

# TRANSCRIPT

## LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

### Inquiry into Victoria's Criminal Justice System

Melbourne—Tuesday, 19 October 2021

#### MEMBERS

Ms Fiona Patten—Chair

Dr Tien Kieu—Deputy Chair

Ms Jane Garrett

Ms Wendy Lovell

Ms Tania Maxwell

Mr Craig Ondarchie

Ms Kaushaliya Vaghela

#### PARTICIPATING MEMBERS

Dr Matthew Bach

Ms Melina Bath

Mr Rodney Barton

Ms Georgie Crozier

Dr Catherine Cumming

Mr Enver Erdogan

Mr Stuart Grimley

Mr David Limbrick

Mr Edward O'Donohue

Mr Tim Quilty

Dr Samantha Ratnam

Ms Harriet Shing

Mr Lee Tarlamis

Ms Sheena Watt

**WITNESSES** (*via videoconference*)

Ms Louisa Gibbs, Chief Executive Officer, Federation of Community Legal Centres Victoria Inc.; and

Ms Jill Prior, Principal Legal Officer, Law and Advocacy Centre for Women.

**The CHAIR:** Hi, everyone. Welcome back. We are very pleased to be joined now by the Federation of Community Legal Centres, and with us today is Louisa Gibbs, who is the CEO, and Jill Prior, who runs the Law and Advocacy Centre for Women. We are very appreciative of your time here today.

If I could just let you know that all evidence taken is protected by parliamentary privilege, and that is provided under our *Constitution Act* but also the standing orders of the Legislative Council. Therefore any information that you provide during the hearing is protected by law. You are protected against any action for what you may say during this hearing, but if you were you to go elsewhere and repeat those same comments, you would not have the same protection. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

In the background we have Hansard; they are recording our every word. You will receive a transcript of today's session, and I would encourage you to have a look at that and make sure that we did not mishear you or misrepresent anything that you have said today. Ultimately that transcript will form part of our report but will also go up onto the committee's website shortly after today.

Again, we appreciate the time you have taken to meet with us today. We very much appreciate the submission that you have provided to us. If you would like to make some opening remarks, then we will open it up to a committee discussion.

**Ms GIBBS:** Thank you so very much. I really appreciate the opportunity here, and I would like to open by acknowledging the traditional owners and custodians of the lands on which each of us is respectfully gathered. I am speaking to you from Wurundjeri country in the Kulin nations, and I acknowledge Wurundjeri elders, people and ancestors who have protected the lands and waterways and animals and birds for millennia. I pay my respects to any First Nations people who are in the meeting today, and I acknowledge that sovereignty was never ceded.

Thank you, Chair. Thank you, Deputy Chair. Thank you, all members of the committee, for this opportunity to share with you the experiences and recommendations of the Federation of Community Legal Centres in relation to Victoria's criminal legal system. The Federation of Community Legal Centres Victoria is the peak body for all community legal centres and Aboriginal legal services in the state. The term 'community legal centres' refers to 47 organisations in Victoria that provide free legal assistance and advice, with a focus on people who are vulnerable or experiencing disadvantage. Community legal centres take a holistic community-based and multidisciplinary approach to providing legal assistance and support. Last year community legal centres provided free legal advice and services to over 50 000 Victorians. Many community legal centres adopt an integrated service model that involves legal and non-legal professionals, such as social workers, health professionals and financial counsellors, working in partnership to meet people's needs in a holistic way. We refer to this as community legal centres' wraparound approach because a team of professionals from different disciplines come together to create, implement and monitor a plan of support for a client. In the legal assistance sector this is a really important approach that community legal centres use widely.

As the peak body for community legal centres, we support the many submissions of our members to this inquiry, including the Victorian Aboriginal Legal Service, Peninsula Community Legal Centre, Human Rights Law Centre, Justice Connect, Mental Health Legal Centre and Youthlaw. Many community legal centres also contributed to the submissions of the Smart Justice for Women coalition, who you heard from just before lunch, and the Smart Justice for Young People coalition. We also stand in solidarity with Aboriginal legal services and their call for urgent responses to address the grossly over-represented number of Aboriginal and Torres Strait Islander people in the criminal system.

