, including by reviewing and publicly reporting on the use of police powers, particularly search and move-on powers, and resourcing an effective and independent police oversight body (Part 1.2);
- Building on the Victorian Government's leadership in abolishing the offence of public drunkenness as an opportunity to engage in a wholesale review of the *Summary Offences Act* and decriminalise other public space offences, particularly begging (Part 1.3);
- Implementing a fairer approaches to fines and homelessness through reform to the special circumstances test, binding enforcement review decisions and making Work Development Permits (**WDP**) available for court fines (Part 1.4).¹⁴

¹³ These measures address terms 1 and 2 of the Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Terms of Reference for the Inquiry into Victoria's Justice System* (3 June 2020) ('**Terms of Reference**').

¹⁴ Justice Connect is part of a large group of organisations who are supporting the #RaiseTheAge campaign to raise the age of criminal responsibility across Australia from 10 to 14 years of age. Evidence shows that children forced through the criminal legal process during their formative developmental phase suffer immense harm, which directly impacts their health, wellbeing and futures.



1.1 Decreasing enforcement-based approaches to homelessness: Victorian Protocol for Responding to People Experiencing Homelessness in Public Places

A Victorian Protocol for Responding to People Experiencing Homelessness in Public Places (**Protocol**) is a high-level policy document that provides a framework and guidance for enforcement officers making difficult decisions in complex situations. It is designed to be used as a tool by enforcement officers to exercise discretion and consider cautions as a first option for people where the offending is directly linked to their vulnerabilities, as well as encouraging referral pathways to appropriate community services or other support agencies as an alternative to fines and charges.

Justice Connect, in collaboration with homelessness, justice, government and other agencies, has been working to revive the 2006 Protocol for People Experiencing Homelessness in Public Places, which was implemented for the Melbourne Commonwealth Games. A copy of the Proposed Victorian Protocol can be found at **Annexure 1**.

Providing a framework to train and support enforcement officers

The negotiation, education and leadership that accompanies the development and implementation of the Protocol has the potential to play a significant role in improving the understanding of frontline officers and providing them with guidance about when and how to interact with people experiencing homelessness.

A tool such as the Protocol also provides an important framework to ensure enforcement officers exercise discretion and consider service-based responses as an alternative to fines and charges. Training opportunities include working closely in partnership with support services to ensure enforcement officers better understand the experience of homelessness and can provide appropriate referrals.¹⁵ The Protocol also offers opportunities for enforcement agencies to collaborate and coordinate on their responses to homelessness, capacity-building and learning from each other.

As well as working to reduce homelessness, the Protocol can also help councils and other public authorities to comply with their obligations under the Charter to make sure human rights are given proper consideration when making decisions.¹⁶ This kind of practical, clear guidance provides the necessary support and resources to engage appropriately and effectively with people experiencing homelessness.

Finally, a Protocol helps to shape conversations and messaging to the public, so that people experiencing homelessness are treated with respect and are not discriminated against on the basis of their homeless status.

NSW Government Protocol for Homeless People in Public Places

In New South Wales (**NSW**), the City of Sydney has had a 'Protocol for Homeless People in Public Places' since 2000. The NSW Protocol has had significant support from enforcement agencies, including City of Sydney enforcement and NSW Police, and has been a successful tool for enforcement agencies in guiding their interactions with people experiencing homelessness. It was recently reviewed through a Parliamentary Inquiry, which found it was working well and there are opportunities for further improvements to increase the impact and effectiveness of the Protocol in the face of growing need.¹⁷ Learnings from this recent process could help in implementing a best-practice Protocol in Victoria.

¹⁵ For example, Victoria Police, Council to Homeless Persons, and Justice Connect have collaborated on a 'Walk in my Shoes' tour for Victoria Police members, where consumers educate police members around the lived experience of people experiencing homelessness. See Miki Perkins, 'Police walk and talk to put a face to homelessness', *The Age* (online, 26 May 2018) <<https://www.theage.com.au/national/victoria/police-walk-and-talk-to-put-a-face-to-homelessness-20180526-p4zhpq.html>>.

¹⁶ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 38.

¹⁷ See New South Wales Government, *NSW Government response to the Legislative Assembly Committee on Community Services Inquiry into the Protocol for Homeless People in Public Places* (19 May 2021) <<https://www.parliament.nsw.gov.au/ladocs/inquiries/2568/NSW%20Government%20response%20to%20the%20Legislative%20Assembly%20Inquiry%20into%20the%20Protocol%20for%20Homeless%20People%20in%20Public%20Places.pdf>>.



Responding effectively to homelessness: NSW Government Protocol for Homeless People in Public Places

Aims and signatories

The NSW Protocol aims to 'help ensure that homeless people are treated respectfully and appropriately and are not discriminated against on the basis of their homeless status' and to 'provide a framework for interactions between officials and homeless people in public places'. Signatories to the NSW Protocol include: Housing NSW, NSW Police Force, Community Services, Department of Premier and Cabinet, Office of Environment and Heritage, NSW Health, RailCorp, State Transit Authority of NSW, Sydney Harbour Foreshore Authority, Sydney Olympic Park Authority, Aboriginal Affairs and Ambulance Service of NSW. The City of Sydney recognises the NSW protocol and notes that it 'acknowledges the equal rights of all members of the community to access public places'.

Guidance on appropriate responses

The NSW Protocol acknowledges that *'like all other members of the public, homeless people have a right to be in public places...at the same time respecting the right of local communities to live in a safe and peaceful environment'*. The Protocol is an agreement by government organisations to respond appropriately to homeless people who are in public places and acting lawfully. It doesn't prevent agencies from acting where health or safety is at risk or a breach of the peace or unlawful behaviour has occurred. It encourages officials to consider the individual's circumstances when enforcing laws and to use discretion which takes account of *'the complex needs of homeless people, including mental health issues, drug and alcohol misuse and cognitive impairment'*.

Implementation and evaluation

'Guidelines for Implementation' have been published and it is recommended that the NSW Protocol is addressed in induction training for all new staff and in development training for existing staff. Housing NSW developed a 'Protocol Training Package' to support organisations to adopt and implement the protocol. Signatories are also advised to conduct internal monitoring and review of the NSW Protocol and its implementation and impact. The Protocol will be reviewed every two years.

Recommendation 1: Create a Protocol for people experiencing homelessness in public places

To reduce justice system interactions for people experiencing homelessness, Justice Connect recommends:

- a. Implementing a Protocol for responding to people experiencing homelessness for enforcement agencies, which would:
 - (i) avoid unnecessary, enforcement-based interactions with people experiencing homelessness;
 - (ii) ensure that where interactions do occur, they are appropriate and respectful;
 - (iii) support enforcement officers to use their discretion and consider alternative options to fines and charges when interacting with people experiencing homelessness; and
 - (iv) train and equip enforcement officers to make referrals to appropriate services as an alternative to fines and charges.



1.2 Police powers and use of discretion

Police search powers allow a very broad scope for police to search people in public spaces on the basis of 'reasonable suspicion' of someone being in possession of a drug of dependence.¹⁸ Equivalent powers do not exist on private property – where people have housing.¹⁹ In Justice Connect's experience, the threshold for that reasonable suspicion is very low and there is little scope for people to protect their rights. As a result of this, people sleeping rough are subjected to increased police interactions and are at higher risk of searches.

This can result in people sleeping rough facing charges and being remanded for relatively minor drug possession charges, including for personal possession and use of cannabis. Cannabis offences account for about half of all drug arrests across Australia, more than any other drug.²⁰ Broad search powers under the *Drugs, Poisons and Controlled Substances Act 1981* (Vic) (**DPCS Act**) can also result in people being charged with a range of unrelated offences. For Justice Connect's clients, a common charge for people sleeping rough is the indictable offence of dealing with property that is reasonably suspected of being the proceeds of crime under s 195 of the *Crimes Act 1958* (Vic) (**Crimes Act**). For this charge, there is no requirement for the court to find that items are indeed stolen. As a result, people experiencing homelessness are often searched under the premises outlined in the *DPCS Act* and then charged under the *Crimes Act* in relation to any items of value for which they can't produce receipts, such as in Gary's story below. This regularly includes electrical items and items of sentimental value, such as family jewellery. Given police do not even need to prove that items are stolen, people sleeping rough are at a significant forensic disadvantage when charged with this offence.

Rough sleeper searched for drugs and charged with other unrelated offences

After the breakdown of his marriage, Gary experienced a decline in his mental health and was facing a number of physical health issues. Gary found it tough to get consistent work and as a result spent around five years sleeping rough.

One day while Gary was sleeping rough, police approached Gary and searched him under the *Drugs, Poisons and Controlled Substances Act*. They said they formed a suspicion that Gary was in possession of drugs because one of the officers saw a zip lock bag. When they searched Gary, they did not find any drugs but found a kitchen knife and a mobile phone which was still in its packaging. Gary had recently received the phone to assist with contact his support workers

Police charged Gary with possession of a controlled weapon and, because he couldn't produce a receipt or evidence of the transaction where he bought the phone, he was charged with dealing with property which is reasonably suspected of being the proceeds of crime.

With the assistance of Justice Connect's in-house criminal lawyer, both charges were withdrawn and almost two years later, Gary was able to get the phone back.

Similarly, move-on powers give police or protective services officers (PSOs) broad powers to direct people to move on under section 6 of the *Summary Offences Act*. This leaves people sleeping rough particularly vulnerable to being moved on, despite the fact that they have nowhere to go.²¹ There is currently a lack of publicly available data to understand the breadth of the issue and the use of police discretion when issuing move-on orders or using search powers.

¹⁸ See *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 82.

¹⁹ In those circumstances, police need to obtain a search warrant.

²⁰ This includes action by way of arrest and charge, summons, diversion, infringement and caution: see Australian Criminal Intelligence Commission, *Illicit Drug Data Report 2017–18* (Report, 2019) 14 <https://www.acic.gov.au/sites/default/files/2020-08/illicit_drug_data_report_2017-18.pdf>.

²¹ See Luke McNamara et al (n 11) 116.



Given the inherent risks of over-policing for people experiencing homelessness, there need to be greater accountability measures in relation to use of police powers. An independent police oversight body is critical to ensure that there is an independent oversight and complaints mechanism. In addition, data on searches and move-on directions needs to be regularly recorded, analysed and reported to the public in order to ensure greater accountability in the use of police powers.

Recommendation 2: Ensuring better and more accountable police practices

To ensure greater accountability in relation to policing and reduce justice system interactions for people experiencing homelessness, Justice Connect recommends:

- a. Reviewing the use of police powers, particularly related to search and move-on powers, including through consultation with people who have lived experience and specialised support professionals. This would improve police engagement with people sleeping rough and prioritise service-based responses to homelessness.
- b. Ensuring that police data on searches and move-on directions is recorded, analysed and publicly reported.
- c. The Victorian Government properly resource an effective and independent police oversight body.

1.3 Decriminalising public space offences

Justice Connect has helped thousands of Victorians experiencing homelessness and housing insecurity to resolve overwhelming fines and charges for what we call 'public space offences', including being drunk in public, begging and conduct on public transport. Decriminalisation of public space offences, including public drunkenness and begging, has the potential to reduce the disproportionate impact that charges and fines can have on the most vulnerable Victorians, and assist to break the links between homelessness and the justice system.

Asking for change: the need to decriminalise begging

Begging and gathering alms remains a criminal offence in Victoria under s 49A of the *Summary Offences Act*, and attracts a maximum penalty of 12 months imprisonment. We see first-hand the disproportionate impact of fines and charges on people experiencing homelessness. Former Justice Connect client, Hayley, found herself homeless after fleeing from an ex-partner due to family violence and having nowhere safe to go. During this time, Hayley received several fines and charges, including for begging, which she said made her feel:

'Ashamed for getting them in the first place, because I'm one that doesn't break the law.'

By criminalising begging, the state continues to rely on the police and courts to tackle what is overwhelmingly a health, housing and social issue. In doing this, we:

- impose a significant burden on police and the courts;
- cause highly vulnerable people to be caught up in the justice system as a result of homelessness and poverty; and



- fail to reduce the number of people who beg.²²

Evidence and research has consistently shown that people who beg experience high levels of hardship. Studies continue to show how begging, homelessness, ill-health and substance dependence regularly intersect.²³ The strong conclusion is that begging is about social and financial poverty, not about crime. In this context, the criminalisation of begging punishes vulnerable people experiencing extreme hardship and minimises their visibility, as Chris' story demonstrates.

