

**Submission
No 91**

INQUIRY INTO VICTORIA'S CRIMINAL JUSTICE SYSTEM

Organisation: Australian Community Support Organisation

Date Received: 1 September 2021

Committee Chair Fiona Patten
Legislative Council Legal and Social Issues Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

Dear Ms Patten,

Thank you for the opportunity to make a submission to the Committee's Inquiry into Victoria's Criminal Justice System. This Inquiry into Victoria's Criminal Justice System presents an important opportunity to consider how to make Victoria's systems fairer, more cost effective and focused on rehabilitating members of our community. Our submission goes to Terms of Reference 1 & 2 relating to factors influencing Victoria's growing remand and prison population; and strategies to reduce rates of criminal recidivism

This submission has been collated with information provided by ACSO clients, Board of Directors, program staff, senior leadership and sector colleagues. Client names have been changed for the purpose of confidentiality.

ACSO believes that the Victorian Government should focus on health and community service gaps which represent drivers of crime, including homelessness, alcohol and other drug issues, untreated mental illness, family violence and debt, outside of criminal justice system interventions. If the Victorian Government is prepared to invest in Family Violence and Mental Health reform, it seems obvious to also invest in reforming the Justice system, given the substantial rise in incarceration over the past 10 years and the negative social and economic costs that have been so clearly documented. By not acting now to prevent people with significant social vulnerabilities from cycling repeatedly through our courts and prisons, we risk creating a much larger group of serious violent offenders in 20 years' time. Creating and funding better community based social housing and treatment options for the 'hard to engage' complex needs cohort, will reduce the risk these people graduating to more serious offending in the future.

The logical starting point would be to cease building more prisons and redirect this funding to creating alternatives to remand. ACSO recommends that specialised Justice supportive housing programs and dedicated social housing options should be established and funded. Community based treatment and support for people with multiple and complex needs is far more cost effective and successful compared to incarceration in high security remand prisons.

ACSO believes that the Victorian Government should work to encourage collaboration across agencies, and to limit data silos across different government departments. Ultimately, this submission makes recommendations reimagining our justice system as one where timely and effective interventions such as housing, assistance with debt and substance misuse are provided to those that need it.



Vaughan Winther
Chief Executive Officer

About us

From the organic beginnings of our founder, Stan McCormack the Australian Community Support Organisation (ACSO) has grown to be a long-term partner of choice for government and industry to help break the cycle of people repeatedly entering the justice system because they lack the support to make change.

ACSO support people at risk of entering or who have already entered the justice system. Our work supports, diverts, or reintegrates people through a range of services including mental health, disability support, alcohol and other drug treatment, intensive residential support, housing and employment.

These services span the entire justice continuum from prevention to rehabilitation. ACSO do not exclude people based on their offending history and are equipped to effectively manage risk alongside government. ACSO's vision is for a community where everyone has the opportunity to thrive, and prison truly is the last resort.

There is enormous over representation of people serving life in prison in installments when other solutions such as housing, health or employment could be used as levers to change the course of their life, reduce the economic burden of the prison system, and truly allow people to change their circumstance and change their behavior.

With more than 35 years' experience, ACSO has an unrivalled understanding of dealing with the whole person, from childhood to present day. This rigorous understanding provides a better chance of finding individual solutions to create a circuit breaker and increase self-determination.

We are collaborators. We understand the linkages of issues and policies and work to connect across government and industry to evolve services, improve equitable access to services and strengthen the evidence base to prevent people from becoming entrenched in the justice system. This will lead to better outcomes for communities across Australia, our clients and government partners.

The quality of our work and the leadership we have shown for over 35 years speaks for itself. We continue to advocate that warehousing people in prisons is unnecessary and comes at great personal, social, and economic cost. Australia needs a long-term solution to provide a genuine chance for people to exit the justice system, keep communities safe and move government investment in prisons to programs of work that increase the health and wellbeing of larger communities.

ACSO will continue to advocate, deliver services, influence, and innovate to be at the forefront of the changes Australia must see in the justice system.

Background

Governments today are tasked with tackling complex social challenges that span traditional public, private, community and departmental siloes. Crime is one of these complex social challenges. The criminal justice system operates to keep communities safe by:

- separating those who have offended from victims and other members of the public
- offering proportionate redress for wrongs perpetrated, and
- working to rehabilitate people to support positive behaviour change.

If ineffective in these pursuits, the criminal justice system only has a compounding effect on other social challenges. The criminal justice system also absorbs the flow-on effects from other social policy endeavours, often serving as a measure of broader social health, equity and wellbeing in a community. Due to this, expanding prison populations, and the social and justice system factors *influencing and influenced by* prison population increases, represent significant challenges for Victoria.

What have past reports told us?

There have been many reviews and reports that examine the circumstances related to expanding prison populations in Victoria. In 2003, the Auditor General Victoria found that the growth in people in custody over the previous eight years had begun to overwhelm prison infrastructure and strain budgets (Auditor General Victoria, 2003). The report found that this expansion in prison populations was driven in part by “tougher approaches to crime resulting in more severe punishment” (Auditor General Victoria, 2003, p. 13), an increasing rate of people impacted by the justice system re-offending after release, and increasingly complex needs of these people, including drug and alcohol addiction, unemployment, and low educational attainment. The report recommended that tools to assess the needs of people in contact with the justice system be developed and that rehabilitation opportunities be expanded to address their identified needs.

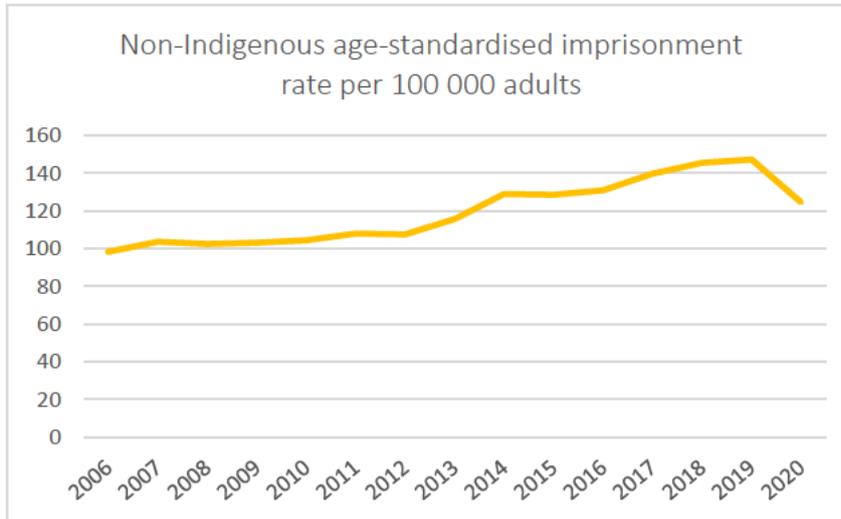
In 2012, Victoria State Services Authority identified that prisons in Victoria faced significant complexity and capacity challenges (State Services Authority, 2012). The report cited the growing diversity in needs of people in prison stemming from increased organised crime activity prosecution, mental illness and cognitive impairment. The report also identified that prisons in 2012 were operating at over 95 per cent capacity. These challenges, the report identified are reciprocal and compounding.

