

A sector-wide approach to the legal needs of Victorian Prisoners

Addressing legal need in Victorian prisoners: A discussion paper for the Victorian Legal Assistance Main Forum

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Background

The Victorian Legal Assistance Forum (VLAFF) exists to promote collaboration and co-ordination in the Victorian legal assistance sector. It has a number of working groups, one of which considers the legal issues facing Victorian prisoners and the legal assistance sector's response to those legal issues (the Prisoners Working Group). The Prisoners Working Group's terms of reference include:

- Considering and developing joint plans for legal education and information for inmates of Victorian correctional facilities
- Developing joint plans to address civil and family law needs of prisoners

This discussion paper seeks to progress both of these aims. It also provides a starting point for a response to recommendations in the Productivity Commission's *Access to Justice Arrangements: Inquiry Report* (the Productivity Commission report), released in December 2014.¹ The report made a number of recommendations, including a recommendation to support 'the identification and assistance of disadvantaged people with complex needs' (Recommendation 5.3).² Relevant to this discussion paper, Recommendation 5.3 considered:

- use of legal health checks
- co-ordination between the legal assistance sector and relevant non-legal service providers in order to provide more outreach and holistic services where appropriate and need is greatest
- better co-ordination of community legal education resources.

In February 2015, the VLAFF Main Forum discussed the Productivity Commission report and requested that the Prisoners Working Group consider how the legal assistance sector could better address the legal needs of prisoners, as a group of disadvantaged people with complex needs, through the lens of Recommendation 5.3.

This discussion paper provides a range of options for a sector-wide response from the Victorian legal assistance sector to the unmet legal needs of Victorian prisoners. It focusses on the adult system and does not consider the legal assistance provided to young people in youth detention facilities. It provides a brief overview of the legal needs of prisoners, in particular in the areas of family and civil law, and the ways in which the Victorian legal assistance sector currently addresses these issues: through one-off advice, legal education and information, and ongoing case work. It then considers the gaps and issues with services currently available to prisoners: in availability, types and models of assistance, and broader factors impacting on a prisoner's ability to access assistance.

Having considered prisoners' legal needs more broadly and the current response and gaps, some options for a sector-wide approach to prisoners' legal needs are proposed. These include opportunities to improve the ways in which existing services are provided, upscaling other services and improving coordination across the sector. Translating these options into a reality would require significant further consultation with stakeholders, the necessary funding, and support from relevant VLAFF members to promote a sector-wide approach.

¹ Productivity Commission *Access to Justice Arrangements: Inquiry Report* (No. 72, 5 September 2014).

² *Ibid*, 180.

The legal needs of prisoners

In the Australian context, there have been a number of recent reports that touch on the legal needs of prisoners. Of most relevance to this paper, the New South Wales Law and Justice Foundation's report *Taking Justice into Custody* (the *Taking Justice* report) provides a comprehensive picture of the legal problems prisoners confront.³ In the Victorian context, the 2011 report by the Public Interest Law Clearing House (PILCH, now known as Justice Connect) *Law Behind Bars: PILCH Report on Prisoner Legal Assistance* (the PILCH Report) also considers the legal needs of prisoners.⁴ A brief summary of the major legal issues affecting prisoners as a demographic is provided below, drawing on both of these reports and other research from Australia and overseas.

Prisoner disadvantage generally

There is 'a concentration of disadvantage' experienced within the prison population, and prisoners may experience a unique range of barriers in addressing their legal needs.⁵ This disadvantage is visible in the high rates of mental illness, intellectual disability, acquired brain injury, alcohol and drug use, poverty, histories of violence and abuse, homelessness, poor literacy levels and education, and unemployment.⁶ In the Victorian context, this is supported by the findings of the Victorian Auditor General's Office, which in its report *Problem-solving approaches to Justice* reported that nearly two-thirds of prisoners are unemployed prior to imprisonment, 85 per cent have only partially completed secondary education, more than 60 per cent have drug and alcohol problems, and almost a third have a known mental illness diagnoses.⁷ Certain groups are over-represented, namely Aboriginal and Torres Strait Islander people who are imprisoned in Victoria at a rate 11 times higher than non-indigenous people.⁸

The *Taking Justice* report suggests that over-representation of multiple forms of disadvantage among prisoners and former prisoners, together with their status of being or having being a prisoner, may directly affect the legal issues experienced of prisoners and their capacity to address these legal issues.⁹ It concludes:

Aboriginal people, people with intellectual disability, alcohol and other drug dependence, mental health issues, histories of violence and abuse, histories of state care and/or parental imprisonment, interrupted or limited education and high unemployment are over-represented among prison inmates, when compared to the NSW general population. It could be expected that having any one of these characteristics may add to the complexity of accessing legal services and/or addressing legal need. However, the data reported above suggest that many prisoners may in fact face multiple and interrelated forms of disadvantage, adding to the complexity of addressing their needs.

³ A Grunseit, S Forell & E McCarron *Taking Justice into Custody: The legal needs of prisoners* (Law and Justice Foundation of New South Wales, June 2008).

⁴ J Winterburn and G Husper *Law Behind Bars: PILCH Report on Prisoner Legal Assistance* (Public Interest Clearing House, 4 September 2011).

