

Submission to the Victorian Parliamentary Inquiry into Victoria's criminal justice system

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McAuley Community
Services for Women
A ministry of the Sisters of Mercy

About McAuley Community Services for Women

McAuley supports women and children experiencing family violence and homelessness.

Our services include safe crisis accommodation, case management, skill development, employment support, and a focus on the wellbeing of children. Partnerships and collaboration with external agencies mean we can connect women seamlessly with a broader range of support such as the resolution of debt and legal problems that have accrued because of family violence.

Background: McAuley's 'safe at home' advocacy project

McAuley has recently led a project to further the adoption of a 'safe at home' approach to women and children who've faced family violence.

A 'Safe at Home' approach addresses this key question: why should victims of violence be the ones to leave? 'Safe at Home' is a prevention of homelessness response with safety a key criterion. It has a human rights basis and aims to rectify the injustice of women and children fleeing their homes for their own safety. Victim-survivors are enabled to live safely at home, remaining connected to their communities, schools, and workplaces. The criminal justice system places a crucial role in this approach, as legal and policing protections must be swift, timely and effective for it to be a realistic option for victim-survivors.

There are still challenges to implementing a 'safe at home' approach in Victoria. The fact that 45% of presentations to homelessness services are because of family violence indicates that it is still routine for women and children to leave home to be safe. In fact, the link between family violence and homelessness is on the rise: numbers of unique clients presenting to homelessness services because they are not safe from family violence has grown by 30 per cent between 2015-2016 and 2019-2020.

In 2021 McAuley initiated a roundtable of services who play a role in supporting those affected by family violence and homelessness. This group has committed to exploring the systemic factors which are preventing women and children from being 'safe at home' and developed a systems map. Police and courts, as well as peak bodies in family violence and homelessness, contributed to the development of a systems map which can be [explored further online](#).

McAuley has taken further steps to consult with victim-survivors to learn more about why so many women are becoming homeless after family violence. Their feedback about their experiences with the police, courts and legal system is at the core of this submission.

Failures and gaps in the criminal justice system are significantly impacting on women's ability to stay home safely and exposing them to the risk of homelessness

A lack of confidence in policing and the legal system's response to family violence is a significant factor in preventing women and children from feeling safe in their own homes.

Women felt the perpetrator was frequently not 'kept in sight' and they weren't informed of what was happening during court processes which they found confusing to navigate. They had many examples of where critical information on whether a perpetrator has been bailed, or a case adjourned, had not been passed on. A lack of timely information-sharing between police, courts, support services, and victims, leads to a constant, heightened sense of anxiety and fear. For many women, this uncertainty makes it almost impossible to imagine a future where they remain safely at home.

Many of the women we spoke to also felt that the criminal justice system did not adequately understand, or respond to, the severity and unrelenting nature of the violence. *'These men: their whole mission in life is to find and destroy us,'* one said.

Penalties that they see as lenient, or inadequate police responses, gave them an implicit message that the perpetrator retains power and control while reinforcing that they must 'hide'. One woman said the justice system was a place that reinforced her trauma.

The inability for the Family and Magistrates' Courts to share information was also cited as a major frustration and frequently led to court-ordered contact with children because the lower courts' evidence of violence was not accepted or considered.

Continued flouting of intervention orders eroded their confidence in their ability to be safe. *'You are only one intervention breach away from being killed,'* one woman said.

Another woman commented on her anger that her partner was penalised with fines, to be paid to the courts, when he had breached intervention orders on multiple occasions. She was homeless, had no source of income, and was living in her car at the time; she found it unfair that the courts benefited but she did not.

One woman told us she had moved interstate with her child who is less than one-year-old, because her ex-husband has never been imprisoned despite assaults which resulted in ambulance attendances and a violent incident which was witnessed by a neighbour.

With the perpetrator having only received a good behaviour bond despite injuries to herself and her child, she has seen no alternative but to move state, and away from family support, in the middle of the COVID-19 pandemic.

