



**Uniting Vic.Tas**  
ABN 81 098 317 125  
130 Lonsdale Street  
Melbourne, VIC 3000

**unitingvictas.org.au**  
**T** (03) 9192 8100  
**E** hello@unitingvictas.org.au

17 September 2021

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

Dear Ms Patten

### **Re: Inquiry into Victoria's Criminal Justice System**

Thank you for your letter inviting Uniting Vic.Tas to make a submission to the Parliament of Victoria Legislative Council Inquiry into Victoria's Criminal Justice System. Uniting appreciates the opportunity to share our views on various issues associated with the operation of Victoria's justice system based on feedback from consumers and our practice experience.

Uniting is the community services organisation of the Uniting Church in Victoria and Tasmania. We have worked alongside local communities in both states since 1881. We deliver a broad range of services in the areas of crisis and homelessness, child, youth and families, alcohol and other drugs, mental health, disability, early learning, employment and aged and carer services. We work across the full spectrum of community services, intervening early to help people avoid crisis, as well as supporting those who live life at the margins. We also work in the prison system and offer programs for people post-prison release and on community corrections orders.

Uniting welcomes the recent legislative amendments to reduce the risk of our most vulnerable people being drawn into the criminal justice system, including the decriminalisation of public drunkenness. We hope this Inquiry and its recommendations provide further impetus for changes to our criminal justice system so that Victoria's most vulnerable and marginalised people can be supported to live their lives with little interaction with the criminal justice system.

### **Factors influencing Victoria's growing remand and prison population**

#### Poverty, homelessness and lack of housing

Poverty and inadequate income support are one of the largest contributing factors that impact Victorians' interactions with the criminal justice system.

Households on low income that experience disruptive life events such as illness, injury, family violence, relationship breakdown, job loss or a death in the family are at a significant disadvantage in dealing with the financial repercussions that come as a result. While a household on an average income is usually able to absorb additional costs or reduced income associated with these events, vulnerable people who live week-to-week do not have this luxury.

Despite three decades of economic growth in Australia, an increasing number of people are living in poverty. 774,000 Victorians live in poverty (13.2 per cent) including 198,600 children. Nationally, ACOSS Poverty in Australia 2020 report shows that there are 3.24 million people (13.6 per cent) living below the poverty line of 50 per cent of median income – including 774,000 (17.7 per cent) children and 424,800 (13.9 per cent) young people (15-24 yrs.). Poverty rates are higher in rural

areas, amongst women, people with dependent children and Aboriginal and Torres Strait Islander people.

Around a third of people experiencing poverty have a job (38.2 per cent). "People with paid employment are also living in poverty in Australia. Among people in households where the main income is wages, 7 per cent are in poverty. This 7 per cent is made up of families with children, those reliant on only part-time earnings, and those with high housing costs. Since most people live in wage-earning households, this group is a substantial part (38 per cent) of all people in poverty." Sometimes dubbed the 'working poor', this group is prey to the low wage growth in lower-income brackets, casualisation of work and increasing housing and living costs.

In addition, the low rates of government income support payments force people into severe poverty. The first increase in income support payments in real terms in over 25 years was finally brought in under the *Social Services Legislation Amendment Act 2021*. However, the Act introduced a meagre \$25 per week increase to the base rate of Jobseeker and related payments. Jobseeker replaced the Coronavirus Supplement which started at \$275 per week in April 2020 and was gradually reduced to \$75 per week by January 2021. The increase is not enough for individuals and families to cover the essentials of life, let alone the additional costs of looking for work.

Secure and affordable housing underpins people's capacity to live dignified and healthy lives and to contribute to their communities. The Victorian Government is not able to change the rate of the income payments that are so instrumental in relieving housing stress. What it can do, though, is increase the supply of social and affordable housing in Victoria, to go some way to alleviate that stress.