⁵ Grunseit, Forell & McCarron, above n 3, 11.

⁶ *Ibid*, 21 – 22.

⁷ Victorian Auditor-General *Problem-Solving Approaches to Justice* (PP No 24, April 2011), 1.

⁸ Australian Bureau of Statistics *Prisoners in Australia, 2014: Victoria* (30 June 2014)

<<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2014~Main%20Features~Victoria~10016>>.

⁹ Grunseit, Forell & McCarron, above n 3, 22.

Prisoners' legal issues

Prisoners' legal issues can be categorised both by the type of legal issue (civil, criminal or family law issues) and the point at which the issue arises (prior to, during or after imprisonment).

• Criminal law

Both during their period of imprisonment and upon release, prisoners face a number of other legal issues connected to either their existing criminal law issue or a new offence. Common criminal law issues that arise in this context include:

- bail applications and breaches of bail
- appeals of a sentence or conviction
- new charges that have emerged during a prisoner's sentence
- disciplinary offences within the prison (for example, concealment of certain items, possession of alcohol or other drugs, prison property offences and physical aggression)
- changes in security classification
- parole (including eligibility for parole, breaches of parole)
- outstanding warrants that could be concurrently served but may lead to arrest upon release if not executed
- breaches of family violence intervention orders (while in prison through phone contact or upon release).

• Civil law

The prevalence of prisoners' civil law issues is a major focus of the *Taking Justice* report. It recognises that it can be easy to overlook the civil and family law issues that prisoners have given their acute need for criminal legal assistance.¹⁰ Civil law issues were also a major focus of the PILCH report. Some of the more significant civil law issues experienced by prisoners include:

- *Business and employment:* While a large number of prisoners are unemployed prior to incarceration, those who are employed often lose their jobs when incarcerated.¹¹ For those prisoners with businesses on the outside, it is practically difficult for them to continue conducting business from prison.¹² When released, prisoners experience both lawful and unlawful discrimination based on their criminal records (especially in small towns).¹³
- *Housing:* Public housing-related legal issues include the loss of Office of Housing properties while in prison, being cut off from public housing wait lists while in prison, and being unable to apply for public housing due to uncertainty around release dates. Given that a large number of prisoners are in public housing prior to imprisonment, this is a major issue for prisoners. There are also issues for those in private housing, including limited time or scope

¹⁰ Grunseit, Forell & McCarron, above n 3, 66.

¹¹ Grunseit, Forell & McCarron, above n 3, 67.

¹² Ibid.

¹³ Ibid.

to notify their landlord that they are going into custody, incurring rent arrears or other debts while in prison, and difficulties obtaining private rental accommodation upon release.¹⁴

- *Debt and Fines*: The *Taking Justice* report found that almost all prisoners interviewed for the study indicated they were in debt, much of which was still accumulating during their time in prison. The kind of debt experienced varied significantly: credit agencies, child support payments, traffic fines, private debt to family and friends, government debt, victims' compensation and more.¹⁵
- *Immigration and visa cancellation*: Since December 2014, non-Australian citizens (including permanent residents) imprisoned in Victoria and serving a sentence of 12 months or more, or convicted some sexual crimes, have their visas mandatorily cancelled. Upon cancellation, a prisoner receives notice of the cancellation and has 28 days to apply for a revocation of the cancellation. If they fail to apply within the 28 period, the prisoner has no remedy to challenge the cancellation outside of administrative law proceedings. As of June 2014, 25 per cent of prisoners in Victoria were born outside of Australia, the highest rate of any state or territory.¹⁶ Some of these prisoners will have citizenship status or serving sentences to which the new provisions do not apply; however, many will be permanent residents and subject to mandatory visa cancellation provisions. Other immigration issues that can lead to deportation include being arrested at the airport upon entering Australia, being arrested for a criminal offence while on a temporary visa, and overstaying a visa.

Other issues explored in the *Taking Justice* report include issues around personal property that remains outside of prisons, difficulty obtaining personal identification documents necessary upon release, loss of personal belongings while in prison, issues with Centrelink entitlements upon release and during incarceration, drivers licence cancellation, and personal injury and injury arising from assault. In the Victorian context, the PILCH report documented similar issues including credit and debt, tenancy and housing, social security, health care, parole, assaults in prison, disciplinary offences, transport between prisons classification and visitation, and family law. A follow up report by PILCH in 2013 concluded that the most significant civil law problems faced by prisoners relate to housing, debt and access to health care while in prison.¹⁷

• Family law

Family law issues, like civil law issues, often tend to be less visible in the prison context – especially given a prisoner's separation from their family. The *Taking Justice* report found that, overwhelmingly, family law problems related to access and residency of children.¹⁸ Approximately two-thirds of those interviewed as part of the *Taking Justice* report had children.

¹⁴ Ibid, 68 – 71.

¹⁵ Ibid, 76 – 80.

¹⁶ Australian Bureau of Statistics, above n 8.

¹⁷ L McKernan and U Noye *Prisoners Scoping Study: Investigating the feasibility of a PILCH civil law program for prisoners* (PILCH, 2013), 8.