Woman experiencing homelessness charged with begging after fleeing violent relationship

Chris was in a violent relationship. After suffering an assault, she fled her home with only the clothes on her back and some essentials. Chris made her way into the Melbourne CBD, believing that was the safest place to be and the most likely place she would be able to secure a night's accommodation at short notice. Chris made a sign that read *"Homeless due to domestic abuse. I'm Chris. I'm 40 & am asking for your help to get a safe warm bed. Any donations of food, coffee or spare change are much appreciated. Thank you."* Police approached Chris who was sitting on the footpath with the sign beside her, and asked what she was doing. The police statement confirmed that Chris said that she was *"trying to get enough money so that I can get a room, go to somewhere safe, instead of going into a laneway getting raped and bashed"*.

Chris was then charged with begging. Unfortunately, Chris was unable to get any accommodation and was forced to return to her former home with her partner. After suffering further violence a couple of months later, a full intervention order was made to protect Chris. With appropriate supports, Chris was then able to enter transitional housing.

Justice Connect's criminal lawyer provided specialised legal advice about Chris' rights, including the option of representation to contest the charge. At court, police prosecutors chose not to exercise prosecutorial discretion and withdraw the charge on the basis that Chris did not call police on the night she fled and did not report the incident. Chris ended up pleading guilty because she just wanted the matter dealt with, so she could safely move on with her life.

As part of Anti-Poverty Week in 2016, Justice Connect joined with leading homelessness and community organisations to launch *'Asking for Change: Calling for a More Effective Response to Begging in Victoria'* (**Asking For Change**).²⁴ In two years of Asking for Change, Justice Connect consulted with 30 individuals who beg or have begged in Melbourne's CBD.

Of these 30 participants:

- 87% reported having mental health issues;
- 77% identified as experiencing homelessness (including 63% sleeping rough);
- 63% had previously been in custody;

²² 'Asking for Change: Calling for a More Effective Response to Begging in Victoria', *Justice Connect* (Web Page, 2016) <<https://www.justiceconnect.org.au/askingforchange>>. See also Justice Connect, *Asking for Change: Calling for a More Effective Response to Begging in Victoria* (Public Briefing Note, 2016) <<https://justiceconnect.org.au/wp-content/uploads/2018/08/Asking-for-change-a-better-response-to-begging.pdf>>.

²³ See, eg, Michael Horn and Michelle Cooke, *A Question of Begging: A study of the extent and nature of begging in the City of Melbourne* (Report, Hanover Welfare Services, June 2001); Philip Lynch, 'Begging for Change: Homelessness and the Law' (2002) 26(3) *Melbourne University Law Review* 609; Philip Lynch, 'Understanding and Responding to Begging' (2005) 29(2) *Melbourne University Law Review* 518; PILCH Homeless Persons' Legal Clinic, *We Want Change: Public Policy Responses to Begging in Melbourne* (Report, June 2005); PILCH Homeless Persons' Legal Clinic, *We Want Change! Calling for the abolition of the criminal offence of begging* (Report, November 2010); City of Melbourne, *Begging Engagement Pathways and Support Program Evaluation Report* (Report, June 2015).

²⁴ 'Asking for Change: Calling for a More Effective Response to Begging in Victoria', *Justice Connect* (Web Page, 2016) <<https://www.justiceconnect.org.au/askingforchange>>. See also Justice Connect, *Asking for Change: Calling for a More Effective Response to Begging in Victoria* (Public Briefing Note, 2016) <<https://justiceconnect.org.au/wp-content/uploads/2018/08/Asking-for-change-a-better-response-to-begging.pdf>>.



- 60% reported suffering family or relationship breakdown;
- 33% identified as victim-survivors of family violence.

When asked how begging made them feel, the participants shared:



Taking a more appropriate approach to public drunkenness in Victoria

Justice Connect commends the Victorian government on its commitment to remove the offence of public drunkenness under s 13 of the *Summary Offences Act* and replace it with a health-based response in consultation with impacted communities, in order to provide vulnerable Victorians with appropriate help and support.²⁵ This is a promising development in recognising that criminalisation and enforcement-based approaches to homelessness do not address the underlying issues of poverty. In addition to being financially overwhelmed and caught up in the justice system, Darren's story below highlights how enforcement-based responses made it harder for Victorians to exit homelessness, and why decriminalisation of public drunkenness needs to be implemented as soon as possible.

Chronically homeless man overwhelmed by fines for public drunkenness

Darren has been homeless on-and-off for almost 15 years and has struggled with alcohol dependence since his teens. A combination of these two factors has resulted in him getting about \$15,000 in fines, many of which he received for being drunk in public. He said:

The impact of the fines in my case just got harder because I kept getting more of them. Before I was able to address or pay for the existing one I already had I would cop another one and another one and it just got overwhelming. I was unable to pay due to the fact that I was only on Newstart at that time and living in boarding houses, which the rent there was pretty much a third of my payment so I couldn't live.

The need for summary offences reform

We know that when certain outdated poverty offences such as begging are still on the books, there will always be pressure to use them on vulnerable people. Building on the welcome commitment to decriminalise public drunkenness in Victoria, the Victorian government should commit to broader summary offences reform through the decriminalisation of begging and a review of the *Summary Offences Act*. As it stands, the *Summary Offences Act*

²⁵ The Hon Jill Hennessy MP, Attorney-General (Vic), 'New Health-Based Response to Public Drunkenness' (Media Release, 22 August 2019) <<https://www.premier.vic.gov.au/new-health-based-response-to-public-drunkenness/>>.



contains a number of other low-level offences that can be used by police to unfairly target people experiencing homelessness and poverty.²⁶ In addition, there are a number of relatively low-level offences that are classified as indictable that should be reconsidered as summary offences to reduce the risk of imprisonment for low-level offending.²⁷ This would pave the way for a service-based response and ensure people are not needlessly entrenched in the justice system.

Recommendation 3: Decriminalise public space offences

To reduce the disproportionate risk of minor criminal charges on people experiencing homelessness, Justice Connect recommends:

- a. Repealing the offence of begging in s 49A of the *Summary Offences Act 1966* (Vic).
- b. Ensuring the intended repeal of the offence of public drunkenness (s 13 of the *Summary Offences Act 1966* (Vic)) is implemented, along with creating an appropriate public health response model in consultation with impacted communities.
- c. Reviewing the *Summary Offences Act 1966* (Vic) with a view to decriminalising other public space and outdated offences.

1.4 More effective approaches to fines and homelessness

Each year, Justice Connect provides legal help to people who have received fines and infringements for 'public space offences' based on their homelessness, which is often interconnected with mental health issues, family violence and substance dependence. Justice Connect assists these clients to resolve fines through social justice initiatives in the *Fines Reform Act 2014* (Vic) (**FR Act**), such as 'special circumstances' enforcement review, the Work and Development Permit scheme (**WDP**) and time served scheme (**TSS**).

We see first-hand the disproportionate impact of fines on people experiencing homelessness. Former Justice Connect client Julia reveals how financial penalties only serve to increase the strain struggling people are already under:

'The effect of having the fines is very stressful because when you are unemployed or on a pension, it is pretty difficult to survive as it is... You don't have a spare \$200 just to give to a fine and if you're homeless as well it's more stressful because it is already incredibly hard not having a place of your own.'

In addition to undertaking direct legal casework, Justice Connect uses the data and client insights from our work to inform and lead conversations about effective, best-practice responses to homelessness and fines.²⁸ This includes co-convening the Infringements Working Group, which is an alliance of 37 legal and financial counselling organisations committed to evidence-based reforms of the fines system that benefit our clients, government agencies and the courts.

²⁶ Including *Summary Offences Act 1966* (Vic) s 17 for obscene, indecent, threatening language and behaviour in public, and *Summary Offences Act 1966* (Vic) s 49B for loitering with intent to commit an indictable offence.

²⁷ For example, possession of cannabis, theft of items, handling stolen goods, property damage of low monetary value. We also support the position adopted by the Victorian Aboriginal Legal Service, Fitzroy Legal Service and Victoria Legal Aid in their respective submissions to the Inquiry into the Use of Cannabis in Victoria, that the use of cannabis and the possession of cannabis for personal use should be decriminalised and replaced by a public health response.

²⁸ For example, Justice Connect has informed and influenced legislative reform to recognise homelessness as a 'special circumstance' in the *Infringements Act 2006* (Vic) and achieved 'social justice initiatives' through the *Fines Reform Act 2014* (Vic), including through our consumer-led campaign 'In the Public Eye – Personal Stories of Homelessness and Fines'.



Most recently, Justice Connect has consulted with the Fines Reform Advisory Board (**FRAB**) and made a detailed, collective submission in January 2020. In April 2020, FRAB delivered its Report on the Delivery of Fines Reform (**FRAB Report**), including 24 recommendations,²⁹ and the Attorney-General announced that the government has accepted 13 of the recommendations in full or in principle.

The following targeted reforms, including those outlined in the FRAB Report, will help to ensure that people experiencing complex vulnerabilities are not penalised for their disadvantage and reduce their chances of interaction with the justice system.³⁰ These reforms will also reduce the burden on the justice system caused by fines recipients being unnecessarily caught in the justice system as a result of their disadvantage.

Early intervention to prevent people entering the fines system

Where possible, people who are homeless should be assisted to avoid entering the fines system in the first place. Enforcement officers should be resourced to properly exercise their discretion, identify the risk of over-enforcement and appropriately interact with vulnerable people. They can be better supported to do this through training, guidelines and protocols (such as the Proposed Victorian Protocol) as well as through amendments to the Attorney-General's Guidelines for Enforcement Agencies.³¹ Jade's story below illustrates how easily people experiencing homelessness can become caught up in the fines enforcement process and how important it is for people to avoid entering the infringements system in the first place.

Young, rough sleeping, family violence victim-survivor resolves \$5000 in public space offence fines with support to navigate the justice system

When Jade first spoke with Justice Connect, she had just moved into a rooming house after previously sleeping rough. She was trying to sort out the \$5000 in fines she had received while living her life in public - travelling on public transport without a valid ticket, being drunk in public, smoking and swearing on train platforms. She also had two court ordered fines for begging totalling almost \$500. Her Newstart income would not come close to covering them.

Contacting Justice Connect and coming to an appointment with lawyers was an achievement for Jade. Her depression and severe anxiety made accessing services confronting and her substance dependence made long term engagement difficult. Jade had also experienced family violence from her on-off boyfriend. Her caseworker collaborated closely with Justice Connect to support Jade to address her health and housing issues and to establish a safe distance from her boyfriend.

Obtaining records of Jade's fines was another challenge. Centrelink listed 24 previous addresses for her and compiling documents to support a special circumstances application was a lengthy process. In the meantime, Jade continued to live in unstable housing and obtain more fines. Eventually, Justice Connect was able to submit two applications for review. Following a hearing in the Magistrates' Court, Jade's matter was adjourned for 6 months on an undertaking with conditions, including that Jade attend drug and alcohol counselling and not get any more fines. Jade complied with the conditions and her fines were dismissed, while a manageable payment plan was established for her remaining begging fines. Following Justice Connect's wrap-around help, Jade said she was *'doing well'*, having moved into public housing, connected with a psychologist and having recently become engaged.

As Jade's story demonstrates, punitive approaches to homelessness impose an unmanageable burden on struggling individuals, do not achieve the desired results, and unnecessarily consume the limited resources of the justice system, and the legal assistance, financial counselling and community-service sectors.

²⁹ Fines Reform Advisory Board, *Report on the Delivery of Fines Reform* (Report, 2020) 2 <https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/2816/0793/8523/Fines_Reform_Summary_Report.pdf> ('**FRAB Report**').

³⁰ Terms of Reference (n 13) terms 1 and 2.

³¹ On this, see Infringements Working Group, Submission to Infringements Standing Advisory Committee, *Amendments to the Draft Attorney-General's Guidelines to the Infringements Act* (3 September 2021). A copy of this submission can be made available on request.



Binding enforcement review

Justice Connect spends significant time assisting vulnerable clients in making enforcement review applications, and Fines Victoria then expends significant resources in determining the applications. However, despite a successful enforcement review application, enforcement agencies can still choose to prosecute the underlying charge after Fines Victoria has cancelled enforcement. The Magistrates' Court then spends time hearing matters that have already been determined by Fines Victoria. This is particularly problematic as each individual fine where an enforcement agency chooses to prosecute is generally listed in the Magistrates' Court closest to where the offence occurred. This means that a fines recipient can have multiple hearings listed in multiple different courts.

As highlighted by Kelly's story below, this process is inefficient, contributes to the backlog in the Magistrates' Court and leads to vulnerable community members being unnecessarily caught up in the justice system.

Aboriginal woman who has experienced homelessness, family violence and mental health issues faces the prospect of 23 different court dates to resolve her fines

Kelly is a 30 year old Aboriginal woman with a history of experiencing homelessness, family violence and sexual abuse since the age of twelve, along with a drug dependence directly related to her past trauma. She has been diagnosed with borderline personality disorder and post-traumatic stress disorder.

