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WEstjustice

Fitzroy Legal Service, WEstjustice and Youthlaw Submission to the Sentencing Advisory Council regarding *"Reforming Adjourned Undertakings in Victoria"* (2022)

18 October 2022

Fitzroy Legal Service, WEstjustice and Youthlaw acknowledge that our offices are located on the lands of Wurundjeri People of the Kulin Nation whose sovereignty was never ceded. We pay our respects to their Elders past, present and emerging.

This submission was authored by Bess Smallwood (Fitzroy Legal Service) with contributions from Meghan Fitzgerald (Fitzroy Legal Service), and is based on the recommendations of the Fitzroy Legal Service Crime and Generalist Services lawyers, Tim Hutton (Youthlaw) and Angus Woodward (WEstjustice).

About Fitzroy Legal Service

Fitzroy Legal Service (‘FLS’) was established in 1972 and has been operating for 50 years to support access to justice. In 2019 we merged with the Darebin Community Legal Centre and now operate from three offices across Fitzroy, Reservoir and the Neighbourhood Justice Centre in Collingwood. FLS provides criminal, family, family violence and generalist legal services to socially and economically disadvantaged clients with a particular focus on people stigmatised and criminalised due to poverty, homelessness, childhood abuse, family violence, trauma, drug use, psycho-social disability, contact with the criminal justice system and incarceration.

The FLS lawyers who participated in providing perspectives to this submission work as:

(a) Duty lawyers at the NJC – adopting a holistic, integrated service model with a wide array of professionals working in support services; all criminal proceedings finalising at NJC are by way of plea, with a strong focus on supported and realistic approaches to rehabilitation; most criminal proceedings resolve in an adjourned undertaking or deferral of sentence.

(b) Senior criminal lawyer & generalist legal services lawyers– includes a broad range of indictable and summary criminal matters, and a number of lawyers working across criminal and civil jurisdictions to support holistic outcomes for community impacted by poverty, health and other factors in their engagement with legal systems.

(c) Drug outreach lawyers – operating an outreach-based health justice partnership for over twenty years, with a focus on acknowledging and providing support around AOD and homelessness drivers of criminalisation; the majority of clients are engaged in low level recidivist offending.

(d) Community outreach lawyer – working in partnership with St Vincent’s Hospital Complex Care Services with a focus on homelessness and mental health drivers of criminalisation and other legal issues.

A majority of clients accessing our service for criminal law matters experience disability in the form of chronic mental health, cognitive impairment, in addition to poverty, homelessness/ housing insecurity and victimisation. A significant proportion of our criminal law clients are CALD, Aboriginal and/or women.

About WEstjustice

WEstjustice is a community organisation that provides free legal help to people in the Western suburbs of Melbourne. We provide a range of legal services (referral information, advice, case-work, in court representation and community legal education) and broader systemic advocacy on behalf of communities in the western suburbs of Melbourne. Our offices are located in Footscray, Werribee and Sunshine, with a number of integrated services available in other locations including hospitals, youth hubs, community centres and schools. In recent years, given the demand on our services, we have honed our focus to the following impact areas:

1. Young people;
2. Culturally and linguistically diverse (CALD) communities;
3. People experiencing gender-based violence; and,
4. People experiencing economic vulnerability.

Most of our services are delivered through multidisciplinary place-based partnerships, which has crystallised in us understanding that good legal outcomes are inextricably linked to good life outcomes. Therefore, much of our broader systemic impact work seeks to address the causes of the causes, rather than reactionary service delivery. Our practice areas include employment, discrimination, family violence, VOCAT, tenancy, fines, consumer and debt. We also run a broad criminal law practice that prioritises children and young people (aged 10- 25), clients from CALD communities, those newly arrived to Australia, and victims of family violence caught up in the criminal justice system. It is through this unique lens, as the largest western suburbs community legal service, and a provider of essential criminal law services, that we contribute to these submissions.

About Youthlaw

Youthlaw is Victoria's state-wide community legal centre for young people under 25 years of age.