¹⁸ Grunseit, Forell & McCarron, above n 3, 87.

A Canadian study into the legal needs of prisoners (the *Legal Needs of Prisoners in Federal Penitentiaries* report) found that 70 per cent of prisoners reported having family law issues.¹⁹ The report found that family law issues were more prevalent amongst female prisoners, although male inmates also named this area as a top concern.²⁰ Amongst prison staff, prisoners' family law issues were identified as the most significant of any legal need – family, civil or criminal.

Impact of legal issues on a prisoner's reintegration and rehabilitation

Regardless of whether a problem arises prior to, during or after a prisoner's term of imprisonment, unresolved legal problems have the potential to cause significant disruption to a prisoner both during their sentence and post release. Ensuring a prisoner's legal problems are addressed both prior to release and before the problems escalate has the potential to relieve stress and anxiety, reduce associated hardship and increase the likelihood of successful reintegration.

In the 2013 report *Beyond the prison gates: the experiences of people recently released from prison into homelessness and housing crisis*, having previous unresolved legal and criminal issues re-surface unexpectedly was cited as one of the difficulties people had when trying to reintegrate into the community.²¹

A 2006 study in New South Wales looked at the link between homelessness and recidivism, and found that ex-prisoners are between two and eight times more likely to return to prison within nine months of release if they are transient and move often (including in and out of states of homelessness).²² Given the high rates of homelessness amongst the prison population, with 2012 figures reporting 35 per cent of prisoners as homeless before they are imprisoned and 43 per cent exiting prison into homelessness,²³ this is a significant legal and social issue for the prison population.

In the context of family law issues, the *Legal Needs of Prisoners in Federal Penitentiaries* report the makes a direct link between the impact of family law issues and female prisoners' rehabilitation.²⁴

It was reported that anxiety about children can derail the focus on rehabilitation when women worry about potential child apprehension, the need to resolve issues related to temporary or permanent custody, and the whole range of other family law issues such as access. As women tend to be the major caregivers for children, issues related to children tend to dominate their periods of imprisonment.

In the *Taking Justice* report, it is found that 'the confluence of legal problems on release from jail may affect inmates' capacity to successfully reintegrate into the community'.²⁵ Unresolved legal problems act as a barrier to effective reintegration, during what is already an extremely challenging

¹⁹ T Lajeunesse, *Study of the Legal Service Needs of Prisoners in Federal Penitentiaries in Canada* (Department of Justice, July 31 2002), 2.

²⁰ *Ibid*, 3.

²¹ L Schetzer, *Beyond the prison gates: the experiences of people recently released from prison into homelessness and housing crisis* (Public Interest Advocacy Centre, 31 July 2013), 53.

²² E Baldry, D McDonnell, P Maplestone and M Peeters, 'Ex-Prisoners, Homelessness and the State in Australia', *The Australian and New Zealand Journal of Criminology* 39 (2006) 20, 30.

²³ Australian Institute of Health and Welfare, *The Health of Australia's Prisoners* (2013) 27.

²⁴ Lajeunesse, above n 19, 2.

²⁵ Grunseit, Forell & McCarron, above n 3, 92.

and precarious time for recently released prisoners. It is suggested that ‘the provision of legal assistance in jail may have benefits well beyond an inmate’s term in prison’.²⁶

Further research and evaluation of projects that aim to address prisoners’ legal issues is needed to make a clear link between the benefit of legal assistance during imprisonment – be it information, one-off advice or case work – and successful reintegration and a reduced likelihood of reoffending. It is clear that not addressing these legal issues increases hardship and stress for recently released prisoners, but further research would assist to establish the impact of receiving legal assistance in reducing reoffending.

²⁶ Ibid.

Availability of legal assistance in Victorian prisons

In 2014, the VLAF Prisoners Working Group undertook an exercise to map the provision of legal assistance to Victoria's prison population. This exercise provides a snapshot of the kinds of assistance provided to prisoners, the gaps in service delivery and highlights the areas of unmet need.²⁷

Legal assistance in this context can be broadly divided into the following areas: one-off legal advice (in person or telephone), legal education and information, and ongoing case work or representation.

The vast majority of legal assistance provided to prisoners in Victoria is through the legal assistance sector – namely, Victoria Legal Aid (VLA), community legal centres (CLCs), pro bono lawyers and Aboriginal legal services. Some prisoners may have access to private lawyers paid by family members or through other means; however, this is uncommon and the services provided by private lawyers on a paid basis were outside the scope of this mapping.

A brief description of the current assistance available is detailed below.

General legal advice services

A number of legal services in Victoria provide some form of general legal advice service to prisoners. Most of these services are based on a clinic model whereby prisoners make an appointment to speak to the lawyer during a designated time, and prisoners are required to be proactive and put their name down for an appointment.