Kelly has 23 different infringements, the majority of which relate to driving an unregistered vehicle without a licence during a period in which she was sleeping in her car. Justice Connect helped Kelly with her special circumstances enforcement review application for these infringements. The application was successful and Fines Victoria cancelled enforcement of the infringements based on Kelly's special circumstances. These infringements were then referred back to Victoria Police in accordance with s37(1)(b) of the *FR Act*. Victoria Police decided to prosecute each of the 23 infringements separately in open court. Each infringement has been listed to be heard on a different date in a local Magistrates' Court. Kelly will seek substantially the same consideration of her special circumstances in each case. The lawyers have been attempting to consolidate all of her matters into one hearing to minimise Kelly's distress in attending court and to maximise the efficient and proper administration of justice. However, the lawyers have not been contacted by Victoria Police when each case is listed, and they are solely reliant on the online Magistrates' Court list to identify each new hearing. The prospect of multiple hearings in open court has been overwhelming for Kelly, which has placed both her mental health and physical safety at risk.

Ultimately, Kelly's lawyers were able to have all of Kelly's matters heard together in the online Magistrates' Court. Kelly was given an adjourned undertaking without conviction for 6 months on the condition that she was of good behaviour and attends counselling.

Justice Connect recommends amending the *FR Act* to make an enforcement cancellation decision by Fines Victoria final and binding on an enforcement agency. Any registered infringement fine subject to a decision by Fines Victoria should then be withdrawn. This brings more certainty, efficiency and fairness into the enforcement review system and would remove the majority of fines matters from the Magistrates' Court.³²

For public safety offences where Victoria Police enforce the matter in court due to the need for a finding of guilt for demerit points to be recorded, Justice Connect recommends permitting demerit points to be recorded in certain circumstances following special circumstances enforcement review.³³ This would significantly decrease the number of fines recipients in the Magistrates Court and improve the efficiency and safety of the demerit point system.³⁴

Special circumstances applications - nexus requirement

Victoria's special circumstances system allows people experiencing homelessness, and other conditions or circumstances, to have their fines reviewed by Fines Victoria and withdrawn by enforcement agencies. To meet the

³² This amendment was recommended in the FRAB Report (n 29) 16 (recommendation 17).

³³ This was also recommended in the FRAB Report (n 29) 14 (recommendation 8).

³⁴ Noting that the current system creates a delay for the accrual of demerit points between enforcement being cancelled by Fines Victoria and a guilty finding in the Magistrates Court.



definition of ‘special circumstances’³⁵, applicants must prove a direct causal link between the conduct constituting the offence and the homelessness or other circumstance (**nexus test**).

This current nexus test excludes many vulnerable people with fines from accessing the special circumstances scheme because direct evidence of the nexus can be extremely difficult to obtain.³⁶

In order for the special circumstances test to work effectively, two key changes are necessary:

1. The nexus requirement should be lowered from a condition or circumstance *resulting* in an inability to understand that the behaviour constitutes an offence, or to control offending behaviour, to *contributing* (ie, that their condition or circumstance contributed to a significantly reduced capacity to understand that the behaviour constitutes an offence or to control the offending conduct);
2. Where special circumstances are significant and likely to be persistent, adding an alternative limb to the nexus test where a person can establish that their condition is “likely to be significant and longstanding” or where they suffer from a “severe episodic illness”, together with other factors such as where their illness and disadvantaged status makes management of their fines difficult (i.e. that their condition or circumstance is likely to be persistent and significant and therefore their capacity to manage the fines is significantly impaired).³⁷

This means that a special circumstances application will be available to some of the most complex and vulnerable Victorians, ensuring diversion from the system of applicants who have conditions or circumstances that contributed to the offending conduct.

Making Work and Development Permits (WDP) available for court fines

The WDP scheme is one of the highest-potential social justice initiatives implemented by the Victorian Parliament through fines reform.³⁸ However, it is not available in relation to court fines. For many vulnerable clients like Zoya whose story is outlined below, the limited options available for court fines are not appropriate, inefficient and contribute to the court backlog.³⁹ In Justice Connect’s experience, many clients are forced to choose to do nothing about their court fines and risk future arrest as they simply cannot afford to pay the fines and the other limited options are inappropriate.

Justice Connect recommends making WDPs available for court fines, as it provides a therapeutic means for vulnerable people to deal with their court fines, efficiently exit the fines system and address the underlying behaviour that may have led to the fines.⁴⁰

³⁵ See *Infringements Act 2006* (Vic) s 3.

³⁶ Sometimes this is because the person was not accessing treatment or assistance at the time the fines were incurred, or because health or support services are unable to comment retrospectively on the direct causal link between a person’s circumstances and their offending behaviour (particularly as fines are often years old).

³⁷ This aligns with the FRAB Report (n 29) 14 (recommendation 7).

³⁸ This is a significant new initiative for Victoria, and one that is expected to support our most vulnerable members of the community to address the circumstances that lead to offending: see Victoria, *Parliamentary Debates*, Legislative Council, 12 June 2014, 1946 (Gordon Rich-Phillips, Assistant Treasurer) <https://www.parliament.vic.gov.au/images/stories/daily-hansard/Council_2014/Council_Daily_Extract_Thursday_12_June_2014_from_Book_8.pdf> (‘Fines Reform Bill 2014 Second Reading Speech’).

³⁹ The only options to deal with court fines are an instalment plan, conversion of the fine to an unpaid community work order, a rehearing in certain circumstances, or appeal of the decision to a higher court. For those who have been determined unfit to work and receive the Disability Support Pension, an unpaid community work order will not be an option. A payment arrangement for court fines also creates significant financial strain for fines recipients, particularly those on Centrelink or low incomes, and leaves them engaged in the fines system for many years. Applications under the *Sentencing Act 1991* (Vic) and applications for a rehearing under the *Criminal Procedure Act 2009* (Vic) carry the risk of resentencing or the fines recipient receiving a higher sentence which can further compound the person’s involvement in the court system.

⁴⁰ The Fines Reform Advisory Board recommended that consideration should be given to expanding the WDP scheme to court fines, subject to consultation with the courts: see FRAB Report (n 29) 14–15 (recommendation 9).



Family violence victim-survivor and refugee heavily burdened by fines directly related to her experience of homelessness

Zoya is a family violence victim survivor who, since arriving in Australia ten years ago as an asylum seeker, has experienced ongoing homelessness which has exacerbated her health issues. While awaiting the result of her permanent protection visa application, Zoya's visa status restricted her ability to gain employment or receive welfare benefits, which placed her in significant financial hardship.

Zoya received a number of infringements and court fines which were directly related to her homelessness. Since she had no permanent address, Zoya was unaware she had received some of the fines and she could not afford to pay them. Justice Connect assisted Zoya to have a number of her infringements waived through internal review and are in the process of assisting her with a WDP which will enable her to see a psychologist to work off her remaining infringements.

As a result of the current limited options available to address open court fines, including no option to apply for a WDP, Zoya has entered into a payment plan for the court fines. While Zoya now receives Centrelink benefits and has secured community housing, her finances are still significantly strained, meaning that the payment plan will exacerbate Zoya's financial hardship and put her at risk of returning to homelessness.

Align approach to court fines and infringements under the Time Served Scheme

The Time Served Scheme (TSS) allows Victorians to convert eligible infringements and court fines to time in prison. The TSS provides an important opportunity for people to leave prison free of fine debt, which also operates to remove the risk of fines resulting in future arrest, imprisonment or financial hardship.

However, the process for resolving infringement fines and court fines through the TSS differ significantly, creating confusion and inequity for people in converting their fines. Recent welcome amendments to the *Fines Reform Act 2014* (Vic) now allow the Director of Fines Victoria (**Director**) to convert infringement fines administratively under the TSS, rather than make an application to the Magistrates' Court for an order.⁴¹ In addition, time on remand is included as part of 'time served' for infringement fines⁴², and a Magistrate may hear an application after a person has been released from prison provided the application was made and lodged with the court while the person was in custody.⁴³

For court fines, the option of administrative waiver by the Director does not apply, an application to the TSS can only be made once sentenced⁴⁴ and the time served can only be counted from the date the person requested the application (ie, not from when the person first entered prison).⁴⁵

In order to ensure that people in prison with court fines are able to exit prison with a clean slate, Justice Connect recommends amending the *Sentencing Act 1991* (Vic) to update the approach to court fines under the TSS to mirror the options and processes available for infringement fines under the *FR Act* to enable time on remand to be included and for applications to be heard after someone is released from prison.

Amending the seven-day notice period under the Fines Reform Act 2014 (Vic)

The *FR Act* introduced significant changes to seven-day notices, which the Sheriff provides people facing fines as a final warning that infringement warrants are imminently going to be executed. Under the new system, the majority of options to deal with fines, including enforcement review, payment arrangements, the Family Violence Scheme

⁴¹ Where an individual is not solely in custody for a fine-related sentence; and their period in custody for a non fine-related sentence accounts for the whole fine debt, where one day in custody accounts for one penalty unit. See *FR Act* ss 171AB–171AD.

⁴² *FR Act* s 171B(2).

⁴³ *FR Act* ss 171A(4), 171B(2).

⁴⁴ *Sentencing Act* s 16A(1).

⁴⁵ *Sentencing Act* s 16A(3).



and Work and Development Permit scheme, are all extinguished with the expiry of the seven-day notice.⁴⁶ Further, due to the complexities of disadvantaged community members, engaging with a legal service or other assistance within seven days of the service of the notice is highly challenging and unlikely.⁴⁷ Justice Connect understands this reform was an unintended consequence of the *FR Act* reforms process, as the previous seven-day notice scheme was not clearly understood.⁴⁸

Extending the time-limit achieves a fairer and more efficient fines systems, as well reducing the burden on the justice system given the increasing the prevalence of Magistrates' Court hearings under s 165 of the *FR Act* after the execution of warrants.

Legislative reform is needed to revert to the pre- *FR Act* system, so that access to the different options to address fines is only extinguished after an enforcement warrant has been executed. If this option is not possible, Justice Connect strongly encourages legislative reform to extend the seven day period to 28 days.⁴⁹

Proposed 'Pocket Resource' for Sheriff's Officers

In addition to the above proposed amendment to the current seven-day notice, Justice Connect recommends that Sheriff's Officers be provided with a Proposed 'Pocket Resource' to give to debtors on the spot, which educates them about the effect of seven-day notices. The Proposed Pocket Resource, which is provided at **Annexure 2**, provides the following benefits:

- It is in plain English and is easier to understand for people with limited English reading proficiency;
- It sets out more clearly the risks of doing nothing and encourages readers, in simple language, to act quickly;
- It very clearly states where to go for free legal information and advice;
- It alerts readers to personal circumstances which will determine which options are available to them, which is more meaningful and likely to connect with readers.

Sheriff's Officers should also receive additional supports, including tailored training and clear, consistent and transparent guidelines, to exercise their available discretion under the *FR Act* when interacting with people experiencing homelessness and other special circumstances.

⁴⁶ *FR Act* ss 10B(2)(a), 10O(a), 32(4)(a), 42(3)(b)(i).

⁴⁷ The seven-day notice itself also does not provide information about WDPs, enforcement review, or the Family Violence Scheme and the circumstances in which those applications can be made.

⁴⁸ See Fines Reform Bill 2014 Second Reading Speech (n 38) 1946, which does not provide any rationale for the change to the seven-day notice's operation.

⁴⁹ These options were also recommended in the FRAB Report (n 29) 17 (recommendation 21).



Recommendation 4: Decrease the burden of fines on people experiencing homelessness

To reduce the burden of fines on people experiencing homelessness and their contact with the justice system, Justice Connect recommends:

- a. Amending the *Fines Reform Act 2014* (Vic) to make an enforcement cancellation decision by Fines Victoria final and binding on an enforcement agency, while permitting demerit points following successful enforcement review to still be recorded in certain circumstances.
- b. Amending the nexus test to require that a persons' special circumstances contributed to the offending conduct, and incorporate people with significant and long-standing special circumstances.
- c. Expanding the Work and Development Permit scheme to include court fines.
- d. Amending the *Sentencing Act 1991* (Vic) to align the approach to infringements and court fines under the Time Served Scheme, in particular to ensure that time on remand is included and applications can be heard post-release for court fines.
- e. Amending the *Fines Reform Act 2014* (Vic) so that options to address fines are only extinguished after an enforcement warrant has been executed, or in the alternative, so that the time to address a seven-day notice is extended to 28 days.
- f. Requiring a proposed 'pocket resource' to be provided by Sheriff's Officers when issuing all seven-day notices (see **Annexure 2**) so that people with complex needs understand their options and can take action to address their fines.