In 2015, the Victorian Ombudsman reported that the dramatic economic pressures caused by expanding prison populations; a challenge that only compounds as overcrowding deteriorates conditions, reduces access to rehabilitative programming and places significant strain on operational staff. The report identifies that the only response has been to build more prisons (Victorian Ombudsman, 2015). The report clearly notes that the rate of reoffending and return to prison after release suggests that public investment in this way has not been effective in producing a return in terms of public safety or public health. Despite nearly a decade of relative consistency across these and similar reports, very few solutions have materialised.

The Justice Reform Initiative (JRI) was established by more than 100 eminent Australians to collectively challenge the high reliance on jails by introducing more effective alternatives to incarceration based upon real evidence. The JRI released a report in September 2020, “Jailing is Failing – The State of the Incarceration Nation” which shows that Australia’s incarceration rate is higher than at any time since 1900, in both total numbers and per capita. Of those entering prison, 78% were unsentenced and of specific concern is that Victoria’s remand population has increased by 264% over the past decade. The JRI also states that evidence – including data from Governments across Australia show that prisons lead to more offending, more crime and more victims. They note that almost 3 in 4 people (73%) who were coming into prison reported being in prison before and almost one-third (32%) has been in prison at least FIVE times previously.

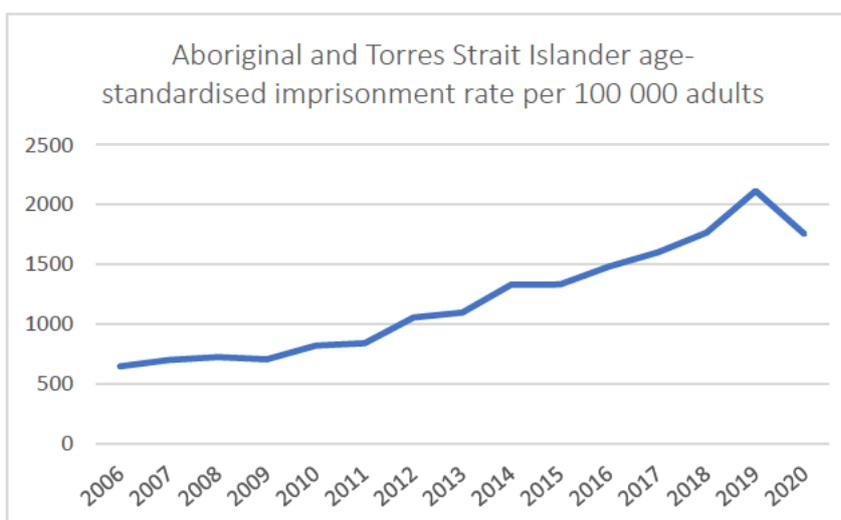
What does the data show?

In 2020, there were 124.6 non-Indigenous people incarcerated in Victoria for every group of 100 000 non-Indigenous people in the community (Australian Bureau of Statistics, 2020). This increased by 49.7 per cent between 2006 and 2019 but decreased by 15.4 per cent between 2019 and 2020 due to impacts related to COVID-19.



Data source: Australian Bureau of Statistics. (2020).

In 2020, there were 1,752.8 Aboriginal and Torres Strait Islander people incarcerated in Victoria for every group of 100 000 Aboriginal and Torres Strait Islander people in the general community in the state (Australian Bureau of Statistics, 2020). The age-standardised imprisonment rate for Aboriginal and Torres Strait Islander people has increased overall by 227.5 per cent between 2006 and 2019, although there was a 17.14 per cent decrease between 2019 and 2020 due to impacts related to COVID-19.



Data source: Australian Bureau of Statistics. (2020).

Alex is a 21-year-old indigenous man, with borderline intellectual disability, Foetal Alcohol Spectrum Disorder (FASD) and Acquired Brain Injury (ABI), who was released from custody after serving his full sentence. Alex has a significant history of trauma, long-term and pervasive substance use, offending and has been assessed as having a 'high' risk or re-offending.*

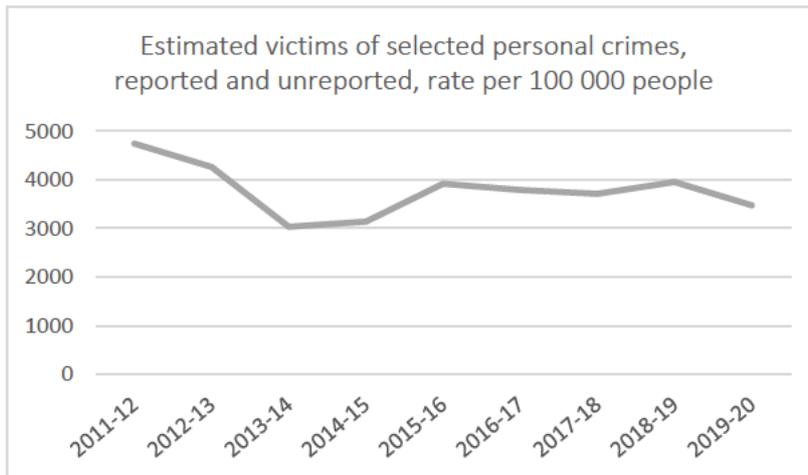
Alex was accepted into residential placement at ACSO with limited notice (due to errors associated with discharge date planning). As a result, there was no planned transition and a lack of funding to work with him in preparation for release. Unlike the traditional case management approach, NDIS case planners do not provide a consistent point of contact and Alex had no funded support coordination at the time, resulting in inconsistent communication, input and support to Alex and his support services. As well as not providing for traditional case management, NDIS has no discretionary funding for emergency support needs or resources.

Due to concerns regarding risk, and risk manageability, a Supervised Treatment Order (STO) framework was proposed (in the absence of other available supervisory frameworks). NDIA indicated that they would not support or provide funding for STO implementation. The Office of Professional Practice advocated to NDIA for this to occur. This was eventually implemented some weeks after Alex had been in the community, due to the failure to obtain an interim order to allow the framework to be in place upon discharge.

The outcomes of this lack of adequate support and inconsistent and unstable new funding and service structure included increased engagement by Alex in serious behaviours in the house, significantly impacting on staff and co-residents. Alex began to abscond, returned several times by police. Following a considerable period absent from property, lack of engagement in treatment and concerns that compelled return to property would result in acute risk to staff and co-residents, a decision was made to exit Alex from residential placement. Support was sought for housing from NDIS however this was not approved to be funded. Alex became transient, then homeless; until re-offending and eventually being reincarcerated.

What else do we know?

This increase in prison populations is not explained by increases in crime. In fact, despite consistent increases in prison populations over time, many measures of crime show that crime rates have been consistent or have declined.



Data source: Report on Government Services Productivity Commission, 2021 (pc.gov.au)

A key driver of increasing prison populations is a growing number of people held in custody on remand awaiting trial or sentencing (Sentencing Advisory Council, 2020). The number of people held on remand awaiting court or sentencing now comprises a large proportion of prison populations in Victoria. In 2020, 34.7 per cent of people in prison in Victoria were unsentenced or held on remand (Australian Bureau of Statistics, 2020).



