



Reforming Adjudged Undertakings
in Victoria – Consultation Paper

ACSO Response

September 2022

Acknowledgement

The Australian Community Support Organisation (ACSO) would like to acknowledge the Traditional Custodians of the lands on which we live and work, across this nation. ACSO proudly acknowledges Aboriginal and Torres Strait Islander people as Australia's first peoples and pay respect to their rich culture, lores, customs and elders past and present. This document was prepared on the lands of the Wurundjeri, Woi Wurrung and Boon Wurrung peoples of the Kulin Nation of Victoria; the Murri people of Queensland and the Dharawal people of NSW.

We strongly embrace the spirit of reconciliation and will continue to work towards ensuring an equal voice for Aboriginal and Torres Strait Islanders, particularly those who have come in contact with the justice system.

ACSO recognises the right to a safe and inclusive service without bias. ACSO is committed to the equitable treatment of its participants, employees and partners. We believe in humanity and celebrating the diverse voices of our community through leadership, practice, and policy design, to honour and embrace diverse traditions, cultures and experiences of those we support and work alongside.



Executive Summary

A consultation paper was released by the Sentencing Advisory Council of Victoria in August 2022. The purpose was to consider potential options for increasing and improving the use of adjourned undertakings in Victoria. The paper posed 23 questions about potential reforms, including changes to the legislation relating to adjourned undertakings, the conditions that can be attached to them, and responses to breach behaviour.

From the organic beginnings of our founder, Stan McCormack, the Australian Community Support Organisation (ACSO) has grown to be a long-term partner of choice for government and industry to help break the cycle of people repeatedly entering the justice system because they lack the support to make change.

ACSO work with people at risk of entering or who have already entered the justice system. Our work supports, diverts or reintegrates people through a range of services including mental health, alcohol and other drug treatment, intensive residential support, housing and employment. These services span the entire justice continuum from prevention to rehabilitation. ACSO do not exclude people based on their offending history and are equipped to effectively manage risk alongside government.

The quality of our work and the leadership we have shown for over 35 years speaks for itself. We understand the linkages of issues and policies and work to connect across government and industry to evolve services, improve equitable access to services and strengthen the evidence base to prevent people from becoming entrenched in the justice system. This will lead to better outcomes for communities across Australia, our clients and government partners.

ACSO is pleased to provide a response to all 23 questions posed within the consultation paper are noted below. In some instances, the response is brief as ACSO supports the suggestions and recommendations noted by the Council. Where we believe our experience can add further information it has been provided.

ACSO is happy to provide further clarification on any of the responses we have provided and welcome the opportunity for further dialogue on these important issues which ensure everyone has an opportunity to thrive and prison truly is the last resort.



Vaughan Winther

Chief Executive Officer

ACSO Responses

1: Supplementary purposes

ACSO agree with the recommendations noted by the Council in relation to this question.

2: The term 'adjourned undertakings'

It is our view that the current terminology can be somewhat confusing, particularly to those subject to the justice system and for those with English as a second language. The term "adjourned" in particular gives the connotation that there is no restriction or requirement of behaviour until the case is resumed.

We would suggest something simple such as "good behaviour order". ACSO would not support the use of the term "good behaviour bond" which has been used previously as it tends to be understood as referencing monetary bond requirements. We are of the opinion that the suggested terminology provides better understanding for lay people that hold an interest or are subject to the order.

3: A new combined order

With the noted trend away from a combined imprisonment/community corrections order to greater use of a term of imprisonment as well as an adjourned undertaking it is ACSO concern that the creation of such an order would be likely to create additional barriers to success by a person subject to such an order. With adjourned undertakings as currently in place, there is no support provided and all provisions are at the cost of the person receiving the order. With no directional supervision or support ACSO is of the firm opinion that persons subject to such orders would be likely to fail due to financial restriction rather than poor behaviour.

