



FEDERATION
OF COMMUNITY LEGAL CENTRES VIC

VICTORIAN ELECTION PLATFORM 2022

**A fair, inclusive and thriving society for all
Victorians**

September 2022

ABOUT THE FEDERATION

The Federation is the peak body for Victoria's 46 Community Legal Centers. Our members are at the forefront of helping those facing economic, cultural or social disadvantage and whose life circumstances are severely affected by their legal problems.

For 50 years Community Legal Centres have been part of a powerful movement for social change, reshaping how people access justice, creating stronger more equitable laws, and more accountable government and democracy.

We pursue our vision of a fair, inclusive, thriving community through challenging injustice, defending rights and building the power of our members and communities.

WE WANT A COMMUNITY THAT IS FAIR, INCLUSIVE AND THRIVING: WHERE EVERY PERSON BELONGS AND CAN LEARN, GROW, HEAL, PARTICIPATE AND BE HEARD.

The Federation:

- ▼ Enables a strong collective voice for justice and equality;
- ▼ Mobilises and leads CLCs in strategic, well-coordinated advocacy and campaigns;
- ▼ Works with members to continuously improve the impact of community legal services;
- ▼ Drives creativity and excellence in the delivery of legal services to communities;
- ▼ Helps make justice more accessible.

Read our strategic plan online

fclc.org.au/about

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ACKNOWLEDGEMENT OF COUNTRY



The Federation of Community Legal Centres acknowledges the Traditional Custodians of the lands across Victoria and note that this document was developed on the lands of the Wurundjeri people of the Kulin Nations.

We recognise that the over-representation of Aboriginal and Torres Strait Islander families and children in the justice system, many of whom have experienced family violence, is in part a devastating consequence of colonisation, intergenerational trauma and ongoing experiences of systemic racism.

We pay our respects to the strength and resilience of Aboriginal and Torres Strait Islander peoples and cultures and to all Elders past, present and emerging and recognise their unceded sovereignty.

FOREWORD

Victoria is a strong and vibrant state which has seen significant social reforms, but there remains much to be done. The community legal sector wants the same thing the Victorian community wants from our political leaders – to live in a fair, inclusive and thriving society. We strive for a Victoria where everyone has a home, lives in a clean environment, is safe from violence and has access to health care and the financial, social and wellbeing support they need to lead meaningful and fulfilling lives. We would also like to build a society where all Victorians are free from discrimination and are not criminalised due to poverty and disadvantage.

Access to a fair and just legal system is at the heart of an equitable community. We know that unfair laws and unresolved legal issues can have a devastating impact on people's daily lives, including significant financial strain and bankruptcy, physical ill-health, psychological distress, incarceration and homelessness.

We believe that with the support and commitment of our political leaders, working closely with the community, we can achieve our shared vision for Victoria. This requires our political leaders to commit to key reforms to embed a fairer system in Victoria. Importantly, it also requires sustainable and long-term resourcing for the community legal sector so all Victorians, no matter their background or financial position, can get the legal help they need.

We recognise that the lands of Victoria were never ceded by our First Nations. We stand in solidarity with the Victorian Aboriginal Legal Service and Djirra in their call for the right to self-determination of Aboriginal peoples. Strong, independent and well-resourced Aboriginal community controlled specialist legal and family violence services are an essential foundation to realise the self-determination of Aboriginal peoples. These organisations serve their communities and deliver programs designed and trusted by Aboriginal communities. We stand by the Victorian Aboriginal Legal Service and Djirra in their call for urgent reforms to reduce the overrepresentation of Aboriginal people in criminal and youth legal systems and the ongoing removal of Aboriginal children from their families.

KEY GOALS

Goal 1: Build a resilient and well-resourced community legal sector by:

- ▼ Providing sustainable, viable and long-term (seven year) funding to Community Legal Centres to meet high demand for legal assistance.
- ▼ Building a strong and resilient community legal sector workforce through a dedicated social justice graduate program, increasing investment in staff wellbeing initiatives, and progressing further with gender responsive budgeting.
- ▼ Ensuring that the community legal sector can meet rising costs through adequate indexation to reflect award wage increases (4.6 per cent in 2022–23).
- ▼ Upscaling integrated legal service models to meet the holistic needs of individuals, families and communities.
- ▼ Increasing investment in data collection, monitoring and evaluation systems for the community legal sector, to better support the legal needs of Victorians.

Goal 2: Victorians have access to secure and affordable housing by:

- ▼ Expanding public and community housing by at least 60,000 homes by 2032.
- ▼ Implementing measures to ensure Victorians are safe and secure in social housing.
- ▼ Establishing an independent Housing Ombudsman and alternate dispute resolution process within the Victorian Civil and Administrative Tribunal for more efficient and fair outcomes.
- ▼ Increasing resourcing for Community Legal Centres to provide legal assistance to tenants so they can assert their rights and achieve fair outcomes.
- ▼ Building new homes with a 7-star efficiency rating.

Goal 3: Implement a fairer fines system by:

- ▼ Fully implementing the recommendations of the Fines Reform Advisory Board.
- ▼ Implementing binding enforcement reviews.

Goal 4: Strengthen consumer protections by:

- ▼ Establishing a Motor Vehicle Ombudsman in Victoria.
- ▼ Ensuring access to affordable energy and fair treatment in the important transition to a clean economy.

Goal 5: Reform laws to stop the criminalisation of disadvantage and poverty by:

- ▼ Reforming the bail laws.
- ▼ Raising the age of criminal responsibility to at least 14 years old.
- ▼ Ending mandatory sentencing in Victoria.
- ▼ Prioritising the review of all offences to decriminalise minor offending linked to disadvantage, poverty and drug dependency, while taking immediate steps to downgrade those offences where there is already a clear evidence basis for action.
- ▼ Diverting people, in particular children and young people, away from the criminal legal system by increasing access to cautions, diversion and therapeutic programs.