Data source: Australian Bureau of Statistics. (2020).

We also know that most people in prison on remand return to communities within a short amount of time. In 2020, 50.5 per cent of unsentenced people in prison were released in 3 months or less. Many people are released only to end up returning to prison. In 2020, 50.7 per cent of people in prison had been to prison before (Australian Bureau of Statistics, 2020).

These circumstances have put unsustainable pressures on existing capacity, staffing and infrastructure. To accommodate these pressures, a new maximum security men's correctional centre is being constructed and existing centres are undergoing expansion. These projects come at significant public cost (Independent Broad-based Anti-corruption Commission, 2021). Expanding infrastructure capacity alone does not address the underlying needs of the people in prison and does not address the drivers of reoffending that bring them back to prison. In 2021, the *Special Report on Corrections* found that many people in contact with the justice system in Victoria face

complex challenges including mental illness, substance addiction and histories of trauma (Independent Broad-based Anti-corruption Commission, 2021). The criminal justice system, strained already by expanding prison populations, is increasingly relying on risk management and strategies like isolation and solitary confinement to manage the complex needs of individuals creating further trauma and behaviours of concern.

The Economic Costs of Incarceration

The Australian Productivity Commission is amongst numerous private and government entities that report on the increasing costs of prisons across Australian jurisdictions. Victoria's expenditure on prisons has increased threefold over the last decade, to keep up with the increase in prison bed numbers. These increases have been driven by multiple policy reforms to parole, bail, sentencing laws, recruitment of additional police and also Victoria's expanding population. Examination of Australian Productivity Commission data in 2019 shows that from 2011 – 2018, growth in spending on Corrections exceeds hospitals, schools and social housing in Victoria.

In 2018, Corrections Victoria commissioned the Australian Institute of Criminology (AIC) for a research report titled, "How much does prison really cost? (Morgan, 2018). Comparing the costs of imprisonment with community corrections". This research represents one of the first attempts to estimate the wider costs and savings of imprisonment and community corrections in Australia. The research conclusions included that over a five-year period, imposing a term of imprisonment still represents a significantly more costly sentencing option. Three-quarters of the community cohort did not end up in prison within five years. Over a five-year period, the prison cohort accrued costs of \$116.2m. This is \$76.3m, or \$94,847 per person, more than the costs accrued by the community cohort. While this cohort represents a small proportion of the entire prison population, this research demonstrates there may be significant savings associated with diverting individuals from short prison sentences to community corrections orders, where it is appropriate to do so.

Increasing rates of incarceration

The Department of Justice and Community Safety's Annual Prisoner Statistical Profiles show that the Victorian prison population has significantly increased in the last decade (Crime Statistics Agency). This is despite the fact that rates of recorded offences has remained generally static (Crime Statistics Agency, 2019). It is of deep and ongoing concern that the incarceration rates of Aboriginal and Torres Strait Islander people, which has long been unacceptably high has tripled in the last decade (DJCS, 2020). We note that the 30 year anniversary of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) fell on 15th April 2021, yet key recommendations such as increasing access to bail are still unimplemented.

The increasing incarceration rates of women is also troubling. In the last decade, the number of women in Victorian prisons has more than doubled (Crimes Statistics Agency, 2019). In 2021, half of the women on remand have not been convicted of a crime (DJCS, 2020). One of the key drivers of the incarceration of women is homelessness. Women face significant barriers to breaking the cycle of homelessness, particularly where there is evidence of a history of offending or activities that might bring women under increased scrutiny of law enforcement.

A key feature in the management of women in prison in Victoria is that of placing women on remand where there is evidence of inadequate accommodation or complex presentation. Whilst the aim of courts in making this decision is often done with the intention of protecting women it leads to further entrenchment in the criminal justice system as evidenced by the greater rates of female imprisonment. Adequate housing and supports for this cohort would help to alleviate women's homelessness but as noted in the Corrections Victoria's still relevant 2005-2009 'Better Pathways' four-year strategy for addressing women's offending (Corrections Victoria 2005), demand for adequate programs such as the Transitional Housing Management Bail Support Program and Corrections Housing Pathways Initiatives' consistently exceeds supply'. This situation is replicated Australia wide with the national increase in the rates of female imprisonment.

Bel is a young person who has recently transitioned from the Out of Home Care (OoHC) sector. Bel has an intellectual disability and complex mental health concerns, and often presents in the community and to support staff as aggressive and reckless in her decision making; which has led to ongoing police engagement and periods of incarceration.*

Bel became homeless as a result of an unintentional house fire. Support staff took Bel to homeless and housing services every day to source short term, transitional and long-term housing however Bel was refused by all services due to either a known history of challenging behaviours, not meeting eligibility due to intellectual disability and/or mental health diagnosis or presenting as aggressive on the day of housing intake.

Bel was soon after remanded due to her offending and was held in custody as she did not have stable accommodation. When Bel was eventually released, she was released without stable accommodation, which in addition to her behaviours of concern led to her re-entering the criminal justice system.

Untreated Mental Health Drives Incarceration

According to the 'Auditor General Victoria's 'Addressing the needs of Victorian Prisoners' report, the majority of people in Victorian prisons are characterised by complex personal needs and problems, and most have previously been in prison.

ACSO supports a large number of Victorians who experience co-morbid health risk factors and consequently, our work sits at the intersection between justice, mental health, disability, alcohol and other drugs, and homelessness. ACSO delivers services from courts, in custodial environments, in the community and in forensic residential accommodation. Across our broad range of justice services and programs, ACSO sees individuals at each point of the justice continuum and has identified key areas where there are opportunities to identify, engage and remain available to people with complex mental health needs in their recovery.

ACSO provides in excess of 9000 (9216 in 19-20) alcohol and other drug assessments a year for almost 9000 (8763 in 19-20) justice involved clients, including those referred on community-based orders or those referred via the courts, pre-sentence. ACSO also provides screening and brief intervention to almost 200 individuals a year on caution notices who are apprehended by Victoria Police. Of those assessed by ACSO in 2019-20 financial year, 63% reported a mental health

diagnosis on assessment and 26% indicated mild to moderate levels of distress, with 20% indicating severe levels of distress at assessment as indicated by administration of the K10 assessment.

Additionally, ACSO support in excess of 1000 post-release persons per annum in Victoria, supporting individuals to link into services in their community and maintain engagement. As part of our service delivery model, mental health is revisited at every case work session, and post-release persons with mental health concerns are supported to engage with their GP to develop a mental health plan, with ACSO providing the person ongoing support to achieve stated mental health goals. ACSO's Partners in Wellbeing program provided mental health one-on-one support and coping strategies to 173 individuals in its first quarter as part of a newly implemented COVID mental health response program

Forensic mental health is a complex issue that remains under resourced, disparate, and siloed. It refers to the complex interplay between mental health and offending behaviours, which evidence notes are often related to alcohol and drug misuse and other social vulnerability factors (e.g. intergenerational disadvantage, long-term homelessness). Whilst there are limited dedicated resources for acute forensic mental health conditions, community-based treatment for Justice clients with non-acute conditions is virtually non-existent. Untreated mental illness is a significant driver of anti-social behaviours and contributes to the range of complex risks and needs that results in poor outcomes for this 'hard to engage' client group. This evidence notes that the success of engaging justice-impacted persons into treatment and maintaining their motivation to engage throughout their recovery requires strong social justice committed workforces and skilled practitioners in both AOD but also offending behaviour.

