

# TRANSCRIPT

## LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

### Inquiry into Victoria's Criminal Justice System

East Melbourne—Monday, 20 September 2021

#### MEMBERS

Ms Fiona Patten—Chair

Dr Tien Kieu—Deputy Chair

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Mr Lee Tarlamis

Ms Sheena Watt

**WITNESSES** (*via videoconference*)

Mr Cameron Lavery, Manager and Principal Lawyer, Homeless Law, and

Ms Samantha Sowerwine, Principal Lawyer, Homeless Law, Justice Connect.

**The CHAIR:** Welcome back. I am very pleased to be joined by Justice Connect. We have Cameron Lavery, the Manager and Principal Lawyer, and Samantha Sowerwine, also Principal Lawyer, with Justice Connect Homeless Law. Thank you both for making yourselves available today.

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

We are recording today's public hearing. You will receive a transcript of today, and I would be encouraging you to make sure that we have not misrepresented you or misheard you.

If you would like to make some opening remarks—you do not have to, but if you would like to—and then we will open it up for a greater committee discussion. We have got some submissions from you, and in particular the information that you provided around homelessness, but I would welcome you to make some remarks. Thank you.

**Mr LAVERY:** Thank you so much, Fiona, for the opportunity to appear before you today. I would like to start by acknowledging the traditional owners of the land on which I am speaking from, the Wurundjeri people of the Kulin nation, and to pay my respects to their elders past, present and emerging. Justice Connect is a social justice organisation that designs and delivers high-impact interventions to increase access to legal support in the face of rising need. Homeless Law was created by Justice Connect 20 years ago, and as you said, we are Victoria's specialist community legal service for people experiencing or at risk of homelessness.

Through our work as a statewide specialist homelessness legal service we clearly see how laws, policies and practices disproportionately impact on people facing homelessness. Homelessness increases the likelihood that you will end up in the justice system, and it also makes it harder to get out. Fines and charges directly related to homelessness are one of the key legal issues faced by our clients, and this has been exacerbated by the pressures of COVID-19. Since 2001 we have helped thousands of homeless Victorians resolve overwhelming fines and charges for what we call public space offences, including being drunk in public, begging and conduct on public transport. We know that homelessness makes it more likely that you will get fines and charges like this because you are forced to live your private life in public places. We also know that without access to housing with supports, many Victorians find themselves entrenched in the justice system with no way out. Exiting prison without a home increases the likelihood of reoffending, and it also makes it harder to secure bail or parole. This leaves many people in prison who should be or could be in the community.

For this reason Justice Connect has developed specialised integrated legal services for people in the justice system and for people in prison to help them in resolving their legal and non-legal issues and to divert them out of the justice system as early as possible. In the last year of Justice Connect's clients who received our integrated criminal legal services 67 per cent reported as having slept rough and 100 per cent reported as having mental health issues. Based on Justice Connect's insights from our integrated legal services for people experiencing or at risk of homelessness, today my colleague Sam and I want to share with you three key ways for Victoria to break the cycle between the justice system, prison and homelessness.

Firstly we need to stop people entering the justice system in the first place. Through Justice Connect's 20 years of frontline work across Victoria we know that enforcement-based responses to homelessness effectively criminalise what are social and health issues. This further burdens an already stretched justice system. But there are three clear solutions. Firstly, we know that there is a heavy reliance on police as first responders to homelessness and poverty. In addition to having a disproportionate impact on homeless Victorians this creates a costly resource burden and expectation on police services and the courts. In the first instance a protocol for people experiencing homelessness in public places, such as the one that was created in 2006 for the Commonwealth Games in Melbourne, would provide a framework and guidance for police to engage

appropriately with people experiencing homelessness and prevent them from entering the justice system in the first place.

Secondly, although Victoria's fines system includes some positive reforms for people experiencing homelessness, many of these reforms are not working in practice. This was recognised by the Fines Reform Advisory Board's recommendations in December 2020 and the Victorian government's response. Fines Victoria currently uses significant resources in determining fines enforcement review applications, only for the underlying offence to be prosecuted through the Magistrates Court. The court then spends time hearing matters that have already been determined by Fines Victoria. Making Fines Victoria's enforcement review decisions final and binding would remove the majority of fines matters from the court, reducing the backlog and creating long-term efficiency.

