



## **Reducing recidivism through health justice partnerships**

**Submission to the Legal and Social Issues Committee's Inquiry into  
Victoria's Criminal Justice System**

**2021**

## **Submission Overview**

This submission addresses the second of the Inquiry's terms of reference: to consider and report on strategies to reduce rates of criminal recidivism.

First Step Legal's primary submission is that investment in holistic legal services available via health justice partnerships will reduce Victoria's rate of criminal recidivism. As such, the Inquiry should recommend that there be:

- Significant expansion of health justice partnerships that embed legal services in therapeutic settings such as mental health, drug and alcohol and family violence services.

Further, to support the efficacy of therapeutic justice interventions available through health justice partnerships, the Inquiry should recommend that there be:

- Legislative amendment to mitigate the risk of incarceration of people undertaking therapeutic interventions while on bail.
- Expansion of specialist therapeutic courts and associated services to ensure their availability to every eligible Victorian.

## **Rationale for Health Justice Partnerships**

Health justice partnerships are collaborations that embed legal help in healthcare services. They deliver an integrated, holistic response to the individual's health and legal needs, with the wider goal of improving client wellbeing. The evidence is that health and legal strategies pursued in partnership will have better outcomes than standard services provided in health and legal silos.

Health justice partnerships have been the subject of a significant, yet still evolving, body of research. Much of this has been collated by Health Justice Australia, the national centre of excellence for health justice partnerships.

The rationale for health justice partnerships is summarised as follows:

- While many people experience unmet legal needs, these are most prevalent among people experiencing multiple forms of disadvantage.
- Those most vulnerable to legal need commonly face significant barriers to accessing legal help including competing problems in other life domains, concerns about the repercussions of raising the legal issue, not believing that a legal solution is available, and the cost and accessibility of legal services.
- Many people take no action to address legal problems, with escalating consequences and compounding health impacts. This is particularly true of criminal matters, where

delay in help seeking can mean that vital opportunities for diversion and low-level contact with the criminal justice system are lost.

- People often raise concerns regarding their legal matters with trusted health professionals, providing an opportunity for warm referral to legal help.<sup>1</sup>

In short, a primary objective of health justice partnerships is to better reach individuals who are disproportionately burdened with legal need, but less likely to seek help directly from lawyers. This provides people with criminal charges an opportunity for earlier intervention to disrupt the offending trajectory, thereby reducing recidivism and future system contact.

Health justice partnerships specialise in client complexity: they support people who are particularly vulnerable to multiple and intersecting problems including family violence, homelessness, mental illness and addiction. This is the same cohort that cycles in and out of the justice system, contributing to high recidivism rates and multiple contacts over time.<sup>2</sup>

There are currently some 107 health justice partnerships operating across Australia, forty of which are in Victoria. However, only a handful of these have a primary focus on criminal matters, with significant scope for expansion in this domain.

### **First Step Legal**

Commencing in 2008, First Step is one of the longest standing health justice partnerships in Australia. The organisation has spent the last fifteen years refining best practice in the integrated service delivery space.

First Step Legal is the legal service delivery arm of the health justice partnership. An accredited Community Legal Centre, First Step Legal has recently expanded its service offering and now delivers integrated legal services in four different health settings: a mental health/addiction services hub, a family violence service, a residential alcohol and drug therapeutic community and a mental health community outpatient clinic. Within these settings, First Step Legal provides holistic legal help with a primary focus on criminal matters, family violence and related family law matters.

First Step Legal's location within various health settings enables us to find and connect with people whose often serious legal needs may otherwise go unmet. In a recent user needs survey, only 28% of clients indicated that they would have attempted to resolve their legal problem without our assistance.

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<sup>1</sup> Health Justice Australia, *The rationale for health justice partnerships: Why service collaborations make sense* (2018).

<sup>2</sup> Omdsman Victoria, *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (2015).

First Step Legal's approach aligns with international best practice models that dictate whole of person, joined up responses for people with intersectional needs who feature heavily in recidivism data. Our innovative design reflects calls from the Victorian Ombudsman for cross sector responses to people with long term justice system contact whose issues traverse traditional service silos.<sup>3</sup>

The Royal Commission into Victoria's Mental Health System and the Productivity Commission's Inquiry into Mental Health have both acknowledged the uniqueness of First Step's co-located, interdisciplinary approach and cite it as a model for sector reform.

### **First Step Legal's Approach to Criminal Matters**

Much of First Step Legal's criminal work occurs in the 'shadow of the court' while clients are on sentence deferrals or on adjournments prior to finalisation or plea. This enables clients to demonstrate their commitment to address the underlying drivers of their offending prior to sentencing.

