



SPRINGVALE MONASH
LEGAL SERVICE Inc.

SUBMISSION

Prepared by Springvale Monash Legal Service for the

Royal Commission into Victoria's Mental Health System

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ABN: 96 206 448 228 Reg: A0013997D

5 Osborne Avenue, Springvale VIC 3171

PO Box 312, Springvale VIC 3171 T. 03 9545 7400 F. 03 9562 4534

info@smls.org.au www.smls.org.au

INTRODUCTION

Our organisation

Established in 1973, Springvale Monash Legal Service ('SMLS') is a community legal centre that provides free legal advice, assistance, information and education to people experiencing disadvantage in our community. We are located in South East Melbourne, with offices and outreach locations across the City of Greater Dandenong, the City of Casey, and the Shire of Cardinia. The City of Greater Dandenong is the second most culturally diverse municipality in Australia, and the most diverse in Victoria. People from over 150 different countries reside in Greater Dandenong and 60% of the residents were born overseas. It also has the highest number of resettlements from newly-arrived migrants, refugees and asylum seekers in Victoria. Data from the 2016 Census revealed that Greater Dandenong was the second most disadvantaged LGA in Socio-Economic Indexes for Areas ('SEIFA') ratings.¹ The City of Casey has one of the largest populations of Aboriginal and Torres Strait Islander residents in metropolitan Melbourne, as well as a high number of residents from refugee or asylum seeker backgrounds. Residents speak over 140 different languages and belong to over 120 faiths.²

SMLS operates a duty lawyer service at various courts in Victoria, including Dandenong Magistrates Court, the Children's Court and provides legal representation in courts and tribunals such as the Victorian Civil and Administrative Tribunal, Fair Work Commission, Federal Circuit Court, Family Court and VOCAT. For most of our 40 years in operation, SMLS has been running a clinical legal education program in conjunction with Monash University's Faculty of Law, whereby law students undertake a practical placement at the legal service as part of their undergraduate degree. Additionally, as a community legal centre, we offer tailored community development programs, community legal education legal education programs and community engagement activities. For example SMLS has contributed to reforms in family violence laws and practices, access to civil procedure reforms, discrimination towards young community members in their use of public space and their interactions with the criminal justice system, as well as in highlighting the needs of refugees and asylum seekers, particularly unaccompanied humanitarian minors and women escaping family violence.

¹ The Australian Bureau of Statistics, 2016, City of Greater Dandenong Community Profile

² The Australian Bureau of Statistics, 2016, City of Casey Community Profile

SMLS CLIENTS AND EXPERIENCES WITH MENTAL HEALTH

The City of Greater Dandenong has the highest rate of psychological and socio-economic distress in the South Eastern Melbourne Primary Health Network ('SEMPHN') region, along with high unemployment rates, housing distress and financial insecurity. Our region is home to a large number of people from a refugee background. SEMPHN has identified past traumatic experiences, language barriers, visa uncertainty and disconnection from family as particular mental health risks for refugees and asylum seekers.³ In addition, SMLS runs specialist clinics services people who have experienced sexual assault, as well as outreach at youth drug and alcohol detox centres. We also operate an integrated Health Justice Partnership with Monash Health. Many of the clients we assist are experiencing mental health issues, which can be compounded by disadvantages such as poverty, drug and alcohol dependence and other issues. SMLS has many years experience dealing with clients experiencing a range of complex issues.

We know that social disadvantage compounds the need for legal services.⁴ Factors driving the demand for legal services in and around the City of Casey, for example, include financial disadvantage, mortgage stress, high rates of unemployment and social disconnectedness. It was identified that issues escalated due to limited legal services availability at an earlier point. There is also evidence demonstrating that legal issues can have a serious impact on people's mental health. We advocate for a multidisciplinary, person-centred approach to addressing these issues.

