



## Reforming Adjourned Undertakings in Victoria– Sentencing Advisory Council

Public Submission on behalf of Women and Mentoring, September 2022

### Introduction

Women and Mentoring (WAM) welcomes the opportunity to provide a submission to the Sentencing Advisory Council's review of Adjourned Undertakings. In providing this submission, we have sought to collate the experiences of women participating in our Peer Advisory group – women with lived experience of contact with the criminal justice system, and, for some, a custodial sentence.

WAM is a small community organisation providing critical support to vulnerable women who are identified as at-risk of offending, facing charges or at varying stages of contact with the justice system. We create positive connections through matching screened and trained volunteer mentors with justice-involved women. WAM offers an alternative to a custodial sentence and incarceration, and instead empowers women to effect positive change in their lives.

WAM's Peer Advisory group have provided their views on some of the 23 questions posed in the consultation paper, directly relating to their own experiences, or from perspectives drawn from within their peer groups.

### Eligibility and purposes

Overall, the group agreed that adjourned undertakings are a practical and cost-effective justice response for someone who has committed low level offences, or who has no prior convictions. The group believes that adjourned undertakings can act as a deterrent for poor choices and provides an opportunity for the person to demonstrate more appropriate and acceptable behaviour. Ultimately, an adjourned undertaking may divert someone away from the justice system at an earlier junction and not be subjected to a custodial sentence that may cause more harm.

The group discussed changing the name of this mechanism to something more in line with other states, however, the notion or use of the term 'good behaviour' felt paternalistic and subjective. The group were more inclined to recognise the term 'conditional release order' as it identified that the person is subject to specific behavioural conditions that would need to be met to remain in community.

### Who receives adjourned undertakings:

Adjourned Undertakings are an appropriate mechanism for use with marginalised groups, especially women.

Due to the intersections of contributing factors in women's offending, it has been argued that health and justice responses that target the root cause of women's offending are the most effective ways to reduce recidivism. WAM's independent evaluation report highlighted the success in providing an alternative justice response for women that is supportive and evidence-based. The findings of the evaluation reinforced the success of WAM in preventing women's imprisonment by focusing on the needs of women

who engage in our program and acknowledging the vast challenges our participants experience in engaging with their community.

Diversion pathways offer an effective alternative for women in contact with the justice system, with criminological research identifying the need for laws and policy to shift from punitive responses to crime, which have been shown to be detrimental and ineffective at best.

Incarceration is expensive, can have little impact on rehabilitation, and does not address the causes of women's offending. Adjourned undertakings have the benefit of not having a charge recorded against a person, as well as being able to remain in community, and attend to their family/caring responsibilities; they are able to maintain their employment and continue their connection to their community, reducing the potential of further harm caused by a criminal conviction and custodial sentence.

Noting that many people who have contact with the justice system come from backgrounds of disadvantage, complex vulnerabilities and poverty, there needs to be support provided to access community services that address their underlying psycho-social issues.

The group identified improving access to community-based support services to prioritise rehabilitation and recommend justice reinvestment towards encouraging engagement with professional providers to address a person's support needs.

### **Mandatory Conditions**

Judicial monitoring, although creating an additional cost for the justice system, is imperative to ensure people undertake appropriate action. Setting a time limit for a review also supports the notion of engaging in some activity (counselling, support group) and being accountable within a time frame.

It is noted by our group that in their experience, there is usually a motivation or desire to change your life and choices. However there often is a lack of self-confidence, or capacity to achieve your goals and make better choices. One woman noted that she had goals *"but [I] just wasn't sure how to achieve them"*.

Interacting with a magistrate who demonstrated care and concern for a person who had offended provides an opportunity to receive positive feedback. For example, one woman's previous involvement with undertaking a Drug Treatment Order was reported to be an overall positive experience. It was noted that Drug Court provided a highly supportive environment, with a care team who didn't take a punitive approach to breaching, rather, understanding that a relapse is part of the recovery journey. The regular check-ins with the Magistrate enabled a mechanism to receive feedback and positive reinforcement enabling the woman to feel valued and supported.

However, the group were unequivocal in their support for mandatory judicial supervision and conditions if any of the offending is linked to family violence. Offenders in this instance should be compelled to engage in positive behaviour change programs or counselling to address the underlying issues. Returning to appear in front of a Magistrate within a set time frame then drives the offender to take the appropriate action to address the issue. Again, it is imperative there is adequate funding and access to these services to prioritise community safety, rehabilitation and support.

### **Optional Conditions**

The group felt very strongly about the imposition of a court fund donation, noting again the likelihood of someone before the courts having come from a background of disadvantage and poverty. Having to pay

a fine or donation to a charitable organisation may add an additional burden to some of our most vulnerable community members, and further entrench them in cycles of offending or poverty.

However, the group strongly recommended volunteer work or community service that could potentially be linked to the type of offending, as an opportunity for learning and to make a meaningful contribution. For example, vandalism or property damage offences could be linked to community work to repair damage, clean up parklands or rubbish removal.

The group noted that any activity that someone undertakes in that time of the adjourned undertaking should contribute to self-improvement or change, and also provide an opportunity to build up self-esteem. One woman stated that offending leads to self-loathing and shame and highlights a person's inability to break the cycle without the right supports.

### **Breaches and Conclusions of Adjourned Undertakings**

One woman spoke of her experience of parole where she was given mandatory counselling, and the opportunity to undertake community service activities. The latter ensured she kept busy and felt her time was valued. Material aid was provided to top up her MYKI and she was referred to support services, such as WAM. It was also noted that the format of returning to the Parole board provided accountability to ensure she followed through with her parole conditions.

Similar to Drug Court, the parole board demonstrated leniency when the woman admitted to lapses of judgement, and they were supportive of her recovery journey, as *"no one is perfect, we will still mistakes, but our efforts in trying to make better choices should be recognised"*.

These factors, she believes, contributed to her successfully completing her parole, and being able to reintegrate with her community, return to work, and get on with her life.

Drawing a parallel to an Adjourned Undertaking, not having the support system in place can contribute to ongoing challenges and contact with the justice system. It was regarded that breaching an adjourned undertaking should not be an offence as this could further entrench someone in the justice system and contribute to their feelings of worthlessness and failure.

The group agreed that there needed to be something official in writing to confirm the end of the adjourned undertaking period and acknowledge the achievement of not re-engaging with the justice system. One woman commented that she didn't even remember if she had completed her adjourned undertaking fully, as there was no return to the court to see the magistrate, or anything official confirming this. It has been three years now, and she has just assumed that it is all dealt with.

Overall, the group were in favour of retaining Adjourned Undertakings, for low-level offenders, where it was recognised that there was an opportunity to successfully divert them from the justice system. Provided there were appropriate supports in place, some accountability to follow through with the set conditions, and a firm conclusion, Adjourned Undertakings could work to reduce the number of women in contact with the justice system, address the growing number of women on remand and subsequently minimise the negative impact of the justice system on vulnerable and disadvantaged cohorts.

### **Women And Mentoring**

Ground Floor, Queen Victoria Women's Centre  
210 Lonsdale Street, Melbourne,  
Wurundjeri Country  
[womenandmentoring.org.au](http://womenandmentoring.org.au)