Youthlaw focuses on assisting vulnerable and disadvantaged young people who are at risk of disengagement from their community, education, training, employment and likely to engage with the criminal justice system.

Youthlaw provides legal support, advice and representation to a significant number of young people having contact with police and/or dealing with criminal charges. The majority present with lower level and circumstantial criminal offending but also have a range of other legal issues including debt, fines, victimisation, family and relationship issues, as well as presenting with and experiencing a range of non-legal issues homelessness, risk of family violence, mental health, use of alcohol and other drugs and long-term unemployment and disengagement with education.

Youthlaw's criminal practice is managed by Principal Criminal Lawyer, Tim Hutton and supported by a number of lawyers working across various legal services programs, including the legal help line, outreach program (via Headspace centres), clinics at Frontyard Youth Services (a service assisting young people experiencing homelessness), Family Violence Program and health-justice partnership with Ballarat Community Health.

About this submission

This submission is a collaboration between criminal lawyers from FLS, Youthlaw and WEstjustice. It includes responses to the Discussion Questions posed in the Sentencing Advisory Council *"Reforming Adjourned Undertakings in Victoria" Consultation Paper* (August 2022).

The initial basis of this submission was formed from two meetings between criminal lawyers from the FLS Crime and Generalist Services team. Notes taken from those meetings were reviewed by Tim Hutton, Principal Criminal Lawyer at Youthlaw, and Angus Woodward, Program Manager of Criminal Law & Youth Law Clinics at WEstjustice, who provided contributions to the responses.

Background

Offending that may result in the imposition of an adjourned undertaking is core work for the community legal sector. Without risk of imprisonment, clients are generally ineligible for a grant of legal aid, but may have circumstances of such complexity and disadvantage, that reliance on VLA duty lawyer services is insufficient to deliver equitable outcomes.

CLCs across the state are engaged in long-term partnerships with community-based health and social services, a practice that has developed and been consolidated in recognition the value of a holistic practice of law, having regard to the social determinants of health and their direct relationship with engagement with criminal justice processes.

In this context, adjourned undertakings are one of the most critical sentencing options available to our client base. This is because of the flexibility permitted under this disposition for the court to consider a broad range of circumstances and underlying causes in tailoring a sanction that can be supportive whilst reflecting the admonishment of the court.

Adjourned undertakings are important because they do the following:

1. They reduce stigmatisation of accused, and particularly marginalised, vulnerable and young people by avoiding ongoing contact with courts and Corrections;
2. They promote rehabilitation, and allow for accused people to engage with existing and/or appropriate support services and treatment;
3. They minimise disruption to accused people's responsibilities (and protective factors) in the community, such as caring, employment and education;
4. They provide a community-based sentencing option for accused people who are unable, by virtue of their marginalisation, vulnerability and/or youth, to complete a Community Correction Order ('CCO').

At the outset, it is critical to state that for many CLC clients, judicial and Corrections-based interventions have limited utility in addressing the underlying drivers of offending.

This is an exercise which requires high levels of flexibility, expertise, and detailed but nuanced knowledge of the individual, inclusive of protective factors, existing supports, triggers. Generally, it is our experience that such interventions are best achieved in the context of a therapeutic as opposed to coercive model that acknowledge the deep challenges faced by our clients.

This submission and responses to the recommendation questions should be read in the overarching context that the CLCs engaged in this exercise are committed to expanded and supportive community-based options to address underlying drivers and are opposed to any amendments that could result in a limiting of options that meet such criterion.

With this in mind, the responses provided in this submission should be read within a number of overarching purposes:

1. To expand the use of adjourned undertakings;
2. To protect the flexibility currently available to sentencing courts when imposing adjourned undertakings;
3. To increase the accessibility and understanding of adjourned undertakings;
4. To encourage rehabilitation and engagement of appropriate services;
5. To limit ongoing judicial and Corrections-based intervention where possible;
6. To avoid the imposition of orders where a person, due to their marginalisation, vulnerability or youth, is unable to comply with that order.