The Victorian Government is to be commended for its \$5.3 billion commitment to social housing – a commitment which will undoubtedly make a real difference to the lives of people in need across our state. This funding is a welcome start, but it's just that, a start. Victoria still lags well behind the national average on recurrent funding for social housing and this is an issue which must be addressed urgently.

At Uniting, we stand ready to partner with governments to deliver affordable housing. We have already pledged \$20 million to help build 500 new affordable housing projects across Victoria over the next five years.

Uniting also strongly supports early intervention to support vulnerable Victorians. We need to continue to invest in all facets of early intervention and provide robust wrap-around social and health services and programs that target the factors that unfortunately amplify the chances of people engaging in anti-social behaviour that leads to involvement in the criminal justice system and the harm it involves.

**Recommendation 1:** The Victorian Government to invest in earlier intervention and prioritise integrated wrap-around services that support people to address compounding needs and issues, to reduce their likelihood of interaction with the criminal justice system.

**Recommendation 2:** The Victorian Government to significantly increase the recurrent spending on social housing and housing supports to bring Victoria's social housing expenditure to a level consistent with better performing jurisdictions.

**Recommendation 3:** The Victorian Government to increase the social and affordable housing in the state at a rate of 3,500 new dwellings annually over the coming decade, with a clear strategy to increase to 6,000 dwellings per year to bring Victoria in line with the national average.

**Recommendation 4:** The Victorian Government to continue advocating to the Commonwealth Government to increase the rate of income support payments above the poverty line.

## Children living in the out-of-home care system

All children and young people have the right to grow up in a home that is safe and stable, where they are cared for and protected. For more than 12,000 Victorian children, this means they are removed from their family home and placed in out-of-home care. The responsibility to care for these children then shifts to the government and the providers of out-of-home care.

Our experience and contemporary research undertaken by the Australian Institute of Criminology<sup>i</sup> found evidence of how histories of trauma and situational factors relating to the care environment interact to increase criminalisation.

The people working in child protection, out-of-home care and family services are committed to providing children and young people with a safe and supportive home environment. This is especially true for those who directly care for the young people living in Uniting's 11 residential care homes. Yet, placement pressures and inadequate funding act as a barrier to some young people receiving the quality of care they need and deserve. This means children cannot be supported to create the strong and positive connections with education, community and pathways that provide them with hope and a supported transition to adulthood.

Uniting is working within the sector to persuade the Victorian Government to fund all out-home care placements at a therapeutic level – currently only 40 per cent of places are therapeutically funded. This must change.

We support the Victorian Government undertaking an analysis and price review of residential care to help inform future reform of, and investment in, care services. Uniting welcomes the Victorian Government's one-off additional \$15 million financial assistance to community services organisations who deliver residential care to children and young people in recognition of the cost pressures throughout the COVID-19 pandemic.

Our practitioner experts note:

*"What is needed is a consistent, continuum of care underpinned by trauma-informed practices. Beginning with early intervention with at-risk families and cascading through out-of-home care, family reunification and leaving care, the care journey must reflect and respond to the individual needs of each young person. Each stage is equally as important as the one that proceeds it. Harm is cumulative and compounding, and young people need to know that we won't give up on them."*

**Recommendation 5:** The Victorian Government to fund all children in out-of-home care placements at therapeutic level.

## Children and the criminal justice system

Children in Victoria do not belong in prison. Presently in Victoria, children as young as ten years old can be arrested by police, charged with an offence, appear before a court and be incarcerated.

We need to fundamentally rethink our approach towards children engaging in anti-social behaviour. Research and experience tell us that:

*Children 13 years and under are not at a cognitive level of development where they may be able to fully appreciate the criminal nature of their actions or the life-long consequences of being labelled a criminal. Children are different from adults in terms of their emotional and mental capacity and deserve and require different treatment. In particular, specific regions of a child's brain responsible for higher functions such as planning, reasoning, judgement and impulse control will not yet be developed and won't fully mature until their 20s.<sup>ii</sup>*

**Recommendation 6:** The Victorian Government immediately raise the minimum age of criminal responsibility to fourteen in all circumstances.