Finally, we know that when certain outdated public space offences such as begging are still on the books there will always be pressure to use them and less opportunity for service-based responses to address the underlying causes of offending. The Victorian government's commitment to decriminalise public drunkenness presents an important opportunity to engage in a wholesale review of the *Summary Offences Act* and to decriminalise other public space offences, particularly begging.

I will now hand over to my colleague Sam, who will continue Justice Connect's opening statement. Thank you.

**Ms SOWERWINE:** Thanks, Cam, and thank you to the committee for your important work on this inquiry. We are very much excited for the opportunities coming out of it.

To continue from what Cam was saying, we know people experiencing homelessness are over-represented in the justice system, often for offences that are directly related to their experience of hopelessness. So for this reason the second key way we see to reduce the current burden on the justice system is to divert people out of the system as early as possible, and there are three key opportunities we see for this. Firstly, the creation of a specialised homeless court would provide a therapeutic response and intervene earlier to exit people experiencing homelessness into appropriate support services. So a specialised homeless court would effectively allow dedicated magistrates, prosecutors, support services and defence lawyers to work together to address the underlying causes of offending and to reduce recidivism in the process.

Secondly, integrated legal services do play a critical role in prevention and early intervention. As Cam mentioned, we already have that approach at Justice Connect, and we have developed an integrated model with a specialist criminal lawyer and a social worker. We find this really reduces the emergence of new legal issues and increases the potential for positive and sustainable outcomes for clients.

Finally, and I believe you have heard about this before through other colleagues presenting, we really see the need to amend the existing criminal justice diversion program. Currently within that program police have complete discretion to consent to diversion, and there is no opportunity for the court or defence to intervene. This means that for many people who should be eligible for diversion they just do not get access to it. On top of that they then end up with criminal records and that really impacts on their future employment prospects and their livelihoods.

Finally, I have just got one key thing around prisons—sorry to jump in. We really see that the issue around the revolving door between prisons, the justice system and homelessness is key. I am sure you have heard a lot about this over past weeks—it is around the bail laws. So we are seeing the current bail laws having really unintended and disproportionate impacts on people experiencing homelessness, and we know that when people experiencing homelessness are on bail they are likely to be remanded, even for relatively minor offences such as shop theft. So we really see that that issue of reforming the bail laws is going to be really key to making sure that more people do not end up in prison for minor offences.

Secondly, just briefly, community correction orders are a key sentencing option that reduces the number of people being sentenced to imprisonment. However, through our work we see how difficult it is for people with complex needs to complete community correction orders. For homeless Victorians a community correction orders regime that is tailored and more specialised would ensure that more people get access to it but also are able to complete them without breaching.

Then, finally, we see that more than half the people exiting prison expect to be homeless on release—and I know you were just talking to our colleagues and partners VACRO about this. Sixty-nine per cent of our prison project clients over the last three years had experienced homelessness, 58 per cent had previously been

incarcerated. Given the high level of vulnerability experienced by people in prison, greater investment in that safe, suitable and affordable housing and integrated supports post release will reduce the risks of people cycling in and out of prison.

So in closing, we really see this inquiry as presenting that unique opportunity to ensure that, firstly, people are diverted away from the justice system and to really make prison an option of last resort. We want to take action now to genuinely invest in early intervention and service-based responses to reduce justice system interactions and prevent homelessness. Thank you.

**The CHAIR:** Thank you both. You managed to get through that very, very swiftly. That was terrific. And, yes, this committee has finalised the homelessness inquiry and also the use of cannabis, which again, went to that greater court discretion on diversions. But we saw in our homelessness inquiry that revolving door and people being remanded because they were homeless but then being released straight back into homelessness without any remedy.

In the short period I have got, Cameron, I just wanted you, if you could, to expand a little bit on the 2006 approach to that police protocol for homelessness at that time of the Commonwealth Games and what we should be implementing and relearning from it.