Discussion Question 1: Are the current supplementary purposes for imposing adjourned undertakings in section 70 of the *Sentencing Act 1991* (Vic) adequate and sufficient? If not, should they be amended and, if so, how?

Suggested reforms:

- Addition of the following further purposes:
  1. To reduce the impact of criminalisation on people who are marginalised, including but not limited to young adults, culturally and linguistically diverse peoples, Aboriginal and Torres Strait Islander people, people experiencing mental health diagnoses, people experiencing addiction to drugs or alcohol, and people experiencing homelessness;
  2. To address the underlying causes of offending;
  3. To avoid the imposition of court orders with which a person is unable to comply;
  4. To take account of a person's youth;
- Replace "trivial, technical or minor nature" with "the objective seriousness of offending", in order to remove the association of adjourned undertakings with only very low-level offending, and instead utilise a term more broadly used and understood, and which allows sentencing courts to consider the wider circumstances of the offending and the accused person;
- Replace "extenuating" with "mitigating", to reflect the language more commonly used by sentencing courts.

Discussion Question 2: Should these orders continue to be described as 'adjourned undertakings'? If not, what would be a more appropriate description?

The term "adjourned undertaking" utilises words not commonly used or easily understood by people outside the legal profession. The term "adjourned" can also create confusion around whether a matter has been finalised, or a person sentenced, in practical terms.

Suggested reform:

- We recommend replacing the term "adjourned undertaking" with "unsupervised sentence agreement" or "good behaviour agreement".

These terms use commonly understood words and avoid confusion. The word "agreement" is more empowering in its involvement of an accused people in the sentence, rather than something that just happens to them. It also makes it clear that failure to comply with the conditions breaches an agreement, and would have consequences.

"Unsupervised sentence agreement" is preferred as it is representative of the fact many conditions imposed in adjourned undertakings do not relate to good behaviour, and are often the focus or most important part of the undertaking.

Discussion Question 3: Should the *Sentencing Act 1991* (Vic) be amended to specifically empower sentencing courts to impose a combined order of imprisonment and an adjourned undertaking? If so, how and why? If not, why not?

We are broadly supportive of this amendment.

This option would be useful where a sentencing court has imposed a term of imprisonment and wants there to be structure or some oversight for an accused person upon their release, but where a CCO is not appropriate. This is particularly relevant where a person has existing supports in place or responsibilities in the community (e.g. employment, caring, education), requires engagement with services that are tailored to their needs, are unable to comply with the onerous requirements of a CCO, or have already served a substantial period of imprisonment.

This amendment would effectively simplify the process of a sentencing option already being exercised. It is our experience that courts adopt this approach in practice by imposing imprisonment on one or a number of charges, and an adjourned undertaking on one or more of the other charges.

Our concern with this amendment lies in the potential that courts will impose adjourned undertakings in combination with terms of imprisonment where previously they would not have imposed an additional community-based order upon release.

Suggested reform:

- Include a provision that states an adjourned undertaking is only to be imposed in combination with a period of imprisonment where the court is considering a combination sentence with a CCO.

Discussion Question 4: Are there any issues with access to adjourned undertakings in regional Victoria? You may wish to consider whether there are certain resources that could be made available that would increase or improve the use of adjourned undertakings in specific regions.

Due to none of our services being based in regional Victoria, we do not provide a response to this question.

Discussion Question 5: Are there reforms that could be made to adjourned undertakings that could reduce the disproportionate effect of the criminal justice system on marginalised groups? If so, what reforms would you propose and why?

Good behaviour condition

The requirement of good behaviour as currently legislated disproportionately affects marginalised people, who are more likely to come in contact with police and be charged on account of their belonging to a marginalised group (e.g. people who experience homelessness, mental health diagnoses, cognitive impairment or addiction to drugs or alcohol, people who are profiled due to race, class or youth, and people who live in areas with higher police presence).

Further, the current definition (or lack of definition) of "good behaviour" captures offences that are directly linked to marginalisation, such as low-level drug possession, shop-theft and other poverty-related offences, as well as charges emanating from interaction with police (e.g. resisting arrest).