In our experience the use of imprisonment and adjourned undertaking together would appear to be more about courts seeking access to treatment and services for persons affected. In our opinion it is a net-widening for someone to be subject to both and we do not support the use of them in a combined order as they currently stand. If significant improvements in the provision of funding for support for persons to access the services noted in the adjourned undertaking was provided ACSO may reassess this position. Similarly, the use of adjourned undertaking and imprisonment must be clearly separated in that failure in one cannot impact success in the other to ensure no unintended consequences in growth in prison numbers.

4: Rural and regional Victoria

With our decades of experience, we can confirm that there are certainly reduced services and supports in rural and regional areas that make the requirements of adjourned undertaking often more costly than for clients in an accessible metro region. Any funding for supports within these orders much apply a loading to service costs in rural and regional areas.

5: Marginalised groups

ACSO agree with the suggestions and recommendations noted by the Council in relation to this question. Specific impacts for the cohort we work with are noted in other answers in this response.

6: Maximum length

Much of the data reveals that Victoria rarely imposes the full term and the majority are sitting at 12 months duration. There is very conflicting evidence between the impact of longer and shorter terms

as noted in the paper. ACSO supports reducing the available length (can be up to 5 years) given that when individuals re-offend during the period of the order it appears to increase the likelihood of being remanded without bail due to Victorian bail laws.

ACSO recommends changing the maximum length of an undertaking to two (2) years due to the complexities of associated issues that persons subject to these order are likely to have which can mean compliance over longer periods of time are very difficult to sustain without support. As noted previously it is our opinion that if adjourned undertakings are to continue funded support for persons to access support to meet the requirements of the orders is urgently required. Without such support the current length and nature of the order has the capacity to actually increase the severity of a person's contact with the justice system over time.

7: Judicial supervision

ACSO agree with the recommendations noted by the Council in relation to this question.

8: Good behaviour

ACSO believes there is a need to clarify this terminology. We are of the opinion that this should reference that 'good behaviour' relates to a person not undertaking a criminal offence that is punishable by imprisonment and abiding by the undertakings (must attend court if required and be of good behaviour are the two mandatory conditions) and any additional conditions for the term of the order.

In our experience often many of those subject to these orders do not understanding the requirements of the order clearly and ACSO strongly recommends funding to ensure that there is provision within the courts for further detailed explanation of an order to a person once it has been imposed. To be most effective this should be delivered by someone seen to be independent to the court and in the case of Aboriginal and Torres Strait Islander or CALD populations it should be a support person with the appropriate cultural standing and knowledge as well as language to ensure adequate interpretation and understanding of the conditions have occurred.

9: Guidance about optional conditions

The paper provided some definitions however in our opinion this could go significantly further to include specified definitions on appropriate optional conditions and how they should be achieved. The definitions as prescribed in NSW would be appropriate for Victorian adoption as they depict the condition needing to match the offence and not be reasonably harsh or onerous and be reasonably achievable. This would also support those people in regional and remote areas as the ability to achieve a requirement would then be based on the ability of access to the service.

10: Payment conditions

Victoria has the ability to order a charitable donation by way of monetary payment or time, either through a donation to the court fund or directly to the charity, these are specifically referred to as not being a fine. Failure to pay will be seen as being non-compliant and this places many people who are already experiencing financial distress in even further distress even though this is not a fine. It is our opinion that these should be removed from an adjourned undertaking. If payments of any kind, including charitable donations and program fees are to be used then ACSO strongly suggests that these should be considered against the persons income for suitability and an assessment of the likely pressure or hardship upon the person or their family must be assessed

carefully, or this will have the potential to illicit further offending behaviour. Low income earners are often negatively impacted compared to high earners as all donations to charities remain tax deductible.

11: Charitable donations

ACSO does not support the use of charitable donations, or any monetary requirements, as a condition. These donations are effectively public funds but without the public having any decision or impact of the expenditure of these funds, directed donations should be excluded from all justice orders and if monetary sanctions are decided they should be in the form of a fine.

