



# Reforming Sentence Deferrals in Victoria

ACSO Response to  
Sentencing Advisory Council  
Consultation

## 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 Palawa People of Lutruwita (Tasmania).

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.



## The Australian Community Support Organisation (ACSO)

ACSO is a not-for-profit company limited by guarantee and registered as a charity with the Australian Charities and Not-for-profits Commission. We pride ourselves on being a dynamic, values driven not for profit, focused on partnering with Government and the community to co-design services that create real social change, inclusive communities and promote wellbeing. 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.

With more than 35 years' experience, ACSO has an unrivalled understanding of dealing with the whole person, from childhood to present day. This rigorous understanding provides a better chance of finding solutions to create a circuit breaker and increase self-determination.

We continue to advocate that warehousing people in prisons is unnecessary and comes at great personal, social and economic cost. Australia needs a long-term solution to provide a genuine chance for people to exit the justice system, keep communities safe and move government investment in prisons to programs of work that increase the health and wellbeing of larger communities.

### Scope

ACSO is one of the major providers of services to people involved in the criminal justice system in Victoria and increasingly in other states of Australia. We provide services to thousands of Magistrate Court clients per year through our AOD and transitional programs (COATS, RAPIDS, Forensic Counselling, ReStart) and have frequently collaborated with the Magistrates Court of Victoria (MCV) on new initiatives to more effectively support court users and intervene in patterns of offending behaviour, including through the Atrium residential bail support program, and CATCH complex needs court-based case management service, provided onsite at the Neighbourhood Justice Centre.

ACSO's expertise is in supporting the holistic wellbeing and rehabilitation of individuals involved in, or at risk of involvement in the justice system. We do not comment in this submission on the technical nature of sentencing provisions excepting those which we believe are directly relevant to our experience and expertise. In responding to the consultation, general feedback is provided on the use of sentencing deferrals and ACSO has provided responses to the review questions where appropriate from its perspective as a support provider.

## Overview

ACSO strongly support the use of sentencing deferrals, which provide an invaluable opportunity for rehabilitation without further entrenchment in the criminal justice system, however the use of this sentencing option MUST be accompanied by access to appropriate treatment responses and effective, appropriately resourced integrated case management, to ensure opportunities for rehabilitation and/or diversion away from the criminal justice system are optimised.

The Department of Justice and Community Safety's Annual Prisoner Statistical Profiles show that the Victorian prison population has significantly increased in the last decade. This is despite the fact that rates of recorded offences have remained generally static.<sup>i</sup> It is of deep and ongoing concern that the incarceration rates of Aboriginal and Torres Strait Islander people, which has long been unacceptably high, has tripled in the last decade. Moreover, in the last decade, the number of women in Victorian prisons has more than doubled.<sup>ii</sup>

The increased availability and uptake of sentencing deferrals in Victoria's Courts provides for a sentencing option that can be effectively adapted to the individual needs of the accused and facilitate opportunities to engage in treatment and avoid incarceration of further sentencing. While sentencing deferrals provide an appropriate avenue for individuals to address their offending behaviour, their effectiveness is vastly diminished if those subjected to such orders are unable to navigate, access and engage effectively with supports in the community.

Best practice guidelines for criminal justice diversion programs include timely access to programs; systematic monitoring of client compliance; suitable support and follow-up after program completion; systematic monitoring and evaluation of program outcomes and adequate, continuing funding.<sup>iii</sup> Examples of effective interventions provided through sentencing deferral are widely available from Victoria's Specialist Courts, many of which use deferred sentencing as a tool to engage offenders in the rehabilitative services provided by the court. Victoria's Drug Courts, ARC List, and Neighbourhood Justice Centre all employ sentencing deferrals alongside therapeutic interventions and ongoing monitoring. In all of these models, participants are supported by a dedicated case manager or care coordinator. Evaluations of these specialist courts have continued to highlight their effectiveness and cost-saving benefits arising from increased compliance, decreased recidivism and reduced use of costly prison sentences.<sup>iv</sup>

In 2012 the Australian Institute of Criminology (AIC) evaluated the NJC's performance on recidivism, order compliance and impact on the local crime rate. This included a comparative analysis of recidivism rates for 187 NJC Court clients who received a therapeutic intervention or referral (May 2009 to March 2011), against a control group from another Magistrates' Court. The recidivism rate for the NJC clients was found to be 25 per cent lower than for the comparison Magistrates' Court clients where no therapeutic programs were available.<sup>v</sup>

While ACSO support the expansion of access to such models, it cautions against diluting the therapeutic and monitoring components in the mainstream court system, which would likely significantly reduce the efficacy of the intervention.

