



ODYSSEY HOUSE VICTORIA

Submission to the Parliament of Victoria Inquiry into Victoria's Justice System

Contact:

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Relevant Terms of Reference:

Odyssey House Victoria would like to make recommendations to the Inquiry in regards to the following terms of reference:

- (1) an analysis of factors influencing Victoria's growing remand and prison populations;
- (2) strategies to reduce rates of criminal recidivism;
- (4) the consideration of judicial appointment processes in other jurisdictions, specifically noting the particular skill-set necessary for judges and magistrates overseeing specialist courts.

Acknowledgement of Country:

Odyssey House Victoria recognises, respects and values Aboriginal and Torres Strait Islander Peoples' histories and cultures, and their unique status as the custodians and traditional owners of this land and its waters.

We acknowledge the Indigenous Peoples of Australia as belonging to the oldest continuing culture in human history. We celebrate this.

We acknowledge that sovereignty to this land and its waters was never ceded. We remind ourselves of this and walk together in reconciliation.

We also acknowledge that Aboriginal and Torres Strait Islander Peoples have suffered profound trauma as a result of Australia's laws and policies. We commit ourselves to assisting in the healing that is needed.

A Note on Consultations:

This submission was prepared using information and experiences shared by Odyssey House Victoria staff and clients. We wish in particular to thank clients for sharing their often traumatic experiences with the aim of improving the system for others. A summary of a particularly rich discussion held with residents of Odyssey House Victoria's Circuit Breaker Program has been included as Appendix 1.

ODYSSEY HOUSE VICTORIA

Odyssey House Victoria (OHV) is a specialist drug and alcohol treatment, training and support organisation that assists more than 16,000 people each year on their journey to recovery. In addition to our community services, OHV manages over 180 residential alcohol and other drug (AOD) treatment beds across Victoria, and provides opportunities for change and growth by reducing drug use, improving mental health and reconnecting people to families and the community.

Since inception in 1979, OHV has been a leading provider of integrated services to clients who typically present with a range of complex issues and co-morbidities. OHV has long recognised that issues of addiction have wider causal factors that may relate to childhood trauma, significant life events, and mental health, and we work collaboratively in a coordinated fashion with other services and sectors to provide holistic, recovery focused interventions. OHV clients receive tailored services for their individual differences and diverse needs.

AOD issues also impact on children, families and communities. Consequently, OHV also provides a range of education, prevention and support programs to families and community groups. OHV has won a number of National Awards for its treatment programs (including the 2012 National Award for Excellence in Services to Young People, an Australasian Therapeutic Communities Association award for its Circuit Breaker residential program near Benalla, and the 2017 Victorian Public Healthcare Award for Improving Indigenous Health – Closing the Gap).

OHV has continued to publish data on its treatment successes in high impact, peer reviewed journals. OHV is actively involved in developing innovative and holistic approaches to treatment and was one of the first to incorporate child and family approaches, mental health, family violence, vocational training and employment programs into its AOD treatment services.

OHV's current services include:

- Long term Residential Rehabilitation
- Short term Residential Rehabilitation
- Community based, outpatient counselling for adults, young people and families
- Gambling and Financial counselling
- Youth and Family services and outreach programs
- Kids in Focus (specialist home based AOD, child and family support)
- School based counselling and education programs
- Accredited training in Alcohol and Other Drug work and Mental Health
- Melbourne Drug Court Counselling Services
- Targeted programs for CALD, LGBTQTI, Muslim, and Aboriginal and Torres Strait Islander communities

Recommendation 1: That drug use and possession be decriminalised

As of June 2020 in Victoria, the most serious charge for 13% of sentenced prisoners was related to illicit drugsⁱ. Significant evidence, such as a 2016 Human Rights Watch report on the US justice system's response to drug related crimeⁱⁱ has shown that criminalisation of drug use and possession has been ineffective in addressing drug use at a societal and personal level, and in fact, adds to the harms experienced by individuals and the broader community. In many cases, incarceration of individuals experiencing problematic drug use can be counterproductive.