Around half the community legal centres in Victoria collect data about criminal law work that they undertake. For these centres criminal law work is typically between 10 and 20 per cent of their work. For some, such as the Law and Advocacy Centre for Women, whose principal solicitor, Jill Prior, joins me today, criminal law is the

focus of their work. I would like to share with you some statistics about these clients. In the 2020–21 financial year these 27 community legal centres assisted 4258 people, with 5759 criminal legal problems. Over one-third, or 39 per cent, of these clients told us that they had a disability. 354 of these clients, 8 per cent, told us they were homeless, and over half of those clients, 54 per cent, live on an income of less than \$600 per week or have no income at all. What this tells us is that community legal centres work with some of the most disadvantaged and marginalised people in society who are also engaged with the criminal legal system. And because of this, community legal centres have unique insights into the reforms that are needed to improve the criminal legal system overall.

Community legal centres have observed that the increasingly punitive approach to criminal justice issues in Victoria is not working. It is filling up our prisons with socially disadvantaged people who do not belong there. Rather, these people deserve to be part of a community that supports them to avoid engaging in criminal behaviour. As the federation prepared its submission for the inquiry we reflected on statistics that gave us cause for concern. The prison population in Victoria has increased by over 60 per cent in the past decade, since 2010—60 per cent. During that time the imprisonment rate for Aboriginal and Torres Strait Islanders almost doubled. For the first time in recent history there are more unsentenced women on remand in custody in Victoria than sentenced women. Add to this the fact that around 45 per cent of prisoners released in 2017 returned to prison within two years. So policy decisions that are intended to make our community safer are actually having the opposite effect.

The evidence is clear and referenced in our submission: harsher sentencing and increasing imprisonment rates do not reduce crime; rather, investing in early intervention, community-based support and diverting people from the criminal legal system is the most effective way to prevent offending and to reduce recidivism. In addition, the link between victimisation and offending is one of the strongest empirical associations in criminological literature. Research has shown that more than half of victims of crime become people who offend, and more than half of people who offend become victims of crime. This talks to the complex nature of offending and the need to have a comprehensive public policy response that considers the relationship between trauma, victimisation and offending. We need a radical rethink of the way that criminal justice issues are approached in this state and to look instead at early intervention, wraparound support and community-based approaches that prevent crime from occurring in the first place.

Just to finish, there are a few key points from our submission to this inquiry that I would like to reiterate for you today. There is a need for an evidence-based, smarter approach to criminal offending. I would ask you to reflect on the evidence before you and imagine a different approach towards our criminal legal system. It is one in which the circumstances of the individual are placed at the centre of our responses. Rather than being punitive, we have the power to nurture and to build on the strengths of those who are disadvantaged in our communities to prevent crime from happening in the first place. There is extensive evidence that providing a person with stable housing, employment and community-based supports for mental ill health, substance use or victimisation reduces the likelihood that a person will come into contact with the criminal legal system, either as a victim or as a perpetrator.

Cost-effective ways of preventing crime are tackling its causes through justice reinvestment by diverting funds into community-based approaches; adopting early intervention approaches that reduce the risk of future engagement with the criminal legal system; and increasing access to government funded legal assistance, including through community legal centres. Legal advice and representation are critical for people who are in contact with the criminal legal system or at risk of incarceration. Access to legal assistance at an early stage, alongside other wraparound supports, can seek to address underlying causes of offending and then decrease the risk of incarceration. Because incarceration increases the risk of reoffending, early intervention can disrupt these cascading impacts. That is why the federation strongly recommends additional investment in community legal assistance. This will provide legal advice and holistic, wraparound support to people at risk of coming into contact with the criminal legal system, and this is a good outcome for all of us in our community. Thank you.

**The CHAIR:** Thank you, Louisa. That was rousing. It was good. Thank you. It is really passionate, and I really do appreciate the passion that your organisation brings to these conversations and this discussion. When you are seeing 4000 clients you are getting an extremely good picture of what is happening there.