Our post-release support teams experience significant difficulties in assisting people leaving custody to prioritise their mental health given the complexity of intersecting and at times competing issues including homelessness, unemployment, relapse to alcohol and drug use and return to prior social groups/friendships where criminal activity remains a feature of their engagement.

Homelessness Drives Incarceration

It is widely acknowledged that significant numbers of persons leaving custody exit to homelessness. Conversely approximately 35 per cent of men released from prison are recorded as being homeless four weeks *prior to entering custody* with the number of women even higher at 52 per cent (Victorian Ombudsman 2015). With the number of people entering the justice system, both as sentenced persons or remandees, continuing to increase across Australia, and new prisons being built across the country, the number of persons exiting to homelessness will continue to rise (Victorian Ombudsman 2015).

In Victoria, legislative changes to sentencing has led to the abolishment of suspended sentences, the bail system being tightened and a reduction in the use of parole (Victorian Ombudsman 2015). Consequently, more people are exiting prison without supervision, and thus, exiting to community without support to access necessary reintegration services, including housing. One concerning consequence of this is the tendency for persons with a history of offending behaviour to exit to temporary accommodation or return to family. Commonly these types of accommodation placements break-down within very short periods of time, and for those persons without access to

a support service, navigating the housing system can be overwhelming and act as a precursor to return to offending (AHURI 2003).

Within Queensland, the recent inquiry by the Queensland Productivity Commission into Imprisonment and Recidivism (2019) noted that within that jurisdiction the rate of imprisonment had increased by 160 percent since 1992. This was despite a falling crime rate. This finding is mirrored in most Australian jurisdictions nationally. They noted that imprisonment as a housing solution was very expensive costing around \$111,000 per year to accommodate a person in custody with further indirect costs of approximately \$48,000 per person, per year. This equates to over \$150,000 per prison per year. These types of figures show the unsustainable nature of custodial centres as housing solutions to the management of complex and challenging behaviours driven by poor health, social and wellbeing of the persons involved.

Research shows that almost half of all people in Queensland prisons are likely to have been previously hospitalised for mental health issues and/or have a history of child protection (Griffith University Criminology Institute, 2019). The Queensland Productivity Commission noted that there was considerable room for reform in terms of improved policy, sentencing options and funding of early intervention which were likely to have positive impacts on the required expenditure on prisons into the future.

Exits to Homelessness

Common Ground (2016) note that the period immediately post-release from a correctional centre is one of significantly increased vulnerability to homelessness and that homelessness is a risk factor in any return to offending behaviour post-release. A key strategy of *The Road Home: A National Approach to Reducing Homelessness* (2008) is that of 'no exits into homelessness,' acknowledging the high risk of homelessness that exists in populations where individuals are being released back into the community from communities of care or custody, including prisons, acute mental health facilities and AOD residential facilities.

From our experience as a pre- and post-release service provider across New South Wales, Victoria and Queensland, ACSO has firsthand experience in the high number of individuals released from these facilities returning to reside with family members, friends or other forms of transient and insecure housing options. Research supports ACSO's front line service delivery experiences that complex factors including a lack of ability to access rapid and timely support for addiction, mental and physical health and family relationships within wider Australian communities led directly to a breakdown in these housing placements. Transitional housing models seek to bridge this gap, but currently the supply of post-transitional housing placements does not meet the level of demand which continues to grow due to the high number of person existing custody across Australia each day.

Over the last five years, the number of people in prison across Australian states and territories has increased by 40 per cent (Australian Bureau of Statistics [ABS], 2018). Across Australia, as at March 2020 there was 44,159 people in custody (Australian Bureau of Statistics [ABS], 2020) a continued trend in increases over the last ten years. However, what these numbers do not accurately reflect is the churning nature of prison populations nationally. In 2019, more than 19,000 people left NSW prisons during that 12 month and returned to their communities (NSW Bureau of Crime Statistics and Research [BOCSAR], 2019).

The Australian Productivity Commission notes the continued rate of high return to custody for these persons. In 2016-17, 44.8 per cent of people released from prison in 2014-15 returned to prison within two years and 53.4 per cent returned to corrective services (prison or community corrections). Nationally, these rates have increased over the last five years (Report on Government Services 2018). Given the high number of persons flowing out of correctional institutions current investment in transitional housing solutions is manifestly inadequate and as such the impact of such programs is diluted. Evaluation of such programs (Willis, 2018) have shown good outcomes for individuals when provided with support where the transitional housing solution provides targeted support to gain and maintain long-term housing solutions.

ACSO has sought to address this gap through the investment in a range of different supported housing solutions and the use of brokerage funding within its dedicated correctional re-entry support programs to purchase short-term transitional housing outcomes. In the last decade ACSO has established new, flexible models of housing and housing support to address the unique needs of people leaving custody and those whose risk of engagement in the criminal justice system is intertwined with long-term and complex homelessness. However, to reduce incarceration a more comprehensive, specialised Justice supportive housing solution is needed in Victoria. The key elements for this solution are:

- A homelike, deinstitutionalized environment that supports autonomy and a change in behaviour and identity
- Should be a mix of independent and shared residences within one facility providing options for stepping up and down in support levels – change is never linear
- Metro and regional facilities needed with high rise multi-story and low level with land
- Female-only facilities appropriate to supporting family reunification activities
- On-site coordinated service delivery across multiple organisations and other government front-line services
- Identified low intensity vs high intensity units to allow for step down in supervision
- Inclusion of wider community in the facilities not just clients of the buildings including spaces for social enterprises/commercial leasing
- Consideration of green space and pets, community gardens and outdoor recreation
- Space for treatment providers and case work including allied health, medical centres and wellness activities such as gyms, learning and creative spaces supporting positive social interactions

A key element in the ACSO housing strategy has been to establish a specialist housing subsidiary company, McCormack Housing, with the mandate to provide sustainable social housing prioritising people in or at risk of entering the criminal justice system, and with the aim to break the cycle between homelessness and offending. McCormack Housing was instigated as a response to the extremely high need for suitable housing for individuals with offending histories. Traditionally this cohort experience high levels of exclusion from a range of public and private housing markets. Through the development of McCormack Housing and in combination with its other behavioural and reintegration support programs, ACSO is actively working to address the current gap in the housing market whilst addressing the key drivers of homelessness for people engaged in the justice system.

Community Attitudes

A recent Australian Institute of Criminology report (Willis 2018) described a study of community attitudes to establishing transitional or other supported housing in United States neighbourhoods. The study exposed heavy resistance to the housing of people convicted of violent and sexual offences in most neighbourhoods. This experience is often replicated in ACSO front-line experiences with complaints from neighbours or objections from communities about the people it houses and supports. ACSO continues to spend significant time investing in education of communities about the needs and lived experiences of those in contact with the criminal justice system.