**Mr LAVERY:** Thank you, Fiona. Absolutely. So as I mentioned we did have a protocol in Melbourne that was introduced in 2006 for the Commonwealth Games. It is perhaps worth noting at this point that Sydney actually introduced a similar protocol in 2000, and they still have their protocol through the city of Sydney. It was actually just recently reviewed and found to have been working well and that there are opportunities for improvement. So that is actually maybe an opportunity for us in Victoria to look at what is still in place in Sydney and the recent review that has happened there around their protocol for homeless people in public places.

Essentially what we had in 2006 and what Justice Connect has been working on with homelessness and Justice, government and other agencies in the years since then, or in recent years, is to have a high-level policy document for responding to homelessness in public places that could be used by police and other enforcement officers—so people like local councils—which provides a framework and guidance for police and other enforcement officers in exercising discretion and making difficult decisions in complex situations. And what it did back in 2006 and what we would hope it would do again is to shape conversations and messaging to the public as well so that people experiencing homelessness can be treated with respect and that they are not discriminated against based on their housing status. Also, most importantly perhaps, it really tries to go towards stopping unnecessary enforcement-based interactions with people experiencing homelessness so that all interactions can be appropriate and respectful, and supporting police to exercise discretion and consider alternative options to things like fines and charges. It also leverages the idea of education and training. So it is a framework, it is a starting point, it is about exercising discretion, but the idea is that if it is used appropriately it gives clear, practical guidance to train and equip police to make those referrals and really stop people entering the justice system in the first place. So we really think it could have a lot of potential in terms of that early intervention and exit and kind of getting in early and exercising discretion, and supporting both people experiencing homelessness and police out there on the front line.

**The CHAIR:** Thank you.

**Ms SOWERWINE:** Perhaps I can jump in there.

**The CHAIR:** Yes. Go, Sam.

**Ms SOWERWINE:** The other benefit for me is that it really helps coordinate across enforcement agencies. So we know Victoria Police obviously play a huge role as first responders but so do other enforcement agencies. Protocol as it works in New South Wales allows those enforcement agencies to sign on to the protocol, share resources and work together, and likewise with support services that are involved with people experiencing homelessness: it creates a framework and enables all of those agencies to come together and work more effectively together to divert people out earlier. So we see that as being one of the key benefits as well.

**The CHAIR:** Yes, and I certainly think the key to that is those agencies being able to communicate well and talk together. Just in the last couple of minutes I have got: Sam, you mentioned a more flexible approach to community correction orders, and I can imagine that if you are experiencing homelessness your opportunity for

a community correction order is greatly reduced. So I was wondering if you could just expand a little bit more about what that flexibility and different approach to correction orders would be.

**Ms SOWERWINE:** Yes, certainly. I think, as you say, community correction orders are trickier for people experiencing homelessness, certainly if they do not have housing. We do have clients who do get access to community correction orders, but as I mentioned, the real issue we see at the moment with community correction orders is: there is still a very, I would say, rigid and inflexible approach generally to the way that we run them. What that means is that for people that have more complex needs, there really is not much flexibility around how they are approached, and what we see is that there are opportunities in that space. Certainly, as you would have heard throughout this inquiry, when you have got reduced sentencing options, as we do in Victoria now, community correction orders are really the last option before prison for a magistrate or a judge. So it could work really effectively if we created that system to be more robust but also with a more tiered approach.

So opportunities we see in relation to that are, for example, that people that do have more complex needs would have a more therapeutic approach. Of course they would have to engage with Corrections, but there are also more supports built into that program itself. So people who might need more mental health supports, for example, in order to help them comply, are actually provided with those rather than—effectively at the moment—being expected to comply with the correction order regime without any supports built in to help them do that. I mean, obviously this is part of the greater conversation we are having now. It is about how much resourcing we are willing to put into those community-based options by providing more flexible and integrated supports within the model before we get people into the prison. We would argue that that makes a huge amount of sense because it keeps people out of the prison system and all the costs that are associated with that, both financial and social. And certainly in our submission we will go into more detail about what some of those programs might look like, but we think that that is a real opportunity that we have been talking to government about for a while now.