Goal 6: Strengthen police accountability by:

- ▼ Establishing a Police Ombudsman to investigate police misconduct.
- ▼ Implementing a robust police monitoring regime.

Goal 7: Invest in the community rather than prisons and make prisons human rights compliant by:

- ▼ Adopting a justice reinvestment approach and diverting funding away from prisons to deliver local and data-driven solutions to address the underlying causes of crime.
- ▼ Addressing the use of harmful practices in prisons by implementing the *Optional Protocol to the Convention against Torture*.

Goal 8: Improve Victorians' mental health and wellbeing by:

- ▼ Integrating legal help in the roll-out of Victoria's 60 Local Adult and Older Adult Mental Health and Wellbeing Services.

Goal 9: Ensure Victorian communities are resilient to the impacts of climate change and disasters by:

- ▼ Committing to equitable climate change adaptation and holistic disaster recovery and embedding climate justice considerations in all new legislation.
- ▼ Increasing funding to Community Legal Centres so they can:
 - ◇ ensure their services and centres are resilient and prepared for disaster and climate change impacts
 - ◇ continue their vital work in disaster recovery, preparation and response

- ◇ upskill to meet the emerging legal needs of communities related to disaster and climate change impact.
- ▼ Providing increased and sustainable resourcing to specialist Community Legal Centres so they can respond to the legal needs of Victorians related to disaster and climate change impacts.

Goal 10: Increase safety for victim survivors of family violence in Victoria by:

- ▼ Committing to continue to fully implement all 227 recommendations of the Royal Commission into Family Violence.
- ▼ Continuing to build an integrated family violence support system, including embedding Community Legal Centres in the Orange Door network across Victoria.
- ▼ Boosting funding to increase the capacity of Community Legal Centres to meet demand for legal assistance to victim survivors of family violence.
- ▼ Expanding legal assistance at court through resourcing legal services at the new Specialist Family Violence Courts in Victoria and continuing the Early Resolution Service / Pre-Court Engagement model.
- ▼ Developing a whole-of-system approach to rectifying misidentification of victim survivors as perpetrators of violence in consultation with key agencies.

Goal 11: Keep children out of the child protection system and with their families by:

- ▼ Establishing a mandatory Aboriginal child protection notification and referral system.
- ▼ Strengthening court oversight of child protection intervention to ensure it is appropriate and in the best interests of the child.
- ▼ Expanding early intervention models that include community legal assistance to promote family preservation and reunification.
- ▼ Embedding a strengths-based, trauma and family violence informed framework across the child protection system.

A RESILIENT AND WELL-RESOURCED COMMUNITY LEGAL SECTOR

Access to a fair and just legal system is at the heart of an equitable Victoria. A strong and well-resourced community legal sector is critical in ensuring that all Victorians, no matter their background or financial position, can access the legal support they need. It is also critical in delivering key system reforms envisioned by the Victorian Government.

Goal 1: Sustainable resourcing of the community legal sector for a resilient Victoria

Sustainable, viable and long-term funding for the community legal sector

Community Legal Centres support those most in need of assistance, who cannot afford private lawyers and do not have access to legal aid. On average, up to 70 per cent of people who access Community Legal Centres have an annual income of less than \$32,000.¹ Legal assistance from Community Legal Centres is critical in many aspects of Victorians' daily lives, including for those facing eviction and homelessness, incarceration, family breakdown and violence, crippling debts and fines, discrimination, exploitation at work and unfair dismissal.

We know that helping people to resolve their legal problems early and effectively can reduce the devastating impact legal issues can have on a person's life. This can reduce downstream pressures on the legal system and other parts of the service systems, including mental health, child protection and the criminal legal system.² Studies have shown that for every dollar spent by government on funding Community Legal Centres, they return a benefit to society that is 18 times that cost.³

With new legal and social challenges arising from the COVID-19 pandemic and widening inequality, demand for community legal assistance is greater than ever. Last year, Community Legal Centres provided legal services for over 100,000 Victorians and half a million people used online tools and self-help resources developed by our centres. Legal assistance with family violence intervention orders (FVIOs), housing, debt collection and financial legal issues doubled.

Yet, the community legal sector is stretched. Inadequate and short-term funding of Community Legal Centres (including, funding grants for only one year) causes service disruption, loss of key staff and reduces the critical reach of Community Legal Centres to their communities. Through sustainable and long-term resourcing, we can ensure all Victorians have access to the community legal assistance they need. This requires increased investment in communities in regional, rural, and peri-urban areas, recognising reduced access to key services and higher delivery costs in these areas. Sustainable, viable and longer-term (seven year) funding (which is in line with the calls from the Victorian Council of Social

Service) will allow for a strong and resilient community legal sector to serve the Victorian community into the future.

We call for increased investment and seven year funding cycles to Community Legal Centres in Victoria to meet existing need for legal assistance and to address the continued rise in demand brought about by the pandemic, climate disasters and widening inequality.

Build a strong and resilient community legal workforce

A strong and resilient community legal workforce is critical for the ongoing delivery of effective and high-quality services to the community and to deliver key system reforms envisioned by the government. To achieve this, the community legal sector must be a workplace of choice for legal professionals and offer rewarding career opportunities, competitive pay and secure employment. However, this is challenged by short-term funding cycles which only allow for one to two year contracts, funding uncertainty and under-resourcing. These factors, coupled with the challenging content of the work and high demand, can lead to burnout and loss of key workforce.