## Unpaid fines and multiple interactions with the criminal justice system

There are a growing number of people within our criminal justice system on remand for minor offences such as unpaid fines and traffic infringements.

The Work and Development Permit scheme (WDP) operated by Fines Victoria provides an option for people with vulnerabilities to expiate their Victorian infringement debt by undertaking therapeutic activities. The WDP scheme commenced on the 1 July 2017 and Uniting was involved in focus groups leading up to its commencement. As a WDP sponsor, Uniting is approved to provide four different eligible activities- drug and alcohol treatment, counselling, training and unpaid work.

In late 2020, the Fines Reform Advisory Board (FRAB) provided the Attorney General with their findings and a summary that gave independent advice on how the fines system is working since reforms introduced by the *Fines Reform Act 2014* that took effect at the start of 2018.

One pertinent recommendation was to "explore funding models for the administration by sponsor agencies of the WDP scheme." The Government took this recommendation under "further consideration". Uniting's experience in delivering this program provides strong evidence of the extremely positive and life-changing impact on our consumers. We believe Uniting, alongside other providers are ideally placed to scale up the operation of the WDP scheme across services as we have many additional programs and services which offer eligible activities, and the majority of our consumers would qualify under one of the eligibility criteria.

Our consumers have experienced the positive impact of participating in the WDP program and having their unpaid fines and traffic infringements worked-off as a result.

**Recommendation 7:** The Victorian Government to review and abolish fine enforcement statutes that provide for imprisonment in lieu of unpaid fines.

**Recommendation 8:** The Victorian Government to scale up WDP and provide funding to services for the administration by sponsor agencies of the WDP scheme.

### State-wide access to Drug Courts

Victoria introduced its first Drug Court in 2002. The purpose of the Drug Court is to impose and administer an order called a Drug and Alcohol Treatment Order. These orders allow a participant to serve their sentence in the community whilst the participant receives drug and/or alcohol treatment and supervision.

The evidence stacks up that Drug Courts work in both reducing harm and recidivism. As Victorian Legal Aid lawyer working in the Drug Court in Melbourne noted:

*Although I don't like to think of our clients in terms of a cost/benefit analysis, a 2014 KPMG evaluation of the Drug Court found that putting a person through our program costs about quarter of what it costs to imprison them, and the post-sentence recidivism rate is 34 per cent lower.<sup>iii</sup>*

Our practitioners working directly with participants note the positive impact of Drug Courts. Unfortunately, Drug Courts are only available at the Melbourne and Dandenong Magistrates' Courts and participants must live within a 15km catchment area.

A Uniting practitioner articulated it perfectly.

*"Whether you are able to access Drug Courts or not shouldn't rely on the geographical lottery. It should be equally accessible to all Victorians (who are eligible)."*

**Recommendation 9:** The Victorian Government to establish and fund Drug Courts in all Victorian Magistrates' courts to ensure state-wide access to for all those eligible.

## **Strategies to reduce rates of criminal recidivism**

### Changes to parole and suspended sentences

Changes to parole and suspended sentences have disproportionately impacted vulnerable Victorians. It has also impacted Aboriginal Victorians. These criminal justice system reforms have had many unintended consequences. We see this impact across several services including alcohol and other drugs, financial counselling and housing and homelessness.

### Different therapeutic supports for people on remand to those sentenced and transition planning for post-release

The Sentencing Advisory Council's most recent data tells us that the percentage of unsentenced prisoners in Victoria's prisons increased from 13.1 per cent in 1977 to over 34.6 per cent in 2020, when there were 2,479 unsentenced prisoners. Unsentenced prisoners include those who are unconvicted awaiting a court hearing or trial, awaiting sentence and awaiting deportation.<sup>iv</sup>

People on remand have different service offerings compared to people who have been sentenced. Whilst there is therapeutic support available for those sentenced, these services are not available or taken up by those on remand. Given the significant backlog in the court system, many prisoners are released directly from remand with the imposition of a time served prison sentence.

