



McAuley Community Services for Women

A ministry of the Sisters of Mercy

McAuley Community Services for Women - Response to the Sentencing Advisory Council of Victoria's review of 'Swift and Certain Approach to Sentencing in Family Violence Matters'

McAuley Community Services for Women welcomes the opportunity to contribute to the Sentencing Advisory Council of Victoria's review about whether "a swift and certain approach to sentencing family violence offenders would be desirable in Victoria." (Recommendation 83).

Our input is founded on our first hand knowledge of supporting women experiencing family violence and have sought refuge in McAuley Care, currently Victoria's only 24/7 safe, accessible crisis accommodation and support for women and children.

In our submission to the Royal Commission, our seventh recommendation calls for an enhanced legal response to and for women and their children experiencing family violence.

Our first recommendation is to fund a comprehensive, fully resourced safe at home service across Victoria. Both recommendations 1 and 7 contain elements that are useful to the Sentencing Advisory Council of Victoria.

About McAuley Community Services for Women

McAuley Community Services for Women **provides** safe housing, education, employment and children's programs for women and their children who are escaping family violence and for women who are homeless, many living with mental illness.

In 2016, we accommodated and supported over 400 women and children who were homeless and/or who had experienced family violence.

McAuley Community Services for Women is a ministry of the Sisters of Mercy. We run family violence and homelessness services that are holistic in approach, providing a joined-up service for women leaving family violence through to providing them with help to secure employment:

McAuley Care: Victoria's only 24/7 safe, accessible crisis accommodation and support for women and their children, escaping family violence, as well as a refuge program.

McAuley Community Services for Women
18 Robertson St, Kensington
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McAuley House that provides accommodation and support for women who are either homeless or at risk of homelessness, many with poor physical and mental health.

We have restarted **McAuley Works**, a jobs-ready and employment program for women experiencing homelessness or family violence. Using a case management model, McAuley Works provides intensive, tailored services to each woman it supports, including post-employment assistance, with the single aim of helping women secure good jobs or to access training that will help themselves and their families financially.

We also run **Engage to Change**, a primary prevention program aimed at educating employers and workforces about what family violence is, how to recognise it and how to refer to the necessary supports.

Executive Summary

McAuley Community Services for Women is a strong advocate for swift and certain approach to sentencing in order to protect women and children experiencing family violence.

In particular, we agree with the reforms that will put in place faster and simpler processes for serving family violence intervention orders, new measures to prevent abuses of the IVO process, allowing pre-recorded evidence to be used in some proceedings for family violence offences, and increased protections for children subjected to family violence.

We are also in agreement with court power to strike out appeals of an FVIO if the respondent fails to attend court as it will help to prevent perpetrators from harassing and intimidation victims by using delaying tactics.

What remains a concern for us, and is appropriate to this review, is that these changes are all overdue and don't change the system which focuses on after the act of violence has occurred. We need cultural change as well, and if swift and certain sentencing allows that to happen, that will benefit all Victorians.

What about family violence?

Traditionally “swift, certain and fair” approaches have been used to exclusively or primarily target drug and alcohol offenders and we are aware of some elements being used in Victorian Courts in family violence matters, specifically the Dandenong Magistrates Court.

Victoria's Drug Courts, which targets offenders with substance-abuse issues, use a similar model to a “swift, certain and fair” approach. But there are a few

key differences. First, Drug Court participants have to attend regular court hearings, while participants in a SCF program usually only come back to court if they have been non-compliant. Second, the Drug Court uses a system of accrued sanctions, such that if an offender's accrued prison days, for example, exceed a week, the offender is required to serve that time in custody. Participants in a SCF program are immediately sanctioned for each and every violation.

In Recommendation 1, we called for an integrated approach similar to the Drug Courts and proposed Family Violence Courts. We continue to call for this.

Current status quo in Victoria

Offenders in Victoria, and elsewhere for that matter, often wait months between the date they commit a crime and the date a court sentences them. This time lag can contribute to reduced effectiveness of the eventual punishment imposed on an offender.