2. Diverting people experiencing housing insecurity out of the criminal justice system

People experiencing homelessness are overrepresented in the justice system, often for offences directly related to their experience of homelessness. For those people, access to social, health and legal supports is critical to reduce recidivism and divert people out of the system as early as possible. In prioritising this early intervention, Justice Connect has developed an integrated practice model with a specialist criminal lawyer and social worker, recognising that diverting people away from the justice system requires a holistic legal and non-legal response.⁵⁰

Based on Justice Connect's integrated practice model, this section outlines three key ways to exit people out of the justice system:

- Creating a specialised Homeless Court to provide a therapeutic response and intervene earlier to exit people experiencing homelessness into appropriate support services (Part 2.1);
- Investing in integrated legal services to reduce the emergence of new legal issues and increase the potential for positive and long-term outcomes for clients (Part 2.2); and
- Providing greater access to diversionary programs such as the Criminal Justice Diversion Program (Part 2.3).

2.1 Homeless Court: therapeutically responding to people experiencing homelessness in the justice system

Through our specialist criminal law program for Victorians who are facing homelessness, we regularly see how people experiencing homelessness are at heightened risk of receiving charges directly related to their complexities. In the last year, of Justice Connect's clients who received our integrated criminal legal services, 67% identified as having slept rough and 100% reported having mental health issues. Rough sleepers interact with police on an almost daily basis and regularly come before the court charged with low level public space offences. Justice Connect clients' housing insecurity often stems from a history of trauma including family violence, poor mental and physical health and substance dependence issues.

Over the last 20 years, problem-solving courts and court supports across the state have expanded in recognition of the need to address underlying factors that might contribute to offending and entrench them in the justice system.⁵¹ Using the principles of therapeutic jurisprudence, problem solving courts apply a multi-disciplinary approach to deal with complex social and health problems, such as drug dependence or homelessness.⁵² This approach provides important benefits to the accused as well as the broader community by providing targeted and integrated supports that reduce the likelihood of reoffending.

From Justice Connect's client and casework insights, the benefits of therapeutic courts and programs for people facing homelessness include:

- Increasing the understanding and engagement of people with complex needs in the court process.
- Offering an opportunity for service-focussed interventions, including tailored supports related to:
 - Mental health;
 - Drug and alcohol dependence

⁵⁰ Terms of Reference (n 13) term 2.

⁵¹ Examples of specialised courts and lists currently operating in Victoria include the Koori Court (in both the Magistrates' and County Court), the Assessment and Referral Court, Drug Court, Neighbourhood Justice Centre, and the Court Integrated Services Program (in both the Magistrates' and County Court).

⁵² Examples in other jurisdictions include the Te Kooti o Timatanga Hou Court (the Court of New Beginnings) in Auckland, New Zealand: see Alex Woodley, *A Report on the Progress of Te Kooti O Timatanga Hou – The Court of New Beginnings* (Report, 25 September 2012) <<http://www.districtcourts.govt.nz/criminal-court/criminal-jurisdiction/specialist-criminal-courts/new-beginnings-court/>>; Homeless Courts in ten states in the United States: see Claudia Lopez, *Trends in State Courts - Homeless Courts* (Report, National Centre for State Courts, May 2017) <<https://ncsc.contentdm.oclc.org/digital/collection/spcts/id/311>>; and a 'Special Circumstances Court' in Queensland: see Tamara Walsh, 'The Queensland special circumstances court' (2007) 16(4) *Journal of Judicial Administration* 223.



- Housing
- Family violence
- Obtaining materials and support to link appropriately with NDIS
- Referrals to culturally safe programs
- Making the person facing charges more likely to attend court and engage in a process where they feel that their story will be heard and understood.
- Giving judicial officers and prosecutors a chance to better understand the charged person's circumstances and the interventions that are likely to support them to break offending cycles. This can include formal training relevant to the area in which the court sits, but can also include informal learning from the experience of sitting in a list which regularly deals with people who face particular issues. This specialisation can be invaluable in understanding how justice might best be achieved, along with better-ensuring community safety.
- Improving understanding and engagement of victims in the court process.

Magistrates' Court block-listing of Justice Connect clients facing homelessness leads to better outcomes during COVID-19

In the COVID-19 pandemic, Justice Connect has worked closely with the Melbourne Magistrates' Court to establish a block-listing for Justice Connect clients through the Online Magistrates' Court. Clients have appeared in court via WebEx by attending with Justice Connect senior criminal lawyer and integrated social workers. Over three afternoon sittings we have been able to support 13 clients to deal with 29 sets of charges. The benefits of this model are seen through Isabelle's story below.

Isabelle has spent large parts of her life sleeping rough. She has recently received extensive support from Justice Connect's community and health partners, including through the Homelessness to Home (H2H) program during COVID-19. Through her supports, Isabelle had secured transitional housing, but after being subjected to 'run throughs' in her home, it was deemed that the housing was not secure. Isabelle left and returned to street homelessness. At that time, she was charged with begging and possessing cannabis. She had been approved for Diversion for the possess cannabis charge. Through negotiations in Justice Connect's block-listing, the Justice Connect senior criminal lawyer secured Prosecution approval for both charges, and the matters are now listed for Diversion. Justice Connect's integrated social worker was also able to provide vital supports, including essential material aid, for Isabelle before and after her hearing.

At the recent hearing in stage 4 lockdown, six Justice Connect clients attended the hearings online and were supported by Justice Connect social workers or by their existing supports to attend. Clients expressed feeling that their stories would be heard, considered and understood, and that this was why they were keen to participate. At the conclusion of the bulk listing, the Magistrate noted that it was remarkable that everyone was able to attend and was in an environment where they were able to appropriately participate and engage in the court process. This was achieved through the wrap-around supports of Justice Connect's specialised senior criminal lawyer and social workers, as well as community sector partners.



The creation of a specialist Homeless Court in Victoria would allow dedicated Magistrates, prosecutors, support services and defence lawyers to work together in holistically addressing the underlying causes of offending. This would directly help more homeless Victorians to make earlier exits from the criminal justice system into secure housing with supports and reduce the risk of reoffending.

Recommendation 5: Create a dedicated Homeless Court

To achieve better outcomes for people experiencing homelessness in the justice system, Justice Connect recommends:

- a. Creating a Homeless Court with specialised Magistrates, prosecutors, integrated lawyers and dedicated support services to provide a therapeutic response and intervene earlier to exit people experiencing homelessness into appropriate support services.

2.2 Preventing criminalisation through access to integrated legal services

Integrated legal services play a critical role to play in diverting people out of the criminal justice system at the earliest opportunity. Many Victorians who are experiencing or at risk of homelessness require intensive, client-centred and multi-disciplinary support. In this context, service models need to be responsive to the range of different social, health, financial and other needs presented by people experiencing homelessness.

Justice Connect’s multi-disciplinary practice - Holistic criminal law outcomes for clients with complex needs

Justice Connect’s integrated practice model seeks to improve the ability of complex clients to access the criminal justice system and to deal with the range of legal issues that accompany the experience of homelessness. In four years, our Courting Justice criminal law program has helped 312 highly complex clients with casework, advice or in-court representation for their criminal legal issues, with a focus on diverting people out of the criminal justice system at the earliest opportunity.

Our integrated model recognises that the clients we are working with require additional time and attention both at court and in the lead up to court due to their complex issues, which include one or more of primary homelessness, acute mental health concerns, family violence and substance dependence. These clients often require outreach and a high level of contact and flexibility from their legal representatives.



For clients with a high level of vulnerability, particularly rough sleepers, there are multiple barriers to engaging and accessing the criminal justice system. Our in-house social workers (Homeless Persons Liaison Officer – HPLO) play a vital role in preparing clients for court by addressing non-legal issues early, facilitating clients attending court, and assisting clients to comply with court orders to prevent them returning to the justice system.

The HPLO provides a critical link to services for people who have multiple legal issues and complex social needs, providing support in



addressing both legal and non-legal issues.⁵³ In the last year alone, 100% of the HPLO clients with Magistrates' Court matters successfully attended court and did not have warrants issued when the HPLO was involved. Former clients Steve and Cory reflected on the difference the support of the HPLO made:

'[The HPLO] enabled me to engage with the world...practical support enabled me to participate in a court system that excludes people with a disability'

'I'm still going strong and sober. About 6 or so weeks ago cohealth were doing interviews for peer workers and I was successful in getting the job...you had a lot to do with helping me turn my life around.'

The HPLO also has a targeted focus on housing needs, helping people to both exit homelessness and to sustain safe housing. Sandy's case below illustrates the crucial role that the HPLO social work support played in enabling her to access the justice system.

Mother of three navigates the justice system, resolving housing, mental health issues, family violence, child protection and criminal law issues

Sandy connected with Justice Connect when she and her three young children were facing eviction. Sandy had experienced family violence for more than 10 years. Despite having an indefinite family violence intervention order against her ex-partner, he continued to track her down and abuse her over many years, which had impacted on her mental health and safety.

Justice Connect's HPLO engaged with Sandy when it became clear she was dislocated from any supports ahead of her VCAT eviction hearing. Collaborating closely, the HPLO and Justice Connect lawyers were able to successfully prevent Sandy's eviction. Soon afterwards, the ex-partner found Sandy and perpetrated further violence, so she sent her children to their grandparents and started sleeping in her car. Justice Connect's lawyers assisted Sandy to end her lease and to resolve other legal barriers to accessing safe, alternate housing. The HPLO worked closely with Sandy to manage her highly vulnerable circumstances from a non-legal perspective – housing options, safety and mental health recovery planning, material aid, petrol vouchers to see her children and connections to other services.

The HPLO also connected Sandy to Justice Connect's specialist criminal lawyer, and they worked closely to support Sandy with her rights as a victim of crime and with her other minor criminal law issues. Our criminal lawyer provided ongoing advice and representation across Sandy's Magistrates' Court appearances, while the HPLO gathered supporting evidence, and successfully secured Sandy a new, safe property. The following week, just before Christmas, she was housed and finally reunited with her children.

With intensive legal and non-legal services, Justice Connect's most isolated and transient clients are able to successfully access, engage and exit the criminal justice system. For James, who was assisted by Justice Connect with his criminal charges, the integrated legal and non-legal supports were critical in ensuring he would attend court:

⁵³ Assistance provided includes: supporting clients to access appropriate legal assistance at the earliest possible point before legal issues escalate; supporting clients to attend court or VCAT, including arranging accommodation prior to court, transport and accompanying clients to court; linking clients with long-term supports; assisting clients to sustain or access housing; providing periods of brief intense intervention to stabilise a client's situation whilst linking with services; liaising with services such as Centrelink, Director of Housing and other current support providers to coordinate and collaborate for optimal outcomes.



‘There are times when I thought about not showing up but [the Justice Connect criminal lawyer] has put a different spin on things and calmed me down. I’ve been at court and [the HPLO social worker] has been at court and she’s come over to wish me luck.

Just because people are homeless doesn’t mean they don’t deserve good, if not the best.’

Recommendation 6: Increase access to integrated legal services

Integrated legal services play a critical role in exiting people out of the justice system and achieving long-term housing outcomes for people experiencing homelessness. Justice Connect recommends:

- a. Investing in client-centred and integrated legal services to help people facing homelessness successfully access, navigate and exit the justice system.

2.3 Better access to the Criminal Justice Diversion program

The Criminal Justice Diversion Program (**Diversion**) provides highly vulnerable people with a therapeutic setting to appropriately address minor offences often directly linked to their experiences of housing insecurity. Diversion presents a valuable opportunity for an accused to engage with rehabilitation, contribute to the community, as well as stopping the cycle of recidivism and mitigating the negative consequences of involvement with the criminal justice system.

However, as it stands, police currently have complete discretion to consent to Diversion and there is no opportunity for the court or defence to intervene. Under section 59(2)(c) of the *Criminal Procedure Act 2009* (**Criminal Procedure Act**), an accused cannot participate in a Diversion Program unless the prosecution consents. There are no external guidelines or framework for police in how to exercise that discretion, and there is no right of appeal against a decision by police to withhold consent, or for the Court to review a refusal of Diversion by police. This means that decision-making by police may be arbitrary, inconsistent or discriminatory, and without any oversight. If prosecution does not refer a matter to Diversion, there is no opportunity for judicial input.

For someone who is unrepresented, the effect is that they rely almost exclusively on the police to access this outcome. Whether or not Diversion is appropriate should be a question for the court, which should be informed by the views of both defence and the Police. The utilisation of Diversion over the last 13 years has gradually declined from 8.1% of sentenced cases in 2004-05 to 6.4% in 2019-20.⁵⁴ In the first four years of Justice Connect’s specialist criminal law program, Courting Justice, 19 clients accessed Diversion. However, only six of these Diversion applications were prompted by police. This means that if they had not been able to access our service or another community legal service, they would likely have had to represent themselves. Without being aware of the Diversion Program they would almost certainly have chosen to plead guilty and emerged with a criminal record.