Without services like ACSO, willing to support and house high risk and socially isolated individuals, significant greater numbers of people exiting institutions such as prison would end up homeless, in custody or in contact with emergency services. ACSO have developed a rigorous risk management model that identifies potential risks to our tenants, neighbours and community members. ACSO works hand in hand with government partners including Corrections Victoria, Department of Health and Department of Families, Fairness and Housing and so on, to ensure that requirements and support provided in housing people exiting custody are well balanced with a commitment to ensuring the safety and wellbeing of the communities in which we operate.

Further funding to ensure that dedicated housing solutions can be owned and operated by non-government service providers such as ACSO will assist with management of placements of persons to ensure the safety of all. There is a significant need to increase the options available to those exiting custody – particularly those under community supervision orders where conditions of the order itself often work against placement for that individual in suitable housing. Across Australia there has been an increase in sentencing options for person classified as “dangerous”. Often these types of orders are indeterminate in length, ongoing and subject to judicial review. Placement of persons on such orders in suitable housing that supports the required high levels of monitoring and supervision whilst ensuring the safety of the community requires specialist support and housing solutions. Many correctional services Australia wide are faced with situations where community-based housing on prison reserves has been developed due to the absence of any other suitable housing solutions for these people. Long-term success in rehabilitation of people impacted by the justice system is best supported through gradual release programs and high levels of post-release support, including appropriate housing.

ACSO also notes the higher number of elderly people exiting custody across Australia. With improved community attitudes and education around sexual offending, many older persons have been charged with historical offences of a sexual nature. In addition, more indeterminate sentences are being used for those with long and violent histories of offending. High numbers of people exiting custody require aged care support which is often impossible to access due to stigma, discrimination, and a lack of expertise by aged care providers in the management of challenging violent and sexualised behaviours. ACSO supports investigation and funding of dedicated aged care beds for those existing custody, whether on parole or straight release.

Addressing recidivism

Recidivism can be broadly defined as a repeating pattern or an instance of reoffending by an individual who has previously offended. Recidivism is often used as a measure of effectiveness in criminal justice interventions. Despite these important implications, and while recidivism may be easy to understand in theory, it is not easy to define or measure in a consistent way. In some contexts, or jurisdictions, recidivism may refer to rearrest by police, reconviction in court, or reincarceration or return to custody; across all of these measures, the behaviours or interactions that count as reoffending and time frame of observation may differ (Payne, 2007). Essentially, the amount of recidivism in the criminal justice system depends on what is measured, using what data, at what point of the system, and when.

Recidivism is important to define because, of all individuals who commit crime, there is a relatively small cohort of individuals who account for a disproportionately large demand on the criminal justice system. This cohort has formerly been referred to as chronic recidivists (Payne, 2007). Labels aside, there is a relatively small cohort of people that account for a large proportion of the crime that flows through the criminal justice system.

If criminal justice system investment and values were better aimed at supporting this cohort to refrain from offending, the number of people who end up in prison may be impacted.

Addressing recidivism – what hasn't worked

While the challenges surrounding recidivism and crime can seem daunting, we know where to look to find what not to do. Examining the criminal justice system policy and investment decisions from the not-so-distant past does a good job of telling us what doesn't work to address recidivism. This section will explore some of these themes drawn from a desktop review of academic meta-analyses and grey literature.

Punitive deterrence-based interventions

A robust evidence base has established that punitive deterrence-based interventions have not worked to reduce future recidivism. These are interventions that aim to deter future crime by threat of punishment, such as:

- mandatory minimum sentences
- longer and more severe terms of imprisonment, or
- 'scared straight' programs targeted at youth.

Punitive deterrence-based interventions may increase the likelihood of reoffending among participants (Barnett & Howard, 2018). The threat of punishment or negative consequences does not reduce recidivism if individual drivers of crime are not addressed (Barnett & Howard, 2018). This effect may be mitigated if deterrence-based interventions involve a personal rehabilitative, instead of one-size-fits-all or punitive focus.

Even the guarantee of swift punishment does not produce a deterrent effect. Timely court and sentencing processes do not reduce future offending outside of temporary incapacitation (Barnett & Howard, 2018). Improved procedural efficiency in court processes may not reduce recidivism (Does reducing case processing time reduce recidivism? A study of the early case resolution pilot, 2020). Expedited court times examined in a US study actually produced an increase in recidivism among the participants compared to a control group.

Ensuring access to efficient and timely trials is an important legal principle and fundamental right of citizens, but it may not impact on recidivism.

Discipline-based interventions

Discipline-based interventions are those that focus on control and incapacitation as forms of punishment. These are interventions like:

- incarceration
- discipline-based diversion programs or
- intensive community-based surveillance.

The evidence suggests that discipline-based interventions such as incarceration are not effective at reducing recidivism except for incapacitating those in custody for a short time (Barnett & Howard, 2018). Overall, non-custodial interventions are more effective at reducing recidivism (Barnett & Howard, 2018).

Despite this, GPS or electronic monitoring and increased community supervision can be harmful to participants and may increase the likelihood of recidivism if implemented with a focus on discipline and control instead of treatment (Barnett & Howard, 2018; Aos, Miller, Drake, & Lieb, 2006). The same goes for punitive community-based drug testing; these interventions do not produce reductions in recidivism for people who struggle with substance use as a driver of offending behaviour (Aos, Miller, Drake, & Lieb, 2006).

Additionally, discipline-based diversionary programs are not effective at reducing recidivism. These interventions aim to divert people away from traditional court or custodial processes using alternative methods of control, discipline or incapacitation. For example, diversionary boot camps do not produce reductions in recidivism (Barnett & Howard, 2018). Although the immediate cost savings of these diversionary interventions may be tempting, they do not produce long-term benefits if they are implemented with a punitive focus instead of a rehabilitative one.

Uniform interventions

There is a robust evidence base to indicate that broad and uniform interventions applied with a one-size-fits-all approach do not reduce recidivism. These interventions are not effective at reducing recidivism compared to interventions that are proportionate to the level of reoffending risk and the personal factors associated with their offending (Barnett & Howard, 2018). Similarly, interventions that are not proportionate to the severity of offending behaviour may be harmful and actually increase recidivism. For example, custodial sentences, mandatory minimum sentences or intensive restorative justice orders for lower-risk adults do not produce a reduction in recidivism (Aos, Miller, Drake, & Lieb, 2006; Barnett & Howard, 2018).

Stigmatic shaming and community exclusion

While the effect of public shaming interventions on some recidivism is debated, the literature distinguishes two kinds of shaming (Sherman & Strang, 1997). Stigmatic shaming often involves publication of personal offending behaviour and often results in community exclusion, social isolation and decay of personal relationships between the individual and their community (Sherman & Strang, 1997). Examples of these kinds of interventions include public sex offender registries and public identification of thieves or those charged with violent offences. The public labelling and exclusion experienced by individuals as a result of these interventions limit opportunities for rehabilitation and pro-social accountability, and instead lead to isolation and often a continuation of more secretive offending behaviour or association with criminal communities (Napier, Dowling, Morgan, & Talbot, 2018).