The Sentencing Advisory Council notes this by stating: one issue with imposing time served prison sentences on offenders who have been held on remand for their entire sentence is a lack of access to targeted programs addressing any underlying issues that may have contributed to their offending.

Uniting views that part of the solution is for community service providers to work with people whilst they are incarcerated. Clinicians noted:

*"We need greater capacity for in-reach [into prisons] to assess, develop exit plans, [which includes things like] financial planning, mental health, and alcohol and other drugs."*

*"It is also about being able to work with family members and the person in prison together pre-release, to build strong and supported release plans and connections that their significant others are part of."*

Sadly, we know that 90 people who died of heroin overdose in 2017 had recently left prison including 10 within the first seven days of release.

Our community programs see the very real impact of the lack of transition planning.

*"Unless people have good lawyers or advocates [who are usually family members], it is hard for them to access treatment programs – you are stuffed."*

People need meaningful engagement to support reconnection to community and achieve success out of prison. When they do not have access to intensive and appropriate transitional planning for post-release to support their underlying issues, they cycle back to the previous circumstances, and end up back in the justice system. As one of our clinicians working in the system states:

*"It [the criminal justice system] is a revolving door."*

### Reducing harm in prison and post-release

Uniting believes this Inquiry provides an important opportunity to reduce substance-related harm in the prison and post-release through greater investment in specialist, therapeutic treatment and support programs as well as harm reduction measures, such as access to Naloxone. On International Overdose Awareness Day 2021, one of our consumers spoke of their experience during and after incarceration:

*"There was a situation in prison – it was weekend visits and one of the girls had smuggled in some heroin. Five of the girls went into one of their units to use the drug and one of the girls overdosed. The girls tried frantically to bring her back to life without any success. The girls were reluctant to raise the alarm as they continued to do what they could, but time was ticking. Eventually they called for help but by the time the ambulance arrived, and the girl was brought back to life, too much time had lapsed, and this girl had gone too long without any oxygen going to her brain and if she had*

*continued to live, she would have been incapacitated. The parents decided to take her off life support and let nature take its course. It was such a sad and avoidable situation.*

*When people are incarcerated for periods of time, their tolerance drops. So many return to what's familiar, and so many overdose to the point of no return. I myself have experienced the very sad and same scenario of those who are released from prison with no home or safe place to go. They are often placed in rooming houses where drugs and crime are just the norm. Without any safe, positive social connections, people continue that same cycle of addiction, crime and prison. Some accidentally succumb to overdose, and some deliberately out of loneliness, despair and hopelessness – leaving their loved ones with so much pain and suffering. There needs to be a lot more done in the area of housing and positive social connections in order to assist those in desperate situations. People who had hopes and dreams and so much potential and sometimes all they need is that lifeline and someone to believe in them and someone to treat them with dignity, respect and worth."*

We thank our consumer representative for allowing us to replicate their speech in our submission to this important Inquiry.

Their story highlights not only the life-saving role of harm reduction measures such as Naloxone if available in prison and on release, but it is a compelling example of the value of speaking directly with people who have experienced incarceration and giving voice and priority to their first-hand experience of what is needed.

### Aboriginal and Torres Strait Islander Perspective

Culture informed support and exit planning impact and improve Aboriginal and Torres Strait Islander (ATSI) people's engagement with the justice system. Uniting Aboriginal Cultural Safety Adviser notes that the increasing number of ATSI People on remand "*adds more trauma to existing intergenerational trauma*". The lack of adequate services for those on remand only exacerbates this trauma.

It was noted that there is "*no treatment for that trauma and it goes in circles and spiral out of control into a volcano. On reflection, "the period they spend in the justice system is a good window of opportunity to address these underlying issues – as they are in contact with services and away from negative influences with time to think/talk about the issues."*

**Recommendation 10:** The Victorian Government to provide all incarcerated people with access to targeted, specialist programs that address underlying issues that may have contributed to their offending such as alcohol and other drug treatment and support.

