



**Submissions to the Royal Commission into Victoria's Mental Health System
Law and Advocacy Centre for Women Ltd**

Introduction

This document constitutes the formal submission of the Law and Advocacy Centre for Women Ltd ('LACW') to the Royal Commission into Victoria's Mental Health System ('Commission'). LACW has considered the questions put forward by the Commission and will make concise submissions on areas most relevant to our legal practice, using three case studies reflecting the experiences of our clients and the operational experience of the organisation. LACW also endorses the submissions put forward by other partner and referral organisations such as Djirra (formerly the 'Aboriginal Family Violence Prevention & Legal Service') and the Centre for Innovative Justice, and has engaged in discussions with these organisations on the shared issues and broader themes that we seek to be considered by the Commission in the justice space.

Who we are

LACW is a not-for-profit community legal centre and a member of the Federation of Community Legal Centres. It is the only legal service in Victoria that provides a gender-specific approach to assisting women who are in or at risk of entering the criminal justice system. LACW was established by Jill Prior and Elena Pappas in February 2016, specifically in response to the rising rates of imprisonment and offending for women. Its mandate is to combat these trends by providing a holistic approach to women in the justice system, providing a wrap-around service that combines legal advice and representation with case management and access to the services necessary to address the underlying causes of women's offending. In so doing, it seeks to reduce the cost borne by the community in funding prisons, instead investing resources in early intervention strategies and support services.

The majority of LACW's work is in the provision of criminal defence advocacy. Other areas of practice include:

- Infringements and fines;
- Victims of crime assistance; and
- Intervention orders (in specific circumstances).

Major issues identified as relevant to the work of this Commission

There is a clear and evidence-based link between issues of mental health and criminalisation. For the women that LACW lawyers represent daily in courtrooms around Victoria, these issues frequently intersect with and are compounded by experiences of family violence, homelessness, poverty, and interactions with the Department of Health and Human Services in relation to children. Failure to adequately address the mental health issues faced by women in the criminal justice system, or those at risk of criminalisation, exponentially increases the risk of re-offending. The following issues have been identified by LACW as critical for immediate redress:

I. Quality of mental health care women are receiving in prison

Case Study One

L■■ is a 33-year-old Aboriginal woman who has a diagnosis of post-traumatic stress disorder, depression, anxiety and ADHD. She has been stable on her medication since 2016, which she is required to take daily, and has been attending upon the same GP throughout this period. In January 2019, she was remanded in custody for the first time on driving-related charges. L■■ was seen by a nurse upon arrival at the Dame Phyllis Frost Centre, but could not access a doctor, nor any of the medication previously prescribed to her. L■■'s mental state deteriorated quickly and, following an incident with a fellow detainee, she was taken to the Swan Management Unit in the prison.

L■■ requested LACW's assistance via fax to obtain a letter from her GP with details of the medications she is prescribed, which was swiftly actioned. However, this letter was not accepted by the prison authorities, who indicated that L■■ would be seen by the prison doctor in due course and that it would not accept external correspondence on medical issues. L■■ finally received medication three weeks after first being detained and had faced considerable difficulties in sleeping, in interactions with other detainees, and in giving instructions on her legal matters. The medication that she was ultimately prescribed in prison differed to what she had been prescribed by her GP. She was subsequently granted bail and took some days to have an appointment with her GP, when her medication was again reviewed and changed.

While LACW is cognisant of the strain on resources at Dame Phyllis Frost Centre based on the significant increase in the female prison population in recent months and years, the prison must be able to swiftly address the mental health needs of women entering into custody.

L■■'s case is particularly troubling given the observations of the Victorian Ombudsman 2017 Report on 'Implementing OPCAT in Victoria: Report and inspection of the Dame Phyllis Frost Centre' which noted specific concerns in relation to the Swan 2 Management Unit (which L■■ was ultimately detained in), including that prolonged periods spent therein could 'amount to treatment that is cruel, inhuman or degrading'.¹

¹ Available: <https://www.ombudsman.vic.gov.au/getattachment/432871e4-5653-4830-99be-8bb96c09b348>

'Conditions in Swan 2, the prison's management unit, are bleak:

- Women are locked in their cells for at least 22-23 hours a day and the inspection team found evidence some women do not always receive their daily entitlement to fresh air.
- There is little privacy for women in observation cells. CCTV monitors in the unit office are visible to staff and visitors. On one occasion the team observed a tradesman sitting behind a desk in front of the monitors, from where he had a full view of a naked woman in an observation cell using the toilet.
- There is little meaningful interaction between staff and women. Several women who had been held in Swan 2 described self-harming in the unit because they felt it was the only way to get staff to engage with them.
- The inspection team noted instances where use of force and restraint appeared unnecessary or excessive.
- There appear to be limited opportunities to engage women in addressing the circumstances that led to their separation. During the inspection, one woman was released directly from Swan 2 into the community.' (pp.9-10)

