



Foundation for Alcohol Research & Education

30 September 2021

Matt Newington
Committee Manager
The Secretariat
Legislative Council Legal and Social Issues Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002
justiceinquiry@parliament.vic.gov.au

Dear Mr Matt Newington,

Re. Inquiry into Victoria's Criminal Justice System

Thank you for the opportunity to provide a submission to the above Inquiry.

The Foundation for Alcohol Research and Education (FARE) is a not-for-profit organisation working towards an Australia that is free from alcohol harm. We approach this through developing evidence-informed policy, enabling people-powered advocacy and delivering health promotion programs. Working with local communities, values-aligned organisations, health professionals and researchers across the country, we strive to improve the health and wellbeing of everyone in Australia.

This submission responds primarily to Items 1 (*"analysis of factors influencing Victoria's growing remand and prison populations"*) and 2 (*"strategies to reduce rates of criminal recidivism"*) of the Inquiry's Terms of Reference.

The Victorian criminal justice system has experienced significantly increased prison populations, costs and recidivism. The criminalisation of alcohol and other drug (AOD) problems is a contributing factor in these increases. The majority of people in detention in Victoria reported having alcohol and other drug problems before they were imprisoned, yet they've often received inadequate support for these problems.

Public health issues such as high risk AOD use, poor mental health and disabilities such as Fetal Alcohol Spectrum Disorder (FASD), must be treated as health issues, not stigmatised or criminalised. Punitive responses to health and social issues are expensive and ineffective.¹

Taking an evidence-informed public health approach can both reduce the harm from alcohol and other drugs in the community, and reduce prison populations, costs and recidivism.

Evidence Briefs on FASD, MACR and Electronic Monitoring

The three evidence briefs attached along with this letter form part of this submission; they address:

- Fetal Alcohol Spectrum Disorder (FASD), criminal justice and government responses (Attachment 1)
- Raising the Minimum Age of Criminal Responsibility (MACR) (Attachment 2)
- Electronic Monitoring (including for Alcohol-Related Offences) (Attachment 3)

Recommendations

FARE has made 15 recommendations to this Inquiry relating to the intersection between the criminal justice sector and alcohol use and harm. These are outlined below and elaborated on in this submission.

Recommendation 1. Implement Recommendations 9, 10 and 22 from the Victorian Ombudsman's Investigation into the rehabilitation and reintegration of people in detention in Victoria, in regards to alcohol and other drug programs.

Recommendation 2. Adopt a public health and human rights approach to reducing alcohol harm. This can be done by implementing community-based health programs (rather than criminalisation) to respond to problematic alcohol use.

Recommendation 3. Increase investment in mental health and alcohol and other drug (AOD) trauma-informed throughcare treatment and harm reduction services.

Recommendation 4. Abandon plans to make permanent the temporary COVID-19 changes to liquor licensing, which increase the density of alcohol outlets and allow for increased takeaway sales and delivery of alcohol.

Recommendation 5. Amend the Liquor Control Reform Act 1998 (LCRA) to place common sense, comprehensive restrictions on online sales and rapid delivery.

Recommendation 6. Restrict alcohol promotion. Restrict alcohol companies from advertising and promoting alcoholic products that associates the use of alcohol with coping with COVID-19, social isolation or loneliness.

Recommendation 7. Publish accurate crime data regularly. Collect, analyse and regularly publish accurate crime statistics, conviction, sentencing and recidivism data, and comprehensive costings for all aspects of the justice system.

Recommendation 8. Implement recommendations 12, 23, 24 and 27 of the Senate Inquiry into *Effective approaches to prevention, diagnosis and support for FASD*, that reported to Federal Parliament in March 2021.

Recommendation 9. Implement Fetal Alcohol Spectrum Disorder (FASD) screening, assessment and support in paediatric, youth justice and adult criminal justice.

Recommendation 10. Work with the federal government to address the gaps left by barriers to access and difficult eligibility with both the National Disability Insurance Scheme (NDIS) and Disability Support Pension (DSP). Address the gaps in service and support by the ineligibility of people in detention for NDIS, DSP, Pharmaceutical Benefits Scheme (PBS) and Medicare.



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Recommendation 11. Develop FASD professional understanding and capacity. Educate relevant justice professionals about children with disabilities and cognitive impairment. Invest in professional workforce development to establish capacity for FASD screening, diagnosis and support.