I would like to start thinking about the justice reinvestment. We know we are spending about \$1.6 billion on our prison system at the moment, and in your submission you recommend that we divert a portion of that into

justice reinvestment. I wonder if there is a formula there. Look, I know that if we could build a rehab bed for every prison bed that we build, then we would probably not need as many prison beds in the long run. But is there a formula? Is there anything that we could recommend and say, 'Okay, if you're going to spend \$1.6 billion, 10 per cent or 30 per cent needs to be invested into justice reinvestment'?

**Ms GIBBS:** That is an excellent question, and I think maybe we need to get some actuaries onto that, don't we? Whilst I cannot provide an exact formula, I think there are a couple of statistics that we can talk to that help us to understand. In the last decade, as our prison population has grown, the investment has grown. It is \$1.6 billion this year—and I am just trying to flick through my notes here—but it was approximately \$600 million just 10 years ago, so we are talking about an escalation that goes up on quite a huge turn. What we also know is that the cost of putting people on community orders to serve community-based programs if they have been found guilty of a crime is a very low cost. Rather than being the \$300 a day per person in prison, it is I think, in the tens—it is something like \$30 or \$40. So if we are looking at what we could do, we could start to plot out what those costs are and different ways of thinking about how we do this that would help us understand how much money needs to come back in. I hope that that might be sort of a starting point for that.

**The CHAIR:** It is, and just thinking about that sort of home detention or community correction order, as long as they have somewhere to go.

**Ms GIBBS:** That is right. And that is where you need to have the social housing in place, and that is a huge part of the recommendation. Social housing; affordable, stable housing; employment opportunities; and then the community-based supports are the things that we are looking at there. Jill has some expertise in this area, so I might pass.

**Ms PRIOR:** I was just thinking about the question, and I do not think there is necessarily an easy answer. But what is very clear is that in the journey of a human being from their first contact with the justice system to the point of incarceration, which is the general trajectory that we see, there are points of intervention all the way along that journey. And looking to the recommendations of the federation, and absolutely no doubt other organisations, there will be points made about raising the age, there will be points made about early interventions and diversions, and, heading to the other end, bail, mandatory sentencing, access to parole. At each of those points it is impossible to envisage a discussion or an alternative to any of those bullet points, if you like, without talking about the alternative position or the supportive landscape that goes with it, because we look to places like the Parkville detention centre, and there are statistical analyses that were undertaken that look to the journey of that child, that child's mother, that child's father. I do not have the current statistics, but there are high numbers, if not in the 90 per cents, that those children in Parkville are the children of parents who have been incarcerated or have had contact with the justice system. So there is a very clear path that we can see, and at each point there are available interventions that are not outlandish, you know. They are housing and mental health and other social supports, and where we tweak those points of intersection then we are stopping this cascade of disadvantage that ends up being a custodial sentence where we start having whole other discussions.

**The CHAIR:** Yes. It is probably more of a comment, but talking about the effects of a wraparound service, you tell a story of Jane, who was a sex assault survivor with an acquired brain injury, and by having that social worker along with her on that journey the outcome was a really good outcome, unlike what it could have been if she had just travelled down there without someone travelling with her. I think that shows the work of both of your organisations. Hopefully I will have time to ask more questions. Tania.

**Ms MAXWELL:** Thank you, Chair. Jill and Louisa, thank you so much for joining us today. I just wanted to touch base on victims of crime. Do you think that victims of crime should have a specific legal organisation to support them to prevent victims not being accepted? In my work with victims often they will say that they are not able to have legal representation because the alleged offender has contacted that legal organisation and it becomes a conflict of interest. So I am just wondering whether you see any evidence that supports that victims should perhaps have their own legal service.

**Ms GIBBS:** We do support that, and we have made submissions to government before on that, and a small amount of funding has come through to try and pilot some ideas in that space. You have identified something that is a very big challenge for victims, which is: where do they go when the services are for people who are

offenders? So I do think that that is a really good question. Jill might want to speak to it from a service provider's point of view as well.

**Ms PRIOR:** Look, I think is interesting where each player fits into the criminal justice system. We see at the Law and Advocacy Centre for Women that probably 90 per cent of our clients have a history of victimisation, and so it is very tangible question, and it is a very tangible experience for those women. Where there is a named victim in a criminal offence there are of course organisations that can provide victims of crime compensation, if that is what you are identifying, but it is in some ways a blunt instrument to deal with something that is very, very difficult and complex.