Suggested reforms:

- Narrowing the definition of "good behaviour" (see below response to Discussion Question 8);
- Making the "good behaviour" condition optional, either completely or subject to a "special circumstances" test relating to categories such as marginalisation, vulnerability and youth;
  (Note: this would effectively have the same impact as a fine – a sentence that is imposed without creating the possibility of re-sentencing if the person commits another offence within a set subsequent period).

Requirement to provide proof of engagement with services

The requirement to provide proof to the sentencing court of engagement with services is more onerous for marginalised, vulnerable and young people and leaves them more vulnerable to breach proceedings.

Suggested reforms:

- A condition requiring proof of engagement with a service should not be imposed where there is a significant risk that the person will be unable to provide such proof.

Availability and accessibility of services and programs

The lack of availability and delay in accessing free/affordable services or programs ordered as part of an adjourned undertaking makes these conditions more onerous for marginalised, vulnerable and young people, leaving them more vulnerable to breach proceedings.

Suggested reforms:

- Undertaking forms should include details of what to do if an accused person is unable to access a service or program, or provide proof of engagement;
- The court bears the cost of programs ordered as a condition of an adjourned undertaking, either generally or in the case of a person with "special circumstances" (categories relating to marginalisation, vulnerability and youth); or
- Where a person has "special circumstances", a sentencing court can only order completion of a program or engagement with a service as a condition of an undertaking where:
    a. The service or program is free; or
    b. The court will bear the cost of the service or program.

Discussion Question 6: Should the *Sentencing Act 1991* (Vic) be amended to restrict the maximum length of adjourned undertakings in the Magistrates' Court? If so, why? If not, why not?

We are not supportive of an amendment to restrict the maximum length of adjourned undertakings. We are broadly supportive of sentencing courts having a wide discretion to deal with matters on a case-by-case basis, and do not support time limiting what is currently one of the least restrictive and stigmatising sentencing options available.

Our concern in relation to the length of adjourned undertaking pertains is the imposition of undertakings that are excessive or longer than what is necessary to affect the purpose of the undertaking, and sentencing principles more generally.

Suggested reforms:

- When considering the length of an adjourned undertaking, a sentencing court must:
    a. Impose a length no longer than is necessary to fulfil the purposes of section 70; and/or
    b. Take into consideration any period of good behaviour between the commission of the offence/s and the date of sentence;
    c. Take into consideration any "special circumstances" (categories relating to marginalisation, vulnerability and youth).

Discussion Question 7: Is there scope to increase the use of judicial supervision as a condition of adjourned undertakings?

The increased use of judicial supervision as a condition of adjourned undertakings is a complex issue, with arguments to be made from both sides in line with our overarching purposes.

In favour of the increased use of judicial supervision, this change could raise the number of undertakings being ordered instead of CCOs, as more judicial officers may be willing to impose adjourned undertakings in circumstances where they are able to ensure that conditions are followed beyond the date of sentence. This would work towards filling a perceived gap in community-based sentencing options between adjourned undertakings and CCOs.

In opposition to the increased use of judicial supervision are the following points:

- There are already other sentencing options available that facilitate judicial supervision (i.e. sentence deferrals, CISP episodes and CCOs);
- If an accused person does not fulfil the conditions of an adjourned undertaking, they can be called in and dealt with by the sentencing court;

- Keeping accused people away from the court system and reducing stigma is an important function of adjourned undertakings;
- The requirement of judicial supervision is more onerous for people who are marginalised, vulnerable and young, who may have more difficulty attending court. This is heightened by the fact many people subject to an adjourned undertaking will no longer have a legal representative involved in the matter, nor will they have a Corrections worker to notify or remind them of a court date. We are aware of a relatively widespread issue of accused people being unaware that they have been called on by a court to attend for adjourned undertaking breach proceedings.

Our position is that the potential increase in the number of adjourned undertakings imposed due to the availability of judicial supervision is unlikely to be substantial, and is outweighed by the risk posed to marginalised, vulnerable and young people should undertakings become more onerous and require increased contact with the court system.