In summary, the literature is clear: the tough on crime paradigm trialled over the last nearly 50 years has not been effective (Bonta & Andrews, 2007). The next section will examine the themes drawn from the literature about what works.

Addressing recidivism – what works

Important lessons can be drawn from recent research about what does work to address recidivism. This section will discuss these themes drawn from a desktop review of academic meta-analyses and grey literature.

Desistance

Desistance refers to the process and experience of abstaining from a pattern of offending behaviour (Her Majesty's Inspectorate of Probation, 2020). Desistance is the incremental and challenging process of re-shaping the thinking and behaviour patterns that contribute to offending. Measuring desistance involves a strength-based approach – it examines the factors, experiences and connections that foster a resilience to recidivism and offending behaviour, recognising the individual as the central agent of change in this process (Her Majesty's Inspectorate of Probation, 2020). The theory is, if main attributes of desistance are understood, interventions can be tailored to invest in fostering and supporting these attributes for individuals.

The literature (Baldry, 2007; Her Majesty's Inspectorate of Probation, 2020) has identified several attributes that contribute to achieving desistance. These include the need to be in a stable environment, and this often begins with having a safe place to call home. The link between housing insecurity and recidivism is well established in the literature. From a place of stability, people can move along the stages of desistance towards identity, participation and belonging.

Case coordination and throughcare

Case coordination or integrated case management involves identifying and connecting existing networks of specialist and support services across various sectors to coordinate support around an individual (Ministry of Justice, 2015). For example, case coordination to address aspects of desistance may involve government housing agencies, specialist housing providers, mental health specialists, health departments, rehabilitative programs, employment agencies and family support providers, among others. This level of coordination across departments, agencies and sectors is a challenge, and requires strategic collaboration, local coordination and consent-driven information sharing agreements between all agencies and organisations (Ministry of Justice, 2015).

Throughcare refers to case coordination that occurs consistently from the earliest point of contact with the criminal justice system and delivers assertive support at the time of release and throughout the vulnerable transition period in the community after release. Throughcare and intensive case coordination have been identified in the literature as promising in their ability to promote healthy community re-entry and reduce recidivism (Borzycki & Baldry, Promoting integration: The provision of prison post-release services, 2003).

Strength-based case management

Even when high degrees of coordination and collaboration exist between departments, agencies and organisations, navigating and connecting to these networks is a challenge, particularly after a period of incarceration. To mitigate this, strength-based case management practices have shown promising implementation outcomes (A Strengths-Based Approach to Prisoner Re-entry, 2015). These practices are modelled after the Good Lives Model, which asserts that most people do genuinely want to live lives free from offending, with healthy social interaction and community participation.

The role of the case manager is to provide collaborative advocacy and assertive outreach to promote the strengths and values of the client within the broader network of supports and resources (A Strengths-Based Approach to Prisoner Re-entry, 2015). The Good Lives Model of strength-based case management works well in conjunction with other aspects of effective person-centred interventions, including risk-need-responsivity frameworks.

Risk-needs responsivity

The literature has established that effective interventions are proportionate to the risks and needs of individuals. A risk-needs responsivity model has three central principles. These principles guide who to target, what needs to be addressed, and how needs are addressed. These principles stipulate those effective interventions should:

- target and are proportionate risk posed by the individual and their risk of return
- aim to target individual drivers of crime (criminogenic needs) and
- be delivered in methods that are responsive to the strengths and intrinsic motivations of the individual (Her Majesty's Inspectorate of Probation, 2020; Bonta & Andrews, 2007)

The literature is clear: interventions that are flexible and responsive to the specific strengths of individuals and proportionate to their level of risk and need are most effective. Within this framework, assertive case management wraps the networked support of various organisations, agencies and departments around one person, responsive to the unique experience of women, culturally and linguistically diverse people, Aboriginal and Torres Strait Islander people, members of the LGBTIQ community, youth, and those who struggle with mental illness to address aspects of risk and need.

Therapeutic focus and therapeutic environmental design

There is a strong evidence base that interventions with a central therapeutic focus reduce recidivism. This effect appears to occur from participation in therapeutic programs in prison or in the community. Participation in therapeutic communities within prison may produce a reduction in

recidivism and substance use, along with improved employment and social outcomes (Three-year reincarceration outcomes for in-prison therapeutic community treatment in Texas, 1999; Gress & Arabsky, 2010; Aos, Miller, Drake, & Lieb, 2006). Therapeutic communities use community and peer accountability, pro-social 'right living' modelling and intensive wrap-around treatment methods to address holistic drivers of substance use and related offending behaviour (Gress & Arabsky, 2010).

Participation in intensive community-based treatment and supervision programs produce reductions in recidivism among participants (Aos, Miller, Drake, & Lieb, 2006). Because intensive community supervision with a punitive focus rather than a therapeutic one does not reduce recidivism, it is the rehabilitative treatment, not the supervision itself that produces the effect on recidivism.

Prison design, organisational context and general environment is generally not therapeutic, but more related to supervision and security (Smith & Schweitzer, 2012). The literature indicates that the prison environment itself is not conducive to therapeutic interventions and may negate the effects of therapeutic programming and increase the likelihood of recidivism (Smith & Schweitzer, 2012). The literature indicates that setting is important; rehabilitative programming delivered in a therapeutic setting compared to a traditional custodial setting is more effective at reducing recidivism (Barnett & Howard, 2018). Prisons that incorporate a more therapeutic focus, implemented in staff capability building, organisational structure, core correctional practices that promote procedural justice and level of collaboration with other agencies, may improve therapeutic outcomes and reduce recidivism (Smith & Schweitzer, 2012).

ACSO's Programs and Proposals for Change

Leveraging Custodial Environments

ACSO strongly supports the use of custodial options as a last resort in addressing offending behaviour. Imprisonment should not operate as a 'default mental health provider', and it continues to be highly concerning that people with complex mental health concerns are overrepresented in all Australian correctional systems. Custody does, however, present an opportunity to engage with people to begin the process of addressing their mental health.

In ACSO's experience, individuals on sentences of three months or more do receive treatment for mental health in prison but are often released without adequate supports in place to assist them with their mental health as they adjust to the stressors of returning to community living. Further, the declining risk appetite in the non-profit and mainstream community services sector sees people with untreated mental health, anti-social behaviours and other complex needs turned away from the very services funded to support them, due to poor ability to manage risk, fear of violence or harm, and a lack of training and knowledge required to support forensic cohorts. Adequately funding this risk, or a shared risk approach between services and Government may turn the tide for people with complex mental health needs.

Custodial environments should be leveraged as a touch point where people with mental health issues can receive a comprehensive assessment, develop a sustainable and realistic mental health plan that can be followed post-release, and set up relationships with mental health providers in the

community but with some engagement with the new service prior to release. To quote Professor James Ogloff, '*...entry into the justice system can be viewed as a public health opportunity to identify those with mental illnesses and provide treatment that will continue upon release to the community*'.