Recommendation 12. Raise the Minimum Age of Criminal Responsibility (MACR) to at least 14. Victoria, along with all Australian State and Territory Governments, should raise the MACR in their jurisdictions to at least 14 years old. There should be no exceptions and no exemptions to this, regardless of the severity of behaviours.

Recommendation 13. Include FASD in alternate pathway model design. Develop and fund appropriate alternative pathways by referring children that would have come into contact with the justice system for clinical assessment to identify potential neurological disorders (including FASD), and for diagnosis and ongoing adequate support.

Recommendation 14. Consider voluntary restorative justice in designing the alternative model. Include voluntary restorative justice processes, where appropriate, in the new model.

Recommendation 15. Re-assess the purpose, lived experience impact, human rights implications, costs and effectiveness of any trials and planned implementations of Electronic Monitoring (EM) programs for alcohol-related offences.

The Victorian Criminal Justice System

In 2015, the Victorian Ombudsman investigation into the rehabilitation and reintegration of people in detention in Victoria, outlined the challenges facing the Victorian Criminal Justice System:²

- **Increase in prison population.** There has been a significant growth in the prison population, (growing faster than the increase in recorded crime) resulting from legislative change leading to fewer parole orders being granted, suspended sentences being abolished and bail procedures being tightened. Conditions inside prisons are also deteriorating as the overcrowding places them under further pressure.
- **Increase in recidivism.** Re-offending rates are increasing faster with the recidivism rate at a high of 44 per cent. Reasons for the increase in numbers and costs include increased rates of reoffending and legislative changes affecting parole, sentencing and bail mentioned above. In addition, heightened pressure on the system has resulted in reduced access to programs and services, leading to a rise in reoffending.
- **Increase in costs.** The operating budget of the Victorian correctional services continues to increase from over \$1 billion in 2014-15,³ to more than \$2 billion by 2020-21.⁴ The correctional services capital program— building, expanding and refurbishing prisons, has also grown to over \$1 billion by 2019-20, representing thousands of new beds in prisons.⁵ Building more prisons is not making the Victorian community safer. Prisons are the most expensive option to address social and health issues like AOD problems and trauma.
- **Alternatives.** We know that alternatives (such as taking public health approaches to health issues), are effective. Evaluations of preventative public health and diversion programs confirm their positive impact both on recidivism and on costs.⁶

Alcohol, Disadvantage and the Criminal Justice System

The Victorian Ombudsman's report outlined the demographics of people in detention in Victoria:⁷

- **Alcohol and other drug (AOD) problems.** The vast majority of Victorian people in detention in Victoria (over 75 per cent of men and at least 83 per cent of women), report having AOD problems before being imprisoned. AOD problems are highly prevalent in prison populations and are often a direct cause of offending and recidivism, as well as the source of physical and mental health problems. Effective AOD treatment interventions can considerably decrease recidivism.
- **Disadvantaged background.** The disadvantaged backgrounds of people in detention in Victoria are evident in the demographics. The average prisoner, male or female, did not complete high school, was unemployed at the time of committing the crime and had a history of substance abuse. Many women in detention are victims of abuse, and over 40 per cent are homeless upon release. The children of people in detention are six times more likely to be imprisoned themselves.
- **Multiple and intergenerational disadvantage.** The data describes a cohort of significant and often multiple characteristics of disadvantage with offending and imprisonment often being intergenerational. About half of the people in detention in Victoria have two or more characteristics of serious disadvantage. The characteristics of 'serious disadvantage' include being unemployed, homeless, Aboriginal or Torres Strait Islander; or having a AOD problems, experience of abuse, having an intellectual disability or having had a psychiatric admission.

Criminalisation and inadequate support for people with problematic AOD use

People in contact with the criminal justice system are more likely to have experienced mental illness and problematic AOD use.⁸ There is a continued stigmatisation and criminalisation of people living with mental illness and problematic AOD use. They are already physically isolated by their sentences (even when not carceral), but ongoing stigmatisation further isolates them, inflicting further punishment beyond sentencing.⁹ The National Alcohol Strategy (2019-2028)¹⁰ calls for human rights approach to reducing alcohol harm, that decreases the stigmatisation and criminalisation of people with mental illness and problematic AOD use.