These donations are meant to reflect the crime having been committed i.e. an act of family violence a payment to a Women's Shelter. This is not the case with donations directed towards individual CFA's as the charity is directed by the magistrate to their preferred charity. This should be removed and replaced with a payment of fine if required, with the State Government then directing the expenditure of the revenue. The statistics within the paper indicate less than 200 groups being nominated by the magistrates and could be considered unjust towards the more than 20,000 registered charitable orgs in Victoria.

12: Court Fund

Donations directed to the court fund are difficult to track, leading to a lack of transparency with public funds. If this practice is to continue it is recommended that there is an undertaking by the courts to audit the funds annually, to adequately account how the funds are expended should the practice continue. There is also a perception by those directed to make such donations that there is an inherent unfairness to donations of this kind given the perception of power imbalance that already exists for those subject to these systems. Payment of donation to the court can feel like a bribe to those requested to make it.

13: Justice plans

The paper poses the question of the availability and operation of justice plans. Justice plans in principle are helpful in supporting the offending presentations of a person as the NDIS will support these needs regardless of the disability. Having the readjustment of the terminology from intellectual disability to impaired mental functioning, while on the surface appears to be a good idea, would open the interpretation for service considerable. ACSO is noting that this is likely to place even greater demand on the already strapped programs that exist in this area. The additional support and funding required would need to be significantly increased.

14: Optional conditions

These need to be obtainable therefore while they should be somewhat specific, they should also have the flexibility to be completed successfully i.e. you must successfully attend a men's behaviour change program with Latrobe Community Health Service. If the person moves services to access the program, this is seen as a failure to comply rather than being able to undertake the program in their new residence, or if the program is at capacity and not accepting new referrals or they are ineligible for other reasons, this would also be a failure to comply at no fault of the person. Rather an order should read something like 'it is recommended that you undertake a men's behaviour change program and/or request a letter of acknowledgement regarding the referral', providing options for circumstances out of the person's control.

15: Funding for programs

Where ordered for by the State, the State should be responsible for payment of these services. For those living on Centrelink payments, which place most people as living below the poverty line, placing conditions requiring payment to access and complete the requirement will most likely place them in a higher category for potential to reoffend in the future or for failure to comply.

16: The adjourned undertaking form

ACSO strongly suggest detailed consultation on any redesign of the form with those subject to adjourned undertakings or other lived experience of justice involvement.

17: The sentencing hierarchy

ACSO supports any recommendation which is likely to reduce the impact or net-widening impacts of non-compliance with order conditions. Where a change in hierarchy is likely to assist with this ACSO is in support but on this matter. Given the nature of the hierarchy changes the impact of monetary requirements this should be considered in light of our other comments on the difficulties associated more generally for those with justice involvement to raise the funds required to meet conditions related to provision of money such as fines.

18: Merging sections 72 and 75

ACSO agree with the recommendations noted by the Council in relation to this question.

19: Merging sections 73 and 76

ACSO agree with the recommendations noted by the Council in relation to this question.

20: Repealing sections 74 and 77

ACSO agree with the recommendations noted by the Council in relation to this question.

21: Spent convictions

ACSO agrees that this section should be amended to reflect that any adjourned undertakings without conviction are spent on the date of sentencing. This unduly disadvantages thousands of people and has the potential to hold them within the justice cycle rather than moving forward with their lives particularly with finding gainful employment if they are unable to produce a clear police record check, despite having no conviction.

22: Decriminalising breaches

ACSO supports any recommendation which is likely to reduce the impact or net-widening impacts of non-compliance with order conditions.

23: Successful completion

If the current title of this sanction continues as an adjourned undertaking, then there must be some type of court resolution. This should be a communication to the person advising of their successful and the following steps. I don't think the person should have another hearing to successfully end an order as this is waste of resources. This relates though to the fact that the title of this offence should be amended as the term adjourned gives reference to a continued court hearing.