**Recommendation 11:** The Victorian Government to provide all incarcerated people with appropriate transitional planning for post-release, including direct referrals to funded in-community supports.

### Case Study: Port Phillip Prison Substance Use Program for ATSI men

Across four months from December 2020 to March 2021, Uniting undertook a review and redevelopment of our substance use treatment program for ATSI men at Port Phillip Prison. The review was guided by the expertise and experience of Uniting AOD's Aboriginal Consultant, together with a review of the research literature and evidence and aimed to:

- Develop a program that is embedded within a trauma-informed and culturally safe framework for service delivery
- Develop a program that focussed more on storytelling and talking than written content
- Incorporate and trial the externally developed Tree of Me program into the broader AOD program being delivered by Uniting at Port Phillip Prison.

Feedback received from the initial round of service delivery was extremely positive with the men appreciating the opportunity to share their culture with one-another and to do so in a safe and supportive environment:

*"I got to focus on and share the positive people in my life, especially my grandfather"* -Uniting AOD Program Participant speaking of their experience of using The Tree of Me in the Port Phillip Prison program.

Through the initial trial of the new content, it is clear that acknowledging and working with the trauma experienced by Aboriginal people is necessary to create a meaningful and respectful AOD program or service:

*"Great, I've done lots of programs before, but this was my first Koori-specific [one]. I was comfortable and I could see you guys [the Uniting facilitators] being honest and respectful."*

**Recommendation 12:** The Victorian Government should look to the success of programs like the case study above to inform the co-design of culturally safe programs.

### Housing First must be a key component of prison transition

We know that those entering the criminal justice system experience a complex interaction of social and economic factors, including poverty, housing instability and homelessness. We know that in Victoria, nearly half of the people leaving prisons expect to be homeless when released.

An August 2021 report by the Australian Housing and Urban Research Institute (AHURI) examined policies and programs relevant to the housing pathways of ex-prisoners with complex support needs in NSW (New South Wales), Victoria and Tasmania, including what benefits result from current housing assistance settings. This research confirms the experience of Uniting consumers and our practitioners that support them.

The AHURI report highlighted the complex interplay of factors:

*"The first is the dearth of accommodation options available to prisoners post-release; the second is that the large majority of people leaving prison have complex support needs with significant histories of abuse, neglect, trauma and institutionalisation. These factors lead to significant and ongoing challenges with respect to clients' desisting from offending and reintegrating with the community."*<sup>v</sup>

At Uniting, our homelessness services support those who have recently left incarceration and experience homelessness. COVID-19 has thrown Victoria's shortage of social and affordable housing into stark relief. The increase in immediate service need is also putting additional pressures on the frontline staff working in homelessness programs at Uniting. Housing Establishment Fund brokerage provides hotel and motel accommodation for a time limited period. This system has not been reviewed in over 10 years.

*From Homelessness to a Home* is an initiative that was launched to provide nearly 2000 households with access to stable medium and long-term housing and support packages to people experiencing homelessness who resided in emergency accommodation due to the coronavirus (COVID-19) pandemic. Uniting strongly believes that the initiative showed homelessness was not an intractable problem and more could be done to help people in crisis. Uniting has been proud to partner with the Victorian Government on its *Homelessness to a Home* program across Victoria. To date we have been able to secure homes for 188 people. This is 188 people who would've been on the streets had it not been for this program, our dedicated outreach workers, real estate agents and property owners.