The provision of effective mental health and AOD programs is therefore a key component in criminal justice settings. However, there are long waiting lists for AOD programs and transitional support services for people in detention with substance abuse issues are inadequate and community-based support services for people who were formerly in detention, are limited.¹¹

There has been a significant increase in mental and physical health concerns and in the use of alcohol in Australia during COVID-19¹². Increased alcohol use during COVID-19 has also seen an increase in demand for AOD treatment services¹³. This has been facilitated by irresponsible behaviour by alcohol companies and inadequate regulatory responses:¹⁴

- Alcohol companies have irresponsibly promoted alcohol as a way to cope with COVID-19 restrictions and isolation.¹⁵ This is despite alcohol use making people more vulnerable to COVID-19, as it weakens immune systems and increases the risk of respiratory failure.¹⁶

- There has been a significant increase in online sales and rapid delivery, (which more than made up for the decrease in on-licence premise sales during lockdowns).¹⁷
- With online sales and rapid delivery not yet properly regulated, the Victorian Government has made temporary changes in liquor licensing laws allowing for increased takeaway sales, (including from venues like cafes and restaurants).¹⁸

Reforming the Liquor Control Reform Act 1998 (LCRA), to incorporate common sense restrictions on online sales and rapid delivery, would include:

- restricting alcohol deliveries between 10pm and 10am (to reduce the risks of family violence),
- introducing a two-hour delay between order and delivery (to stop the rapid supply of alcoholic products),
- introducing online age verification through digital ID checks (to ensure alcohol is not sold to children)
- ensuring there are no unattended deliveries of alcohol, (to ensure alcohol is not sold to children and people who are intoxicated)

Recommendations 9, 10 and 22 from the Victorian Ombudsman's Investigation into the rehabilitation and reintegration of people in detention in Victoria, related to AOD programs:

- "Ensure that alcohol and drug treatment programs are available in all Victorian prisons, including minimum security prisons.
- Review whether the residential drug treatment program at Marngoneet is meeting its objectives, and whether the effectiveness of the program is being compromised by the current prisoner placement process.
- With the Department of Health and Human Services, investigate a 'throughcare' model from prison to community health services, to address the health needs, in particular mental health, alcohol and drug, and disability, of people in detention being released into the community."

Recommendation 1. Implement Recommendations 9, 10 and 22 from the Victorian Ombudsman's Investigation into the rehabilitation and reintegration of people in detention in Victoria, in regards to alcohol and other drug programs.

Recommendation 2. Adopt a public health and human rights approach to reducing alcohol harm. This can be done by implementing community-based health programs (rather than criminalisation) to respond to problematic alcohol use.

Recommendation 3. Increase investment in mental health and alcohol and other drug (AOD) trauma-informed throughcare treatment and harm reduction services.

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Recommendation 5. Amend the Liquor Control Reform Act 1998 (LCRA) to place common sense, comprehensive restrictions on online sales and rapid delivery.

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Challenging the harmful ‘tough on crime’ narrative

A key contributor to the lack of political appetite for crime reform by Australian governments has been the harmful and self-defeating ‘*tough on crime*’ narrative, especially following incidents of significant harm and during election campaigns. Evidence shows that imprisonment rates are increasing, the costs are high and increasing, and that increased imprisonment can actually make the community less safe.¹⁹

Despite this ‘*tough on crime*’ approach requiring significantly increased spending on (often privatised) prisons and the criminal justice system, no significant return on investment has been achieved. This investment has not led to a reduction in offending rates, reduction in recidivism rates or improvements in community safety.²⁰

The Australian Survey of Social Attitudes (ASSA) indicated that the Australian public sources their information about the criminal justice system primarily from broadcast and tabloid media. This has resulted in much of the public having inaccurate views about the occurrence of crime and the severity of sentencing. The ASSA indicates that the Australian public perceives crime to be increasing when it isn’t, overestimates the proportion of crime that involves violence, and underestimates the proportion of charged persons who go on to be convicted and imprisoned.²¹

The ‘*tough on crime*’ rhetoric appeals to this misinformation both because of a fear of becoming a victim of crime and the belief that offenders deserve harsher punishments. As a result, the criminal justice system has been skewed unfairly towards harsher, more punitive responses including mandatory sentencing, minimum terms, and reduced parole. These approaches impinge excessively and unnecessarily on human rights, without evidence of positive outcomes of reducing crime or recidivism.²²

Harsher penalties including mandatory sentencing, minimum terms, and reduced parole, do not reduce crime, imprisonment or recidivism, but do cause harm, including criminalising and breaching human rights.²³ One way for governments to help end the self-defeating ‘*tough on crime*’ rhetoric is for independent bodies to regularly collect, analyse and publish accurate justice information, including crime statistics, conviction, sentencing and recidivism data, and comprehensive costings for all aspects of the justice system.