We reiterate our call for long-term, viable and sustainable funding for a strong and resilient sector. As part of this, the Victorian Government needs to progress further with gender responsive budgeting to promote gender equality. A recent snapshot of the community legal workforce indicated that women make up 77 per cent of the sector.⁴ The gender pay gap is still too high at 14.3 per cent in Victoria.⁵

Currently, Community Legal Centres do not have the capacity or resourcing to provide graduate opportunities for training. To enhance sector sustainability, there needs to be tailored programs and training in tertiary education providers on social justice lawyering to create a pipeline of skilled workers into the future. This is particularly important for regional, rural and peri-urban areas which experience significant workforce challenges, coupled with critical housing shortages.

A resilient sector requires further investment in initiatives that focus on trauma-informed practice and staff wellbeing.

We call for commitment to a strong and resilient community legal workforce by:

- progressing further with gender responsive budgeting.
- building a workforce for the future through a dedicated graduate program for community lawyering with a particular focus on regional, rural, and peri-urban areas.
- increasing investment in initiatives that focus on trauma-informed practice and staff wellbeing.

Ensure the community legal sector can meet rising costs

Rising costs have increased pressures on a sector that is already stretched. The government could help to ease these pressures by providing indexation to community legal sector funding which aligns with the national wage increase of 4.6 per cent on modern awards.

While the government has provided 4.6 per cent funding indexation for many community sector organisations to help these services meet rising costs, the community legal sector has been left out. Current indexation for the community legal sector funding is too low and does not reflect the real cost of delivering services. This will lead to cuts in essential staff. When staff are cut, so are services. Going forward there needs to be fair and predictable funding indexation to respond to the changing economic and social landscape and to ensure the community legal sector's continued viability.

We call on the government to commit to adequate indexation that matches increases to national award wages (4.6 per cent in 2022-23) in funding contracts to Community Legal Centres.

Promote best practice service delivery to the community

It can be challenging to navigate a disconnected and complex community support system particularly in times of crisis and stress. We know that in times of hardship, essential pillars can break down in people's lives leading to compounding issues, such as family separation and violence, housing and job insecurity, financial pressures, disconnection from friends and family and poor mental health. To meaningfully support Victorians, this requires an integrated and holistic response to address people's intersecting legal, social, financial and health needs.

Community Legal Centres achieve this by delivering integrated legal services through multidisciplinary teams and partnerships with other community service professionals, such as social workers, financial counsellors and health providers.⁶ People experiencing disadvantage or stress are more likely to present at a health or community service for help than a legal service.⁷ These partnerships ensure that people with vulnerabilities are connected with legal services wherever they seek help, including at schools, hospitals, maternal health clinics, youth centres, alcohol and drug programs and family violence services. It also enables legal issues to be identified as early as possible before they snowball.

We call on the government to address service gaps and silos to ensure Victorians can access holistic legal and other community supports by:

- continuing to resource existing integrated legal services.
- investing in new integrated legal services.
- scaling up proven integrated legal services models.

Build the evidence base - meaningful outcomes for Victorians

The benchmark of any effective program is the ability to capture relevant and meaningful data to measure impact. The community legal sector's capacity to measure impact and build an evidence basis has been constrained by lack of investment in data collection, monitoring and evaluation over many years. Increasingly, government and other funders require evidence-informed reporting to measure the effectiveness of services. This requires capacity building and investment in data systems, monitoring and evaluation for the community legal sector. This will ensure that Victorians, particularly those who are most at risk of injustice, are getting the best possible access to appropriate legal services.

We call for increased investment in data collection, monitoring and evaluation systems for the community legal sector, to better measure outcomes and support the legal needs of Victorians.

AFFORDABLE HOUSING, A FAIRER FINES SYSTEM AND CONSUMER PROTECTIONS

The foundations of a thriving and equitable Victoria require access to healthy, affordable and secure housing for all, a fairer fines systems and robust consumer protections. Fair public, social and community housing empowers at-risk Victorians to be safe and build healthy livelihoods for themselves and their communities. Safe and affordable housing is essential for all Victorians, but particularly for those experiencing family violence, leaving prison or at risk of being unhoused due to the cost of living or extreme weather.

Too many vulnerable Victorians are caught up in a fines system that compounds their disadvantage, producing unfair outcomes and inappropriate sentences. Fair outcomes in consumer contracts are vital across essential items like second hand cars and energy to power Victorian homes. Key changes to these areas will have a dramatic impact on people's lives.

Goal 2: Victorians have access to secure and affordable housing

Increase social and affordable housing

Victoria needs at least 60,000 new public and community homes (social housing) before 2032 to protect the fundamental human rights of Victorians. Rural and regional Victorian towns are suffering from the influx of private Airbnbs and empty housing stock. Disadvantaged Victorians are pushed into a precarious private market or homelessness. The scarcity of affordable private rental homes has disempowered renters at a time when the impacts of COVID-19 and a precarious economic environment are being acutely felt.

Key changes that will ensure healthy and fair Victorian communities include:

- Preventing hardship and increasing accountability by implementing effective mechanisms to ensure rent increases are fair and proportionate.
- Regulating holiday accommodation in rural and regional areas to be in balance with community need for essential dwellings for locals and workers in essential services.
- Reforming the tax system by increasing levies on empty homes in high demand areas and reviewing stamp duty.

We call for a commitment to expand public and community housing by at least 60,000 homes by 2032 to enable thriving and safe Victorian communities.

Safe and regulated public and community housing

The Fairer Safer Housing reforms to the *Residential Tenancies Act 1997 (Vic)* commenced in 2021 and are an important step towards making renting in Victoria fairer, safer and more equitable. However, there is more to do, particularly in social housing, for renters to thrive. We must build on these vital reforms to ensure no Victorian renter is left behind by:

- Improving regulation of social housing, particularly community housing.
- Strengthening equality in the social housing system by ensuring community housing renters have the same rights and protections as public housing renters.
- Implementing the findings of the Victorian Ombudsman's report and the Interim Report of the Social Housing Regulation Review to install an independent centralised accessible complaints system for public and community housing renters.
- Committing to no evictions from social housing into homelessness.