**The CHAIR:** Thanks, Sam. I will turn to Tania Maxwell.

**Ms MAXWELL:** Thank you, Chair. Thank you, Samantha and Cameron. Ultimately we would love it if we could prevent offending, particularly low-level offending that is the outcome from vulnerable young people specifically. We still have quite a significant number of people on CCOs and, Samantha, as you said, that needs to be holistic as well. And we are almost setting people up for failure—for example, in rural and regional Victoria we see a lot of CCOs where they are required to attend or address drug and alcohol issues, and yet we have very lengthy waitlists or we do not have those facilities. What do you see as a way that we can inform the government of what is needed, and what evidence or evaluations do you have to support that statement—you know, that we often do not have those resources available when a CCO is first handed down to that person?

**Ms SOWERWINE:** It is a very good question, Tania, and I think that hopefully this inquiry can make the case to government. I think that there are a lot of evidence-based evaluations of programs both within the justice system but also the ones that are earlier intervention even, as you say, upstream that do work really effectively to basically keep people out of the justice system or to divert them out as early as possible, and certainly we are happy to reference that and take that on notice in terms of our submission.

Going to the point I was making to Fiona earlier, I think the tricky thing is that at the moment we are putting all resources into the back end of the system, and we are putting it all into the prison system, where, if we front-ended a lot of that resourcing at the earlier opportunity, we would see less people going in and the costs that are associated with that. We constantly say this, and I am sure you have heard it through many of these hearings, that that integrated support that you provide to people—in our case obviously it is the legal and non-legal coming together—plays such a critical role, and the earlier on you can get to people, the better, because that is when you are likely to be able to do that preventative work. And I think government does understand: there is a whole early intervention framework the Treasurer has rolled out, really making that case around the earlier you put the resources in, you are going to feel the benefits in a long-term and sustainable way.

**Ms MAXWELL:** I guess those conversations we need to continue to have to access that resourcing, particularly in our rural and regional areas, because whilst we can improve and resource those early intervention programs it still takes quite a while to develop that policy and have that funding made available for those ongoing resources. So we have still got a cohort of people that we have to address in the here and now, particularly those who are on CCOs.

How do we challenge reporting, because a lot of the feedback that I get, particularly whether it be from victims or somebody who knows somebody who was on a CCO, is there is often not accountability held to that person to actually attend and complete programs. How do we address that, particularly men's behavioural change programs? For whatever reason there is often not accountability held for them to complete those. How do we address that in order to prevent that recidivism?

**Ms SOWERWINE:** Look, I think it is a really interesting question. I think accountability is really key. And I think that, interestingly, when you look at corrections models if you do not have the right therapeutic approach, I think what happens is you see the accountability diminish and people's compliance diminish as well. So I think that part of building a system that is really robust is that when you make therapeutic programs effective it actually means that accountability is more likely to be genuine and real, rather than it feeling more like a compliance approach, which is how I think a lot of people who have been in the justice system for a long time tend to find it more. You know, that becomes a bit of an us and them mentality, so I think that is where once again building in that real therapeutic approach actually does increase the likelihood of accountability for people in the system.

But I think that that is why it is really important that, in the framing of it, it is not seen that somehow if you have a therapeutic approach there is less accountability. In fact I think it is the opposite, and it needs to be framed very clearly that the therapeutic approaches increase that accountability and the chance that someone will genuinely be able to engage with the underlying issues that led to them getting the community correction order rather than it being something they just need to comply with so that they can move on.

**Ms MAXWELL:** Thanks, Sam.

**The CHAIR:** Thank you. Sheena Watt.

**Ms WATT:** Hello to you both, and thank you so much for your work to date and for appearing before us today. I have a question in particular around women and homelessness. So I just wonder if you could talk for a moment about the intersection between family violence, homelessness and then the likelihood of that victim of crime being likely to offend. Do you have any particular commentary around that?