As Charlotte’s story below demonstrates, diversion can be used to support people living with complex needs in avoiding harsh judicial outcomes.

⁵⁴ ‘Sentencing outcomes in the Magistrates’ Court’, *Sentencing Advisory Council* (Web Page, September 2021) <<https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-statistics/sentencing-outcomes-magistrates-court>>.



Single mother of two obtains Diversion which allows her to access employment

Charlotte is a 24 year old Aboriginal woman and a single mother of two children aged under five. She was referred by her family violence support worker. Charlotte was charged with hindering Police due to her intervening with police when her partner was being arrested. Charlotte had received a job offer, but the pending charge had been flagged on a Police check. Her job offer was put on hold when her potential employer became aware of the pending charge.

Despite some initial resistance, at court the Homeless Law criminal lawyer was able to negotiate Police consent to a Diversion. Ultimately the Diversion was granted allowing Charlotte to commence her traineeship. Without representation Charlotte would almost certainly have been found guilty of the charge, ending up with a criminal record and missing out on her job opportunity.

The advocacy of the criminal lawyer allowed Charlotte to focus on providing for her children and contributing to her community.

For these reasons, the *Criminal Procedure Act* should be amended, so that the Court determines whether Diversion is appropriate. This decision should be informed by the views of both defence and the police, and would improve access to the therapeutic outcomes of Diversion for people experiencing homelessness and enable them to exit the justice system earlier.

There should also be the option for courts to vacate pleas of guilty where it becomes apparent, after a plea is entered, that Diversion is the most appropriate outcome. Often people will enter a plea before becoming aware that Diversion is an option. These recommendations will reduce the inconsistency and arbitrariness that currently affects whether our clients are able to access Diversion and the opportunities for a future without a criminal record that it provides.

Recommendation 7: Improve access to the Criminal Justice Diversion Program

To improve and increase access to diversion for people experiencing homelessness, Justice Connect recommends:

- a. Amending section 59 of the *Criminal Procedure Act 2009 (Vic)* to remove the requirement that the prosecution consent to the Criminal Justice Diversion Program, so that the Court has the power to determine whether diversion is appropriate on balance in each matter.
- b. Implementing an option for courts to vacate pleas of guilty where it becomes apparent, after a plea is entered, that Diversion is the most appropriate outcome.



3. Closing the revolving door between prisons, the justice system and homelessness

Between 2010 and 2020, the number of people imprisoned in Victoria has grown by approximately 57%, and Aboriginal and Torres Strait Islander people now represent 10 per cent of the prison population compared to six per cent in 2010.⁵⁵ The latest Australian survey of prisoner health indicates that 33% were experiencing homelessness prior to incarceration and over half of people in prison expect to be homeless on release.⁵⁶ If people in prison exit into homelessness, they are twice as likely to return to prison within the first 9 months of release.

With imprisonment in Victoria costing around \$323 each day per prisoner,⁵⁷ it has never been more vital to stop the cycle of incarceration and homelessness.

This evidence is supported by insights from Justice Connect's Closing the Revolving Door Prison Project (**Prison Project**),⁵⁸ which holistically works towards break the links between prison, housing insecurity and the justice system. Of the 160 people in Victorian prisons assisted through the Prison Project over the last three years, 69% had experienced previous homelessness, and 58% had previously been incarcerated. Many of the clients also had caring responsibilities, and maintaining housing was a crucial factor in keeping their children out of state care.

During that time, 66% of our Prison Project's clients identified as female, highlighting the growing prevalence of women being held on remand, or short sentences, for offences directly related to their marginalised circumstances. This further emphasises the importance of exploring opportunities to prevent homelessness and improve community reintegration for people in prison, especially women.⁵⁹

From Justice Connect's client and casework insights, this section outlines three priority opportunities to close the revolving door between prisons, the justice system and homelessness:

- Amending the current bail laws to ensure that more people don't end up in prison for minor offences (Part 3.1);
- Creating better alternatives to imprisonment through a more client-centred, responsive and therapeutic approach to Community Correction Orders (**CCO**) (Part 3.2); and
- Preventing homelessness and increasing reintegration for people exiting prison through greater investment in safe, suitable and affordable housing and integrated supports (Part 3.3).

3.1 Reforming bail laws to ensure people experiencing homelessness are able to access bail

Justice Connect regularly sees the detrimental and disproportionate impact that the current bail laws have on homeless or at risk Victorians. Being on bail automatically escalates the likelihood that someone will be remanded for subsequent minor offences such as marijuana possession or shop theft.⁶⁰ The remand population continues to

⁵⁵ See 'Corrections statistics: quick reference', *Corrections Victoria* (Web Page, 30 June 2020) <<https://www.corrections.vic.gov.au/prisons/corrections-statistics-quick-reference>>.

⁵⁶ AIHW Report (n 6) 13.

⁵⁷ Australian Productivity Commission, *Report on Government Services 2021*, Part C, Table CA.4

⁵⁸ See 'Closing the Revolving Door prison project' *Justice Connect* (Web Page, 2021) <<https://justiceconnect.org.au/our-services/homeless-law/tenancy-legal-help-for-prisoners/>>.

⁵⁹ Terms of Reference (n 13) term 2.

⁶⁰ Under the *Bail Act 1977* (Vic) s 30B, it is an offence to commit an indictable offence whilst being on bail. There are a set of designated offences in schedule 2, and any offence against the *Bail Act* (including committing an indictable offence while being on bail) is a 'schedule 2 offence'. Indictable offences include burglary, and intentionally causing injury and murder, but also include less serious offences including possessing illicit drugs such as cannabis; shoplifting, and handling stolen goods. In these circumstances, an offender must show 'compelling reasons' why their continued detention in custody is not justified. Further, if a person is on bail for a schedule 2 offence, and it is alleged they committed a further schedule 2 (or schedule 1) offence, they are required to show 'exceptional circumstances' as to why their continued detention in custody is not justified.



grow⁶¹, and for many people, even a short period in prison is enough to enter the spiral of incarceration and homelessness.⁶²

The current bail laws have had a particularly detrimental impact for women. In June 2019, 46 per cent of women in Victorian prisons were on remand, whereas in 2007 the rate was 25 per cent.⁶³ As of 30 June 2021, more than half of the women in Victorian prisons were unsentenced,⁶⁴ and 89.2 per cent of Aboriginal and Torres Strait Islander women entering prisons are unsentenced.⁶⁵

Reflecting on our work, key learnings on the impact of bail reform on bail and court support programs include:

- Police are more likely to place rough sleepers and people experiencing homelessness on bail. Presumably this is because of a perceived increase in the risk that they will commit offences or that they will not attend court.
- Court support services such as the Court Integrated Services Program (**CISP**) or the Assessment and Referral Court (**ARC**) are contingent on the accused being on bail – this means that the risk of being remanded while accessing these support services is also increased. This risk is not just because of the fact that they are on bail, but because, to be effective, support programs need to run for an extended period of time. This means that the accused will be on bail for an extended period of time.
- Because people are at a significant risk of being remanded in relation to low level offending, they are also less likely to have been eligible for a grant of aid before being remanded. If someone is legally represented they are significantly more likely to get bail when police bring their remand application.

The following client story shows how the current bail laws have led to many of Justice Connect’s clients being at real risk of remand for relatively low-level offences.

⁶¹ As at 31 August 2021, 3,099 Victorians in prison had not been sentenced (44% of the total prison population): see ‘Monthly Prisoner and Offender Statistics’, *Corrections Victoria*, 30 September 2021.

⁶² Federation of Community Legal Centres, Submission No 3 to Royal Commission into Victoria’s Mental Health System (July 2019) 25 <https://d3n8a8pro7vhmx.cloudfront.net/fclc/pages/666/attachments/original/1564038121/FCLC_Submission_-_Home_Connection_Healing.pdf?1564038121> (**FCLC Submission Paper 3**).

⁶³ Corrections Victoria, *Annual Prisoner Statistical Profile*, June 2019.

⁶⁴ Corrections Victoria, *Monthly Time Series Prisoner and Offender Data*, July 2021.

⁶⁵ Corrections Victoria, *Annual Prison Statistical Profile 2019-2020 (2021)* State Government of Victoria, Table 2.3: Aboriginal and Torres Strait Islander Prisoner Receptions, By Sex and Legal Status on Reception, accessible: *Annual Prisoner Statistical Profile 2009-10 to 2019-20*.



Rough sleeper with neuropsychological disabilities remanded for low-level shop-thefts

When she first met with Justice Connect, Hope was a 34 year old mother of two. After the onset of schizophrenia in 2014, she lost custody of her kids and was evicted from her family home. Hope then spent four years sleeping rough, and accrued a number of low-level shop-theft charges and poverty offences.

Before obtaining her transitional housing she was placed on bail for a charge of stealing a CD from a music store. Given her diagnosis, she was eligible for the therapeutic Assessment and Referral Court (ARC). Unfortunately, due to limited capacity in the ARC, Hope was placed on a waitlist until a clinician became available to support her. In the intervening period, she was charged with further shop-thefts of items and had to 'show compelling reasons' for committing offences while on bail. Justice Connect's criminal lawyer was not notified of this, and Hope spent over 3 weeks in custody before a court granted her bail.

After almost 6 months in the ARC waitlist, in late January 2019, Hope was allocated a clinician. Unfortunately, one month later Hope was charged with further shop-thefts of clothing items. She was then required to show 'exceptional circumstances' to get bail, which is the same threshold imposed on someone who is charged with murder, commercial drug trafficking or certain terrorism offences. Thankfully, the Magistrate recognised the context of her low-level offending and granted her bail (and recognised that refusing bail would prevent Hope from accessing the ARC). An ARC neuropsychological report revealed significant issues with Hope's memory and ability to control impulses.

After engaging with the ARC court and being on bail for over 12 months, Hope missed court and warrants were issued for her arrest. With the support of Justice Connect and her mental health support worker, Hope arranged to attend a police station and have her warrants executed. Unfortunately Police again applied to have Hope remanded in custody. Given Hope had to again prove 'exceptional circumstances' and had already engaged with the ARC court for an extended period of time, Hope decided she wanted to finalise her matters. Unfortunately the court didn't have capacity for this to happen immediately. Hope spent another two days in custody before being released'. Ultimately Hope was sentenced to a 'time served' sentence – meaning the periods she has already spent in custody were sufficient penalty.

To participate in the therapeutic ARC program, Hope needed to be subject to a grant of bail.⁶⁶ However due to the current bail laws, she ended up spending time on remand for low level shop-theft offences, which exacerbated her existing complexities.

In order to ensure that people such as Hope are not remanded for low level offending, Justice Connect recommends the repeal of the reverse-onus in the *Bail Act 1977* (Vic) and a return to the presumption of the accused's right to bail unless there is a specific and immediate risk to the safety of another person.

The importance of bail support programs and access to housing

Access to stable accommodation is a key factor to successfully secure bail, without which people can spend prolonged periods in prison.⁶⁷ In 2019, almost 9 out of 10 women incarcerated were un-sentenced.⁶⁸ Currently, the need for secure housing options far outweighs supply, with limited crisis accommodation and no long-term housing options. An accused should not be refused bail due to homelessness or a lack of social and affordable housing.

The Court Integrated Services Program (CISP), which commenced in 2009, provides valuable assistance for vulnerable Victorians in the criminal justice system, coordinating external referrals to:

⁶⁶ The Magistrates' Court website articulates that '[t]he accused person must be on bail at the time of the referral' into the ARC court: 'Assessment and Referral Court', *Magistrates' Court of Victoria* (Web Page, 20 November 2018) <<https://www.mcv.vic.gov.au/about-us/assessment-and-referral-court-arc>>.

⁶⁷ Emma Russell et al, *A Constellation of Circumstances: The Drivers of Women's Increasing Rates of Remand in Victoria* (Report, July 2020) 23.

⁶⁸ Based on data reported in Department of Corrections. Prisons and Parole, Monthly Prisoner and Offender Statistics 2020-21; Ibid 6.



- drug and alcohol treatment services;
- crisis and supported accommodation;
- disability and mental health services;
- acquired brain injury services; and
- Aboriginal and Torres Strait Islander specific services.

The CISP assigns a case manager to the accused, who meets regularly with them to help them through the program, review their progress and provide updates to the Magistrate. The CISP can also begin at any stage, from the point of being charged – up until sentencing.⁶⁹ In Justice Connect’s experience, the CISP is an invaluable program for our clients, as it provides support to find housing and offers the required level of flexibility to enable people to focus on their vulnerabilities, decreasing the likelihood of reoffending.⁷⁰ In addition, community based programs such as the Women Transforming Justice project play a significant role in providing integrated supports to women to ensure they get access to bail and find stability in the community.