There are other points of intersection in the justice system: restorative justice models that have had resounding success, and the Koori court and those kinds of therapeutic courts where there is an invitation for the named victim to participate in that process. Often that experience is incredibly fulfilling for those who have been impacted by crime. But in terms of accessing support or legal representation, I appreciate that particularly in a local community setting it would be very difficult to find agencies that are not conflicted, and those are very important principles of legal representation—that they are kept separate. So, look, I would support any endeavours to advance those vehicles for restoration for victims, however that is formulated.

**Ms MAXWELL:** Thanks, Jill. That is it from me for the moment.

**Ms GIBBS:** Member Maxwell, if I just can comment on that as well, we know that victims do not just want a perpetrator to be put into prison. It is not as simple as that. There are lots of things that the research has shown help people to heal. So what you are talking along the lines of is about finding some resolution when something has happened to someone.

**Ms MAXWELL:** And often those victims do not have anybody, so whilst they may have never been involved or immersed in the justice system before, they feel that they—I mean, victims of crime supports come along much later. What they are saying to me is that they feel that they do not have anyone to walk them through the justice system per se, whereas often their offenders will have that and will have that support. I am interested to get your perspective on how you see that—

**Ms GIBBS:** It makes it a robust system when we do that properly.

**Ms MAXWELL:** Yes. Thank you.

**Ms PRIOR:** Of course, the victim is a witness in a criminal offence usually, and that is a very hard message to give. You are actually a witness to a crime against the state of Victoria where there is a victim—you being the victim and the witness—and it is a very difficult integration and often one, without shifting the buck, that sits in fact with the prosecuting agency in the way that they hold their witnesses and their victims and how they support them through that really difficult process, particularly if they are giving evidence. It is a very common issue that is raised.

**Ms MAXWELL:** Interesting.

**The CHAIR:** Yes, I think it has been fascinating, because I think a lot of people think that the justice system is actually about the victim, but it is not. As you say, the victim is a witness in the crime. The justice system is actually about the perpetrator, really. Kaushaliya.

**Ms VAGHELA:** Thanks, Chair. Thanks, Louisa and Jill, for your time today. I would like to also thank the federation for its submission. What do you see as the common range of factors that lead to criminal behaviour? For example, how does inequality affect offending, imprisonment and recidivism?

**Ms GIBBS:** There is fantastic research on this. Thank you. That is a very good question to be asking to understand the causes of offending, because I think for a strong criminal legal system we need to understand why people are offending. The research shows that issues related to poverty and unemployment are key drivers. There is also lots of evidence that shows the younger that a person has an interaction with the criminal justice system, the more likely they are to reoffend, so the age of when someone has that contact with the legal system is quite significant as well. Feeding into that is that children who come into contact with the legal system often have situations of neglect from their parents. So there are some social issues there—we are talking about

poverty, unemployment, lack of housing and challenges with parenting—that lead to offending behaviour. There are lots of statistics on that that we can look at, and if we understand what those are and we address those causes, we have a fantastic chance of supporting people not to fall into contact with the system. Jill.

**Ms PRIOR:** That is right. That is certainly our experience. There is also obviously an over-representation of Aboriginal people in our justice system, so whereas you could argue that Aboriginality is a factor in the over-representation of young people in the justice system, it also provides wonderful fodder to say we could interrupt this at any point. We have had experiences of clients that are in jail and have been entrenched in the justice system and have had many periods of time in jail, where just working out what it is, aligning one factor slightly differently, providing a safe place, the children come back into their care, there are supported treatments around parenting, drug and alcohol and mental health—and then you slowly edge away from what has been happening and towards a life in the community that is meaningful and connected. It is wonderful to see that that is possible. No matter where along this path they are, there is scope for change and there is hope to realign them in a way with the appropriate supports. That might be slightly overreaching on your question though.

**Ms VAGHELA:** What do you think are the most effective ways to divert people from the criminal justice system while maintaining community safety?