Community Legal Centres ('CLC') have a long history of providing holistic support to redress experiences of disadvantage, especially with individuals and families experiencing the impact of serious, long-term mental health issues. The service delivery of legal assistance, partnered with other social services provides an inter-sectoral, multi-disciplinary response to mental health. In addressing the Terms of Reference of this Royal Commission, SMLS submits that funding cuts to both legal and social services challenges the capacity to meet the needs and prevent legal issues amongst those with mental health conditions from escalating. A holistic approach to delivering quality mental health services demands sufficient funding to support interconnected services that support people

³ Beyond Blue, 2017, Beyond Blue targets mental health in Greater Dandenong, Beyond Blue News

<https://www.beyondblue.org.au/media/news/news/2017/06/02/beyondblue-targets-mental-health-in-greater-dandenong>

⁴ Access to Justice Review, 2016, The Department of Justice and Regulation, Victoria

experiencing mental health problems. We agree with Health Justice Australia; 'Seeing a lawyer can be good for your health'.⁵

SMLS welcomes the Royal Commission into Mental Health and the opportunity to identify possible areas of law reform with the aim of improving the justice system's responses to those with mental health issues.

SMLS is not seeking confidentiality regarding this submission.

TERMS OF REFERENCE

1. How to most effectively prevent mental illness and suicide, and support people to recover from mental illness, early in life, early in illness and early in episode, through Victoria's mental health system, and in close partnership with other services.
2. How to deliver the best mental health outcomes and improve access to and the navigation of Victoria's mental health system for people of all ages, including through:
 - 2.1. best practice treatment and care models that are safe and person-centred;
 - 2.2. strategies to attract, train, develop and retain a highly skilled mental health workforce, including peer support workers;
 - 2.3. strengthened pathways and interfaces between Victoria's mental health system and other services;
 - 2.4. better service and infrastructure planning, governance, accountability, funding, commissioning and information sharing arrangements; and
 - 2.5. improved data collection and research strategies to advance continuity of care and monitor the impact of any reforms.
3. How to best support the needs of family members and carers of people living with mental illness.

⁵ Health Justice Australia, 2019, Twitter Statement, <https://twitter.com/HealthJusticeAu>

4. How to improve mental health outcomes, taking into account best practice and person-centred treatment and care models, for those in the Victorian community, especially those at greater risk of experiencing poor mental health, including but not limited to people:
 - 4.1. from Aboriginal and Torres Strait Islander backgrounds;
 - 4.2. living with a mental illness and other co-occurring illnesses, disabilities, multiple diagnoses or dual disabilities;
 - 4.3. from rural and regional communities; and
 - 4.4. in contact, or at greater risk of contact, with the forensic mental health system and the justice system.
5. How to best support those in the Victorian community who are living with both mental illness and problematic alcohol and drug use, including through evidence-based harm minimisation approaches.

ACRONYMS:

CCO: Community Corrections Order

CLC: Community Legal Centre

SMLS: Springvale Monash Legal Service

A HUMAN RIGHTS APPROACH

Various human rights frameworks underpin the need for reform to current Victorian mental health responses and practices. The need to consider the experiences of those with mental health within a human rights framework has gained momentum globally. The World Health Organisation acknowledges that human rights violations against those with mental health conditions are widespread, and that stigma and discrimination are prevalent across countries and cultures.⁶

According to the Victorian Human Rights Commission, disability discrimination is the most common issue raised in the enquiries and complaints that they receive.⁷ Australia is bound to protect the human rights of those with mental health conditions by several international treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR; United Nations 1966a), the International Covenant on Civil and Political Rights (ICCPR; United Nations 1966), and the Convention on the Rights of the Child (CRC; United Nations 1989).⁸ As a result, Australia has particular obligations to protect the fundamental human rights of those with mental health conditions. This is further underpinned by the fact that The UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care were adopted by the United Nations in 1991. The Commonwealth, State and Territory governments have recognised the value of incorporating those principles into policy, and attempted to do so in the First National Mental Health Strategy.⁹

SMLS strongly recommends that any approach taken to reform Victoria's mental health system takes a human rights approach and is person-centred. We recognise and acknowledge steps already taken towards a human rights approach. This includes the prioritisation of individual freedoms and interests regarding mental health treatment. A person-centred approach is a preferred alternative to a 'best interests' model. In a 'best interests' model, medical professionals and the law are able to take a paternalistic approach to service users, which can be disempowering for the person.