Ideally, community providers should be funded with 'throughcare' as the goal. Currently, it is ACSO's opinion a person's journey within our health and social support system are too often disrupted due to the complexities and difficult nature of servicing people with co-occurring mental health, addiction, and homelessness. Due to the siloed nature of funding and its lack of flexibility, there tends to be a disconnect with people needing to be in contact with multiple agencies and organisations for assistance with the range of issues they may be facing. With limited skills in navigating systems to begin with people impacted by the justice system often fall between the gaps in systems. A genuine throughcare model should be cognisant that crisis can come and go, but access to services must be flexible and immediate.

Innovative Housing Solutions

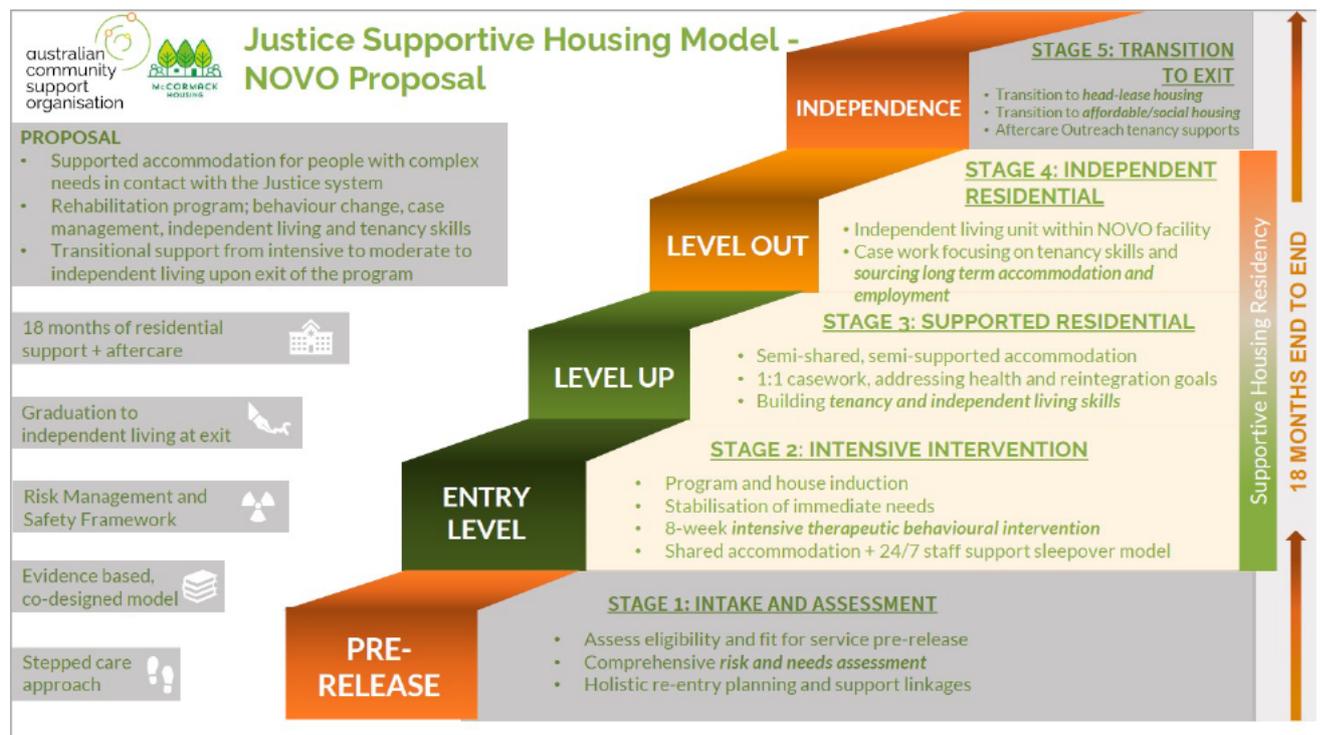
In Australia examples of integrated therapeutic community housing programs exist, however they are primarily focused on rehabilitation for substance abuse and mental illness. People involved in the criminal justice system have trouble accessing these programs, leaving a significant service gap for Corrections Victoria and Courts. To address these gaps, a new policy, service design and funding approach is needed. Courts and Corrections Victoria must be able to obtain priority service access for specialised community housing programs for 'their hard to engage and service' cohorts. ACSO is one of a limited group of agencies with the capability, risk appetite and vision that is focused on reducing the number of people trapped in the criminal justice system. ACSO provides, or has provided, limited placements for some of these cohorts, men with an Intellectual Disability (Specialist Forensic Disability Accommodation) and homeless people with significant AOD issues seeking bail or exiting prison (Atrium Program), however, there are many others where there is no current community based housing and program solution. Our NOVO Housing Proposal is new, innovative thinking that brings together global evidence with ACSO's experience and capability.

Our approach is informed by our own experience of delivering supportive housing models and jurisdictions in Canada and the USA where they have established appropriately designed community housing for people impacted by the justice system, integrated with specialist therapeutic support models which positively impact on reduced offending and increased health and wellbeing.

ACSO is developing its NOVO (Latin; from the new) Supportive Housing Proposal which combines our experience across a number of our program streams in development of a dedicated site which combines our service offerings and provides ACSO brand of support to clients which stabilises them and allows them to transition safely and with support to mainstream services. By co-locating services funded multiple government agencies into different programs ACSO ensures that government investment in a client is maximised and duplication of service is also significantly reduced. NOVO is suitable for both urban and regional locations and ensures that people impacted by the justice system are supported to stabilise upon their re-entry to community and develop the appropriate skills to be able to be serviced by mainstream services moving forward.

As noted previously, to respond to this need ACSO created McCormack Housing a wholly owned subsidiary company in 2016 to provide innovative housing models to people exiting prison. Currently the company owns and operates nineteen units providing transitional supported housing to people on parole or straight release who would otherwise have been released into homelessness. The clients entering this program must be eligible to receive post-release support from one of ACSO's Corrections Victoria funded programs (e.g. Reconnect, ReStart or CSP). The available housing and post release support has been supplemented by ACSO's own resources, with the provision of intensive case management to address clients' alcohol and other drug needs. This model of supported housing is proving very successful in transitioning clients into stable housing and employment and ACSO is heartened by this early success, however, more time is needed to properly evaluate this program.

Figure 1; ACSO's Proposed NOVO Supportive Housing Model



Increase Proactive Strategies Including Diversion and Cautions

Diversion and cautions are an under-utilised opportunity to divert individuals into planned treatment in the community. The recent bail reforms within Victoria mean that more people are likely to go to prison and that in many cases, poor mental health and the behaviours and actions stemming from unwellness, are the likely entry point to custody. Other jurisdictions across Australia are also seeing significant increases in the number of persons refused bail where there is a belief services can be more readily accessed and provided alongside a perception that there is decreasing options to safely manage the risks posed from persons suffering from poor mental health within the community.

Currently within ACSO's post release programs, the number of people on straight release far outnumbers those on parole and who have a supervisory element. Consequently, a great many persons

with complex support needs are exiting to no support. This is due to similar reforms and changes across Australian jurisdictions around the use and operation of parole. Diversion offers up the benefit of treatment and support in the community and is less likely to lead to loss of employment or housing, family breakdown and community disconnect. Furthermore, it can avoid the stigma associated with an offending history that impacts on every part of a person's life, including potential employment, interpersonal relationships and the lives of children and significant others.