It is recalled that women in Victoria have a right pursuant to Section 22 of the Victorian *Charter of Human Rights and Responsibilities Act* (2006) ('Charter') to humane treatment when deprived of liberty. Where access to mental health care in prison is denied or delayed, and women face concomitant adjustment and behavioural difficulties that result in their behaviour being 'managed' rather than mental health conditions being treated, this right is not given effect to. This often also has flow-on effects for women's ability to engage with their legal issues and provide instructions in relation to their criminal matters, which is critical to determining the legal steps required to allow them to exit custody.

While the Marmak Unit exists at Dame Phyllis Frost to house women with serious psychiatric conditions or needing immediate or intensive care, this unit lacks the capacity to assist the overwhelming number of prisoners entering the prison who may not initially present with such acute mental health issues.

Recommendation One: All women entering Dame Phyllis Frost Centre have a mental health assessment completed by a medical practitioner as part of their intake on the same day as they are admitted, including any necessary liaising with GPs administering existing treatment and/or mental health care plans.

II. Reforms to the *Bail Act 1977*

The impact of the staged reforms to the *Bail Act 1977* ('*Bail Act*') in Victoria that came into force in 2018, with the attendant increase in numbers of women imprisoned in Victoria, has been well-documented. Due to changes in relevant bail thresholds, which effectively mean a presumption against bail for many more offences, there has been an overwhelming increase in the numbers of women on remand. These women are frequently charged with minor offences related to homelessness, poverty and mental health issues, including shoplifting. The experience of LACW lawyers is that those entering custody are also overwhelmingly the victims of family violence.

The amendments to the *Bail Act* do allow for mental health issues of accused persons to be considered by bail decision makers, but there is often a requirement to provide documentation as to the nature of the mental health issues faced by women fronting court for the first time, including details of relevant treatment, prior to bail being granted. This can lead to delays whereby women are held on remand while lawyers and case managers attempt to connect with health care professionals and exhort them to provide documentation to the court. Where bail is denied at an initial application, mental health issues are merely noted as 'custody management issues' with the hope that the prison will follow up on reported diagnoses.

While a referral can be made to court-based Forensicare clinicians to assess women as soon as they enter into custody, which can assist in applications for bail, this is no substitute for information obtained from mental health care professionals who may have been engaging with women over a longer period of time. Forensicare reports are also often based only on a detained woman's own reports of her mental health issues, with the information garnered at a time at which women have just been detained and may be extremely distressed, may not have been medicated, and may be withdrawing from alcohol or other drugs.

The effect of the reforms to the *Bail Act* mean that magistrates' hands often appear tied in the sense that, women who may not otherwise receive a custodial sentence for the offences for which they are charged are unable to meet the bail threshold and thus may be held in custody regardless of the seriousness of the offending.

Case Study Two

On 11 November 2018, L■■■■ a 45-year-old woman, was charged with theft of some grocery products valued at \$25 (shoptheft), and was placed on bail with a date to attend Melbourne Magistrates Court on ■■■■■. On ■■■■■, L■■■■ was charged with a fresh count of shoptheft, and was remanded in custody on that charge, along with a charge of committing an indictable offence on bail. L■■■■ was subject to a Community Correction Order at the time of the alleged offending, on which she had not yet had an opportunity to engage. Accordingly, under the amended bail laws, she needed to demonstrate 'exceptional circumstances' as to why she ought to be granted bail. L■■■■ was homeless at the time of her offending, fleeing family violence, and not receiving Depot injections for her schizophrenia. She was highly agitated in the cells and did not at that stage give instructions to enter a plea of guilty in relation to her charges, and instead, bail was applied for. Bail was refused on the basis that she could not demonstrate any exceptional circumstances as to why it ought to be granted, alone or in combination.

L■■■■'s offending was clearly linked to her poverty, mental health issues, and experience of family violence. She would be unlikely to ultimately receive a custodial sentence for offending of this nature, yet her inability to meet the highest bail threshold of 'exceptional circumstances' meant that she spent 3 weeks in custody on these charges before ultimately being released following a plea of guilty, which occurred only when she was finally well enough to give those instructions to her lawyer. An adjourned undertaking (good behaviour bond) was the ultimate penalty imposed.

Another significant issue related to bail is the housing crisis that Victoria is currently facing. While having stable accommodation is not an explicit requirement under the *Bail Act* for bail to be granted, in practice, courts may be reluctant to bail accused persons to no address. Given that the availability of emergency and transitional housing is strongly outweighed by increasing demand, homeless persons charged with criminal offences (many of whom have mental health issues or are fleeing family violence) have significantly poorer prospects of bail than those with housing support.