People experiencing mental illness face many challenges in their everyday lives. In addition to the symptoms that result from their illness, society also disables them through policies that stigmatise and exclude. They experience stereotyping and often prejudice that result from misconceptions about mental illness. This can impact their capacity to get good jobs, secure housing, appropriate health care, or be deemed unworthy of certain opportunities.¹⁰

Research indicates that stigma 'thwarts, undermines, or exacerbates several processes (i.e. availability of resources, social relationships, psychological and behavioural responses, stress) that

⁶ Australian Human Rights Commission, 2005, *Not for Service: Experiences of injustice and despair in mental health care in Australia*

<<https://www.humanrights.gov.au/our-work/disability-rights/publications/disability-rights-not-service-index>>.

⁷ Victorian Human Rights Commission, 2019, *Discrimination against people with mental illness is a key part of the Royal Commission into Mental Health*,

<https://www.humanrightscommission.vic.gov.au/home/news-and-events/commission-news/item/1786-discrimination-against-people-with-mental-illness-is-a-key-part-of-the-royal-commission-into-mental-health>

⁸ Australian Human Rights Commission, 2005, *Not for Service: Experiences of injustice and despair in mental health care in Australia*

<<https://www.humanrights.gov.au/our-work/disability-rights/publications/disability-rights-not-service-index>>.

⁹ Australian Human Rights Commission *Not for Service: Experiences of injustice and despair in mental health care in Australia*

<<https://www.humanrights.gov.au/our-work/disability-rights/publications/disability-rights-not-service-index>>.

¹⁰ P.W. Corrigan, A.C. Watson, A.C. Heyrman, A. Warpinski, G. Gracia, N. Slopen, et al. *Structural Stigma in State Legislation*, *Psychiatric Services* 56, no. 5 (2005): 557-563.

ultimately lead to adverse health outcomes. Each of these stigma-induced processes mediates the relationship between stigma and population health outcomes'.¹¹

SMLS sees an opportunity for the legal system explore the relationship between legislation relating to people experiencing mental illness and structural stigma or discrimination. This exploration should include ways in which laws impacting the stigma of mental illness are shaped by a range of other social, contextual and relational factors.¹²

Recommendation 2:

Commission research designed to map laws that impact people with a mental illness. Use this research to assess the extent of the legal system in generating stigma among people who have a mental illness.

MENTAL ILLNESS AND WORK

Through our various employment law practices, SMLS has often observed that stress from disputes between employers and employees contributes to the onset of mental health problems and or the exacerbation of existing mental health conditions. In our experience, employers are often ill equipped to support and manage staff who are experiencing mental illness. We see an opportunity for employers to be supported to rectify this through improved guidelines and policy infrastructure.

If a dispute arises, the dispute resolution process can be extremely stressful for the employee, and this is intensified if that employee is experiencing a mental health issue. Employers need greater support in order to respond to employees appropriately and with sensitivity.

There is a role for Worksafe, together with the Fair Work Commission and the Victorian Human Rights Commission to work together to improve the resources offered to employers to ensure those with a mental illness are supported in their work place.

Recommendation 2:

Provide increased infrastructure, including best practice guidelines, training, and organisational review audits for employers so they are equipped to support employees experiencing a mental illness.

Recommendation 3:

Ensure that Worksafe is taking rigorous steps to protect the mental health and safety of workers within the workplace.