To qualify for ongoing legal support and representation, First Step Legal requires that clients commit to addressing the causes of their contact with the justice system. This typically involves engagement in treatment with a health partner to address mental health, addiction or violent behaviour.

Over the course of any given matter, the client, clinicians and legal team meet regularly to discuss recovery and rehabilitation and the status of legal proceedings. In this way, the lawyer becomes part of the triangular model of care, reaffirming the principle that an individual's contact with the justice system provides an opportunity for structured treatment to support long term desistance.

Aside from treatment, First Step Legal's holistic approach enables us to address a broad range of contextual factors that contribute to a client's risk of reoffending, including homelessness, social isolation and financial insecurity. This in turn builds the client's commitment to engage with our service and pursue forensic treatment goals.

First Step Legal's practitioners are trauma informed: the practice model recognises that many clients are impacted by cumulative harms arising from childhood abuse and neglect, parental rejection and associated grief and loss, sexual and physical assault and trauma arising from contact with the justice system itself. The approach is informed by the substantial evidence base that past trauma is strongly associated with long term contact with the criminal justice system.<sup>4</sup> Central to the trauma informed model, First Step Legal privileges client choice and

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<sup>3</sup> Ibid.

<sup>4</sup> Sentencing Advisory Council, *Crossover Kids Report 3: Sentencing children who have experienced trauma* (2020).

control in directing treatment and determining how the legal matter is progressed. This gives agency to clients, increasing the likelihood of their ongoing engagement with services and achievement of sustained recovery.

In summary, First Step Legal's approach to criminal matters draws on key elements that are proven to achieve long term desistance from offending: an individualised, strength-based practice framework; consistent, stable therapeutic relationships; addressing the individual's wider social context as well as their behaviour; fostering self-determination and recognising that lapses and relapses are often a part of long-term change.<sup>5</sup>

This last point is important. Much of First Step Legal's criminal work occurs with clients who are currently on bail for alleged offences. However, a series of amendments to Victorian bail laws have had the cumulative effect of increasing the risk that clients will be remanded for relatively minor offences. This disproportionately impacts marginalised clients who cannot satisfy the 'compelling reason' or 'exceptional circumstances' test.

Low level offending, especially property offending, is a reality for many vulnerable and disadvantaged people with whom we work. It is often an unavoidable consequence of homelessness and structural and systemic failures to adequately address comorbidities of mental health and addiction. It is deeply counterproductive when a client's otherwise positive journey to recovery and desistance is thwarted by an episode on remand for charges such as shop theft or drug possession.

First Step Legal supports wider calls to amend Victorian legislation to ensure that a presumption in favour of bail is reinstated and the offences for which bail may be denied are narrowly defined.

### **Impact on recidivism**

First Step Legal has a proven track record in breaking the cycle of relapse and recidivism. Program evaluations conducted in 2014 and again in 2017 have demonstrated reductions in recidivism well above those in the wider criminal justice system.<sup>6</sup> For example, in 2014 the two-year recidivism rate among First Step Legal clients based on self-report data was just 21%<sup>7</sup> compared with a rate of 45% in the wider community.<sup>8</sup> This outcome is particularly significant in view of the complex risk/need profile of the First Step Legal client group.

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<sup>5</sup> Fergus McNeill, Stephen Farrall, Claire Lightowler and Shadd Maruna, 'How and why people stop offending: discovering desistance,' *Insight Research Brief 15* (2012); Ciska Wittouck and Tom Vander Beken, 'Recovery, desistance, and the role of procedural justice in working alliances with mentally ill offenders: a critical review,' *Addiction Research & Theory*, 27(1) (2019).

<sup>6</sup> First Step Legal, *First Step Legal service development project* (2014); First Step Legal, *Final evaluation report* (2017).

<sup>7</sup> First Step Legal, *First Step Legal service development project* (2014).

<sup>8</sup> Sentencing Advisory Council, *Reoffending following sentence in Victoria: a statistical overview* (2015).

Adding to the evidence regarding the impact of integrated models of care on reoffending, a recent global systematic literature review of integrated services for people with dual mental health and substance abuse issues<sup>9</sup> analysed eight separate international studies that reported on criminal justice outcomes among participants receiving co-located services. Seven of these reported improved outcomes relative to comparative groups receiving non-integrated services including reduced arrests, reduced average number of crimes committed and reduced incarceration.<sup>10</sup>

To further expand the knowledge base regarding health justice partnerships, First Step Legal is partnering with the School of Population and Global Health, Melbourne University to conduct a rigorous two-year outcome evaluation of its integrated legal services.