We call for measures that strengthen social housing regulation and support safe, affordable, and secure housing.

Fair and efficient dispute resolution for all Victorians

The current dispute mechanism of the Victorian Civil and Administrative Tribunal (VCAT) for private renters is stretched beyond capacity, resulting in renters facing lengthy delays. Efficient and timely dispute resolution is essential to ensure the fundamental needs for safe housing and livelihood security are met.

An independent Housing Ombudsman is required to provide timely and more accessible dispute resolution options and to relieve pressure on VCAT. There needs to be a framework to encourage early dispute resolution that places the onus on landlords to negotiate repayment plans or compliance with duties, such as alternative dispute resolution prior to a VCAT hearing. This opt-in alternate dispute resolution process should be safeguarded by clear information about the process and the effect of any agreement, involve accredited mediators and access to a hearing on the same day (where mediation is not successful).

The housing crisis in Victoria means more Victorians are seeking legal advice about their rights. Community Legal Centres need increased funding so they can provide specialised legal advice and advocacy for vulnerable tenants (particularly for eviction matters) that address the root causes of homelessness and housing insecurity.

We call for:

- a more efficient and fair dispute resolution system through the establishment of an independent Housing Ombudsman to reduce pressures on VCAT, as well as alternate dispute resolution processes within VCAT.
- increased resourcing for Community Legal Centres to provide legal assistance to tenants so they can assert their rights and achieve fair outcomes.

Ensure new homes are both energy efficient and climate resilient

Rising energy prices are placing pressure on living costs and causing widespread energy hardship. This is hardest felt in low-income communities, and exacerbates financial hardship already felt due to increasing rental and housing unaffordability. Inefficient houses result in increased energy usage and is an avoidable contributor to climate change. Increasing the energy efficiency of new homes from six to seven stars would help alleviate these pressures into the future.

We call for all new homes being built to meet a 7-star efficiency rating.

Goal 3: Implement a fairer fines system

Full implementation of the recommendations of the Fines Reform Advisory Board

The fines system is being reformed, but there is more to do. Full implementation of the recommendations from the Fines Reform Advisory Board would reduce the adverse impact of fines on the most vulnerable Victorians. This would also result in improved efficiencies and decrease backlog of matters for Fines Victoria and the Magistrates' Court. As marginalised Victorians continue to feel the social and economic impacts of COVID-19, improving the fines system is essential for our state's ongoing recovery process.

We call for full implementation of the recommendations of the Fines Reform Advisory Board.

Implement binding enforcement review

The Fines Advisory Board recommended that the *Fines Reform Act 2014 (Vic)* (FRA) should be changed to make an enforcement cancellation decision by the Director of Fines Victoria final and binding on an enforcement agency, and that any fine subject to the decision be withdrawn.⁸ Binding enforcement review would stop enforcement agencies from taking a person with fines to the Magistrate's Court where Fines Victoria has already determined that special circumstances led them to incurring this fine.

This reform would improve fairness and efficiency in the fines system and will stop vulnerable people from being unnecessarily caught up in an already overwhelmed legal system. This could be achieved by removing the option for enforcement agencies to start proceedings in court in relation to enforcement review applications involving special circumstances.⁹ The Fines Reform Advisory Board also recommended more effective information sharing between the Director of Fines Victoria and enforcement agencies to improve administrative decision making.¹⁰

We call for the implementation of binding enforcement review as recommended by the Fines Reform Advisory Board.

Goal 4: Strengthen consumers protections in Victoria

Establish a Motor Vehicle Ombudsman in Victoria

Thousands of Victorian lives and livelihoods are adversely impacted because the state does not have a fast and accessible way to resolve lemon car disputes. Similar ombudsman schemes already exist for utilities providers, telcos, lenders and insurers. This recommendation will level the playing field, making it easier for Victorians to access justice when sold a lemon car and get back on the road quickly.

We call for the establishment of a Motor Vehicle Ombudsman for Victoria.

Increased access to affordable energy

It is vital to ensure all Victorians can access affordable energy and receive fair treatment in the important transition to a clean economy. This involves:

- Extending the Energy and Water Ombudsman’s jurisdiction to cover solar and other new energy technologies.
- Tightening the rules to make sure Victorians stay connected to essential services.
- Introducing a Victorian Default Offer for gas to ensure a fair price.

We call for access to affordable energy and fair treatment in the important transition to a clean economy.

REFORMING THE CRIMINAL LEGAL SYSTEM AND INCREASING POLICE ACCOUNTABILITY

Over the past decade, various reforms have been implemented in Victoria that have increased the punitive nature of the criminal legal system and contributed to escalating numbers of people in prison and on remand. Victoria's prison population has more than doubled over the last 10 years which has disproportionately impacted Aboriginal people, young people and women.¹¹ Too often, members of our community are unnecessarily caught up in the criminal legal system due to poverty and disadvantage. This exacerbates trauma and leads to ongoing cycles of imprisonment. Prisons do not reduce crime. The evidence is clear that investing in early intervention, community-based support and diverting people from the criminal legal system, where possible, creates a healthier and safer Victoria for all.

Critical reforms are also needed to stop children and young people being criminalised and placed in youth detention, in particular those young people who are over-represented in the criminal legal system. This includes children who live in residential care, Aboriginal children, children from culturally and linguistically diverse backgrounds and girls and young women with complex needs. This overrepresentation relates to these children's experiences of discrimination and disadvantage, unmet needs, over-policing and unfair criminal legal policies.