Our view, and certainly one shared by women we assist, is that fast responses from the criminal justice system are particularly important in holding perpetrators to account for their behaviour and is effective in reducing offending behaviour

In relation to the current state of service provision, we would add the following points:

- A need for trained and adequately resourced policing – no new approach to sentencing is likely to work if the system is not properly resourced and police are not effectively trained.
- Intervention Orders need to be accorded priority status in family court matters..
- The need for effective coordination of safety and high-risk management – if delays to sentencing continue, this remains essential for all the women we see.
- Children's needs responded to separately – this is vital.

We continue to call for trained and adequately resourced policing, lawyers and magistrates, regardless of whether swift and fair sentencing is adopted in Victoria.

Swift and fair sentencing to assist with safe at home

Attempts to put in place safe at home programs are failing in part due to continued concern around women's safety, especially when the perpetrator is still waiting for a court time, deferment of sentencing OR where there are delays in convicting perpetrators who have breached intervention orders.

Successful Safe at Home programs occur where the perpetrator is removed and safety measures and coordinated supports are put in place. Only around 3% of women who come to McAuley Community Services for Women's crisis service each year, leave to return home safely. This is mainly due to the high risk of perpetrators breaching their intervention orders; the slow response from the legal system, and women feeling unsafe to return under those circumstances.

Despite high levels of awareness, inconsistent response by police and lack of resources means that women cannot rely on police to remain safe. For example, it can take up to three weeks for Intervention Orders (IVOs) to be served – a time at which risk of violence is greatest. Swift and fair sentencing would assist this issue.

Swift and fair sentencing to assist women

Women face a range of problems when dealing with the legal system as a result of family violence, as well as various court matters being dealt with in separate courts. Many of these will be overcome if the proposed amendments to the bill goes ahead, these include:

- When police are prosecuting IVOs no legal aid is available to women. This can result in women appearing in court following a recent incident of violence, confused and frightened and unsure of what decisions to make next. She can often be required to appear before a magistrate and be questioned on the incident with the perpetrator in court.
- A breach of an IVO is a criminal matter and therefore a higher level of evidence is needed to prove guilt. To date, it has been difficult for women to collect evidence that will satisfy court requirements. New technology is assisting to remedy this situation.

We agree with the discussion paper that suggests that an option that may align with an SCF approach in Victoria would be to expand courts' powers to impose alcohol exclusion orders or conditions during sentencing (particularly for family violence offenders for whom alcohol abuse is an issue), including the power to order that the offender wear a SCRAM device to detect alcohol use. Detected use of alcohol could then be met with swift and certain prosecution of this order or condition contravention.

Other reports and recommendations

McAuley Community Services for Women concurs with the view of the Magistrates' Court of Victoria and the Children's Court of Victoria that courts should have access to a broader range of sentencing options (such as a 'strengthened' CCO) that would better promote compliance with sentencing orders.

We also concur with the RMIT's Centre for Innovative Justice (CIJ) published *Opportunities for Early Intervention: Bringing Perpetrators of Family Violence into View*, a report recommending ways that family violence offenders could better be held accountable for their behaviours, with a particular focus on early interventions.¹

The CIJ concluded that systems that utilised swift and certain sanctioning for non-compliance with court orders had significantly reduced rearrest rates for convicted offenders, and recommended that Australian courts develop swift and certain protocols such as 'flash incarceration' of 24 hours for non-compliance.²

We further agree with its recommendation that a swift and certain approach be coupled with ongoing monitoring and assessment, preferably by the same judge.³

These points, and indeed some of the recommendations made in our submission, were taken up by the Royal Commission which noted that there was considerable promise in the following sentencing laws and processes, all of which are to some extent already in use:

- Using CCO conditions to provide continuing contact with the court and the same judicial officer, as well as compelling the perpetrator to engage with the causes of their offending and holding the perpetrator to account;
- Expanding the fast-tracking model being trialled at different locations of the Magistrates' Court to other locations, as well as expanding its scope to ensure it applies in relation to a breach of a CCO where it involves family violence.

¹ . RMIT Centre for Innovative Justice, *Opportunities for Early Intervention: Bringing Perpetrators of Family Violence into View* (2015).

² . RMIT Centre for Innovative Justice (2015), above n 7, 62, 64, 67, 87, 92.

³ . Ibid 7, 34.