**Ms GIBBS:** I think there are great examples of when we provide wraparound services so that we do not silo legal issues from other issues in people's lives. So people who come to see us at community legal centres have a range of complex legal issues and other issues in their lives. Health professionals, social workers, schoolteachers, financial counsellors working together to support a person, I think, is a really great way to have a holistic and meaningful and full response to the issues that someone is facing in their lives. So not just saying, 'This is an offence, this is a legal issue', but saying it is part of someone's whole life and it has implications in their whole life. We need to think about how to support all those different elements around them so that the legal issue can also get solved.

**Ms VAGHELA:** So you are saying that the way that services are delivered or structured affects this?

**Ms GIBBS:** We have got some very good results from that, that is right. We have fantastic stories of how people are able, as Jill was saying, at any point in their journey to sort through and be supported with not just the legal issues but everything that is happening, which creates meaningful change in the whole structure of their life, which helps them then to bounce into greater things and go forward and upward.

**Ms VAGHELA:** Thank you. Thanks, Chair. If time allows, I will ask a quick question at the end.

**The CHAIR:** Thanks, Kaushaliya. I was interested in your recommendation and some commentary around a review of the *Summary Offences Act*. Certainly we have seen the decriminalisation of public drunkenness most recently, but I was wondering if you could expand on that and if you have got any thoughts about other indictable offences that probably should be, for want of a better word, downgraded?

**Ms GIBBS:** Jill, are you happy for me to pass this one to you?

**Ms PRIOR:** Sure. The *Summary Offences Act* is an unusual piece of legislation because it was usually there to capture the unusual, and if you look at the *Summary Offences Act* there are some very unusual offences there that arguably are considerably out of date, but probably they do not impact all that much on those who are normally presenting or more frequently presenting before the courts. There are things about pigeons and all sorts of strange things which I do not think are really a big concern to anybody. The difference, of course, with the *Summary Offences Act* and the significance of that is it comes into play most obviously in recent times when one is considering bail, because there is a tripping mechanism which I will not bore you with, but the tripping mechanism for bail sends the threshold for that person applying for bail into the same category as it is for murder, and it can be as simple as a summary offence, a failure to appear on bail, and then we have this journey that puts us in a very different category.

So it is relevant in that respect and there are charges there that, as has been suggested, potentially are more suited to an infringement-type action and there are charges in the *Crimes Act* that potentially could be better categorised as summary offences. They tend to slip and slide with community expectations and where things are at. Without detracting from the significance of those characterisations, it is really how they are dealt with.

So it is, once those charges are laid, once those charges are before the court, how the court manages that process through from start to finish, really, from the question of bail through to the question of sentence. Without expanding those options, it almost does not matter what the charge is—for example, a summary offence. To contravene an intervention order, a family violence intervention order, is a summary offence—and summary unlawful assaults. So it is what the community appetite is for the categorisation of particular charges, and that shifts, as we have seen with the wonderful outcome in relation to public drunkenness.

**The CHAIR:** As you say, we have probably still got, you know, urinating on the left wheel of a wagon or something in the *Summary Offences Act*. So would I be right in saying that there has been very little review of the Act; there may have been shifts of more offences into the Act, but we have not seen an overarching real review of that piece of legislation?

**Ms PRIOR:** I am not sure whether there has been a concerted review of the legislation. There has certainly been a shift of offences out of the *Summary Offences Act* rather than into it. Again, there are unlawful assaults that sit within the *Summary Offences Act*. Whether you would want to argue that they ought to be as offences against the person in the *Crimes Act*—as a defence lawyer you might not want to argue that. You might want to keep the *Summary Offences Act* there and available. Things like the *Vagrancy Act*, of course, which is now repealed, had a number of similar-type offences that were in some ways out of date. Offences like singing a lewd ballad, I think, in a public place is in the *Summary Offences Act*—how often that comes up. I have seen it charged, but that was many years ago. But certainly the review of offences, the legislative framework around them and in fact the categorisation of those offences ought to be an organic and live process as it meets community standards and expectations.

**The CHAIR:** I totally agree. Yes, it certainly would not hurt, and it has become more acute because of the changes to bail as a result of that. I will go to Tania and Kaushaliya. Tania.