Women Transforming Justice program

The Women Transforming Justice (WTJ) project started in 2018 as a collaboration between the Fitzroy Legal Service, the Law and Advocacy Centre for Women, and Flat Out.

The WTJ provided skilled legal advice and representation integrated with assertive outreach support to women on remand to help them get bail and find stability in the community.

Key findings of the evaluation conducted by the Centre for Innovative Justice include:

- the design of the integrated court support service met women’s immediate legal and social support needs while operating in the confines of the largely inadequate service system
- 76 per cent of women referred to WTJ were granted bail at the first bail application
- women accessing the program were supported to maintain bail and connected to the necessary supports
- social outcomes included that women were connected to housing, AOD services, counselling, mental health services and medical appointments, provided with court support, transported to appointments and court appearances, supported to gain access to and/or reunification with children and support with family violence issues and safety
- the support provided through WTJ was timely, integrated and high quality.⁷²

Further bail reforms and access to bail support programs, such as CISP and the WTJ program, are needed to ensure people experiencing housing insecurity are not caught up in the prison system unnecessarily, focusing particularly on those who would not have otherwise received a custodial sentence for the alleged offence.⁷¹

⁶⁹ ‘Bail support (CISP)’, *Magistrates’ Court of Victoria* (Web Page, 4 July 2019) <<https://mcv.vic.gov.au/find-support/bail-support-cisp>>.

⁷⁰ An evaluation conducted into the CISP conducted by the University of Melbourne found that: “...magistrates and other stakeholders showed a high level of support for the [CISP] and its outcomes; and, compared with offenders at other court venues, offenders who completed CISP showed a significantly lower rate of re-offending in the months after they exited the program”: see Victorian Department of Justice, *Court Integrated Services Program: Tackling the causes of crime, Executive Summary Evaluation Report* (Report, 2010) <<https://www.mcv.vic.gov.au/sites/default/files/2018-10/CISP%20tackling%20the%20causes%20of%20crime.pdf>>.

⁷¹ FCLC Submission Paper 3 (n 63) 26.

⁷² For further information, see Centre for Innovative Justice, *Women Transforming Justice: Final Evaluation Report* (Report, December 2020).



Recommendation 8: Reform bail laws to ensure people experiencing homelessness are able to access bail

To ensure that more people experiencing homelessness can access bail, Justice Connect recommends:

- a. Repealing the reverse-onus provisions in the *Bail Act 1977* (Vic) and creating a presumption in favour of bail for all offences, unless there is a specific and immediate risk to the safety of another person.
- b. Including a specific provision in the *Bail Act 1977* (Vic) that a person may not be remanded for an offence that is unlikely to result in a sentence of imprisonment.
- c. Extending initiatives such as the Court Integrated Services Program and other bail support programs across Victoria.

3.2 Community Correction Orders – creating a more client-centred, responsive and flexible approach

Given the limited number of sentencing options available, CCOs are a key sentencing option that reduce the number of people being sentenced to imprisonment. However, through Justice Connect's criminal law program, we have seen how the CCO system is inflexible and rigid in meeting the needs of Victorians experiencing homelessness. For people experiencing homelessness, managing complex mental health needs, suffering family violence, dealing with addictions, caring for children and living with other complexities, completing a CCO can be extremely challenging, such as for our client John.

Man facing housing insecurity and mental health issues unable to complete community corrections order due to inflexible approach

John was found guilty of persistently breaching an intervention order having sent numerous texts to his ex-partner over a period of weeks. In recognising the seriousness of breaching a Court order the court sentenced John to a Community Corrections Order. Attached to this was an order suspending John's driver's licence – the Magistrate had been concerned that John had disclosed drug use.

John had lived all of his life in a community on the outskirts of Melbourne. After the breakdown of his relationship John's mental health suffered. He could not work and his house was repossessed by the bank. Before being sentenced, John had been living out of his vehicle and had relied on that to get around. Given his licence was suspended, continuing to drive would place him at risk of further charges but also breaching his order. John's order was being managed by the local Corrections office. John did not have a mailing address and could not always be contacted on the phone as he was sleeping rough. John often lost track of time and appointments and expressed that he was not sufficiently deserving of supports.

John soon recognised that there were limited supports available for a middle-aged man without any children in the outer suburbs. He chose to move to the CBD where more support was available. He did not know that the office managing his order could be transferred.

John was charged with breaching the corrections order and plead guilty. The court recognised the difficulties John had faced in managing his order while sleeping rough. Given he was now based in the CBD the court decided to recommence John's order. Although he was still sleeping rough, John managed to re-engage with his order on the second occasion thanks to the additional supports he accessed.



Though some people manage, many like John need extra support. For these people there should be scope for an order which considers the need for further support. Where more intensive support is required, case managers with lower caseloads, greater training and a greater capacity for outreach and specialised support should be available.

The need for this higher level of support can be considered at sentencing, allowing the corrections assessment to consider what level of support is required as well as allowing legal representatives to make submissions. Consideration can be given to previous compliance with orders as well as personal circumstances. This will not only give people a better opportunity of completing their sentence in the community but will improve community safety by giving them a better chance of remaining offence free in the community.

The justice system already recognises the need for varying degrees of support. Indeed CCOs themselves can be tailored with a Justice Plan for people who qualify for the support of Disability Services. Within the Court system Courts such as the ARC List recognise that some people need an extra level of support, as with Stefan and Bryce's matters below.

Rough sleeping man with complex mental health issues unable to complete Community Correction Order due to lack of support

Stefan* has diagnosed schizophrenia, depression and an intellectual disability, along with a long-history of sleeping rough. When Stefan first spoke with Justice Connect, he was experiencing homelessness and isolated from supports after being put under an intervention order related to his complex-family circumstances.

Before engaging with Justice Connect, Stefan had been sentenced to a short period of imprisonment and upon his release was placed onto a Community Correction Order (CCO). Stefan was released into homelessness. Initially Stefan was able to engage with his order however given his circumstances found managing the order amongst his other day-to-day needs very difficult.

Ultimately, rather than being supported to manage his complex needs, Stefan was charged with breaching

Long-term rough sleeper with multiple complex health issues avoids imprisonment through access to ARC List

Bryce's parents separated when he was young and he spent large parts of his childhood in state care. At the age of 21, Bryce suffered an acquired brain injury after complications with a medical procedure and struggled with substance use, mental health and physical health issues. Bryce has struggled to maintain employment and hasn't had stable housing for almost all of his adult life.

Through his adult life Bryce had accrued an extensive criminal history. Most of his offending related directly to his homelessness.

At the age of 47, Bryce found himself again before the court for a number of offences committed while sleeping rough. Bryce was also before the court for breaching a Community Corrections Order he had been placed on the preceding year, which he struggled to complete while sleeping rough.

With the support of cohealth and Justice Connect's HPLO, Bryce was linked with a number of supports, including mental health support, drug and alcohol support and Justice Connect's criminal lawyer. Most importantly, Bryce was supported to access secure housing for the first time in almost two decades.

In dealing with the new offences, the court had limited sentencing options and it was clear that Bryce was still not well placed to complete another Community Correction Order. Given Bryce's criminal history, the only other realistic sentencing option was further imprisonment. This would only serve to undo any progress Bryce had already made. Bryce was referred to the Assessment and Referral Court (ARC) list and based on his extended engagement with the ARC list, ultimately Bryce was sentenced to an adjourned undertaking.



For both Stefan and Bryce, the current CCO system could not adequately support their needs in order to complete their CCOs. Fortunately, they were able to access the support they needed through the ARC List, and secure therapeutic and long-term outcomes. Bryce has gone on to become employed as a peer support worker and is in the most stable and secure position that he has ever been in his life, including reconnecting with his adult daughter. This outlines the value of specialist court programs like ARC, but also highlights the shortcomings of the current CCO regime for court users with complex needs. In order to ensure that more people with complex needs are able to access and complete CCOs, particularly in rural and regional Victoria, a similarly client-centred and targeted approach should be implemented for CCOs based on learnings from the ARC List and best-practice programs such as Sacred Heart Mission's Journey to Social Inclusion.

Sacred Heart Mission's Journey to Social Inclusion program

The Journey to Social Inclusion (J2SI) program has been running for more than 10 years in Melbourne to provide long-term support to people experiencing chronic homelessness. Now in its third phase with Social Impact Investment funding from the Victorian Government, the program aims to not only help participants exit homelessness, but also improve their health and wellbeing, and build skills to maintain a better quality of life.

J2SI achieves this through five key elements of its service delivery: providing clients with intensive case management and service coordination, rapid access to stable housing, trauma-informed care, skills development for employment and social inclusion, and capacity building for self-management and independent living.

The first and second phases of the J2SI program delivered highly successful outcomes in terms of housing, health and employment. The first phase of the program resulted in 75% of participants remaining in stable housing after four years, as well as a substantial decrease in healthcare services for those people. Similarly, 82% of participants who were provided with permanent housing as part of the program's second phase remained housed after three years. This proved to increase employment, improve mental health, and reduce substance use among participants, which yielded significant cost savings to the government from reduced spending on public services.⁷³

More therapeutic programs such as Wulgunggo Ngalu⁷⁴ (a CCO program for Aboriginal men) should also be expanded. Not only should there be an equivalent service for Aboriginal women, but the idea could be expanded to address other specific groups. Some examples of specific high intensity, live-in programs could be:

- People seeking drug and alcohol rehabilitation;
- Perpetrators of family violence; and
- Victim-survivors of family violence.

⁷³ For further information, see 'Journey to Social Inclusion program', *Sacred Heart Mission* (Web Page) <<https://www.sacredheartmission.org/seek-help/housing-support/journey-to-social-inclusion-program#Outcomes>>.

⁷⁴ For information on Wulgunggo Ngalu, see <<https://www.corrections.vic.gov.au/wulgunggo-ngalu-learning-place>>.



Wulgunggo Ngalu Learning Place

Opened in September 2008 as a joint initiative of the Victorian Government and the Indigenous community, the Wulgunggo Ngalu Learning Place is a culturally appropriate diversion program for Indigenous men undertaking Community Correction Orders. The program aims to reduce the over-representation of Indigenous people in Victoria's criminal justice system by having men address their offending behaviour, whilst learning new skills and reconnecting with their culture.

As a live-in program which accommodates up to 18 people at a time, residents participate in activities to develop life skills and improve job prospects, improve overall health and reduce substance abuse, to ultimately reduce the likelihood of future reoffending. These activities include local land care and community art, cooking, sport and parenting workshops. Indigenous elders are also involved as mentors and role models, providing leadership and communicating traditional cultural values to participants.

As a result, the program's holistic model has successfully diverted many participants away from the criminal justice system.⁷⁵

Recommendation 9: Create a more responsive, client-centred and flexible approach to Community Correction Orders

To maximise the effectiveness and accessibility of Community Correction Orders, Justice Connect recommends:

- a. Creating a more responsive, client-centred and flexible approach to Community Corrections Orders across Victoria with built-in supports to increase compliance and completion rates.
- b. Investing in specialised and therapeutic programs to better support people with specific complexities.

3.3 Preventing homelessness and increasing reintegration for people exiting prison

Justice Connect sees first-hand the importance of access to post-release housing. For people who have been in the criminal justice system, the harsh reality is that homelessness is more common, more likely to reoccur and lasts longer.⁷⁶ If people exit prison into homelessness, they are also twice as likely to return to prison within the first nine months of release.⁷⁷ Notably, 69% percent of our Prison Project clients over the last three years had previously experienced homelessness.

Not only does exiting prison without a home increase the likelihood of reoffending, but without an address to return to, many people on remand are not able to secure bail, and people who are sentenced are not able to access parole. This leaves many people in prison who should or could be in the community. Given the current rate of recidivism sits at 44.2,⁷⁸ access to secure housing with supports is a critical component of tackling Victoria's growing and costly imprisonment rate.

⁷⁵ For further information, see Department of Justice, *Wulgunggo Ngalu Learning Place Final Evaluation Report* (Report, May 2013).

⁷⁶ Mark Wooden et al, *Journey Home Research Report* (Report No 6, University of Melbourne, 2015).

⁷⁷ Eileen Baldry et al, 'Ex-Prisoners, Homelessness and the State in Australia' (2006) 39(1) *The Australian and New Zealand Journal of Criminology* 24.

⁷⁸ Australian Productivity Commission, *Report of Government Services 2021* Part C Table CA.4 <<https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/justice#attachtables>>.



Sustaining public and community housing (social housing) tenancies for people on remand or short sentences

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.⁷⁹ Recent research highlights the importance of public housing for people on release, finding that people in prison who had access to public housing on release had significant drops in police incidents, court appearances, proven offences, and time in custody.⁸⁰ Ensuring that people on remand or short sentences have the best chance of keeping their social housing property is critical to reduce the risk of homelessness and recidivism upon release.