HOLLISTIC SERVICE DELIVERY

¹¹ Hatzenbuehler, M. L., Phelan, J. C., & Link, B. G. (2013). Stigma as a Fundamental Cause of Population Health Inequalities. *American Journal of Public Health, 103*(5), 813-821, as quoted in Seear, K., 2017, Submission to the Legal and Social Issues Committee, Inquiry into the Drugs, Poisons and Controlled Substances Amendment (Pilot Medically Supervised Injecting Centre) Bill 2017

¹² Seear, K., Lancaster, K., Ritter, A. *A new framework for evaluating the potential for drug law to produce stigma: insights from an Australian study*, *J Law Med Ethics* 2017; 45: 596– 606

As a community legal centre, our lawyers engage with some of the most disadvantaged in our community. Rarely do our clients experience a legal issue by itself or in a vacuum. Studies show that low-income Australians experience three or more legal problems per year.¹³ Evidence also indicates that those legal problems often contribute to or even cause physical and mental health issues.¹⁴

Frequently, our clients present with multiple, intersecting issues, including but not limited to family law matters, including family violence, problematic substance use, tenancy stress, immigration problems and notably, physical and mental health issues, to name a few.

SMLS conducts a comprehensive intake to help identify other appropriate referrals where necessary. As such, we are in a unique position to identify and refer clients with escalating mental health issues.

However, to provide a safe and appropriate referrals and enable streamlined engagement with the mental health space, it is necessary for community lawyers and other professionals working in the legal sector, such as community workers, social workers, and youth workers to have adequate capacity-building in identification and referral of suicide and other serious mental health indicators.

Recommendation 4:

Enable access to tailored mental health response training for workers in the legal sector and workers in the mental health sector to allow for safe and appropriate referrals, and appropriate strategies for responding to clients holistically. This training should assist people to recognise the intersection between legal problems and mental illness.

Opportunities for mental health justice partnerships

Today, more than ever, responses to complex human problems require complex and innovative solutions. The CLC sector, along with other community organisations has a strong focus on partnership programs that respond to the existing and emerging needs of a community. For example, Integrated partnerships and services such as Health Justice Partnerships (HJP), School Lawyer programs, and Community Hubs represent models that are designed for services to respond to people with multiple, complex issues.

A HJP is an innovative service delivery model that embeds legal practitioners in healthcare services and teams. HJP's collaborate with patients to address a variety of health-harming legal needs. These partnerships support populations that are particularly at risk of poor health and unmet legal need, like people experiencing family violence, people at risk of elder abuse, Aboriginal and Torres Strait Islander people, culturally and linguistically diverse communities and people experiencing poverty.¹⁵ HJP's were borne out of research demonstrating that nearly one in five Australians take no action for

¹³ Law and Justice Foundation of New South Wales, 2012, *Prevalence of legal problems in Australia*, Updating Justice

¹⁴ Health Justice Australia, 2019, *What we Know about Health justice partnerships'* <<https://www.healthjustice.org.au/#>>.

¹⁵ Health Justice Australia <<https://www.healthjustice.org.au/hjp/what-is-a-health-justice-partnership/>>

their legal problems. When they do seek advice, they are more likely to ask a non-legal advisor, such as a health professional, than a lawyer.¹⁶

SMLS is committed to implementing integrated, multidisciplinary partnership programs in order to respond to community needs. Partnerships with services such as Windana Community Residential Withdrawal Service for Youth and Youth Support and Advocacy Service have enabled SMLS to better access people disproportionately burdened with legal need, but less likely to seek help directly from lawyers at all or in a timely manner. Recognising the benefits of early access to legal assistance as part of a community wide response to mental health is necessary and effective.

These inequities in resource allocation and the failure to develop innovative and comprehensive services have major health and social consequences for those with mental illness. For example, when people who are ill cannot access appropriate health care they are more likely to become unemployed, homeless or enter into the criminal justice system.¹⁷

SMLS recognises that assisting people with their legal problems can improve their mental health. It is essential to recognise that a legal problem is not just a justice problem but a health problem.

Recommendation 5:

That future government planning and funding of mental health services should prioritise holistic service delivery and multidisciplinary partnership programs that address people's legal issues in addition to their health.

Recommendation 6:

SMLS recommends an expansion of integrated, multidisciplinary partnerships programs such as Health Justice Partnerships.