Goal 5: Reform laws to stop the criminalisation of disadvantage and poverty

Reduce incarceration of people experiencing disadvantage by reforming the bail laws

Changes to the *Bail Act 1977 (Vic)* (the Bail Act) in 2013 and 2018 have resulted in a substantial number of people charged with low level and non-violent offences being refused bail and being held in prison on remand. The number of people in Victoria's prisons who have not been found guilty of a crime has increased by more than 140 per cent in just under a decade with just under half of the people in prison being unsentenced.¹² This costs taxpayers more than approximately \$1 million each day.¹³

People experiencing disadvantage are disproportionately impacted, particularly Aboriginal women and women experiencing poverty. Many women who have been charged with low level and non-violent offences are in prison awaiting sentencing not because they pose a risk to the community, but due to intersecting forms of disadvantage. Between 70 to 90 per cent of women in prison have been victims of violence and abuse.¹⁴ The impact on women is profound and can result in separation from their children and loss of housing and other critical supports. In Victoria on an average day in 2020–21, 81 per cent of young people aged 10–17 in detention were unsentenced which underscores the need for urgent reform.¹⁵

We call for:

- the removal of the reverse-onus and double uplift provisions in the Bail Act; and
- the creation of a presumption in favour of bail for all offences with the onus on the prosecution to demonstrate that bail should not be granted due to there being a specific and immediate risk to the physical safety of another person or demonstrable flight risk.

Raise the age of criminal responsibility to at least 14

The current minimum age of criminal responsibility in Australia at 10 years of age harms children, and in particular Aboriginal and Torres Strait Islander children. It is discriminatory and out of step with human rights standards and research which shows that children below the age of 14 have not yet reached the stage of brain development where they can be held criminally responsible. The United Nations Committee on the Rights of the Child has called for countries to have a minimum age of criminal responsibility set at 14 or higher and recommends that children under 16 should not be deprived of their liberty. Incarceration at a young age has a damaging impact on children's wellbeing and growth, with long term implications, such as potential disability, suicide risk and increased risk of longer-term imprisonment as an adult. There should be increased investment in therapeutic, child-centred and culturally appropriate responses rather than criminal responses.

We call for Victoria to raise the age of criminal responsibility from 10 to at least 14 years old in line with international human rights standards.

End mandatory sentencing in Victoria

There are a wide range of offences in Victoria which require courts to impose custodial sentences and fix a minimum term of imprisonment. Mandatory sentencing laws can lead to unjust and unfair outcomes. Mandatory sentencing requires the court to treat people who have committed offences identically, even when there may be varying levels of culpability. This is because they constrain the court from considering

the context of offending, mitigating factors or alternative sentencing options. More punitive sentences and imprisonment may follow, which diverts focus away from rehabilitation, particularly for young offenders.

The Victorian Court of Appeal has been critical of mandatory sentencing as unjust and out of step with the community's best interests. Due to mandatory sentencing, a young person was sentenced to over three years in an adult prison in circumstances where the court considered that a sentence involving rehabilitation would have been a better outcome.¹⁶ The UN Committee Against Torture has also called for Australia to abolish mandatory sentencing because of its discriminatory and disproportionate impact on Aboriginal and Torres Strait Islander peoples.¹⁷

We call for the removal of mandatory sentencing in Victoria.

Decriminalise low level offences linked to poverty and disadvantage

There have been repeated calls for the decriminalisation of minor offending and the implementation of non-punitive responses, following key recommendations made by the Royal Commission into Aboriginal Deaths in Custody. This is important in reducing the criminalisation of Aboriginal and Torres Strait Islander peoples and people experiencing poverty, as well as decreasing pressures on the criminal legal system.

Recently, the Inquiry into Victoria's Criminal Justice System called for a review of all offences with a view to minimising the criminalisation of low level offending linked to underlying issues such as income stress or alcohol and other drug issues.¹⁸ We call on the government to prioritise this review, while also taking immediate steps to downgrade certain offences so there is a greater focus on diversion where there is already a clear evidence basis for action.¹⁹ This includes petty theft (below a certain property level),²⁰ handling stolen goods and obtaining property by deception²¹ (where this is due to poverty/survival), common law offences of public nuisance and unlawful assembly²² and possessing drug of dependence.²³

We call on the government to:

- **review all offences with the purpose of reducing criminalisation of low level offending linked to underlying issues of poverty, disadvantage, and substance use.**
- **take immediate steps to downgrade certain offences where there is already a clear evidence basis for action.**

Increase access to diversion and use of cautions

Cautions and court-based diversion are key mechanisms to divert people away from the criminal legal system and increase access to therapeutic programs, treatment and rehabilitation. They aim to address underlying causes of offending and reduce recidivism.²⁴ Cautions, diversions and a focus on therapeutic programs are particularly important for children and young people to reduce cycles of imprisonment from an early age. However, the use of cautions and diversion is inconsistent, has declined in recent years, and is often left to a police officer's discretion.²⁵ Police officers are less likely to caution young Aboriginal people and young people from lower socio-economic communities.²⁶ Aboriginal people were found to be less likely to be provided with opportunities for diversion following their first offence compared to other first time offenders.²⁷ The Inquiry into Victoria's Criminal Justice System found that the requirement for prosecution to consent to court-based diversion contributes to inequalities in the criminal legal system.²⁸ A similar finding was made about diversion for children and young people.²⁹

We call for reforms to:

- improve the consistency and use of cautions and diversions across Victoria, particularly for young people.
- remove the requirement for Victoria Police or prosecution to consent to a diversion and make it available at the instance of the court.
- increase access to diversionary and therapeutic programs, particularly for young people.