The vast majority of OHV's clients use drugs or alcohol as an attempt to manage ill mental health, psychological distress, or both individual and generational trauma, which is exacerbated by a punitive prison environment in which supports for mental health and addiction are hard to access. Our clients noted that help in dealing with their mental health and addiction issues were either unavailable or "hard to access" (male, 20-25 years old) whilst incarcerated and that in trying to obtain these supports "You can't get off the ground, you are so exhausted" (female, 30-40 years old). They also reported that by its nature, prison culture is punitive and that this compounds and reproduces the trauma that has often led to their drug use in the first place. Such an environment also makes doing the personal growth and behaviour change work that is required very difficult to achieve. OHV anticipates that the decriminalization of drug use and possession would assist in the destigmatisation of addiction and encourage help seeking behaviours, which we understand to be negatively affected by community perceptions related to drug use.ⁱⁱⁱ

Recommendation 2. That offenders be diverted to community-based orders wherever practicable

As well as compounding prisoners' experiences of trauma and mental illness, custodial sentences have been shown not to decrease recidivism, and perhaps to even have a criminogenic effect.^{iv} Around half of prisoners have reported that the offences they are incarcerated for are in some way related to substance use, and as outlined above, OHV does not believe prisons to be an environment conducive to recovery from problematic use of drugs or alcohol^v. Further to a lack of accessible and safe therapeutic supports, custodial sentences, often served in prisons far away from their local area, remove those in custody from community and family supports.

OHV's model of treatment is one in which relationships and community supports are the underpinnings of recovery, and that allowing people to remain in the community and access the supports they need will avoid the cycle of institutionalisation and criminalisation that many of our clients find themselves trapped in. OHV notes that despite its larger costs, evidence has not found imprisonment to be effective in reducing recidivism^{vi}, and that jurisdictions such as Sweden and the Netherlands have been successful in decreasing prison populations through the use of community-based sentencing.^{vii}^{viii}

Recommendation 3. That bail reforms be reversed.

OHV notes that remand populations have increased due to the reforms to the Bail Act including the introduction of the reverse onus test and recommends that this provision be removed and a presumption of bail be made except where there is a clear, specific and immediate threat to another's safety.

Recommendation 4. That the age of criminal responsibility be raised from 10 to 14 years.

OHV supports the recommendation made by the UN Universal Periodic Review in Jan 2021 that the age of criminal responsibility be raised to 14 years.^{ix}

Evidence shows that there is a correlation between early contact with the justice system and rates of recidivism. Children who have contact with the criminal justice system also experience interruption and discontinuation of their education, worse employment outcomes and ultimately are more likely to die early.^x OHV recommends that children who commit crimes are instead linked with therapeutic services that address the root causes of their offending, rather than initiating them in a cycle of offending and incarceration.

Recommendation 5. That secure rehabilitation facilities be established for young people whose offending is related to substance use.

Estimates suggest that 66-87% of young offenders have a history of substance use and 83-90% have offended whilst under the influence of drugs and alcohol. Whilst voluntary AOD recovery and treatment programs should always be the first option, we understand that not all young people will engage in treatment when their AOD use and other high-risk behaviours are escalating. OHV therefore supports the proposal made in Magistrate Jennie Bowles Churchill Trust report that where serious crimes committed by young offenders are related to their use of drugs or alcohol, children's courts be enabled to make Youth Therapeutic orders for mandatory attendance at a purpose-built, secure rehabilitation facility to address their substance use, mental health and other issues in place of prison attendance, in a safe, therapeutic environment with all the necessary oversight and safeguards^{xi}.

Such programs, and specialist courts, are valuable in ensuring that a range of psycho-social issues relating to offending behaviours are considered as a priority, and that the authority of the court is used to develop a course of action that will both lead to effective long-term outcomes for participants and keep the community safe. This of course requires that judicial officers overseeing such processes have sufficient knowledge of a range of therapeutic interventions, understand the social determinants of health, bring empathic values and attitudes and a belief that change is possible, and engage well with people with a lived experience of the matters they are considering, including those where positive change and recovery have occurred.