INFRINGEMENTS AND MENTAL HEALTH

Research has identified the disproportionate impact fines can have on the lives of disadvantaged people, particularly those who are homeless, mentally ill, young people, or on low incomes. Disadvantaged people are more vulnerable to receiving fines, are more likely to accumulate larger debts through multiple fines and additional penalties.¹⁸ People experiencing mental illness 'comprise a disproportionate number of the people who are arrested, who come before the courts and who

¹⁶ *The rationale for health justice partnerships*, Health Justice Australia.

<<https://www.healthjustice.org.au/wp-content/uploads/2018/12/Health-Justice-Australia-The-rationale-for-health-justice-partnership.pdf>>.

¹⁷ Australian Human Rights Commission *Not for Service: Experiences of injustice and despair in mental health care in Australia*

<<https://www.humanrights.gov.au/our-work/disability-rights/publications/disability-rights-not-service-index>>.

¹⁸ McKail, B., 2016, *Help people facing disadvantage deal with outstanding fines and debt*

Victorian Council of Social Service,

<https://vcoss.org.au/analysis/help-people-facing-disadvantage-with-outstanding-fines-and-debt/>

are imprisoned'.¹⁹ As fines remain unpaid, a cycle of disadvantage emerges, as people's licenses and car registration are affected.²⁰

We recommend a multifaceted approach to reducing the impact of infringements on people with a mental illness.

At SMLS we support the greater use of warnings and diversionary options at the point an infringement is issued. This is consistent with the original intention of the scheme²¹ and will ensure that vulnerable people are not unnecessarily caught up in the system. Approximately fifty per cent of applications for internal review result in an infringement being withdrawn or an official warning issued.²² The burden of receiving these infringements and making these applications on individuals, families and communities is immeasurable.

By utilising a diversionary approach and issuing warnings for low level, first time offending will reduce the stress on those receiving the infringements and the community resources invested in the enforcement of fines against people who, based on their personal characteristics and circumstances, are unlikely to be able to pay.

Recommendation 7:

Implement legislation whereby warnings, information and diversionary approaches are standard practice for low level and first time offending.

There are several reasons why people experiencing mental illness are disproportionately involved in the legal system. Of significant concern relates to the Summary Offences Act. People experiencing some types of mental illness are more vulnerable to various public nuisance offences. Certain kinds of behaviour can be deemed 'anti social' and can cause people with a mental illness to be an easy target for policing practices. For example, at SMLS we regularly see a specific client 'Abel' who has an acquired brain injury, who has received several infringements for disorderly conduct in a public place throughout his lifetime. Yet Abel's mental illness means that he cannot control his behaviour, and SMLS has made a number of special circumstances applications for him.

We are requesting that summary offences are reviewed and assessed. Are they required? Where they unfairly overrepresented people experiencing mental ill-health, they must be done away with.

Recommendation 8:

Implement a review of Summary Offences, and eliminate those that unfairly over-represent people with a mental illness.

An infringement system where penalties take account of social disadvantage is essential in creating a more just Victoria. In the Community Legal Sector, there is a saying 'Punishable with a fine means

¹⁹ Senate Select Committee on Mental Health, 2006, *A national approach to mental health – from crisis to community, First Report, Chapter 13 - Mental health and the criminal justice system*, Commonwealth of Australia.

²⁰ Public Interest Law Clearinghouse, *Disadvantage and fines*, 2003, Public Interest Law

²¹ As noted in the Second Reading Speech 'people with special circumstances are disproportionately, and often irrevocably, caught up in the system. In a just society, the response to people with special circumstances should not be to issue them with an infringement notice.' Victoria, *Parliamentary Debates*, Legislative Assembly, 16 November 2005, 2185-2186, (Rob Hulls MP, Attorney-General).

²² Department of Justice *Attorney-General's Annual Report on the Infringements System 2011/12* (Released March 2013), p 18.

“legal for rich people”. The lack of equity of a single penalty amount irrespective of income is discriminatory and often unfairly impacts disadvantaged people, including those with a mental illness.²³ We recommend that fines for eligible concession card-holders are significantly reduced, reflecting their reduced income, reduced capacity to pay, and impact of the fine on their overall finances.