Without dedicated resourcing available for case management, participants face an array of barriers to access and obtain appropriate treatment, support, and stability. As ACSO has previously advocated, investments in Victoria's criminal justice system should focus on health and community service gaps which represent drivers of crime, including homelessness, alcohol and other drug issues, untreated mental illness, family violence and debt. Sentencing deferral, if executed well, is an ideal opportunity to address these risk factors. By not acting early to prevent people with significant social vulnerabilities from cycling repeatedly through our courts and prisons, we risk creating a much larger group of serious violent offenders in 20 years' time. Creating and funding better community treatment options for the 'hard to engage' complex needs cohort, will reduce the risk of these people graduating to more serious offending in the future.

## Length of deferral (q.6)

As noted in the Sentencing Advisory Council consultation paper for this submission, 'rehabilitation, particularly for offenders with complex needs, will often be a prolonged journey, best facilitated by ongoing support.' It is noted that for many, this journey is built upon the foundation of a trusting, therapeutic alliance with an appropriate professional. Indeed, studies into the effectiveness of criminal justice interventions have consistently highlighted the interpersonal and effective relationship skills of correctional supervisors as key to the success of interventions offered.<sup>vi, vii, viii</sup>

Research has demonstrated a strong correlation between Adverse Childhood Experiences (ACEs), trauma, and offending behaviour.<sup>ix</sup> In ACSO's considerable experience, participants with a history of trauma can often take much longer to engage effectively in support or treatment, and the journey to build a therapeutic alliance is often of slow progress initially: 'two steps forward; one step back.' Indeed, evidence on the effectiveness of Victoria's specialist courts more often shows greater time elapsing

ACSO advocates, given strong correlations between victimisation and offending, as well as the disproportionate experience of mental ill health, addiction, disability, and socioeconomic disadvantage in Victoria's offending population, that the court system must be highly trauma informed and responsive. Literature on best practice trauma informed care consistently highlights the need for individualised, strengths-based approaches to facilitate ongoing trust and engagement. Victoria's highly successful Journey to Social Inclusion (J2SI) program for example, provides case management terms of up to three years, and has noted in its evaluations that participants frequently disengage for periods before building a steady pattern of engagement with the service, with participant engagement in the J2SI pilot reaching its peak at 9 months after commencement.<sup>x</sup>

In addition to the critical aim of building a trusting therapeutic relationship with participants, for sentence deferrals to serve an effective purpose, engagement with treatment and stabilisation is paramount. ACSO provides a range of diversionary services, including housing support through our subsidiary McCormack Housing, and forensic AOD assessment and treatment through our Community Offenders Advice and Treatment Service (COATS) and Forensic Assessment and

Counselling (FACT (Forensic Assessment and Counselling Team)) program, delivered in partnership with the Magistrates Court of Victoria. The current COATS service is designed as a highly accessible, centralised, state-wide integrated specialised intake and assessment system that prioritises forensic clients into drug and alcohol treatment in Victoria, including those on pre- and post- sentence orders.

ACSO manages waitlists for access to forensic AOD treatment across the state of Victoria, and is highly cognisant of the challenges faced by participants in gaining access to these services, including long wait times in the treatment sector generally, agency exclusions which preclude our clients' access (e.g. restrictions on violent and sex offenders), availability of a skilled workforce (agencies will assign forensic clients to specific clinicians, who typically have large existing caseloads) and the transient nature of the client group. It is not unheard of for individuals to wait upwards of a year for residential AOD treatment, particularly where multiple co-morbidities exist or where treatment is staged to allow for less intensive treatment options prior to entering residential rehabilitation.