AHURI captures the experience perfectly:

*"With very few people released directly to a new tenancy, ex-prisoners face a fraught pathway through various forms of temporary accommodation—motels, caravan parks, Specialist Homelessness Services (SHS) facilities and boarding houses—with a few also accessing, via referrals from corrections, transitional accommodation specifically for ex-prisoners. Workers indicated that temporary accommodation could be a useful tool to change a client's course and link them with other services but having to rely on it was highly stressful for clients. There is considerable variation in the accommodation offered by SHS, with interviewees identifying large congregate services and shared spaces as posing risks to residents. There is a high level of dissatisfaction with private boarding houses but, out of necessity, use is still made of them."*<sup>vi</sup>

**Recommendation 13:** The Victorian Government to provide all people leaving incarceration with a housing solution. People who are leaving prison into homelessness should be transitioned into a program that runs exactly as the *Homelessness to a Home* initiative with wrap-around services that meet their needs to give them the best chance of avoiding recidivism.

**Recommendation 14:** The Victorian Government to undertake a strategic review of homeless entry points and the Housing Establishment Fund to determine the best model to support Victorians experiencing homelessness in the future.

*Poverty, financial literacy and financial counselling*

*"Debt is just an expected part of being in prison. People resign to it ... it is normal."* Uniting practitioner

We know too well that poverty and imprisonment are interlinked. The Thriving Communities Partnership<sup>vii</sup> has undertaken an excellent piece of research around Fostering Financial Stability for People in Prison Project. They note that in one study, 49 per cent of people in prison reported that they had committed a crime to repay a debt. Meanwhile a 2016 study in Victoria found that women who reported having debts before they went into prison were nearly two times as likely to return to prison than those who didn't. They make a series of key insights and emerging opportunities that the Committee should note:

1. There are diverse cohorts of people in prison with specific needs in relation to financial stability.
2. There is a spectrum of debt-related needs.
3. Low priority of financial matters is a barrier to accessing support.
4. Targeted support for people on remand and short sentences is a current challenge and key opportunity.
5. Continuity of support improves outcomes, but there are many barriers to achieving this across the journey.
6. Barriers for essential service providers supporting customers in prison.

At Uniting, we see families access our services due to the impact of a family member entering the criminal justice system. As part of the criminal justice process, there needs to be support for families when someone in the family enters the prison system, especially when the family relies on that person financially. The consequences for families are very real - income drops, assets may be frozen, housing becomes tenuous and access to utilities come under risk. Uniting practitioners are *"keen to see criteria for early release of Super to be allowed for families experiencing financial hardship as a result of imprisonment of family member."*

**Recommendation 15:** Victorian Government to provide state-wide access to financial counselling for people incarcerated. It should be funded per individual and should move with them as they are moved to different jails.

**Recommendation 16:** Victorian Government to provide access to financial literacy sessions in every jail including access to safer credit options, gambling, concessions, rights about debt collection activity.

Thank you for the opportunity to provide a submission to this inquiry. We will be pleased to provide further input on any of the areas covered in this submission.

Yours sincerely



**Bronwyn Pike**  
Chief Executive Officer

## Attachment 1: References

---

- <sup>i</sup> McGrath A, Gerard A & Colvin E 2020. Care-experienced children and the criminal justice system. *Trends & issues in crime and criminal justice* no. 600. Canberra: Australian Institute of Criminology.
- <sup>ii</sup> <https://www.raisetheage.org.au/about>
- <sup>iii</sup> <https://www.legalaid.vic.gov.au/about-us/news/fighting-poverty-via-drug-court>
- <sup>iv</sup> <https://www.sentencingcouncil.vic.gov.au/sentencing-statistics/victorias-prison-population>
- <sup>v</sup> Martin, C., Reeve, R., McCausland, R., Baldry, E., Burton, P., White, R. and Thomas, S. (2021) Exiting prison with complex support needs: the role of housing assistance, AHURI Final Report No. 361, Australian Housing and Urban Research Institute Limited, Melbourne,
- <sup>vi</sup> Ibid.
- <sup>vii</sup> Thriving Communities Partnership, Fostering Financial Stability for People in Prison Project (2021) <https://thriving.org.au/what-we-do/fostering-financial-stability-for-people-in-prison-project>