Recommendation 9:

Introduce a more equitable concession –based infringement system.

‘One of the problems of the current regime is that when people who are suffering from mental illness, cognitive impairment or some other serious issue which has resulted in them incurring large numbers of infringements – many of them may be automatically generated, or many may be issued in ignorance of the person’s broader circumstances – they can very quickly incur a large amount of legal debt to the point where it is then very difficult for them to resolve’²⁴

The large amount of debt accrued by people with a mental illness is a significant burden for people with a mental health issue. At SMLS, we are often assisting clients who have tens of thousands of dollars in fines and penalties. The enforcement processes do not support timely intervention. People and community wellbeing would be improved and the system would benefit if people were identified and a personalized intervention took place earlier in the process. This way, large, impossible to pay debts would not occur.

We recommend the introduction of a debt threshold whereby a debt ceiling would prevent infringements and penalties from increasing beyond an established number, possibly \$5000.

Recommendation 10:

Introduce a maximum debt threshold.

Special Circumstances

This legislation was designed reduce the burden on people with conditions and circumstances that may contextualise (and in some cases excuse) their offending behaviour. ‘People with special circumstances are disproportionately, and often irrevocably, caught up in the system. In a just society, the response to people with special circumstances should not be to issue them with an infringement notice’.²⁵

A special circumstance application must meet two criteria. The first involved proving the existence of a ‘special’ condition and the second requires proving a nexus between the condition and the offence.

A person must suffer from one of the following types of conditions:

²³ Infringements Working Group, ‘On Track to Fairer Fares and Fines’ Public Transport Position Paper, March 2016, [https://www.justiceconnect.org.au/sites/default/files/IWG%20%20Public%20Transport%20Position%20Paper%20\(March%202016\).pdf](https://www.justiceconnect.org.au/sites/default/files/IWG%20%20Public%20Transport%20Position%20Paper%20(March%202016).pdf)

²⁴ Evidence to the Public Accounts and Estimates Committee, Parliament of Victoria, 16 May 2013, 16 (Robert Clark MP, Attorney-General)

²⁵ Victoria, Parliamentary Debates, Legislative Assembly, 16 November 2005, 2185-2187, (Rob Hulls MP, Attorney-General).

- A mental or intellectual disability, disorder, disease or illness; or
- A serious addiction to drugs, alcohol or volatile substances; or
- Homelessness; or
- Be experiencing family violence.

Where a person claims that they are suffering from a serious drug, alcohol or volatile substance addiction or some form of mental disability, illness or disorder the person must show:

- That because of their condition they could not understand that their behaviour was against the law; or
- That because of their condition, they could not control the conduct for which they received the infringement.

Where a person claims special circumstances on the basis of homelessness, they must show that because of this condition they could not control the conduct for which they received the infringement.

Our staff spend many, many hours assisting people who have a mental illness and have received an infringement. The cost to the system is worth considering, as well as the impact of the stress on the individual, and the detrimental impact this can have on the client. SMLS argues that establishing the nexus between the special circumstance and the offending is overly onerous, ineffective and requires review.

Recommendation 11:

That the nexus required between offending behaviour and Special Circumstances is reviewed and altered to be less onerous.

MULTICULTURALISM AND MENTAL HEALTH

SMLS notes that support services, such as housing support and health care often exclude non citizens, which results in harm for vulnerable people such as women on partner visas, elderly migrants and refugees.

Selma came to SMLS regarding a parking fine. In the intake interview, it was discovered that she was homeless and living in her car with her 10 month old baby, and elderly mother. Selma had been living as an unpaid domestic servant in exchange for accommodation while she studied. Her landlord had evicted her when she was too unwell to cook and clean. As Selma was an International Student, she was unable to access housing services and could not even afford fuel, let alone a parking fine. At 4pm on a Friday, SMLS staff spent several hours attempting to secure emergency housing. We managed to find support through a convent as no government services would take her due to her visa.