VLA provides a visiting advice service to all Victorian prisons (by phone only for Beechworth Prison). Duration varies from weekly to monthly depending on the prison. Lawyers rostered on to the service are from the closest regional office for the non-metropolitan prisons, and criminal lawyers for the metropolitan prisons. The service operates as a drop-in clinic – prisoners put their name on a list to see the lawyer and are then provided access when the lawyer comes to the prison. The rostered lawyer may then make a referral to an in-house lawyer from VLA's large civil, family or criminal practices for advice or ongoing assistance. In particular, VLA's child support program in its family law division has regular video conference appointments at most prisons. In some cases, where a grant of aid is available, a referral may be made to a private practitioner on the legal aid panel, or they may already be acting for the prisoner (for an appeal, for example). A recent survey of VLA lawyers who provide this visiting advice service found that the three most common legal issues dealt with by visiting lawyers were appeals advice (from a legal perspective, not a matter for which immediate advice can be given), wanting to appear via video link at the next court hearing, and seeking their regular lawyers' details. Family law, fines/infringements and parole were the next most common issues. VLA has an online resource, Law Guru, accessible to all VLA and CLC lawyers (upon request) that provides a section on prisoners, which is a useful resource for both generalist and criminal lawyers who provide the prison advice service.

Aboriginal legal services also provide a visiting legal advice service to some prisons. The Victorian Aboriginal Legal Service (VALS) provides a fortnightly prison visiting service to two prisons: Port Phillip Prison and Dame Phyllis Frost Centre. The lawyers assist with matters including child protection and family violence; criminal law; and some civil law matters such as VOCAT issues,

²⁷ This mapping work built on previous scoping by VLA in 2013 into the feasibility of a prisoners' phone line and improving prisoners' access to legal assistance.

coronial inquests, wills, guardianship, credit and debt, employment, tenancy and neighbourhood disputes, and privacy. The Aboriginal and Family Violence Prevention Legal Service (FVPLS Victoria) has recently started a regular visiting service to Dame Phyllis Frost Centre. This runs as a clinic model, where prisoners book in advance to meet with a FVPLS Victoria lawyer. This had in the past been an ad hoc service, but will now run on either a monthly or fortnightly basis. The service largely assists with family violence intervention orders, VOCAT matters, family law and child protection. If necessary, FVPLS Victoria will make referrals to other services to deal with other legal and non-legal matters.

Three CLCs provide regular visiting services or phone services to prisons on a fortnightly basis: the Central Highlands Community Legal Centre, the Darebin Community Legal Service and the Mental Health Legal Centre. Central Highlands Community Legal Centre visits the Hopkins Correctional Centre and Langi Kal Kal, and assist with a range of issues including wills, powers of attorney, Centrelink, VOCAT, debts, discrimination, prison complaints, parole questions and general family law. Darebin Community Legal Centre provides a weekly telephone appointment service to prisoners from any prison, depending on service capacity. The focus of its service is on prisoner complaints and civil law issues (such as debt, power of attorney, wills, personal injury and VOCAT).

The Mental Health Legal Centre runs a program, *Inside Access*, which responds to the civil law issues of prisoners with mental health issues in a number of ways. This includes a weekly legal clinic at Dame Phyllis Frost Centre, and each clinics assists on average 14 women over three hours. *Inside Access* also assists at men's prisons across the state when a referral is made or a prisoner contacts the service via phone (having added the Centre to their list of phone numbers).

Outside the scope of this mapping was the work done by the Victorian Ombudsman and the Health Services Commissioner. The Ombudsman runs a free phone service for prisoners and takes a large volume of prison-related complaints. The Health Services Commissioner also takes complaints from prisoners, about access to health care facilities or services in prison.

Legal education and information

There are a number of legal services (both VLA and CLCs) that provide legal information and education (community legal education) to prisoners in Victoria. In this context, community legal education refers to programs, usually comprising face-to-face sessions in prison, that inform and build prisoners' awareness and understanding of the law and how to identify, prevent and deal with problems.²⁸ A major focus of legal information and education in the context of prisons is raising awareness of the help available from legal and non-legal support services, and ensuring prisoners reach out for assistance when required. In this way, information and education can act more as an access strategy than an education strategy.

Three community legal centres have information and education targeted towards prisoners. Fitzroy Legal Service produces *The Law Handbook*, online and in hard copy, which includes a dedicated chapter on prisoners. This chapter looks largely at issues specific to prisoners such as communication with prisoners and offences in prison. This handbook may be available in prison libraries and is suited to prisoners with higher levels of literacy.

The Mental Health Legal Centre's *Inside Access* program involves providing community legal education sessions to prisoners at Dame Phyllis Frost Centre and to patients at Thomas Embling

²⁸ Commonwealth Government, *National Legal Assistance Data Standards Manual* (2015).

Hospital. These sessions include information on credit and debt, VOCAT, guardianship, family violence, general family law, parole submissions, child protection, and prison issues such as access to health care, complaints and governors hearings.

Monash Oakleigh Community Legal Centre supports a general community legal education program for prisoners led and staffed by volunteer students, the Prison Legal Education and Assistance Project (PLEA). The students deliver weekly and fortnightly legal information sessions at Metropolitan Remand Centre, Damn Phyllis Frost Centre, Parkville Youth Justice Centre, Malmesbury Youth Justice Centre, and Port Phillip Prison. These sessions cover a range of topics including court readiness, family law, parole readiness, dealing with police, sentencing and working with lawyers.