Recommendation 6. That where custodial sentences are deemed unavoidable, better access to legal, mental health, addiction, harm reduction, educational and cultural supports be made available.

Our clients also reported difficulty in accessing legal assistance in a timely way - *"It felt like a waiting game – the unknown"* (female, 25-30 years old).

As mentioned under Recommendation 1, feedback from our clients indicates that specialised supports for mental health and addiction issues are difficult to access while in prison. OHV therefore advocates for better funding and provision of these services to prisoners so that issues underlying offending can be addressed to avoid future recidivism. Our experience with clients indicates that key reasons for re-entry into the justice system are a lack of capacity to find employment post release,

and that access to education while serving their sentences, particularly accredited courses, can assist future access to employment after release.

The credibility of those providing treatment and support in prisons is critical, and access to peers and those with a lived experience of AOD issues are important for many people to feel comfortable in engaging, not just clinical staff.

OHV also notes the importance of cultural safety and opportunities to connect with and practice culture to Aboriginal and Torres Strait Islander people, and advocates for better access to cultural supports and kinship ties while imprisoned. One of the clients who participated in OHV's consultations for this inquiry reporter that during their time in prison, there were *"not enough Koori workers – two workers to the whole prison, how do you expect anything to happen?"* (male, 20-25 years old).

Recommendation 7. That better housing, employment and AOD supports be provided to people exiting prison.

OHV clients and staff surveyed identified a lack of housing and employment as being key factors leading to recidivism. As such, OHV advocates that housing support services be provided to prisoners prior to their exit from prison with wait times minimised, so that no-one in Victoria is released into homelessness. We also recommend that better linkages to employment be provided to people while they are in prison, for example through partnership between correctional services and selected employers, so that people are not released into poverty.

OHV would also like to highlight the increased risk of overdose immediately after release from prison and suggest that overdose prevention programs such as the one run by OHV be expanded and that all prison leavers with a history of problematic substance use be linked in with AOD services on release, or better still, prior to release so that trusting relationships can be formed.

ⁱ <https://www.sentencingcouncil.vic.gov.au/sentencing-statistics/most-serious-offences-for-victorian-prisoners>

ⁱⁱ <https://www.hrw.org/report/2016/10/12/every-25-seconds/human-toll-criminalizing-drug-use-united-states>

ⁱⁱⁱ https://www.parliament.vic.gov.au/images/stories/committees/lrrcsc/Drugs_Report/LRRSCSC_58-03_Full_Report_Text.pdf

^{iv} Cullen, Francis & Jonson, Cheryl & Nagin, Daniel. (2011). Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science. *The Prison Journal*. 91. 48S-65S. 10.1177/0032885511415224.

^v <https://www2.health.vic.gov.au/about/publications/ResearchAndReports/forensic-aod-treatment-recommendations>

^{vi} Wermink H, Nieuwbeerta P, Ramakers AAT, de Keijser JW, Dirkzwager AJE. Short-Term Effects of Imprisonment Length on Recidivism in the Netherlands. *Crime & Delinquency*. 2018;64(8):1057-1093. doi:10.1177/0011128716687290

^{vii} <https://www.theguardian.com/society/2013/dec/01/why-sweden-closing-prisons>

^{viii} <https://www.usnews.com/news/best-countries/articles/2019-05-13/the-netherlands-is-closing-its-prisons>

^{ix} <https://undocs.org/A/HRC/WG.6/37/AUS/1>

^x https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Reoffending_by_Children_and_Young_People_in_Victoria.pdf

^{xi} <https://www.churchilltrust.com.au/project/to-review-options-for-residential-therapeutic-treatment-for-young-people-suffering-substance-abuse-mental-illness/>