### **Earlier, accessible legal help**

First Step Legal has an established track record of securing diversionary outcomes for clients whose criminal matters, though serious, may not qualify for Legal Aid. More than half of all criminal matters finalised by First Step Legal result in either an adjourned undertaking, diversion or discharge, dismissal or withdrawal of charges. However, these legal outcomes do not reflect the whole story: at the point of finalisation most clients are connected with treatment and supports that will actively support their desistance from crime long into the future.

Many First Step Legal clients have been charged with driving offences including multiple charges of drive while disqualified and/or driving under the influence of drugs or alcohol over the prescribed limit. While these matters may be ineligible for a grant of Legal Aid, data from the Sentencing Advisory Council indicates that traffic offences are the greatest numerical contributor to the volume of reoffending in Victoria.<sup>11</sup> Further, individuals convicted of repeat traffic offences comprise a significant component of the prison population. In the three-year period to 30 June 2019, some 3,576 people were incarcerated for unlicensed driving alone.<sup>12</sup>

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<sup>9</sup> Kym Coupe, Clare Glover-Wright, Alexander Campbell, Claire Keen, Patrick Lawrence, Stuart Kinner and Jesse Young, *Health outcomes and service use patterns associated with co-located outpatient mental health and alcohol and other drug specialist treatment: a systematic review*, University of Melbourne (2021) (publication forthcoming).

<sup>10</sup> Ibid.

<sup>11</sup> Sentencing Advisory Council, *Reoffending following sentence in Victoria: a statistical overview* (2015).

<sup>12</sup> Sentencing Advisory Council, SACStat Magistrate's Court, Unlicensed Driving, Road Safety Act 1986 (Vic) s 18(1)(a), Magistrates' Court, 1 July 2016 to 30 June 2019, [https://www.sentencingcouncil.vic.gov.au/sacstat/magistrates\\_court](https://www.sentencingcouncil.vic.gov.au/sacstat/magistrates_court).

By intervening earlier and proactively, First Step Legal can prevent the escalation of legal problems such as driving matters and divert clients away from future contact with the justice system. As the threshold for Legal Aid assistance increases in Victoria, health justice partnerships have an important role to play in providing intensive legal assistance as part of an integrated therapeutic justice response.

At the 'back end' of the system, health justice partnerships are well placed to service clients exiting custody who have accumulated legal matters that may otherwise jeopardise their successful return to the community.

### **Reliance on therapeutic courts and services**

Health justice partnerships are just one element of the wider therapeutic justice landscape. In concert, these services successfully divert people away from custodial outcomes to more appropriate therapeutic services that support ongoing non-offending in the community. In Victoria, several services that provide a therapeutic response spanning the justice and health sectors have a proven track record in reducing recidivism. For example:

- The Drug Court that matches mandated treatment with comprehensive judicial monitoring reduces recidivism among service completers by more than one third compared with comparative cohorts.<sup>13</sup>
- The Assessment and Referral Court that delivers mental health treatment and case management under the supervision of the court produces substantial reductions in both the frequency and seriousness of offending that persist over time, reducing incarceration rates.<sup>14</sup>

First Step Legal relies heavily on the full suite of therapeutic justice services that form part of the Victorian legal landscape. However, many of these services have limited capacity due to resource constraints, limited geographical coverage and/or restrictive eligibility criteria.

First Step Legal supports wider calls to expand the provision of specialist problem solving courts across Victoria as part of concerted and sustained investment in services that have a proven capacity to reduce recidivism. These elements must be 'mainstreamed' and legitimised as a cornerstone of the Victoria's criminal justice system.

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<sup>13</sup> KPMG, *Evaluation of the Drug Court of Victoria: Final Report to the Magistrates' Court of Victoria* (2014).

<sup>14</sup> Brianna Chesser and Kenneth Smith, 'The Assessment and Referral Court List program in the Magistrates' Court of Victoria: An Australian study of recidivism,' *International Journal of Law, Crime and Justice* 45(2) (2016); Liz Richardson, 'Mental health courts: Providing access to justice for people with mental illness and cognitive impairments,' *Alternative Law Journal* 44(2) (2019).

## **A final word**

Health justice partnerships are a small but vital element of the Victorian criminal justice landscape. They have a proven track record in reducing recidivism and achieving sustained desistance from crime. They are strongly supported by international evidence regarding effective modalities for people facing persistent and long-term contact with the criminal justice system.

First Step Legal would welcome the opportunity to address the Legal and Social Issues Committee directly to explore the future role of health justice partnerships in the Victorian context.

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