In 2015, Victoria Legal Aid started a short-term community legal education project aimed at educating prisoners who have had their visas automatically cancelled about applying for a revocation of the cancellation. At the time of writing, sessions with both prison staff and prisoners had been delivered in prisons and more were being planned. Victoria Legal Aid's library service, which is open to all members of the public, also provides assistance to prisoners and their family members upon request.

Beyond legal services, community agencies with a prison focus also provide information and resources for people, including legal information or education. This includes VACRO (the Victorian Association for the Care and Resettlement of Offenders), which provides a wide suite of publications, Flat Out and the Centre for Human Rights of Imprisoned People (which co-presents *Inside Access* sessions).

Beyond the legal assistance sector, there are various non-legal education initiatives that may have a legal component – for example, financial counselling. This reflects the breadth of social, economic and health issues with a legal component. These initiatives were not mapped as part of this discussion paper.

Specialist pilots and projects

In addition to general regular legal advice services, over the past 18 months two community legal centres have piloted specialist services for prisoners in two prisons.

Since August 2014, Justice Connect's Homeless Law program has been piloting a specialist tenancy and debt project. The project is set to run for 12 months and provides specialist advice and representation on tenancy and debt matters. The project aims to prevent homelessness upon release, reduce disadvantage and increase the prospect of successful reintegration by sustaining tenancies for prisoners and reducing, resolving and managing debts and infringements. The project operates out of Port Phillip Prison but has also seen an increase in referrals for housing assistance from other prisons. The project received 120 referrals in the first six months, of which the majority were debt or credit issue and the majority of clients being on remand, and assisted a total of 38 clients.²⁹

The Brimbank Melton Community Legal Centre *Clean Slate* pilot project also addressed the issue of debt and infringements. This pilot operated out of Dame Phyllis Frost Centre and involved bulk negotiations on behalf of prisoners to address outstanding debt and fines. The project assisted 122

²⁹ More details on the Justice Connect project can be found in the six month project report, see: L Adams and A Lyons *Debt and Tenancy Legal Help for Prisoners: Six month project report* (Justice Connect, March 2015).

female prisoners over a course of five visits during a period of four months. During the visits, the project team delivered community legal education to prisoners and compiled information about the participating prisoners' debts. After running credit reports and linking with the deemed served program, it was able to negotiate with creditors through both one-on-one meetings and roundtables. As of August 2015, \$188,673 of debt had been waived or written off. Twenty companies participated, including banks, telecommunications, water, energy, debt collection and credit reporting agencies and the Energy and Water Ombudsman. In addition to waiver of debt, 15 clients were able to concurrently serve additional infringement warrants as part of the Deemed Served Program. As a result of the project, a new energy and water provider notification system will be established that will enable prisoners to avoid further energy and water debt.³⁰

Both the Justice Connect and Brimbank Melton Community Legal Centre pilots demonstrate the need for legal assistance in civil law areas. More extensive evaluations of both projects, if they continue beyond the pilot stage, could allow for a clear link between legal assistance and reducing reoffending and recidivism to be established. Both projects are currently looking to grow and continue beyond the pilot stage.

Other jurisdictions

While the focus of the mapping undertaken by the VLAF Prisoners Working Group was specifically on legal assistance provided to Victorian prisoners, it is useful to look at the services provided in other comparable states. Both New South Wales and Queensland have dedicated prisoner legal services, servicing both legal issues relating to prison and other legal issues that may relate to prisoners' lives outside.

In New South Wales, the Prisoners Legal Service is a statewide specialist service operated by Legal Aid New South Wales. The service provides advice, minor assistance and representation to prisoners. Services include a phone line for prisoners during business hours and a duty lawyer allocated to parole matters four days per week. The service provides weekly and fortnightly outreach to almost all prisons. The Prisoners Legal Service deals with mainly criminal matters relating to incarceration, but also a range of family law and civil law matters. All prisoners have access to the Prisoners Legal Service phone line from the prison phone system.³¹ Prisoners also have access to LawAccess NSW, the statewide phone line for the general public, and this line receives a large number of calls from prisoners. Legal Aid New South Wales also provides an education program targeted to prisoners and their legal needs, *Back on track: legal education for prisoners*. This program consists of six educational DVDs, with accompanying brochures, which provide information about legal issues prisoners commonly face and how to get help. Topics include housing, debt, care of children and fines.³²

Queensland has two specialist services dedicated to prisoners: the Prisoners' Legal Service Queensland, a specialist community legal centre, and the Legal Aid Queensland Prison Legal Advice Service. The Prisoners' Legal Service provides legal advice, information and referrals for

³⁰ More details on the Brimbank Melton Community Legal Centre pilot project can be found in the final project report, see: S Tonkin *Clean Slate: Pilot Project Report* (Community West (Victoria Ltd), 2015).

³¹ Legal Aid New South Wales, *Prisoners Legal Service* (3 February 2015) <http://www.legalaid.nsw.gov.au/what-we-do/criminal-law/prisoners-legal-service>.