Similarly, access to the National Disability Insurance Scheme (NDIS) can take upwards of six months and multiple appeals, even with the support of ACSO's Mental Health Access Program practitioners, and access to stable housing is likely to take upwards of a year, without dedicated resourcing. Research into best practice clinical treatment for mental illness suggests that between 13 and 18 sessions are required for 50% of people to reliably improve in psychological therapy<sup>xi</sup>; the number of people who respond to treatment will increase when higher numbers of sessions are provided; and optimal doses for effective treatment can range up to 26 sessions or more.<sup>xii</sup>

ACSO advocates that deferred sentences be available for a period of up to two years, in line with Drug Treatment Orders in Victoria. This would allow sufficient time for an effective worker-client relationship to be established, for the participant to gain access to relevant services and achieve a level of stabilisation (including in housing and relationships), and for the court to genuinely assess a participant's level of engagement and prospects of rehabilitation.

## Deferral Plans (q.11)

In NSW (New South Wales), ACSO has worked with the University of Wollongong to develop an evidence-informed service model addressing concerns raised with us by local Police and Youth Justice representatives who have observed a high rate of Apprehended Violence Order (AVO) breaches by young people locally. ACSO's research into this issue suggests that one of the factors influencing this high breach rate relates to the format of the written AVO and poor rates of comprehension amongst respondents. Stakeholders consistently raised confusion including the lack of understanding that some juvenile DV offenders were recounted to have regarding the terminology used in AVOs. Furthermore, some were also stated to lack comprehension of what certain AVO conditions entailed for them, what this meant for their behaviour, when and where these conditions applied, and to whom they applied. This same confusion was also noted amongst some parents or guardians (who may also be victims) of juvenile DV offenders, as well as some victims. This failure to provide clear and accessible information leads to regular breaches, which as criminal proceedings, risk placing young people on a trajectory of further offending.

ACSO's experience in this space has reiterated the importance of clearly communicated legal orders. Australia's contemporary culture is no longer based around written text to the extent it was in the past.<sup>xiii</sup> Rather, there has been a shift in cultural focus more heavily upon more visual methods of communication: a cultural shift that is yet to widely infiltrate Court formalities. There is increasing evidence that people more readily retain information presented in a visual format as opposed to a written one.<sup>xiv</sup>

In responding to these concerns in NSW, ACSO and the University of Wollongong have proposed to co-design an additional handout for young people subject to AVOs which breaks each section of the order into the basic points that need to be understood. To maintain a simplistic format, dot points will be used to convey these key points. Images will also be used to further aid in prompting understanding.

Clear communication of the conditions of a Deferral Plan could be further facilitated by the employment of skilled, dedicated case coordinators for this cohort.

## Programs and Services (q.10)

As articulated above, ACSO strongly assert the need for dedicated resourcing to facilitate the uptake and effectiveness of this sentencing option in Victorian Courts.

ACSO clients involved in the criminal justice system face a range of direct barriers to accessing necessary supports, including lack of knowledge of supports available; service entry points in some sectors which are difficult to navigate; long wait lists to access support; onerous application and assessment processes; community stigma and program exclusionary criteria. Further consideration must be given to a person's personal barriers to engagement, including mental illness, trauma, alcohol and drug addiction, disability, family conflict, poverty, and others. To address these barriers and effectively engage participants in a sentence which is rehabilitative (rather than administrative), a dedicated care coordination or case management service to support the sentenced cohort is critical.

In addition to care coordination services, resourcing should be available to broker access to assessment and supports in the community, including crisis housing supports, psychological or neuropsychological assessment, and clinical treatment if required. ACSO is particularly concerned to ensure that appropriate resourcing is available to participants to address housing insecurity and homelessness, given the well-established link between housing insecurity and recidivism and prevalence of homelessness amongst justice-involved clients.

In our transitional services, ACSO post-release participants have consistently faced barriers to securing suitable accommodation, and this has continued to be a primary challenge for our clients, staff, and organisational interventions across all life domains. Where secure, stable, and appropriate housing cannot be sourced, efforts to improve the wellbeing and social integration of our clients are exceedingly challenging and are regularly prone to fail. In the last decade ACSO has established new, flexible models of housing and housing support to address the unique needs of people leaving custody and those whose risk of engagement in the criminal justice system is intertwined with long-term and complex homelessness.