**Ms SOWERWINE:** Thanks, Sheena. Yes. So in our prison project two-thirds of the people we assist in prison are women, and that is because we see a lot of women who are on short sentences and remand. We are helping them to try and sustain their housing while they are in prison and access housing on release. Certainly we see that almost two-thirds of them have experienced family violence, so that link, as you say, is very real, as is the fact that over 68 per cent of them have experienced homelessness. So those links, as we see all along in the criminal justice system around homelessness, family violence and recidivism, really play a key role.

I guess what we see for women particularly—we have been doing a lot of research recently and looking at that gendered element, and certainly we have seen in the post-release space it is really important to be looking through a gendered lens. One of the key things we see for women in terms of exiting prison is obviously the relationship between having children that they want to be reunited with and how access to housing is a critical part of that but how so often women do not have access to that housing. You have heard that, I think, a lot in the hearings—the issues around post-release housing. What we see for women is that if they do not have access to that housing then the risk of them ending up with the perpetrator of family violence, for example, and going back to unsafe housing is increased, but also then they are less likely to get access and reunite with their children. So we see that as being a really critical part of having that gendered lens—really looking at how we can support women to access that safe, stable housing when they are post release but also really looking at perpetrators and how we can make sure that, particularly in the justice system, but more broadly, there are housing options for perpetrators of family violence, because there is a real link there otherwise with the fact that people are unlikely then to be able to escape family violence.

**Ms WATT:** Thank you.

**The CHAIR:** Thanks, Sheena. Matthew Bach.

**Dr BACH:** Thanks, Chair. Chair, I do not have any specific questions. Thank you, both, for your presentation. I mean, I really note in particular some of the very interesting ideas around early intervention and diversion are quite different from some of the other ideas. It has been a real theme, and I agree with you completely that we need to do far better in that space. So thank you in particular for presenting those ideas to us. I very much think that they are worthy of our ongoing consideration, so thank you.

**The CHAIR:** Thank you. In that case it comes back to me. We have heard this throughout the homelessness inquiry and, as I say, through other justice inquiries that this committee has conducted: can you point to any, I guess, examples of programs that have really worked in ensuring that people who are experiencing homelessness are protected or do not fall into the justice system—if there are any sort of, I guess, programs out there that you think we should really more deeply consider and also consider broadening as well?

**Ms SOWERWINE:** A very good question, Fiona. I think it is always good to look at the best practice programs that are working and how we can increase those. There is an interesting tension for us and, I think, for the committee in looking at this, which is that we need to think sort of pre justice system. So certainly what we see is that we moved away a while ago from providing solely services to people experiencing homelessness to really looking at that prevention space.

So I think in terms of that earliest intervention it is: how we stop people entering homelessness? We have a range of programs that we run, once again integrated, so that idea of legal and non-legal services working together is really critical, but really preventing homelessness is the first part of it—so the more we can invest in those services that prevent people entering homelessness. We have a women’s homelessness prevention program. It is specifically tailored for women. It helps them stay in their housing, whether it is private rental or whether it is social housing, and it is hugely effective. We have an 85 per cent success rate, so the more we can invest in programs like that—but then we come to the interesting problem where we also need to have programs that are specifically tailored to people once they are in the justice system. So we need to intervene earlier, but we have to recognise that we are dealing with people who are in the justice system or more likely to end up in it. What do we do at that point in time? I think there are really effective programs—for instance, the court integrated services program, the CIS program. We have found that to be quite useful for our clients, particularly in securing bail. So where there is an issue around getting access to housing or other supports for bail, something like the CIS program has worked really effectively.

I always feel slightly conflicted about, you know, at what point—you do not want people to have to enter the justice system to get access to those specialised supports. So I think we need to be really careful about making sure we have got a responsive justice system, and we put the resources there where we need to, but also earlier on making sure that we are giving people access to those programs so that they are not having to kind of get into the justice system simply in order to access supports and then get diverted out.

So I guess, to answer your question, we will provide more examples directly in our submission of these best practice programs, but I think it is really trying to find a balance of the prevention at the earlier scale but also catching people when they do end up in the justice system and getting them out as soon as we can.