³² Legal Aid New South Wales, *Back on track: legal education for prisoners* (6 July 2015) <http://www.legalaid.nsw.gov.au/what-we-do/workshops/back-on-track>.

prisoners and their families on matters relating to their imprisonment. The service includes a prison phone line for limited hours two days per week. It assists prisoners in their transition back to the community with a program called *Safe Way Home*, and provides a specialist service to families of prisoners once a week.³³ Legal Aid's Prison Legal Advice Service has a phone service that operates during business hours and provides initial triage for a face-to-face or video conference appointment service. It deals only with matters not dealt with by the Prisoners' Legal Service.³⁴

³³ Prisoners' Legal Service *About us* (undated) http://www.plsqld.com/Prisoners_Legal_Service/About_Us.html.

³⁴ Legal Aid Queensland *Prison legal advice service* (September 2013)
http://www.legalaid.qld.gov.au/publications/Factsheets-and-guides/Factsheets/Documents/fs_PrisonServices.pdf.

Gaps in legal assistance currently available to prisoners and factors impacting on access

The exercise of mapping the legal assistance available to prisoners across Victoria demonstrated that there are some services to assist prisoners with their legal issues, however there are gaps in service availability, intensity, frequency and co-ordination. In addition to this, a number of wider systemic and contextual factors impact on a prisoner's ability to access legal assistance.

Availability of legal assistance

While all prisoners, in theory, can access a visiting lawyer, the legal assistance provided – across advice, education and case work – varies somewhat between prisons.

A significant gap in the availability of legal assistance to prisoners across all prisons is the lack of access to a phone line. Prisoners currently have direct phone access to the Victorian Ombudsman and the Health Services Commissioner, but do not have access to a legal service in terms of pre-programmed lines available to all prisoners. This is in contrast to the general Victorian public, which can access VLA's Legal Help line, government department helplines such as Consumer Affairs, or a community legal centre or VLA office directly, and to prisoners in other states who have access to dedicated phone lines as outlined above.

In terms of face-to-face services, location plays a role in the availability of legal assistance to prisons. While generally legal assistance services are placed and resourced in accordance to an area's population and, increasingly, to an area's relative social disadvantage, prisons are often located in areas of low population and not necessarily areas of high social disadvantage. This means many of Victoria's large prisons are in areas where there are limited services, and areas with small community legal centres and Legal Aid offices, rather than in metropolitan Melbourne where there is greater service availability.

For example, Dame Phyllis Frost Centre has capacity for 386 prisoners in Ravenhall, in Melbourne's West. In addition to the legal information theoretically available in all prisons, prisoners at Dame Phyllis Frost Centre receive additional support from:

- the bulk debt Clean Slate project,³⁵
- regular community legal education sessions from the Mental Health Legal Centre's *Inside Access* project and the Prisoners Legal Education Assistance project,
- visiting lawyers from four different services: Victoria Legal Aid, Victorian Aboriginal Legal Service, FVPLS Victoria and the Mental Health Legal Centre.

These services are not necessarily duplicative and are distinct and in some case specialist in nature (for example, legal assistance for women with mental health issues or bulk debt negotiations). Dame Phyllis Frost Centre houses a number of particularly vulnerable client groups, for example a number of Aboriginal and Torres Strait Islander women. However, by comparison, the similarly sized Loddon Prison near Castlemaine with capacity for 452 prisoners receives no additional legal assistance beyond the weekly visit by the visiting Victoria Legal Aid lawyer. Beechworth Prison, around three hours' drive from Melbourne and an hour and a half from the nearest Legal Aid office in Shepparton,

³⁵ As of July 2015, Brimbank Melton was planning to run *Clean Slate* at Dame Phyllis Frost Centre again.

and a minimum security prison with capacity for 240 prisoners with a focus on education, treatment programs and pre-release services, receives just a weekly appointment phone legal advice service.

A lack of services for regional areas is an issue across the social services sector, not just legal assistance services for prisoners. However, the somewhat unique nature of prisons, where social disadvantage is concentrated and often not tied to the local needs, population or disadvantage of the area in which it exists, means the problem of underserved prisons is heightened.

In metropolitan areas, prisoners' legal issues are still significantly under-served, especially when compared to other essential services for prisoners such as healthcare. The strain on the services that do exist is heightened by the sharp increase in Victoria's prison population, which increased by 68.7 per cent over the past ten years – from a total population of 3,642 in 2004 to 6,113 in 2014.³⁶ In particular, the two-year period between June 2012 and June 2014 saw an increase of 1,229 prisoners in the total Victorian prison population.³⁷

Types of assistance

As explored above, the legal needs of prisoners are diverse, complex and often numerous, and spread across a number of areas of law. Currently there are only a small number of specialist pilots (i.e. pilots that focus on a particular area of law) provided to prisoners, in addition to the referrals that can be and are made to specialist legal services or programs (within VLA, CLCs or Aboriginal legal services) from visiting lawyer services. There would be merit in having on-going specialist projects providing assistance to prisoners to complement general advice services. These projects would also benefit from the provision of clear, consistent messaging at intake, in terms of appropriate referrals from staff and prisoners being aware of potential avenues to address their legal issues.