Goal 6: Strengthen police accountability

Establish a Police Ombudsman to investigate police misconduct

There has been a significant investment in policing in Victoria. As policing increases, greater trust is placed in the hands of the police. However, the mechanisms in place for independent oversight of police conduct are inadequate. Most complaints against police officers are investigated by the police themselves. While the Independent Broad-based Anti-Corruption Commission has legislative power to investigate police misconduct, it investigated less than one per cent of allegations and referred all other matters to the police for investigation, including complaints about serious police misconduct (such as, serious assault).³⁰ A system where police investigate their own misconduct undermines public confidence in the police and weakens police accountability.

This has a disproportionate impact on communities that experience systemic racism and over-policing, in particular Aboriginal communities. In Victoria, Aboriginal people are substantially more likely to be apprehended and arrested by police and experience police misconduct and harassment.³¹ A recent audit found most complaints by Aboriginal people about police conduct included use of force or assaults with many involving children. However, very few of these complaints were substantiated by police with significant evidence of bias, lack of impartiality and poor management of conflicts of interest.³² The Commission for Children and Young People found that over 70 per cent of Aboriginal children and young

people consulted spoke about racism, mistreatment, or violence by police, raising significant human rights issues.³³

We call for the establishment of a Police Ombudsman to investigate police misconduct. This body must meet human rights standards, including:

- **having adequate powers and resources to carry out independent investigations; and**
- **being independent, prompt, transparent, victim-centred, and responsive to the needs of Aboriginal complainants.**

Establish a robust police monitoring regime

To strengthen police accountability, Victoria requires a wide-ranging police monitoring regime to review police conduct and performance. This should include metrics about police use of force and weapons (OC foam and tasers), the perceived ethnicity of people subject to a police stop and search, complaints and complaint handling data, and the impact of litigation against Victoria Police. Policing metrics should be monitored by an external body that provides publicly available reports to Parliament, with compliance obligations for police.

We call for the establishment of a robust police monitoring regime to increase transparency and accountability in Victoria.

Goal 7: Invest in the community rather than prisons and make prisons human rights compliant

Take a justice reinvestment approach

While the vast majority of people who experience disadvantage do not offend, different forms of social disadvantage compound to increase the risk of engagement with the criminal legal system.³⁴ We support a justice reinvestment approach aimed at delivering local solutions that address socio-economic disadvantage and other underlying causes of crime. Justice reinvestment diverts a portion of the funds spent on prisons to local communities to design and deliver local, community-based solutions. A justice re-investment approach partners with community and uses data to identify local need.

We call for:

- the adoption of a justice reinvestment framework for Victoria.
- resourcing to identify suitable areas for justice reinvestment programs and for implementation and evaluation of these programs.

Ensure Victorian prisons are human rights compliant

The *Optional Protocol to the Convention against Torture* (OPCAT) is an international human rights treaty aimed at preventing inhumane treatment and torture in detention facilities. While it was ratified by Australia in 2017, it has not yet been implemented. The implementation of OPCAT is critical in increasing independent oversight of prison conditions in Victoria and addressing harmful practices, such as solitary confinement, strip searches and physical restraints.³⁵ The Inquiry into Victoria's Criminal Justice System recognised the urgent need to establish and adequately resource independent detention oversight bodies under OPCAT (National Prevention Mechanisms (NPMs))³⁶ in close consultation with civil society and Aboriginal controlled organisations.³⁷ The NPM's operations, policies and governance must be culturally appropriate and safe for Aboriginal people.³⁸

We call for the establishment of independent and well-resourced detention oversight bodies under OPCAT to monitor Victoria's prisons and address the use of harmful practices in prisons.

MENTAL HEALTH REFORM

Most of us will experience poor mental health at some point in our lives.³⁹ Around one in five Victorians will experience mental illness each year.⁴⁰ Good mental health is not just the absence of illness, but involves the ability to fully and effectively participate in society.⁴¹ As highlighted by the Royal Commission into Victoria's Mental Health System, health is not the only priority in promoting good mental health and wellbeing, but among other factors, involves social services, such as housing, education and justice.⁴² It is essential that people living with mental illness have access to the legal support they need as part of a responsive and integrated system in Victoria.

Goal 8: Improve Victorians mental health and wellbeing through access to critical legal support

Integrate legal assistance into the Local Adult and Older Adult Mental Health and Wellbeing Services

Legal problems are widespread for people with lived experience of mental health issues. For example, 20 per cent of Community Legal Centre clients self-identified as living with mental ill health,⁴³ but this is likely to be a substantial underestimation. A study of legal needs in Australia found that of the respondents who had at least six legal problems, over 60 per cent were living with a mental illness.⁴⁴

Despite this, many people living with mental illness are not able to access the legal services they need. The escalation and compounding of legal issues without legal support results in further harm and distress. The Royal Commission into Victoria's Mental Health System found that people's interaction with the legal system often worsened, rather than improved, their mental health and wellbeing.⁴⁵

The Royal Commission in Victoria's Mental Health System documented the challenges faced by people living with mental illness in accessing services which were disconnected and emphasised the need for a responsive and integrated system in communities.⁴⁶ The reforms flowing from the Royal Commission into Victoria's Mental Health System provide an important opportunity to increase access to timely place-based legal assistance and holistic support to people living with mental illness. This can be achieved through long-term and sustainable funding to embed community legal services into Victoria's Local Adult and Older Adult Mental Health and Wellbeing Services.

We call for sustainable funding to embed community legal services in the roll-out of Victoria's 60 Local Adult and Older Adult Mental Health and Wellbeing Services.

DISASTERS AND CLIMATE JUSTICE

Climate change is already having a significant impact on the ability for Victorians to access justice. Many Victorians are still recovering from Black Summer bushfires of 2019/2020, and all Victorians face risks from climate change impacts and disasters. Climate change and the increasing frequency of extreme weather events are some of the greatest threats facing our communities. Strong climate action will ensure a future with healthy air, waterways and land, as well as protection of our communities.