Youthlaw further submits that rather than introducing judicial supervision as a way to fill the gap between adjourned undertakings and CCOs, more funding should be provided to CISP to make it more widely available as a deferral option. Youthlaw's experience is that due to limited resources, CISP is often not available unless an accused person is remanded or at risk of a prison sentence.

Discussion Question 8: Is there a need to clarify the definition of 'good behaviour' in sections 72 and 75 of the Sentencing Act 1991 (Vic)? If so, why and how? If not, why not?

We are supportive of narrowing the definition of "good behaviour". See response to Discussion Question 5.

<u>Suggested reforms:</u>

- Narrowing the definition of "good behaviour" in any one or combination of the following ways:
  a. To only include indictable and family violence-related offences (excluding low-level drug possession and shoptheft);
  b. To exclude a list of specific offences, particularly ones that tend to contribute to the criminalisation of marginalised, vulnerable and young people (e.g. low-level drug possession, shoptheft);
  c. To exclude non-convictions;
  d. To exclude offences capable of being dealt with by way of an infringement (as well as shoptheft, low-level drug possession);
  e. To exclude victim-less crimes;
  f. To exclude any offence that has a lesser penalty than the offence in relation to which an adjourned undertaking was originally imposed.

Discussion Question 9: Is there a need for legislative or other guidance about the optional conditions that can be attached to adjourned undertakings? If so, why and what type of guidance? If not, why not?

We are broadly supportive of retaining as much as possible the current wide discretion available to sentencing courts in imposing optional conditions as part of adjourned undertakings, for the reasons provided in Background of this submission.

<u>Suggested reforms:</u>

- An accused person or legal representative must have the opportunity to address a sentencing court in relation to any proposed optional conditions;

  (Note: this will serve to avoid the not uncommon situation where the sentencing court imposes optional conditions that are inappropriate or unworkable. This is particularly important for self-represented accused people who are less likely to raise issues with

proposed conditions without explicitly being provided the opportunity to do so, and even more-so for those who are marginalised, vulnerable or young);

- Sentencing courts must not include any condition requiring an accused person to submit to drug testing;
  (Note: these conditions criminalise marginalisation and are in conflict with mainstream and health-centred approaches to addressing drug dependence);
- In considering whether to include engagement with a service or program as a condition of an undertaking, the sentencing court must have regard to the availability of such a service or program to that person within the required timeframe;
- Where a person has "special circumstances" (categories relating to marginalisation, vulnerability or youth), a sentencing court can only order engagement with a program or service as a condition of an undertaking where:
  a. The service or program is free; or
  b. The court will bear the cost of the service or program;
  (Note: see Discussion Question 5);
- A condition requiring proof of engagement with a service or program should not be imposed where there is a significant risk that the accused person will be unable to provide such proof.
  (Note: see Discussion Question 5).

Discussion Question 10: **Should Victorian courts continue to be able to require an offender to make a payment to an organisation that provides a charitable or community service, or to the court for payment to such an organisation, as a condition of an adjourned undertaking? If so, why? If not, why not?**

Discussion Question 11: **Should courts continue to be able to order donations to specific charities? If so, is there a need for guidance or limitations about which charities?**

We are supportive of sentencing courts retaining the ability to impose a condition requiring payment, however only to either:

a. The court fund; or
b. An organisation that provides a charitable or community service of the accused person's choice.

This is in line with our support for maintaining flexibility in the discretion of courts when imposing adjourned undertakings, however ensures consistency and avoids the situation where sentencing courts select charities that are inappropriate or conflict with the accused person's values (e.g. payment to a police-related charity where the offences occurred in the course of protesting against police brutality).

<u>Suggested reforms:</u>

- Sentencing courts can only impose a condition requiring payment to either the court fund or an organisation that provides a charitable or community service of the accused person's choice;
- Payment conditions can only be imposed with the consent of the accused person;
- When considering the inclusion of a condition requiring payment to an organisation that provides a charitable or community service or court fund, the sentencing court must make enquiries as to the financial circumstances of the accused person.
  (Note: this is in line with the existing practice when imposing a fine).