One benefit of a specialist service may be that it draws attention to a particular issue facing prisoners as a population – for example, homelessness or debt. Greater visibility of and attention on these issues may increase referrals and awareness amongst prison staff about avenues for assisting a prisoner. For example, Justice Connect's Homeless Law program experienced a doubling of referrals from prison staff in the six months the project operated, the majority of which related to sustaining tenancies.³⁸ While this was a relatively small number, from seven to fourteen referrals, it suggests that the specialist project assisted in increasing referrals from prison staff. Further evaluation would assist in determining whether specialist services increase referrals and awareness of certain legal issues relevant to prisoners.

Specialist, targeted projects may also be able to operate at a more systemic level, such as the *Clean Slate* project, which enables large numbers of prisoners to benefit from a large-scale legal intervention rather than one-on-one assistance. Currently, only prisoners at Dame Phyllis Frost Centre have been able to access the *Clean Slate* project, but this model could be scaled up and rolled out to prisons across the state, with the proper resourcing and training of staff required to deliver sessions and work with prisoners. The fact that arrangements have already been brokered with creditors, and creditors have shown a willingness to extend the project, would make some aspects of scaling the project easier.

³⁶ Corrections Victoria *Corrections Statistics: Quick reference* (30 June 2014)

<http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/corrections+statistics+quick+reference>.

³⁷ Department of Justice and Regulation *Key Statistics on the Victoria Prison System 2009-10 – 2014-15* (2015), 12.

³⁸ L Adams and A Lyons, above n 30, 5.

Model of service

The visiting services run by VLA to all prisons, and by the Aboriginal legal services and some community legal centres in select prisons, largely run on a drop-in clinic model. Drop-in clinics ensure a regular presence is maintained in a prison, and staff and prisoners know when to expect a lawyer. A regular clinic also means the service continues to be available to a population that is by its nature frequently changing, and a regular physical presence allows for relationships to be built with prison staff and prisoners to be more aware of the availability of a lawyer. However, visiting lawyer services best function when they are well triaged and co-ordinated across services.

In the prison context, a triaged and co-ordinated model of service would allow for an early assessment of what assistance is required, which service is best placed to provide it and how the service is to be provided. For example, it may be the prisoner needs simple information that could be provided over the phone, such as their existing lawyer's phone number. If legal advice is required, triage would determine which service is most appropriate – for example, it may be that the client is Aboriginal and would like assistance from an Aboriginal legal service, or it may be that the prisoner needs advice in a short time-frame and the VLA lawyer is best placed to provide face-to-face assistance given the frequency of its advice service. A well-triaged service would also ensure that prisoners are better prepared for their advice session, for example with the necessary paperwork.

While some prison staff assist in terms of a basic triage function and directing prisoners to the visiting lawyer service, this is generally based on relationships formed over time with the lawyer rather than a triage model of service. A phone triage system that acts as an entry point to the services available to prisoners could help to ensure prisoners have access the appropriate assistance and ensure lawyers' time is best used to assist those who need it most.

Use of community legal education and information

While there is some targeted legal education and information being delivered to prisoners across Victoria, there is not a large volume and it does not exist in a variety of modes or in a way that means prisoners receive consistent education at pre-sentence, during their sentence and upon release. It is somewhat ad hoc, reflecting the fact many services are not well resourced; instead, much of the work is done 'over-and-above' core business or on a voluntary basis. It also reflects the fact that, when compared with the general community, the 'distribution channels' for information and education into prisons are limited, have barriers to access or are not as well-understood by service providers wanting to deliver education or information into prisons. The access to distribution channels can also be contingent on local rules of a prison. There are also issues in how to best promote education or information to prisoners.

Given the lack of access to the internet and lower levels of literacy in the prison population, face-to-face sessions tend to be a more effective mode of delivery. A major function of community legal education is increasing awareness of legal and non-legal services available to people when they need advice or assistance, and empowering them to seek assistance. This aspect of community legal education requires the availability of services to refer to and well-developed linkages with services that can provide assistance and advice and the information when the prisoner is ready and able to seek assistance.

If agencies with visiting services do outreach into prisons, the community legal education requires referral pathways to those services. If linkages are with services that do not provide visiting services, then a significant barrier exists with the lack of access to a phone line. In NSW, the community legal

education project *Back on track*, detailed above, ends its videos with a ‘call to action’ encouraging prisoners to call the LawAccess phone line. In the Victorian context, ensuring access to a phone line and other legal services in prison may need to be part of a legal education program to ensure prisoners can access the support they need.

The *Taking Justice* report expressly identified the quality and currency of legal information and the restrictions on accessing legal information as barriers to accessing legal assistance.³⁹ Further, it noted the fact the processes for obtaining information are themselves a barrier to access given the limited capacity of prisoners as a group, especially in regards to literacy and cognitive impairment.⁴⁰ These factors need to be kept front-of-mind in considering the legal information and education strategies for prisoners.

Well-designed community legal education strategies for prisoners are likely to include working with ‘trusted intermediaries’ – services and individuals that have established relationships and regular contact with prisoners and also by building legal messages into broader information and support programs. More generally, well-designed strategies should be informed by the end-user and their preferences for learning styles. In the prison context, there are challenges in accessing prisoners for the purposes of running focus groups or user testing, activities which are easier to organise with groups of people in the community.