The complexity of housing accused persons who present with multiple issues (for example, mental health issues, fleeing family violence, AOD issues), further complicates a process made exceptionally difficult by lack of housing supply. Women who present with multiple, complex issues in particular in relation to their mental health are often refused housing, in particular crisis accommodation or transitional housing, on the basis that the facilities available are not set up to accommodate their needs.

Recommendation Two: LACW strongly supports the repeal of the changes to the *Bail Act* that came into force in 2018, which have promoted a significant increase in the number of women with mental health issues remaining in custody for offences they may not otherwise receive a custodial sentence for, and which have led to women's increased criminalisation and traumatisation.

Recommendation Three: LACW supports the immediate provision of further funding to support crisis accommodation and transitional housing for those interacting with the criminal justice system. In particular, LACW urges that funding be provided for housing that is suitable for women with multiple and complex needs including in relation to their mental health.

III. Interface between criminal justice system and system of acute care for psychiatric patients

In the experience of LACW's lawyers, the interaction between the criminal justice system and health system presents significant problems. Many women in LACW's client base exhibit signs of significant mental health issues upon entering custody, and are assessed as more appropriately placed under the care of doctors in a hospital and/or mental health facility than in prison. Despite the best efforts of magistrates who are keenly aware of these issues, there is no confidence and no mechanism available to ensure that women exiting custody will be triaged into hospital upon release, whether or not the process is voluntary or involuntary.

Case Study Three

N■■■■ was remanded in custody at Melbourne Magistrates Court in relation to two outstanding warrants. She was attended upon by Forensicare, who reported that there were concerns with her mental health, and that she had otherwise previously been assisted by a clinic attached to a local hospital. It was ascertained that N■■■■ also has extensive experience of family violence and diagnosis of multiple psychiatric issues. N■■■■ was unable to provide any instructions at all in the cells and expressed suicidal ideation. Bail was applied for and granted on the basis that she would be transported to hospital by ambulance by virtue of an interim assessment order made by Forensicare.

A short adjournment of N■■■■'s court matters was ordered to allow her to be treated in hospital. On the return date, N■■■■ did not attend court and enquiries revealed that she had been released from the hospital the preceding day for a short period of day leave, in line with the hospital's least restrictive practice model. N■■■■ did not return to the hospital following this temporary leave. A further short adjournment was ordered by the court to ascertain the reasons she was released from the hospital and to provide a further opportunity for her to be reached.

N■■■■ could not be reached, and when the matter again returned before the court, warrants were issued for her arrest. This means that she may again return to a custodial rather than a therapeutic environment when located by police, depending upon whether or not powers under Section 351 of the *Mental Health Act 2014* are exercised, which is discretionary and wholly dependent upon her presentation and the resulting assessment of arresting officers.

Recommendation Four: LACW recommends the strengthening of communications between the justice and health systems, as well as transparency and consistency in care arrangements for those transitioning in and out of custodial settings.

Conclusion

Notwithstanding the significant issues faced by criminalised women in Victoria who have mental health issues, and the failures of the system that occur at various points along their journey through it, there have also been some positive developments in recent years. Magistrates are increasingly willing to refer to Charter rights to support reasons for a grant of bail where women in custody have mental health issues and have not received medication or other treatment. The Assessment and Referral Court ('ARC') provides a useful tool to allow ongoing therapeutic intervention in offenders' lives, and to travel through the court process in a less formal and intimidating way. Forensicare and the Court Integrated Services Program exist and work together to provide support in the area of mental health, and report directly to the court on supports that are in place or may be put in place.

However, in an era in which more and more women are being imprisoned than ever before, vast numbers of whom have mental health issues (both diagnosed and undiagnosed), often intersecting with alcohol and other drug abuse, poverty, family violence and homelessness, LACW would urge recommendations from the Commission that are responsive to the issues women face in the justice space. The deleterious impacts of the system on such women, whether due to reforms to the *Bail Act*, or the dearth of mental health services in custody, or in the lack of coordination between justice and health responses, cannot be underestimated.

Since its inception, LACW has adopted an integrated holistic model of practice with lawyers and case management / social work support, which ultimately seeks to address the underlying reasons that people come into contact with the criminal justice system. Integrated supports are essential for good justice outcomes. Targeted reforms in the justice space will have the capacity to transform the lives of criminalised women with mental health issues, especially where their contact with the criminal justice system can provide an opportunity – sometimes, a first opportunity – for genuine therapeutic intervention.

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