For people in prison who are public housing renters, the Director of Housing (DOH) allows them to be absent from the property and pay a reduced rent for up to 6 months, recognising the cost of people losing their housing when they are imprisoned for short periods of time.⁸¹ Extensions to the six month period can currently only be granted in exceptional circumstances. Some community housing providers also have similar policies covering renters' temporary absences, though generally for shorter periods of up to three months.

Integrated legal and social work advocacy is pivotal in helping people to secure temporary absences from public and community housing, particularly where a Notice to Vacate has also been issued. For longer-term absences, legal assistance is also essential for many people to ensure that they do not lose their personal belongings and potentially accrue a housing debt.⁸²

In the last three years, our Prison Project had an 87% success rate in resolving tenancy legal issues and debts that are direct barriers to stable housing on release. This includes directly preventing 65 people in prison with complex needs from being evicted into homelessness, which represents a cost saving of around \$1.9 million to the health, justice and welfare systems.⁸³

⁷⁹ Anne Grunseit, Suzie Forell and Emily McCarron, *Taking justice into custody: the legal needs of prisoners* (Report, Law and Justice Foundation of New South Wales, 2008) 68–9.

⁸⁰ Chris Martin et al, *Exiting prison with complex support needs: the role of housing assistance* (Final Report No 361, Australian Housing and Urban Research Institute, 2021) <https://www.ahuri.edu.au/sites/default/files/documents/2021-09/AHURI-Final-Report-361-Exiting-prison-with-complex-support-needs-the-role-of-housing-assistance_0.pdf>. Australian Housing and Urban Research Institute

⁸¹ 'Tenancy management manual - Temporary absence operational guidelines', *Director of Housing* (Web Page, 2021) <<https://providers.dffh.vic.gov.au/tenancy-management-manual-temporary-absence-operational-guidelines-word>>.

⁸² FCLC Submission Paper 3 (n 63) 17.

⁸³ Estimated annual cost to government services of an individual experiencing homelessness is \$29,450 higher than for the rest of the Australian population: see Kaylene Zaretsky and Paul Flatau (n 9) 14.



Madeleine's story below demonstrates the role of intensive legal help in making sure that women exiting prison to have a home to go to on their release.

Aboriginal woman in prison granted parole after holistic legal services keep her in public housing

When Justice Connect first spoke with Madeleine, a young Aboriginal woman in prison, she was distressed after being told by Director of Housing (DOH) that she was being evicted from her public housing property. Madeleine had lived in public housing for 10 years and had never had any issues with her tenancy. After Madeleine had been incarcerated for 6 months, she received a letter from DOH telling her that she had been absent from her property for more than the allowed 6 month period and would need to give up her housing. She was eligible for parole in 3 weeks and her parole officer was positive about her chances, but they knew there was no chance of it being granted if she had no home to go to. An Aboriginal woman in her thirties with substantial mental and physical health issues, a Centrelink income that would not cover private rental and no family she could stay with, Madeleine was at risk of post-release homelessness.

Madeleine's rent was also being charged at market rent and she fell into rental arrears. She was soon issued with a Notice to Vacate for arrears. Justice Connect's specialist lawyers began negotiations immediately, working with the Justice Connect social worker to secure brokerage for the arrears. They were able to avoid eviction, but DOH advised they would issue a 'no specified reason' Notice to Vacate if Madeleine was not released at the earliest possible parole date. Justice Connect extensively negotiated for DOH to provide the parole board a letter advising that they would allow a short extension on the temporary absence period if she was released. Madeleine's application for parole was successful and she was allowed to go home.

Through Justice Connect's negotiations with the Director of Housing, Madeleine had the chance to reconnect with her community. However, without targeted legal intervention, she would have been one of the 54% of people who exit prison into homelessness.⁸⁴ Appropriate and flexible temporary absence policies are essential for both public and community housing providers. This is because most Victorians spend only short periods in prison,⁸⁵ and many people in prison are now on remand.⁸⁶ Efforts should be made to maintain the housing they have, whether through brokerage programs or temporary absence policies that reduce rent.

Addressing housing debts helps people exit prison into safe homes

Research indicates that debt is one of the most significant and under-addressed legal problems for Australia's prison population.⁸⁷ For many people, unpaid debts reduce their ability to reintegrate post-release and increase their likelihood of reoffending.⁸⁸

Through Justice Connect's tailored work with people in prison, we identified that housing debts for rental arrears, repairs or compensation were a significant barrier to people being offered social housing on release. People with unpaid charges (including debts for compensation claims) were not being offered public housing unless certain repayment conditions were met.⁸⁹ Over the last three years, Justice Connect has helped 59 people in prison with housing debts and getting over \$160,000 in housing debts waived, allowing people to focus on securing housing

⁸⁴ AIHW Report (n 6) 13.

⁸⁵ 77% percent of sentenced people spend less than 12 months in prison: see 'Annual Prisoner Statistics Profile 2017-18: Table 3.7', *Corrections Victoria* (Web Page, June 2018) <<https://www.corrections.vic.gov.au/publications-manuals-and-statistics/annual-prisoner-statistical-profile-2006-07-to-2017-18>>.

⁸⁶ FCLC Submission Paper 3 (n 63) 17.

⁸⁷ Grunseit et al (n 79) 76; Justice Connect, *Prisoners Scoping Study: Investigating the Feasibility of a PILCH Civil Law Program for Prisoners* (Report, Justice Connect Homeless Law, 20 July 2012).

⁸⁸ Eileen Baldry et al, *Ex-prisoners and Accommodation: What Bearing Do Different Forms of Housing Have on Social Reintegration for Ex-Prisoners?* (Final Report No 46, Australian Housing and Urban Research Institute, August 2003) 4.

⁸⁹ Director of Housing, *Allocations Manual: Introduction and Conditions of Public Housing Offers* (2019) 10 <<https://providers.dffh.vic.gov.au/public-housing-allocations-operational-guidelines>>.



and community reintegration. Brett's story below shows just how important resolving a housing debt can be for people with complex vulnerabilities.

Intensive legal representation ensures prisoner with complex vulnerabilities has a clean slate to access housing and reunite with his son

Brett, who has long-term mental health issues and has previously experienced family violence, was referred to Justice Connect by a Housing Pathways worker in prison, when the Director of Housing (DOH) requested he pay \$11,200 in compensation for maintenance at his recently vacated property.

The damage had been caused by unknown third parties when they squatted in his property during an earlier period of incarceration, and Brett was concerned that he was unfairly being held responsible for the related maintenance costs. Brett was particularly worried that he would not receive an offer of housing due to the debt, impacting directly on his chances of reuniting with his five year old son.

Justice Connect's lawyers advised Brett about his rights and options, and negotiated with DOH to have the debt reviewed. Through this intensive advocacy, DOH was satisfied that the property damage had been caused by third parties and agreed to waive the entire debt. During our engagement with DOH, it became apparent Brett also had a rent arrears debt of \$1579. Through Justice Connect's legal intervention, Brett's rent was recalculated based on the DOH temporary absence policy, resulting in the rent arrears being reduced by over \$500.

Brett expressed his relief, and through Justice Connect's Prison Project partnership pathways, he was linked into post-release housing services, allowing him to focus on reconnecting with his son.

More housing support workers for people in prison

The Corrections Victoria Housing Pathway Initiative is the key program in relation to post-release housing for people in prison. Through this initiative, Initial Assessment and Planning Workers (**IAP**) are employed to help people get their Victorian Housing Register application up to date and discuss possible housing options on release. Despite a steep rise in people in prison over the last decade, the resourcing of IAPs and in particular, enhanced housing pathways workers who provide case management support remains low.⁹⁰

More housing workers, particularly those who provide case management support, should be employed who – together with legal services – could prevent people exiting prison into homelessness.⁹¹ Funding should also be increased for housing programs in Victorian prisons, in particular programs directed at people on remand or short sentences, improving access to pre-release housing. These programs should continue to include brokerage funds to help sustain tenancies while people are in prison, and to assist people to access post-release housing with supports.

Increased social housing supply for people in prison

Suitable supply of social housing with supports is critical to break the cycle between prisons and homelessness. Given the high-level of vulnerability experienced by people in prison, an investment in housing and wrap-around supports reduces the risks of people cycling in-and-out of prison when their needs could be better met in the community.⁹²

⁹⁰ In June 2015, there were 8.5 staff in these roles across all Victorian prisons, the same number as when the initiative was introduced in 2001. See Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (Report, September 2015) 106.

⁹¹ See Lou Schetzer, *Beyond the Prison Gates – The experiences of people recently released from prison into homelessness and housing crisis*, (Report, Public Interest Advocacy Centre, 31 July 2013) <https://www.piac.asn.au/wp-content/uploads/2013.05.10_hpls_report.pdf>.

⁹² See Martin et al (n 80).



Justice Connect recently undertook a scoping study to assess opportunities to provide best-practice, wrap-around legal help for people released from prison.⁹³ This included consultations with a range of Australian organisations involved in providing legal and non-legal services to people in prison and those who have been released, as well as consultations with people with lived experience of imprisonment. During our consultations, safe and stable housing was cited as one of the most immediate and important needs post-release.

'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.'

'If I'd been released back to my environment, I would have gone back to where I was before.'

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

The Victorian Government's investment in the "Big Housing Build" and commitment to the development of a 10-Year Social and Affordable Housing Strategy presents an important opportunity to address Victoria's acute shortage of social housing and ensure that there is enough social housing for people exiting prison and in the justice system. As proposed in the Victorian Housing Peaks blueprint, *Make Social Housing Work: A Framework for Victoria's Public and Community Housing*,⁹⁴ we need at least 60,000 new public and community housing homes by 2031 in order to reach the national average.

In addition, options for addressing post-release housing for people in prison, including expansion of existing services such as the Judy Lazarus Transition Centre, the development of a single housing service point,⁹⁵ and resourcing rapid rehousing are vital components for reintegration.

Holistic, post-release services help to prevent homelessness

For people exiting prison, there are significant legal and non-legal issues which can create barriers to reintegration.⁹⁶ In addition to social, health, education and employment issues⁹⁷, unresolved civil legal issues can often increase disadvantage upon release into the community.⁹⁸ While support services and programs exist for post-release non-legal needs, there are by comparison far fewer avenues of support for legal needs.⁹⁹

⁹³ Justice Connect, *Closing the Revolving Door: Scoping holistic legal needs of Victorians exiting prison* (Report, 2021) <<https://justestconnect.com/wp-content/uploads/2021/06/Closing-the-Revolving-Door-Scoping-holistic-legal-needs-of-Victorians-exiting-prison-May-2021.pdf>>.

⁹⁴ Victorian Housing Peaks Alliance, *Making Social Housing Work – Better homes for low-income Victorians* (Report, 2020). The Housing Peaks Alliance is comprised of Aboriginal Housing Victoria, the Community Housing Industry Association Victoria, the Council to Homeless Persons, Domestic Violence Victoria, Justice Connect, Tenants Victoria, the Victorian Public Tenants Association and the Victorian Council of Social Service <<https://justiceconnect.org.au/wp-content/uploads/2020/11/Make-Social-Housing-Work.pdf>>.

⁹⁵ Victorian Ombudsman (n 90) 156.

⁹⁶ Ibid. See also Annette Olesen, 'Ex Prisoners' Need for Legal Aid in Denmark' in Ole Hammerslev and Olaf Halvorsen Rønning (eds), *Outsourcing Legal Aid in Nordic Welfare States* (Denmark University Press, 2018).

⁹⁷ Law Council of Australia, *Prisoners and Detainees* (Consultation Paper, August 2017).

⁹⁸ Justice Connect, *Closing the Revolving Door: Scoping holistic legal needs of Victorians exiting prison* (Report, 2021) <<https://justestconnect.com/wp-content/uploads/2021/06/Closing-the-Revolving-Door-Scoping-holistic-legal-needs-of-Victorians-exiting-prison-May-2021.pdf>>; PILCH, *Prisoners Scoping Study: Investigating the feasibility of a PILCH civil law program for prisoners* (Report, July 2012) 11.

⁹⁹ Ibid.



The Melbourne Street to Home program run by Justice Connect partners Launch Housing, Salvation Army and Bolton Clarke is a best-practice example of how to support people with complex needs to access and sustain housing through an integrated model.

Melbourne Street to Home program

Melbourne Street to Home is a support service for rough sleepers in Melbourne, delivered by Launch Housing in partnership with the Salvation Army and Bolton Clarke healthcare. The initiative not only provides housing advice, long-term case management, and ongoing tenancy support to rough sleepers, but also provides an integrated health service, whereby nurses assess clients' health needs and refer them to specialist services as required.