A key element in the ACSO housing strategy has been to establish a specialist housing subsidiary, McCormack Housing, with the mandate to provide sustainable social housing prioritising people in or at risk of entering the criminal justice system, and with the aim to break the cycle between homelessness and offending. McCormack Housing was instigated as a response to the extremely high need for suitable housing for individuals with offending histories. Traditionally this cohort experience high levels of exclusion from a range of public and private housing markets. Through the development of McCormack Housing and in combination with our other behavioural and reintegration support programs, ACSO is actively working to address the current gap in the housing market whilst addressing the key drivers of homelessness for people engaged in the justice system.

There are several levers available to Courts to ensure supported participants can gain prioritised access to services in the community. Brokerage funding is necessary and provides case managers or care coordinators with the flexibility to be responsive to a participant's needs. In addition, formal partnerships and referral protocols with the community service sector can enhance access pathways into treatment. For example, ACSO's COATS program receives referrals directly from Corrections and CISP (Court Integrated Services Program) employees; providing assessment (via outreach where necessary and practicable) and providing brokerage and referral management to community based AOD services.

The Neighbourhood Justice Centre model facilitates access to a wide team of specialists across clinical mental health, housing, family violence, AOD and other supports: through its Embedded Specialist Services Model, premised on partnerships with community organisations who co-locate at the site. This model not only provides on-site access to specialist, skilled staff; it also provides the Neighbourhood Justice Centre streamlined access to mainstream funding pathways through service agreements of the partner organisations, for example, crisis accommodation funding, or material aid. A 2015 evaluation of this model by the Australian Institute of Criminology found that 80% of referred clients successfully engaged with specialist services; that reoffending rates amongst participants engaged in specialist services were significantly lower than those for matched cohort; and that the embedded services model is marginally cheaper to deliver than the Court Integrated Services Program (CISP) model of support.<sup>xv</sup>

## Deferral Conditions (q.7)

ACSO would urge caution against any measure which serves to increase the rates of remand in Victoria. Should compliance with a Sentence Deferral be a condition of a Bail Order, this detracts from the rehabilitative nature of the Deferral and emphasises the punitive conditions available should the individual fail to engage in treatment at any point. As mentioned above, it is ACSO's experience that complex clients will often experience patters of engagement/disengagement, particularly early in the service relationship. The ever-present threat of remand (in the context of Victoria's stringent bail laws) looming over a Sentence Deferral would be counter-productive to the establishment of a trusting, effective therapeutic relationship. It is ACSO's opinion that dedicated case coordination coupled with judicial monitoring would be a far more effective



intervention to compel compliance with the order; promote rehabilitation; and avoid unnecessary incarceration.

Judicial Monitoring can provide valuable affirmation and the opportunity to improve relationships with criminal justice authorities for participants, as well as provide for a sense of progression through the program – the latter of which is an important component of the successful drug court model, allowing for a phased approach to the intensity of engagement and treatment.<sup>xvi</sup>

A robust evidence base has established that punitive deterrence-based interventions have not worked to reduce future recidivism; the threat of punishment or negative consequences does not reduce recidivism if individual drivers of crime are not addressed.<sup>xvii</sup> Research has shown that punitive interventions, not balanced with individually tailored support plans, may increase the likelihood of reoffending among participants.<sup>xviii</sup>

## Justice Plans (q.9)

ACSO believes that the utilisation of Justice Plans in Sentence Deferrals would provide for equitable access to this diversion and its potential rehabilitative benefits. In ACSO's experience, the judiciary is necessarily reluctant to sentence offenders to community-based orders where it cannot ensure the provision of support or monitoring throughout the same.

Justice Plan case managers would serve an important role in connecting the participant to services, and funding these where necessary. ACSO would caution against relying solely on NDIS service provision to support the completion of orders for participants with a disability. The National Disability Insurance Agency (NDIA) explicitly do not fund Justice Services, and for those participants able to successfully access the scheme, it is unlikely to provide the level and coordination of supports required for a Sentence Deferral to be optimised.