Dual Disability and Offending Behaviour

The National Disability Insurance Scheme (NDIS) continues to be cause for concern for complex client cohorts including people with cognitive impairments, mental health and psychosocial disability who are engaged in the justice system. The NDIS funding system is designed to provide tailored support to individuals but is framed by inflexible funding rules and narrow definitions around what constitutes a 'disability' need. Further, the demarcation between mental health (not funded under the NDIS) and psychosocial disability (NDIS funded) is both poorly understood at the planning level and equally poorly communicated via NDIS consumer and provider communication channels. Individuals who enter custody, those on remand and those on short sentences, are at risk of losing their connection to mental health services when they enter custody.

Whilst we are seeing a shift in the execution of NDIS funding, highly prescriptive NDIS My Plans and the exclusionary criteria preventing NDIS services from being delivered within custodial environments mean that short stays within prison can lead to a breakdown in existing service delivery which then requires significant time and resources to put back into place upon release.

A further issue with the NDIS for justice-involved persons with 'psychosocial' disability is that the onus is placed on the person to provide evidence required to develop a funded NDIS plan. People with justice involvement and complex needs are primarily those who find it difficult to obtain the information required. Memory impairment, service breakdown, transience, among other factors, mean that many consumers have to work harder to track down evidence and revisit potentially traumatic experiences to fulfill the requirements of the NDIS in order to receive a service.

ACSO recently developed a program that directly supports people with psychosocial support needs to apply to the NDIS. This program strategically identifies the required documentation and works with the person to source the evidence, or to commission new assessments if required. Despite having skilled mental health practitioners 'on the case', it can still take up to three months for a person to receive an actionable NDIS plan.

ACSO Recommendations

- A. *Provision of specific funding and programs addressing homelessness for people exiting custody* - It is ACSO's position that persons with offending histories require judgement free flexible supportive housing models as a first step in desistance from crime with a focus for those exiting institution on skills development and building of support networks over the first 12 – 24 months to support people exiting custody in establishing longer term stability allowing them to then transition to mainstream services. ACSO is supportive of transitional housing programs for those exiting custody but believes these must be of sufficient duration to support the achievement of longer-term housing stability. ACSO support solutions of at least six to twelve months as the minimum needed in any transitional housing solution for its client base.
- B. *Address broader health and community gaps which represent drivers of crime, outside of CJS interventions.* ACSO recommends that the Victorian government advocate strongly with the NDIA and Commonwealth Government to examine dedicated and funded throughcare focused programs such as this which should encompassing both state and federal funding sources, for complex cases to ensure the required flexibility to tailor support to the persons need and funded support that can follow the person into custodial environments and back into the community. ACSO supports consideration of justice reinvestment solutions which would look at investment in combined localised solutions which divert persons from continued contact with the criminal justice system. These need to be focussed on providing outcomes in reducing prison populations where in turn savings realised through such outcomes are “reinvested” into further solutions to manage complex and challenging behaviours in the community.
- C. *Reduce silos between relevant government departments, including investigation of combined funding for common clients, development of a combined data models utilising data across different service systems and collaboration across agencies.* Evidence on cost-benefits strongly supports integrated solutions noting they reduce the use of and costs to criminal justice, health and public housing systems (Fontaine et al, 2012; Burt and Anderson 2005; Culhane, Metraux, and Hadley 2002; Culhane et al. 2007). There must be improvements in the sharing of data between frontline government agencies and the identification of common clients across systems. Current funding for these people is fractured and inefficient. There are high levels of duplication in effort across systems but poor outcomes for the persons involved. Given clients in contact with the justice system are likely to exhibit difficult and challenging behaviours, and their engagement and motivation are often poor without dedicated funding and services for this cohort they are often excluded from access to services. Demand for services remains high from cohorts without this complexity and there is a low incentive for both frontline government services and funded support organisations to service this cohort when funding targets and performance can be met through servicing cohorts without the same level of complexity and challenges.
- D. *ACSO supports the examination of sentencing and charge/diversion principles which minimise harms and address needs of people impacted by the justice system* - ACSO notes that it supports the removal of the current requirement for police to consent to diversion to be removed from section 59 of the Criminal Procedure Act 2009 (Vic). This includes the funding of alternatives to remand (such as bail housing and increased access to both residential and day drug and alcohol rehabilitation facilities. Urgent review of the adverse and unintended net-widening

consequences of changes to bail and parole legislation over the last 5 years within Victoria is urgently needed. ACSO also recommend re-establishment of programs similar to PACER that support co-responder models with police and mental health workers such as the Mental Health Intervention Team (MHIT) in NSW and the Mental Health Co-Responder Program in Qld.

- E. *Improve research base and knowledge on effective interventions* – ACSO supports the establishment of a ‘Justice Centre for Excellence’ in reintegration and desistance that acts as both a clearinghouse for research and evaluation within the wider human services sector as well as specific funding to support non-government organisations to purchase and support the completion of outcome evaluations of their programs and services. Currently funding to service providers is only for direct service delivery and does not support the building of capacity and capability in evaluation of programs and interventions in use currently.
- F. *Increase funding/efficacy of aftercare supports* - ACSO recommends a move to desistance based reintegration and aftercare services. This includes on strengths-based interventions that seek to ensure people do not continue to experience barriers and stabilisation from their previous periods of incarceration. Currently on a very small percentage of budgets within the three arms of the criminal justice system: police, courts and corrections is spent on rehabilitation or reintegration. ACSO is advocating for the inclusion of transparency on the expenditure on infrastructure, security and personnel in these systems as opposed to the clients that the system should be supporting to change. A per person spend in dollar value on rehabilitation or reintegration within productivity and annual reporting from Government Departments would provide more transparency on the comparison of this expenditure to other costs across the system which do not address or create any impact on recidivism.

Conclusion

ACSO understands the many challenges facing Victoria’s Justice system. Legal reforms in sentencing, bail and parole have contributed to higher rates of incarceration for women, young people, First Nation’s people and specifically those with alleged offences on remand. Data confirms that people in Victorian prisons experience very high rates of social vulnerability, substance abuse, family violence, limited education and employment, untreated mental illness, and disability as well as homelessness. There is an emerging consensus that this trajectory is both economically and socially unsustainable for Victoria. If prison continues to be the solution, compared to what can be achieved in the community, the economic and social costs will continue to rise.

The challenges are difficult to solve, and while some strategies and service solutions have attempted to address the problems, the reality is that prison numbers continue to escalate. If the policy and funding settings remain the same, these ‘hard to engage’ client groups will continue to cycle in and out of prison with increased experience of individual, family and community trauma. Without appropriate intervention at an early stage of a person’s offending, that person may go on to experience 20+ years of offending, with multiple prison sentences, could be classified as a ‘Serious Violent Offender’ and would leave many traumatized victims of crime.

By seeking every opportunity to deliver services to divert people away from the justice system or reduce the harm created by time and contact with the system, ACSO is committed to creating communities where everyone has the opportunity to thrive.

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