In designing community legal education strategies, there is scope for community legal education that is tailored to the general prison population or to key demographic groups within it, for example, for CALD groups with significant prison populations such as Vietnamese or Pacifica people; for Aboriginal and Torres Strait Islander prisoners; prisoners with mental health issues or cognitive impairment; female prisoners; or prisoners on shorter sentences. This is work that could build on information or education currently targeted to these groups (by, for example, *Inside Access* and VACRO).

Central to the success of a community legal education strategy is a co-ordinated education function within Corrections Victoria, which can provide oversight and insight into the educational needs, distribution channels and services across all prisons.

Other factors impacting on access

Ensuring prisoners have real, rather than theoretical, access to legal help involves addressing a number of other significant barriers to access. These other factors are discussed at length in the *Taking Justice* report, and although specific to New South Wales’ system, may be broadly applicable to Victoria. These factors include:⁴¹

- difficulties obtaining information in prison, including about the visiting lawyer service and how to get advice
- issues communicating with lawyers, including the brevity of legal advice sessions and the complexity of issues discussed
- ‘limiting’ beliefs held by inmates, including perceptions about negative consequences from engaging with the legal system and fears around losing certain privileges.

³⁹ Grunseit, Forell & McCarron, above n 3, 264.

⁴⁰ *Ibid*, 266.

⁴¹ *Ibid*, xix.

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- lack of information about possible legal remedies and how to initiate or participate in a legal process while in prison
 - inefficiencies in processes that mean it may take some time to get legal assistance
 - lack of direct access to government departments and restrictions on legal transactions inmates are allowed to make as inmates.

As touched on at various points in this discussion paper, some of the most significant factors impacting on a prisoner's ability to access legal assistance while in prison are systemic. As stated in the *Taking Justice* report:

Given the significant systemic barriers they face to addressing multiple legal issues from inside jail, inmates need to be motivated, tenacious, articulate, patient, organised and familiar with the law and legal process to successfully address their legal needs. In contrast, the profile of the prisoners in NSW is characterised by high rates of illiteracy, mental health issues, alcohol and other drug misuse, and cognitive impairment. Many prisoners had limited or interrupted education. Periods in custody had served to decrease inmates' confidence and skills at being able to function constructively when they return to the community.

There are many other factors that mean prisoners are less likely to identify, act upon and ultimately seek legal assistance. Some of these, like those set out above, are likely to be common across the wider Australian prison population; other issues will be specific to the Victorian prison system. A deeper understanding of the broader issues impacting on Victorian prisoners would assist in best planning the legal assistance sector's response; however, existing literature and the mapping of Victorian services as detailed in this discussion paper provide a start point for considering an improved way of addressing prisoners' unmet legal need.

A sector-wide approach to prisoners' legal needs

While further research on the legal needs of Victorian prisoners would be useful, there is evidence of significant unmet legal need within the Victorian prison population. Traditionally, there has been a focus on servicing the criminal legal needs of prisoners, however it is clear that prisoners experience varied and multiple civil and family law needs. While there are some services provided to some Victorian prisoners, a more co-ordinated, well-invested approach to prisoners' legal needs is necessary to begin to address the unmet legal need in prisons – especially in the areas of civil and family law.

This paper provides a range of initial recommendations for the legal assistance sector to better meet the legal needs of prisoners.

Access to a phone line

- A phone line for prisoners and their family members to seek legal information and advice or triage (if further assistance is required). The phone line could also improve triage of visiting services to minimise unmeritorious or poorly directed queries and ensure appropriate referrals to other services (legal or non-legal).

Information and assessment at intake and pre-release

- Clear, consistent information for prisoners at intake and pre-release, with a focus on ensuring prisoners and prison staff can identify legal issues and can seek assistance through a clear, simple pathway (a phone line as an entry point, with triage to identify the most appropriate type of assistance)
- Legal health checks for prisoners at intake and release as part of existing intake or pre-release processes.

Improved coordination between existing services

- Greater coordination between legal information education services and visiting lawyer services so that prisoners have the opportunity to move from information at intake to advice, case work or another referral as appropriate, with an emphasis on ensuring legal information and education services are frequent and consistent
- Developing coordinated, targeted and high quality community legal education strategies (or building on existing localised initiatives) to address common legal issues in prisons, and to set out clear pathways for prisoners to more independently pursue to resolve legal issues
- Improved and regular engagement with 'trusted intermediaries' and 'gatekeepers', such as prison staff and other social support services in a prison environment.

Capacity building

- Increased availability of specialist services focussing on particular legal issues (such as homelessness, family law issues and debt)
- Increased services to prisons outside metropolitan Melbourne
- Targeted services to prisoners coming to the end of their sentence, with a focus on unresolved civil and family law issues that may impact on their reintegration

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- Further expansion and measurement of specialist projects that maximise the impact of legal interventions, such as the bulk debt *Clean Slate* project
 - Creation of a new position within Corrections Victoria that focuses on co-ordinating access to services and providing education and information, and which can be a key linkage between the legal assistance sector and all prisons.

These options reflect some of the current challenges and gaps the Victorian legal assistance sector faces in addressing the legal needs of prisoners. Each option will involve variable levels of investment for different services, and many will require greater co-ordination between existing services.