## Conclusion

Victoria's specialist courts were established to provide a more effective response to offenders with levels of complexity including addiction, mental illness, and geographic socioeconomic disadvantage. Successive evaluations have proven these court models, which use sentencing deferral coupled with case management and therapeutic jurisprudence as a rehabilitative instrument, to be effective in reducing offending behaviour and diverting criminal justice trajectories. It is well known that Victoria's justice system is over-populated with individuals experiencing multiple morbidities and complexities: homelessness, mental illness, disability, and addiction are commonplace in our criminal courts. ACSO strongly supports the transference of aspects of these models across Victoria's courts, so that access to this intervention is equitable (for example, for those in regional areas, or those without skilled legal representation to make the appropriate referrals) and so that our Courts and justice system are orientated towards responses which seek to rehabilitate and prevent further offending.

ACSO strongly asserts that, for this intervention type to be effective, it must be supported with dedicated resourcing for case management, as well as brokerage or skilled staffing support to streamline access into community support, treatment, and housing services. A maximum sentence

deferral period of two years would allow for participant setbacks to be addressed and supported through a treatment lens, rather than resulting in further involvement in the criminal justice system, including remand.

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- <sup>i</sup> Department of Justice and Community Safety's Annual Prisoner Statistical Profiles, Crime Statistics Agency, 2019.
- <sup>ii</sup> Department of Justice and Community Safety's Annual Prisoner Statistical Profiles, 2020.
- <sup>iii</sup> Coghlan, S., Sutherland, P. & Millsteed, M. (2016) *Evaluation of the Victoria Police Drug Diversion and Cannabis Cautioning Programs – Final Report*, Crime Statistics Agency, November 2016.
- <sup>iv</sup> Gelb, K., *Solution-focused interventions for drug-related offending*, [https://www.courts.qld.gov.au/\\_data/assets/pdf\\_file/0019/514720/dc-rpt-dscr-appendix-c.pdf](https://www.courts.qld.gov.au/_data/assets/pdf_file/0019/514720/dc-rpt-dscr-appendix-c.pdf), accessed 12/12/22.
- <sup>v</sup> Ibid.
- <sup>vi</sup> Dowden C, Andrews DA. The importance of staff practice in delivering effective correctional treatment: a meta-analytic review of core correctional practice. *Int J Offender Ther Comp Criminol*. 2004 Apr;48(2):203-14.
- <sup>vii</sup> Ugwuodike, P., Raynor, P., & Annison, J. (Eds.). (2018). *Evidence-based skills in criminal justice: International research on supporting rehabilitation and desistance* (1st ed.). Bristol University Press.
- <sup>viii</sup> Trotter C (2006). *Working with involuntary clients*. Sydney: Allen & Unwin
- <sup>ix</sup> Malvaso, C. G., Cale, J., Whitten, T., Day, A., Singh, S., Hackett, L., Delfabbro, P. H., & Ross, S. (2022). Associations Between Adverse Childhood Experiences and Trauma Among Young People Who Offend: A Systematic Literature Review. *Trauma, Violence, & Abuse*, 23(5), 1677–1694.
- <sup>x</sup> Johnson, G., Parkinson, S., Tseng, Y. & Kuehne, D. (2000) Long Term Homelessness: Understanding the Challenge. 12 months outcomes from the Journey to Social Inclusion pilot program.
- <sup>xi</sup> Hansen, N. B., Lambert, M. J., & Forman, E. M. (2002). The psychotherapy dose-response effect and its implications for treatment delivery services. *Clinical Psychology: Science and Practice*, 9(3), 329–343.
- <sup>xii</sup> Robinson, L., Delgadillo, J. & Kellett, S. (2020) The dose-response effect in routinely delivered psychological therapies: A systematic review, *Psychotherapy Research*, 30:1, 79-96
- <sup>xiii</sup> Angel, K. 2018, 'Emerging literacy: Multimodal text in the classroom', *Metaphor*, 2, 13-17.
- <sup>xiv</sup> Carter, D. 2015, 'Connected to my world: Seeing to understand', *Access*, vol. 29, no. 1, pp. 22-29.
- <sup>xv</sup> Morgan, A. & Brown, R. (2015) Estimating the costs associated with community justice. *Trends & issues in crime and criminal justice* no. 507. Canberra: Australian Institute of Criminology.
- <sup>xvi</sup> Gelb, K.
- <sup>xvii</sup> Barnett, G. D., & Howard, F. F. (2018). What Doesn't Work to Reduce Reoffending? *European Psychologist*, 23(2), 111-129. doi:10.1027/1016-9040/a000323
- <sup>xviii</sup> Ibid.