Goal 9: Ensure Victorian communities are resilient to the impacts of climate change and disasters

Climate justice for all Victorians

Substantial climate justice requires that all legal and regulatory frameworks include climate impacts and climate equity as a primary consideration. It is important to fulfill the full mandate of the *Climate Change Act 2017* (Vic) so all decision makers, legislation and regulation must address climate justice considerations.

We call for the Victorian Government to deepen its commitment to equitable climate change adaptation and holistic disaster recovery and embedding climate justice considerations in all new legislation.

Establish a resilient and prepared community legal sector

There is a pressing need to increase resources for Community Legal Centres so they can invest in infrastructure adaptation, business continuity planning and build organisational resilience to the impacts of climate change. The rise in extreme weather events and disasters demands a resilient and well-resourced community legal sector that can respond to the emerging legal needs of their communities. Community Legal Centres' holistic, intersectoral place-based approach is best practice for reducing disaster risk and adapting equitably to climate change. Secure, sustainable funding for integrated services, place-based collaboration and climate impact preparation is crucial to empower resilient communities in these uncertain and precarious times.

We call for increased funding so Community Legal Centres can:

- ensure their services and centres are resilient and prepared for disaster and climate change impacts.
- continue their vital work in disaster recovery, preparation, and response.

Upskill Community Legal Centres in emerging areas of legal need

Community Legal Centres are increasingly seeing issues, such as insurance, planning, building codes and small business and agricultural sector remedies due to impacts of climate change. Access to support in these complex areas of law is essential for communities' self-determination and ability to prepare for, and recover from, climate change impacts. This need is particularly acute in regional, rural and peri-urban areas, which are most at risk of increasing vulnerability due to slow onset impacts and climate disasters. Increased funding for community legal education and information sharing systems in high-risk areas will mitigate risk and support community resilience. This is in line with the United Nations' Sendai Framework for Disaster Risk Reduction 2015–2030 as well as the National Action Plan for Disaster Risk Reduction.

We call for increased funding so Community Legal Centres can upskill to meet the emerging legal needs of communities related to disaster and climate change impacts.

Support specialist Community Legal Centres who are central to access to justice in times of disaster

When emergencies and disasters occur, concerns for those affected include safety, access to adequate housing, and income and financial security. It is critical that the Victorian Government maintain an ongoing focus on financial livelihoods to ensure Victorians have access to adequate social security entitlements when they are needed, and that there is appropriate assistance available for housing, consumer and family law needs.

We call for increased and sustainable funding for specialist Community Legal Centres so they can respond to the legal needs of Victorians related to disaster and climate change impacts.

FAMILY VIOLENCE AND CHILD PROTECTION

Victoria has been at the forefront of family violence policy development and reform since the Royal Commission into Family Violence (the Royal Commission) and has provided substantial investment in addressing family violence. However, there is still much to be done to respond to the scale and impact of the harm caused by family violence in Victoria. We strive for a Victoria where all women and children are free from violence. We call on our political leaders to continue to work with the community to make this a reality.

Goal 10: Increase safety for victim survivors of family violence

Implementing an integrated family violence response

The Royal Commission envisioned an integrated family violence response where services work closely together to support victim survivors from early intervention, crisis response through to recovery.⁴⁷ The Royal Commission called for reducing service silos so that victim survivors were not left to navigate a complex system by themselves at a time of acute stress.⁴⁸ An integrated family violence response is essential to keep women and children safe from family violence and increase perpetrator accountability.

Legal assistance is a critical part of an integrated family violence response. It is only through a whole-of-system approach that the challenges faced by victim survivors can be addressed, including through access to safety planning, secure housing, counselling, financial support, legal assistance and help resolving conflict between parents over children. Legal assistance from Community Legal Centres is essential in restoring safety and helping victim survivors to recover from family violence. This includes legal assistance with securing FVIOs and resolving parenting disputes to put in place safe arrangements for children. Community Legal Centres support victim survivors to restore their financial safety and independence, helping them to recover from often long periods of economic abuse.

As part of creating a more integrated system, it is critical that Community Legal Centres are resourced to provide legal services to people accessing the Orange Door hubs (the central family violence intake points) across Victoria. This can be achieved by expanding the current pilot across the Orange Door network.

We call on our political leaders to continue to:

- fully implement all the Royal Commission's 227 recommendations.
- implement an integrated family violence response by adopting a whole-of-system government approach, which sees legal assistance as an essential part.
- embed legal services in the Orange Door network by expanding the current pilot across Victoria.

Meet demand for family violence legal services

While demand for legal services for family violence related matters was already high, the COVID-19 pandemic exacerbated the number and intensity of family violence incidents. In under a decade, there has been a significant increase in family incidents attended by police with family violence safety notices issued by police more than doubling and final FVIOs increasing by 44 per cent.⁴⁹

Reported family violence incidents in Victoria increased by 18 per cent from 2016 to 2020⁵⁰ with half of this increase occurring during the pandemic in 2020.⁵¹ Community Legal Centres assisted with 52 per cent more FVIO matters in 2020–2021 compared with the previous year.

At court, the impacts of the pandemic, coupled with increased demand, has led to a significant increase in people requiring legal assistance with family violence and other related legal matters. The volume of family violence matters being heard at court has almost doubled in some places. Demand has outstripped available resources. Without additional resourcing, this will lead to victim survivors requiring representation at court being left to navigate high risk situations alone.

We call for an additional boost of funding to increase the capacity of Community Legal Centres to provide legal assistance to victim survivors of family violence.