This integration of community health nurses enables clients to manage chronic medical conditions more effectively. Furthermore, the capacity of case workers to build ongoing relationships and provide intensive support both before and after clients secure housing has been noted as a key strength of the integrated model.

As a result, Melbourne Street to Home observed a significant reduction in hospital admissions and the use of homeless services by its clients. The service also improved clients' physical and mental health, relationships with friends and family, and housing circumstances, whilst reducing substance use amongst clients.¹⁰⁰

The costs incurred by the community if the legal needs of people in or exiting prison are not addressed can be ongoing and significant. These costs include increased spending on prison infrastructure, costs incurred through the justice system (e.g. policing and attendance at court) and social costs (e.g. a workforce not at full capacity).

As a result, Justice Connect continues to prioritise sustaining and securing housing for people exiting prison, with an increasing focus on delivering impactful, integrated services when people exit prison. With research suggesting that the risk of homelessness increases for people 6 months after release,¹⁰¹ Justice Connect is currently designing a best-practice pilot program of integrated post-release support with a view to supporting community reintegration and reducing the risk of reoffending.

¹⁰⁰ For further information, see Guy Johnson and Chris Chamberlain, *Evaluation of the Melbourne Street to Home Program* (Final Report, March 2015) <<https://data.launchhousing.org.au/app/uploads/2016/07/ms2h-final-rpt-4-publication-20150318.pdf>>.

¹⁰¹ Julie Moschion and Guy Johnson, 'Homelessness and Incarceration: A Reciprocal Relationship?' (2019) 35(4) *Journal of Quantitative Criminology* 855.



Tanya's story highlights the importance of wrap-around post-release supports.

Aboriginal woman with a history of homelessness, incarceration and state care exits into post-release housing through holistic legal services

Tanya is an Aboriginal woman who lost both parents by the time she was 12 years old. From this young age she entered a spiral of state care, homelessness and incarceration. The trauma and grief Tanya experienced led to substance dependency. After years of couch surfing, sleeping rough and incarceration, Tanya secured transitional community housing, which she described as *"the best thing to happen to me"*. The housing offered security and was instrumental to reducing her offending and substance abuse.

When Tanya's uncle, who was a father figure, passed away she experienced a relapse, became paranoid and disengaged with support services. When Tanya was referred to Justice Connect by a housing support service in prison, she had received a 'no specified reason' Notice to Vacate for failing to engage with her support worker, which was a requirement of her transitional housing. The Notice to Vacate was due to expire two months prior to her release date.

Justice Connect negotiated with the community housing landlord to withdraw the Notice to Vacate, including suggesting steps to support engagement post-release. During negotiations it became clear that Tanya was required to lodge an updated housing application, another requirement in transitional housing.

Justice Connect worked with the support worker to ensure the application was lodged. Due to Justice Connect's holistic advocacy, the housing provider agreed not to enforce the Notice to Vacate. Tanya was released into her transitional housing property and engaged with post-release support. This fresh start has given Tanya the confidence and stability to prioritise her continued health recovery and reconnect with her community.

Recommendation 10: Close the revolving door between prisons and homelessness

To close the revolving door between people in or exiting prison and homelessness, Justice Connect recommends:

- a. Increasing supply of social housing with supports for people in the justice system.
- b. Increasing access to housing workers in prison so that Victorians have better community reintegration outcomes.
- c. Resourcing pre and post-release integrated legal services that support a person to access and maintain housing on release from prison.
- d. Improving and lengthening post-release support options, and resourcing rapid rehousing in safe accommodation for Victorians leaving prison, so that there are no exits into homelessness.



Annexure 1 - Proposed Victorian Protocol for Responding to People Experiencing Homelessness in Public Places

Proposed Victorian Protocol for Responding to People Experiencing Homelessness in Public Places

The aim of the Victorian Protocol for Responding to People Experiencing Homelessness in Public Places (**Protocol**) is to provide a framework for relations between agencies¹⁰² and people who are experiencing homelessness in public places. The Protocol has been developed to ensure that people experiencing homelessness are treated with respect and are not discriminated against on the basis of their homeless status. The Protocol aims to help agencies and their authorised representatives to respond effectively to people experiencing homelessness in public places by assisting people to receive services if they need or request them.

The Protocol is informed and underpinned by the Victorian Charter of Human Rights and Responsibilities Act 2006 (**Charter**), recognising the fundamental dignity and rights of people experiencing homelessness, and the importance of a rights-based approach to homelessness. The Protocol recognises that homelessness is not a crime. Most of the agencies that have contact with people experiencing homelessness are public authorities under the Charter, which means they must act compatibly with human rights and, in making decisions, they must properly consider relevant human rights. This Protocol assists agencies to comply with their human rights obligations.

Individual agencies are accountable for service delivery and implementation of this Protocol.

The Protocol

All Victorians have a right to be in a public place, and a person who is, or appears to be, homeless should not be approached unless:

- d. they request assistance;
- e. they appear distressed or in need of assistance;
- f. they are sheltering in circumstances that threaten the health and safety of themselves and/or others (e.g. in derelict buildings);
- g. they are a child who appears to be under the age of 18;¹⁰³
- h. their behaviour threatens their immediate safety or the immediate safety and security of people around them;
- i. their behaviour is likely to result in damage to property or to the environment;
- j. their safety is threatened by others.

The Protocol does not override existing laws, statutory requirements or regulations. It does not reduce the powers of agencies or their authority to enforce specific laws and regulations.

The Protocol encourages agencies and their authorised representatives to take the Protocol and the circumstances of the person experiencing homelessness into consideration when enforcing laws and regulations and to use discretion as is appropriate under their own policies and procedures. This discretion should take into account the complex needs of people experiencing homelessness.¹⁰⁴ As public authorities

¹⁰² 'Agencies' refers to any organisation, including government departments, local councils, public authorities (as defined by the Charter) and public entities, that have endorsed the Protocol. 'Authorised representatives' include agency staff, contractors and any person authorised to act on behalf of the agency.

¹⁰³ In this situation, Victoria Police and Child Protection should be called.

¹⁰⁴ See also Principle 2 below.



under the Charter, agencies and their authorised representatives must exercise their discretion in a way that respects the fundamental dignity and rights of people experiencing homelessness.

Underpinning the Protocol is an acknowledgment that homelessness can be more effectively addressed through housing and services, rather than through a law enforcement response.

Who is considered homeless?

People without conventional accommodation, including people sleeping rough, in improvised dwellings such as tents, sleeping in cars, squats, emergency accommodation, refuges, boarding houses and caravan parks. This includes people who are living in overcrowded and unsuitable accommodation and, as a result, are often forced into public places due to the unsafe nature of their accommodation.

Underlying Principles

When approaching a person who is experiencing homelessness, authorised representatives need to consider whether their decisions and actions are compatible with the Protocol and therefore the Charter, as well as the intersection with other relevant laws and regulations.

The Protocol is based on the following principles:

PRINCIPLE 1: Right to be in public places

A person experiencing homelessness has the same right as any member of the community to:

- be in public places, at the same time respecting the right of local communities to live in a safe and peaceful environment;¹⁰⁵
- participate in public activities or events;¹⁰⁶ and
- carry with them and store their own belongings, at the same time respecting the right of other community members to safe and accessible public places.¹⁰⁷

PRINCIPLE 2: Communicating reasons for contact

If an authorised representative of an agency makes contact with a person experiencing homelessness, they should clearly communicate to that person who they are and on what basis they are approaching the person.¹⁰⁸

PRINCIPLE 3: Consideration of needs and diverse backgrounds

People experiencing homelessness have diverse backgrounds and needs, and these should be considered in all interactions:

- Cultural sensitivity and respect should be applied when communicating and engaging with people experiencing homelessness.
- People experiencing homelessness often face discrimination and may include:
 - Aboriginal and Torres Strait Islander people;
 - People from culturally, linguistically or religiously diverse backgrounds;
 - Young people;
 - Older people;
 - Lesbian, gay, bisexual, transgender or intersex (LGBTI) people;
 - People with a disability;

¹⁰⁵ Relevant Charter rights: Section 8: Recognition and equality before the law; Section 12: Freedom of movement; Section 13: Privacy and reputation; Section 21: Liberty and security of person

¹⁰⁶ Relevant Charter rights: Section 16: Peaceful assembly and freedom of association

¹⁰⁷ Relevant Charter rights: Section 20: Property rights

¹⁰⁸ Relevant Charter rights: Section 21: Right to liberty and security of person



- People with a mental illness or cognitive impairment.¹⁰⁹
- People experiencing homelessness have often experienced trauma and can have complex social, mental and/or physical health needs. These issues may result in behaviour that is seen to be antisocial.¹¹⁰
- People experiencing homelessness may have experienced other issues that impact on their needs, such as family violence, exiting custody or statutory care, or asylum seekers with no contacts in the community.
- Interpreters should be used where necessary.

PRINCIPLE 4: Access to complaint mechanisms

People experiencing homelessness have the same access to complaints mechanisms as all members of the public and should be supported to exercise this right through the provision of information on relevant avenues of complaint.¹¹¹

PRINCIPLE 5: Partnerships, consistency and integrated responses

All endorsing agencies are committed to working in partnership with community organisations, housing providers and other services to provide consistent and integrated responses to people experiencing homelessness.

PRINCIPLE 6: Agencies and authorised representatives have sufficient information and training

A range of agencies and their authorised representatives will come into contact with people experiencing homelessness and have to manage competing expectations within diverse communities. Agencies and authorised representatives should have sufficient information, support and training to respond appropriately to people experiencing homelessness and assist with referrals to appropriate services if needed.

HOMELESSNESS ASSISTANCE IN VICTORIA

If people experiencing homelessness require assistance, there are specialist services to help them.

Where a person has existing support networks in place, they should be assisted to access these if requested.

Note that these referrals are for state-wide services. Each agency is encouraged to develop their own set of local referrals.

The following assistance is available in Victoria:

- **Opening Doors** (24-hour referrals for housing assistance)
1800 825 955
- **Safe Steps** (24-hour family violence referral service for women and children)
1800 015 188
- **Child protection**
13 12 78 (after hours service)
North Division Intake number 1300 664 977
South Division Intake number 1300 655 795

¹⁰⁹ Relevant Charter rights: Section 8: Recognition and equality before the law; Section 19: Cultural rights; Section 14: Freedom of thought, conscience, religion and belief.

¹¹⁰ Relevant Charter rights: Section 8: Recognition and equality before the law.

¹¹¹ Relevant Charter rights: Section 8: Recognition and equality before the law; Section 24: Right to a fair hearing.



East Division Intake number 1300 360 391

West Division Intake - rural and regional only - number 1800 075 599

West Division Intake - metropolitan only - number 1300 664 977

- **Emergency services** (police/ambulance/fire brigade)
000
- **Lifeline** (24 hour telephone crisis support and suicide prevention)
13 11 14
- **Kids Helpline** (24 hour phone counselling for 5-25 year olds)
1800 55 1800
- **MensLine Australia** (24 hour phone counselling for men)
1300 78 99 78
- **Victoria Legal Aid** (state-wide legal advice weekdays 8.45am-5.15pm)
1300 792 387

Where needed, interpreting services should be used.

You can:

- contact services directly on behalf of the person/s (with their consent);
- provide advice or information including location of available services;
- provide a contact point that the person experiencing homelessness can either call or go to for further advice or help.

Where the Protocol applies

The Protocol applies to all public places ordinarily accessible to the public, including parks, outdoor space, footpaths.

The following agencies have endorsed the Protocol:

Each of the endorsing agencies is responsible for implementing the Protocol within its own organisation and will determine how it should be used by its authorised representatives.

Review of the Protocol

This Protocol will be reviewed every two years from the date of its publication.



Annexure 2 - Proposed Pocket resource for Sheriff's Officers

Can't pay your fines?

You can still get help, but you need to act quickly

A 7-day notice means you only have **seven days to take action**. After your 7-day notice runs out the Sheriff can:

- take and sell your property, including your car or your house;
- put you on a community work order; or
- arrest you and you will have to go to court

What can I do?

Get free legal information **right now** to stop the Sheriff taking further action.

- Victoria Legal Aid on 1300 792 387
- Victorian Aboriginal Legal Service on 1800 064 865

All information and advice is free and confidential.

What do I need to tell the lawyer?

To find out all the options for you, make sure you tell the lawyer if you are experiencing or have previously experienced:

- an addiction to drugs or alcohol;
- a mental illness or intellectual disability;
- homelessness or housing instability;
- family violence;
- financial hardship; or
- other difficulties, such as loss of employment or being a single parent.

It's not going to go away, deal with it straight away!





justice connect
fairer and better lives