**Ms MAXWELL:** I actually do not have any more questions. Your submission was so fulsome and the conversation we have had has been fantastic, so I just would like to thank you very much for joining us.

**The CHAIR:** Thank you. Kaushaliya.

**Ms VAGHELA:** Just a quick one. Louisa and Jill, you might be aware of what the Victorian government is currently building regarding the new administrative financial assistance scheme for victims of crime. I just wanted to know your perspective on why this is so important.

**Ms GIBBS:** So the importance of funding victims of crime?

**Ms VAGHELA:** Yes, the financial assistance scheme for victims of crime.

**Ms GIBBS:** I think it comes back to the point that Jill raised, which is when you are in our Westminster system the crime is against the state. In other parts of the world in fact people have systems where it is based on reconciliation and how do two families live together happily next to each other after an incident has happened. We have got a system where we prosecute it as a crime against the state, so bringing the victims forward in that situation and understanding what has happened to them and that they have suffered a loss is quite an important part of having a robust system that looks at every part and every person who is part of the system.

**Ms VAGHELA:** Thank you. No more questions, Chair.

**The CHAIR:** Thank you. I just wanted to ask a quick question about an independent body for investigating police. It has certainly been a very live conversation, not just during this inquiry but for some time. We have got IBAC at one level that does have that power, but you would have to say it is rarely used. And then most investigations are done within the police themselves, and it might be quite appropriate in some cases that it is an internal review of police action, or would you say that all investigation of police should be done independently, or is there a point, I guess—are there different levels where that would come into play?

**Ms GIBBS:** I think when we are looking at administrative decisions there is going to be a field of how things are done, and I think it is important that we have the availability of the independent body to do this. But I am not sure that I have enough information to comment on at what point it becomes an internal review and at what point it goes to that external review. We would be encouraging external reviews as being a more

transparent way of addressing things, but it is a little hard to say, without looking at it further, what that point would be where it tips over from just an internal inquiry. But if the external inquiry body is there and available and has broad powers, we will have a much more transparent system able to respond to issues with police accountability. Jill, have you had any experiences with your clients?

**Ms PRIOR:** Yes. Look, I think sensibly it depends on the nature on the complaint, because there are complaints that ought to be dealt with at potentially the station level, arguably. In the same way as other organisations have levels of complaint, including the legal profession, where if somebody says, ‘Well, my lawyer didn’t call me in time’, that might be something dealt with in house and then elevated if it is a gross grievance. And looking at something like a coronial inquiry, and that seems to me the starkest—well, it is certainly an example of the starkest—reality of police investigating police, where there is a suggestion of police involvement in the coronial inquiry, then I think it is a really obvious point of fracture and one that has, certainly for as long as I have been practising, been a point of great contention, that the police ought not investigate a coronial inquiry where police are somehow involved. And then pulling back from, I guess, that most serious of consequences down to allegations of assault and the like—it must be a graded response where at some point there is an independent examination, I would have thought.

**The CHAIR:** Is there anywhere, any jurisdiction, that you could direct us to, I suppose, to flesh out that structure and I suppose the triggers of where that independent body would sit?

**Ms PRIOR:** That might be something that perhaps Louisa might be able to get some information about.

**Ms GIBBS:** I cannot answer on the spot, but I can certainly take that on notice. We would be really delighted to provide you with that information. I think that is a really great suggestion to have an idea of where it has worked well in another context.

**The CHAIR:** Thank you. I mean, I think the example of the legal system is a good one as well, but this has been a conversation that seems to be—well, for as long as I can remember there has been a call for an independent body to be looking at police, but we seem to just go around in circles. Everyone says, ‘Yes, that’s a good idea’, and then nothing happens. And yes, it would be nice for us to be able to make a more fulsome recommendation in that area. Thank you.

**Ms GIBBS:** Very happy to.

**The CHAIR:** Thanks very much. Thank you to you both for today. I think it has been a really interesting conversation. We very much appreciate your submission. It certainly will form part of our report—as will the transcript of today, so, as I said at the outset, please have a look at it and make sure that we have not misheard or misrepresented you in any way. Thanks again.

**Witnesses withdrew.**