Expand family violence legal assistance at court

The Royal Commission recommended the establishment of Specialist Family Violence Courts at all major courts in Victoria with the overarching aim of improving safety outcomes and strengthening perpetrator accountability. To date, five Specialist Family Violence Courts have been established, with the roll-out of a further seven Specialist Family Violence Courts in September/October 2022. While there was funding provided to legal services for the first five Specialist Family Violence Courts, no additional funding has been provided to legal services to support the new courts. Additional resourcing is required for legal services to provide a more intensive, specialist and therapeutic service to give effect to the Royal Commission's vision.

The Early Resolution Service / Pre-Court Engagement model was rolled out in 2020. The purpose of the model is to provide more support in family violence matters at an earlier stage of court proceedings to enable earlier risk assessments, increase safety for victim survivors and streamline court processes to better meet demand. The evaluation found that this model was delivering significant benefits, but that current resourcing was insufficient to meet demand. Funding to legal services to deliver this model will end this financial year.

We call for Victorians to have equal access to family violence legal assistance at court no matter where they live by:

- increasing investment in legal services at the new Specialist Family Violence Courts.
- providing ongoing and expanded resourcing to legal services to continue to deliver the Early Resolution Service/Pre-Court Engagement model at Magistrates' Courts across Victoria.

Stop the misidentification of victim survivors as perpetrators of family violence

The misidentification of women as perpetrators of family violence remains a complex and pervasive issue in Victoria. Victoria Police estimated that women who are respondents on family violence reports about intimate partner violence are misidentified approximately 12 per cent of the time.⁵² A study conducted by Women's Legal Service Victoria in 2018 revealed that of the 55 women they assisted that were named by police as respondents to FVIOs, 32 women were incorrectly identified.⁵³ Certain cohorts of women are at greater risk of being misidentified, in particular, Aboriginal women, migrant and refugee women, women in the criminal legal system, women with disabilities and people who identify as LGBTIQ+.⁵⁴

The flow-on effects for women who have been misidentified can be devastating. Without adequate protection, this places these women at higher risk of ongoing violence and can lead to far-reaching consequences, such as separation from children, reduced access to family violence services, criminalisation, and homelessness.⁵⁵

The Family Violence Reform Implementation Monitor recently highlighted the urgent need to address misidentification in its monitoring report.⁵⁶ To effectively reduce and respond to misidentification, as intended by the Royal Commission, a genuine whole-of-system effort is required.⁵⁷

We call on the Victorian Government to work with key agencies, including Community Legal Centres, Aboriginal legal and family violence services, Victoria Legal Aid, Victoria Police, the Magistrates' Court of Victoria, and child protection authorities, to develop a whole-of-system approach to rectifying misidentification of victim survivors as perpetrators of family violence.

Goal 11: Keep children out of the child protection system and with their families

Establish a child protection notification and referral system for Aboriginal children

An Aboriginal child protection notification and referral system needs to be established to ensure that families are linked into culturally safe and holistic legal assistance as early as possible. This system will ensure that parents are immediately connected with an appropriate legal service as soon as a child protection notification is received for an Aboriginal family. It is important that this system is adequately resourced and led by Aboriginal community controlled specialist legal and family violence services.

We call for the establishment of a mandatory Aboriginal child protection notification and referral system.

Strengthen court oversight in child protection matters

The decision to remove a child from their family has a profound and enduring impact and requires robust court oversight to ensure that this decision is in best interests of the child. However, changes made to the law in 2016 limit the court's discretion to restore children in out of home care to their family. Strict time limits require parents to achieve reunification with their child within two years. These time limits have a detrimental impact on children and parents, particularly mothers experiencing trauma, family violence, substance dependency or mental illness, who are unable to access appropriate culturally safe support to promote timely reunification. Urgent changes are required to allow a child to return to their family beyond two years where this is in the child's best interests.

Existing restrictions on court orders also limit the court's ability to ensure children in out of home care have regular contact with their parents, siblings, and other family members. The power of the court to specify placement conditions to maintain a child's connection to family and culture should be restored.

Proposed changes currently before Parliament further limit court oversight. These changes include a proposal to delay court hearings beyond 24 hours where a child is placed in emergency care. Emergency hearings should not be delayed as immediate court oversight is crucial to child safety and wellbeing. In addition, changes are proposed to limit the court's ability to keep children in the care of their family where supervision is required to ensure a safe home environment. These changes mean that children are more likely to be permanently removed from their family.

We call for the strengthening of court oversight to ensure child protection intervention is appropriate and in the best interests of the child.

Expand early intervention initiatives to keep children with their families

It is critical to expand early intervention services for families at risk and provide proactive, integrated supports to promote family preservation and child safety. This must include access to early legal assistance to support parents to navigate a complex system and understand child protection's concerns. Intervening early can stop issues reaching crisis point, prevent the removal of children, and reduce complex litigation. Early intervention allows parents to access the support they need to address compounding issues, such as housing instability, unemployment, family violence, substance dependency or mental health issues.⁵⁸ Recognising the overrepresentation of Aboriginal children in the child protection system, early intervention models require Aboriginal-led solutions.

We call for the expansion of early intervention models that include community legal assistance to promote family preservation and reunification, particularly for mothers experiencing family violence.

Embedding a strengths-based and trauma informed framework across the child protection system

Many mothers and children involved with child protection have experienced family violence and long-lasting trauma.⁵⁹ Research has found that mothers are often held responsible for failing to protect their children from family violence, while fathers remain largely invisible and are less likely to be held accountable even where they are using violence.⁶⁰ A strengths-based approach needs to be embedded across the child protection system which promotes trauma and family violence informed practice and is informed by Aboriginal community controlled specialist legal and family violence services.⁶¹

To strengthen accountability and drive cultural change across the child protection system, the government should monitor and publicly report on family violence practice outcomes. This includes compliance with risk assessment frameworks (i.e., MARAM and the SAFER Children Framework).

We call for the development of a shared practice framework that consolidates strengths-based approaches and trauma and family violence informed practice across Victoria's child protection system.

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