Recommendation 7. Publish accurate crime data regularly. Collect, analyse and regularly publish accurate crime statistics, conviction, sentencing and recidivism data, and comprehensive costings for all aspects of the justice system.

Fetal Alcohol Spectrum Disorder (FASD) and the Criminal Justice System

FASD is the leading preventable developmental disability in Australia and there is a high prevalence of FASD in people detained in the criminal justice system. Research at the Banksia Hill Youth Detention Centre in Western Australia identified that more than a third of the young people screened in detention were diagnosed with FASD. Researchers suggested this may be an underestimate due to, for example, the lack of confirmation of prenatal alcohol exposure, suspecting that almost half of these young people may have FASD.²⁴

People in the criminal justice system are excluded from the National Disability Insurance Scheme (NDIS), Disability Support Pension (DSP), Pharmaceutical Benefits Scheme (PBS) and Medicare. The exclusion of people in prison who have a cognitive disability from the NDIS represents a substantial barrier to people with cognitive and mental health impairments getting adequate support, care and protection for their disability-related complex support needs. Screening, diagnosis and treatment should be targeted towards those in the criminal justice system.²⁵

See the full evidence brief on FASD, criminal justice and government responses as Attachment 1.

Recommendation 8. Implement recommendations 12, 23, 24 and 27 of the Senate Inquiry into *Effective approaches to prevention, diagnosis and support for FASD*, that reported to Federal Parliament in March 2021.

Recommendation 9. Implement Fetal Alcohol Spectrum Disorder (FASD) screening, assessment and support in paediatric, youth justice and adult criminal justice.

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Recommendation 11. Develop FASD professional understanding and capacity. Educate relevant justice professionals about children with disabilities and cognitive impairment. Invest in professional workforce development to establish capacity for FASD screening, diagnosis and support.

Raising the Minimum Age of Criminal Responsibility (MACR)

The Australian Capital Territory (ACT) is the only jurisdiction in Australia to commit to Raising the Minimum Age of Criminal Responsibility (MACR). Raising MACR is based on the following research and human rights obligations:

- **Medical and social research on child development.** Research evidence on developmental psychology and brain development shows that children are not sufficiently able to reflect before acting or to comprehend the consequences of a criminal action.²⁶
- **Significantly improved life outcomes.** Neurobiological research on early childhood trauma shows that criminalising children under 14 years old leads to a lifetime of harmful consequences, including sustained contact with the justice system.²⁷



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- **International human rights obligations.** Australia has human rights obligations under the United Nations Convention on the Rights of the Child. These obligations state that the MACR should be at least 14 years old.²⁸

See the full evidence brief on Raising the Minimum Age of Criminal Responsibility (MACR) as Attachment 2.

Recommendation 12. Raise the Minimum Age of Criminal Responsibility (MACR) to at least 14. Victoria, along with all Australian State and Territory Governments, should raise the MACR in their jurisdictions to at least 14 years old. There should be no exceptions and no exemptions to this, regardless of the severity of behaviours.

Recommendation 13. Include FASD in alternate pathway model design. Develop and fund appropriate alternative pathways by referring children that would have come into contact with the justice system for clinical assessment to identify potential neurological disorders (including FASD), and for diagnosis and ongoing adequate support.

Recommendation 14. Consider voluntary restorative justice in designing the alternative model. Include voluntary restorative justice processes, where appropriate, in the new model.

Electronic Monitoring (including for Alcohol-Related Offences)

Current evidence suggests that Electronic Monitoring (including for Alcohol-Related Offences) in the criminal justice system is stigmatising, breaches human rights, is expensive and ineffective. The technology is unreliable, it does not reduce re-offending, does not reduce prison populations, it increases incarceration and does not treat problematic alcohol use. Electronic monitoring contributes to the criminalisation of children, First Nations peoples, people on low incomes and people with problematic alcohol and other drug use.

See the full evidence brief on Electronic Monitoring as Attachment 3.

Recommendation 15. Re-assess the purpose, lived experience impact, human rights implications, costs and effectiveness of any trials and planned implementations of Electronic Monitoring (EM) programs for alcohol-related offences.

Thank you for the opportunity to provide a submission to this Inquiry.

Yours sincerely,

A handwritten signature in black ink, appearing to read "C. Giorgi".

CATERINA GIORGI
CHIEF EXECUTIVE OFFICER



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- ¹ VCOSS (2021) *Fair and equal justice - A VCOSS guide to the 2021 Victorian budget*.
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