**The CHAIR:** And just quickly—and I will go to you, Tania, straight after—I think one of the most disturbing pieces of evidence we saw today, but also during the homelessness inquiry, was: your parole is delayed because you have no home, so all of a sudden you are then actually released without parole and quite often just directly into homelessness. And again, I guess, possibly just taking it on notice as part of your submission, if you could point to some practices—and I know of that early intervention of getting housing workers into the prison system to provide that pathway, and we heard that from VACRO as well—but if there are any other examples or models that you think we should really consider to ensure that that just does not happen. I just do not think it ever should.

**Ms SOWERWINE:** No. I will just state the obvious, which I know Marius from VACRO just spoke to as well: availability of social housing is so critical. I know the government is investing in that, and we welcome that, but I think we cannot say enough how important that is. I know the Australian Housing and Urban Research Institute just released a really important research paper on the importance of public housing in reducing recidivism, so I think that that investment in housing goes so far in terms of making sure that people do not go back into the justice system.

**The CHAIR:** Homes not prisons.

**Ms SOWERWINE:** That is right.

**The CHAIR:** Tania.

**Ms MAXWELL:** Thank you, Chair. I just wanted to touch base on one of the terms of reference, and we have not touched base on this with you: magistrates and judges being upskilled, so particularly over cases that they are presiding over, whether it be the Koori Court, family violence or child sexual abuse. What are your

thoughts on making it compulsory that they actually are trained, particularly in trauma, so having some sort of trauma-informed background?

**Ms SOWERWINE:** Thanks, Tania. I think that is really important. Certainly I know that our CEO, Chris Povey, presented it to the Magistrates Court a couple of years ago in relation to people experiencing homelessness. I think that training and education is always really important. I think trauma-informed sentencing approaches would be excellent. I think that there is a lot of appetite, as you would have heard, I think, throughout the inquiry, for the courts—but magistrates particularly want to have options and want to know more about the different cohorts coming through the system and are very well aware of the complexities, I think, often of people coming through the system. So I think that there is definitely more that can be done in that space.

That being said, I think that once again it is a tricky area where I think that that is really important, and certainly when we talk about a homeless court proposal it is about having particular magistrates that have very good understandings of the client group and the issues they face and also the support and service system that sits around those cohorts. We see that really well with the Drug Court, for example, or with the assessment and referral court, so I think having that specialisation is really helpful. But I also think that the reality is that magistrates need more options available to them. There is a training and education component that I think is really important to support magistrates who are dealing with a lot of complex issues coming through the courts and really limited time to deal with them, but we also need to make sure as part of this inquiry we are looking at those broader kinds of issues around what sentencing options are available, what programs are available, because I know that magistrates generally are very keen to avail themselves of those options but sometimes just do not have access to them. So it is a bit of a balanced approach, I think, between increasing the training and support to magistrates dealing with complex clients in the system but also having the programs and resources available to them as well.

**The CHAIR:** Thank you. Sheena, did you have a final question? Lovely.

**Ms SOWERWINE:** Going back, Fiona, to your questions about programs, the other one I am remiss not to mention is the Women Transforming Justice program that you may have already heard about through the Law and Advocacy Centre for Women, Flat Out, and Fitzroy Legal Service. So there are programs like that that really have worked really hard to specialise and look at providing that whole of support to people to get women out of the justice system, and there are a number of examples like that. I think there are lots of programs we could roll out that would work really effectively.

**The CHAIR:** I think that is great, and certainly we will be catching up with the Flat Out crew and those projects during the course of the inquiry. So yes, thank you for mentioning those. And thank you for appearing and thank you for the work that you have done. It seems that we are constantly coming back to you with the various committee inquiries that this committee undertakes. As I mentioned at the outset, you will receive a transcript of today. Please have a good look at it and make sure that we have not misheard you or misrepresented you. Once we have also had a good chance to have a look at your submission, we may come back to you with some follow-up questions from that. Thank you, everyone.

**Witnesses withdrew.**