Discussion Question 12: **Should there be more transparency in how the Court Fund operates, including how much money it receives and distributes, who receives the funds and how decisions about distribution are made?**

We do not consider this transparency of the operation of the court fund to be a critical issue with respect to our clients in the context of a review into reforms of adjourned undertakings.

However, we have seen examples where the failure of sentencing courts to explain the court fund to an accused person at the time of imposing a payment condition has caused confusion, and a mistaken assumption that the money will be used to fund the court itself.

Suggested reform:

- Where a sentencing court imposes a condition requiring payment to the court fund, the court must explain to the accused person, in brief, the function of the court fund.

Discussion Question 13: Are there any issues with the availability and operation of justice plans as conditions of adjourned undertakings? What changes would you propose and why?

There is currently a widespread lack of awareness among the legal profession and courts around the availability of justice plans as part of adjourned undertakings, not just CCOs.

The use of justice plans may increase the number of adjourned undertakings being imposed in cases involving accused people with an intellectual disability, where a CCO would otherwise have been imposed. In these instances, adjourned undertakings have the potential to be more effective than a CCO, given they are usually less onerous, more achievable, can be tailored around a person's existing supports, and reduce entrenchment in the court system and stigma attached to Corrections involvement.

Suggested reform:

- Increased, targeted education for the courts and legal profession about the availability of and use of justice plans with adjourned undertakings.

Discussion Question 14: Are there any other issues with the optional conditions that currently can be, and are, attached to adjourned undertakings in Victoria?

We do not raise any further issues. See Discussion Question 9.

Discussion Question 15: Should offenders sentenced to participate in programs as a condition of an adjourned undertaking be required to pay for those programs themselves, or should they be paid for by the state?

We submit that where a program requiring payment is ordered as a condition of an adjourned undertaking, the state should bear the cost of that program. This would reduce disproportionate impact of such a condition on marginalised, vulnerable and young people, while increasing the likelihood of participation in programs and enhancing their benefit to the community.

If not global, this should at the very least occur when an accused person has "special circumstances" (categories relating to marginalisation, vulnerability and youth).

Discussion Question 16: Should the Magistrates' Court review the current adjourned undertaking form (CP230-9)? If so, what revisions would you recommend and why?

We submit that the current undertaking reform should be reviewed. It is currently cluttered, contains information that is not relevant to the accused person, uses jargonistic legal language, and fails to provide important information about what to do if there is an issue or the person is unable to comply with the condition/s of an order.

Suggested reforms:

- Removal of any jargonistic or legalistic terms;
- Removal of any unnecessary, unused or irrelevant sections of the form (including where something is left blank);
- Revision of the language used in relation to the requirement to attend court in the future, so that it is made clearer that an accused person will only be required to attend if there has been a breach, and they will be notified of any such requirement;
- Clear setting out of all conditions;
- Include information about what to do if an issue arises during the period of the undertaking or an accused person is unable to comply with a condition of the undertaking – e.g. to contact Victoria Legal Aid or local community legal centre;

    (Note: if the above suggestions conflict with the administrative requirements of the court, a separate sheet should be provided to the accused person that reflects these recommendations);

- Following the imposition of an adjourned undertaking, the accused person should be given the opportunity to provide a postal or email address to the court, to which another copy of the form is sent.

    (Note: it is our experience that many accused people do not or have difficulty retaining the hard copy adjourned undertaking form provided at court, particularly where the person is marginalised, vulnerable or young, and are thereafter unaware of their obligations).

Discussion Question 17: Should the placement of adjourned undertakings in Victoria's sentencing hierarchy be amended? If not, why not? If so, how, why and what consequential reforms would be needed (e.g. to section 70)?

We are not supportive of the notion of a sentencing hierarchy, and instead submit that sentences imposed should meet the purposes of sentencing while addressing the particular circumstances of an accused person with reference to each individual case, rather than simply moving up a scale.