Recommendation 12:

That the Victorian Government ensures that support services are accessible for all Victorians, regardless of citizenship.

In addition to exclusion from some services, the harm caused by unfair and cruel immigration policies compounds mental ill-health for people seeking asylum and refugees. At SMLS, many of our clients have been separated from their families for many years. Policies that block family reunion increase the risk of mental illness developing, and prevent successful recovery.

Family separation is a burden to refugees and the wider Australian community. The pressure on people in Australia to support relatives in refugee situations overseas imposes a significant emotional and financial burden on our communities. Family separation deprives people of social and emotional support that is essential to positive settlement outcomes. Family separation is also one of the most significant contributors to mental health problems for refugee communities. Family separation due to immigration policies creates increased burden on our mental health services and the costs associated with these services.²⁶

We recognise the limits of the Victorian government in addressing immigration matters.

Recommendation 13:

That the Victorian Government urgently increases advocacy efforts promoting family reunion for refugees and people seeking asylum.

COMMUNITY CORRECTION ORDERS

In Victoria, there is recognition by bodies such as the Victorian Ombudsman that the failure to address the mental health conditions of people in custody will have a ‘significant effect on their rehabilitation’, as well as their capacity for successful reintegration back into mainstream society.²⁷ Community corrections orders (“CCOs”) are a non-custodial option that allow courts to address a wide range of criminal behaviours.²⁸ Magistrates can impose rehabilitative conditions to an offender’s CCO, such as the requirement to engage with mental health services. In fact, 51.4% of CCOs registered between 2015 and 2016 included a mental health condition.²⁹

We commend the investment in community mental health programs to support offenders on CCOs within Victoria’s 10-year mental health plan.³⁰ However there are other issues with the CCO scheme that inhibit the capacity of offenders with mental health issues to successfully comply with their CCOs. This is reflected in Victoria’s rate of completion for CCOs, which is the second lowest of all Australian jurisdictions at 66.5%.³¹

For offenders suffering with mental health issues, barriers exist which may prevent them from complying with their CCO. For example, financial barriers to accessing mental health services exist for offenders who are referred for further treatment by specialists.³² Offenders are often unable to afford the gap payment for their treatment, preventing them from receiving required services.³³ Furthermore, there can be significant waiting lists for mental health programs,³⁴ which may increase

²⁶ Refugee Council of Australia, 2019, Family separation and family reunion for refugees: The issues, <https://www.refugeecouncil.org.au/family-reunion-issues/>

²⁷ See, eg, Victorian Ombudsman, *Investigation Into the Rehabilitation and Reintegration of Prisoners in Victoria* (Report, September 2015) 6.

²⁸ Sentencing Advisory Council, *Community Correction Orders Monitoring Report* (February 2014); See also Victoria, *Parliamentary Debates*, Legislative Assembly, 15 September 2011, 3291-3295 (Robert Clark, Attorney-General).

²⁹ Victorian Auditor-General, *Managing Community Correction Orders* (Report, February 2017) 26.

³⁰ Victorian Government, *Department of Health and Human Services Policy and Funding Guidelines 2018* (Volume 2: Health Operations 2018-19, Chapter 1: Overview, key changes, and new initiatives) 48 <<https://dhhs.vic.gov.au/sites/default/files/documents/201808/Policy%20and%20Funding%20Guidelines%20018%20Volume%202%20Chapter%201%20Health%20Operations.pdf>>.

³¹ *Ibid* xi.

³² *Ibid* 27.

³³ *Ibid* 12.

³⁴ *Ibid*.

the chance of relapse for people who require urgent treatment for their mental health issues. This also heightens their risk of reoffending. This shows that time delays and financial barriers may prevent or hinder offenders from complying with their CCOs and reduce the likelihood of rehabilitation. We support the removal of financial barriers that hinder people with mental health issues accessing support.

Recommendation 14:

Reduce or remove the gap payment for mandatory mental health services as part of a CCO.