Discussion Question 18: Should sections 72 and 75 of the *Sentencing Act 1991* (Vic) be merged to create a single sentencing order of an 'adjourned undertaking' regardless of whether a conviction is also imposed? If so, why? If not, why not?

Discussion Question 19: Should sections 72 and 75 of the *Sentencing Act 1991* (Vic) be merged to create a single sentencing order of an 'adjourned undertaking' regardless of whether a conviction is also imposed? If so, why? If not, why not?

We do not consider these amendments be critical issues with respect to our clients in the context of a review into reforms of adjourned undertakings. However, we ultimately submit that combining each set of provisions into single clauses may reduce convolution within the legislation.

Discussion Question 20: Should sections 74 and 77 of the *Sentencing Act 1991* (Vic) be retained or repealed? In either case, why?

We do not consider that these provisions present a critical issue with respect to our clients in the context of a review into reforms of adjourned undertakings, and do not make any submission.

Discussion Question 21: Should the *Spent Convictions Act 2021* (Vic) be amended so that findings of guilt become spent at the date of sentencing for

people receiving adjourned undertakings without conviction, rather than at the end of their adjourned undertaking?

We are supportive of this amendment.

Allowing findings of guilt to be immediately spent at the time an adjourned undertaking is imposed is reflective of adjourned undertakings as a therapeutic and undisruptive sentencing option.

The practical effect of charges remaining on a person's criminal record throughout the period of an adjourned undertaking, which can last for several years, is that accused people are requesting alternative, less appropriate sentencing options (i.e. a fine) so that their conviction is immediately spent. This is an inappropriate outcome not only because a fine would be considered more serious and is prejudicial to an accused person should they return to court, but also because a fine does not provide any rehabilitative value and is more onerous for people who do not hold employment.

It is also our experience that accused people whose need for their conviction to be spent is more urgent (e.g. for employment or visa application purposes) are more likely to receive shorter than usual adjourned undertakings to avoid the impact of charges remaining on their criminal record. This means within the consideration by courts of the length of adjourned undertakings, people are benefiting from the fact they may be less marginalised.

Discussion Question 22: Should breaching an adjourned undertaking be decriminalised? If so, why? If not, why not?

We are supportive of the decriminalisation of breaching an adjourned undertaking.

There is already a punitive consequence for breaching an adjourned undertaking, which is the option of re-sentencing. Further, where an accused person breaches an adjourned undertaking by way of new offending, it is already considered an aggravating feature of the new offending that it was committed during the period of the undertaking.

The introduction of a charge for breach of an adjourned undertaking in addition to the option of re-sentencing further criminalises marginalised, vulnerable and young people – see Discussion Question 5. Police practises with regards to charging people with breach offences are inconsistent, creating further room for disproportionate impact on these groups. It is our experience that once a charge is before the court, prosecutors are often unwilling to negotiate or elect not to prosecute a breach charge, even where a condition has been fulfilled by the time it reaches court stage.

Discussion Question 23: What should happen at the end of an adjourned undertaking that has been successfully completed?

We are broadly supportive of the of the existing process for the successful completion of an adjourned undertaking, i.e. no notification or requirement to attend any hearing unless there is an alleged breach.

This is in line with our overarching purpose to reduce as far as possible the unnecessary interaction of accused people with the court system. Additional hearings at the conclusion of undertakings would not only add to backlog and use of court resources, but it necessitates bringing people back to what is a highly stressful and for some traumatising environment, disrupting their day-to-day life, when the matter is ultimately being dismissed.

In relation to notification at the end of a successfully completed undertaking, we only note that it is not uncommon for accused people, particularly marginalised, vulnerable and young people, to change residential addresses within a period of 1-2 years (the common length of an adjourned undertaking). This means that correspondence sent by mail that includes information pertaining to charges and interaction with the court system is often unlikely to be received in any event, and may be accessed by persons other than the accused.

We further submit there should be no further entry on a person's criminal record for the discharge/completion of an adjourned undertaking. Such additional entries unnecessarily lengthen an accused person's record, when successful completion can already be identified by absence of any entry for re-sentencing or a breach offence.