Courts' approach to exclusion of perpetrators from family home

One key element of a 'safe at home' approach is that the perpetrator of the violence is removed from home. [The Family Violence Protection Act \(2008\)](#) makes provision for this exclusion and outlines that the court **'must'** consider factors such as *'the desirability of minimising disruption to the protected person and any child living with the protected person and the importance of maintaining social networks and support which may be lost if the protected person and the child were required to leave the residence or were unable to return to or move into the residence.'*

The data above on increasing rates of homelessness following family violence raises the question of why, if the **intent** of the Act is for victim-survivors of family violence to remain home, the **reality** is that many do not. This is not, of course, solely a court responsibility,

and other factors such as economic security, housing affordability, visa status, or the victim-survivor's own preference are undoubtedly influencers.

However, most women we spoke to had gone through many processes within the legal system without ever having understood that exclusion of the perpetrator from the family home was an option. Many women did not recollect any discussions about whether they could have stayed home. Some were extremely surprised to learn of some of the legal protections they could have accessed to make it viable. It is clear from our consultations that if women are not given clear advice that they may be able to request exclusion, it falls off the radar of the police and courts, especially when the woman has already begun a cycle of temporary housing options and has not been 'home' for some time.

'The system isn't good at giving us time'

Given time, space and support to think through their options, victim-survivors might have been able to consider a return home.

Many women felt that at the traumatic time of leaving violence, they were too stressed to make clear decisions about whether they wanted to remain in the family home in the longer-term. In many cases supports around the women, including the court system, tends to assume the initial decision to leave reflects the woman's wishes, and keeps moving along inevitably in that direction without checking in as to whether this remains her choice.

Attendance at courts could be a critical opportunity to convey information and also check whether a return home is feasible.

Women tell us they often had difficulty retaining or absorbing information given to them in the early distressing and chaotic stages of leaving violence, so courts, legal staff and police need to have information about her options available at every stage of their interactions rather than assuming an early decision is fixed and irrevocable.

Attendance at court is also a chance to connect them to other forms of legal help that may have a bearing on their ability to maintain housing, such as support in removing the perpetrator from the lease or sorting out debts and fines that are related to the violence.

Instead we heard that many women have found it extremely difficult to get this help in one place and the courts do not function as a one-stop shop for a legal health check of the other issues victim-survivors are facing.

Support at Court for victim-survivors

McAuley has operated a children's programs in three Magistrates' Courts and the Melbourne Children's court. *Court Support 4 Kids* was developed in response to the high number of women entering our refuge service who did not have Family Violence Intervention Orders in place, despite court attendances. These women explained that they had attended court at the direction of police after incidences of extreme violence, with traumatized children in their care, and without any personal support. The long waiting times in Court and the difficulties inherent in managing their own and their children's trauma meant that women often left without having their matter heard.

The service provides a specialist children's worker to engage with the children and/or young people onsite in age-appropriate distractive play. This allows mothers to focus

entirely on the court process and on the crucial decisions that will affect her and the children's futures. In addition, the distractive play prevents the children being further traumatized by hearing details of the violence as it is relayed to solicitors and the Magistrate. It also helps minimise the distress caused by the fact that court can be a frightening and intimidating environment for children.

Court Support 4 Kids program also uses a child-centred lens to ensure children are linked to their own specific support services such as family violence counselling, local school wellbeing officers and/or online resources. Individualised safety planning is also provided if deemed appropriate to ensure their safety when they return home.

The Royal Commission acknowledged in its final report that some Magistrates' Courts did not 'have adequate child-care facilities, which can expose children attending court with their parent or family members to fear and trauma.'

They also stated: 'As a community we should not tolerate situations where emotionally stressed and fearful victims, who are often accompanied by young children, have to spend lengthy periods in court waiting areas in the vicinity of perpetrators and, sometimes, perpetrators' supporters.'

McAuley has faced a long struggle to get the Court Support 4 Kids program funded since a pilot, funded by philanthropy, began at Sunshine Magistrates' Court in 2014. Its operations since then, as well as the cost of an independent evaluation by the Centre for Innovative Justice, were also met by philanthropy. This research confirmed that it was effective, responsible and accessible, and highly valued by those who needed it as well as court staff.¹ In 2019 we received a one-off grant from Court Services Victoria to enable its continuation in Geelong and Sunshine and expand it to Ballarat and the Melbourne Children's Court. We have now secured another one-off grant to enable it to continue in Geelong, Sunshine and Ballarat, while currently awaiting information about whether the Children's Court funding can be expanded.

We believe this relatively low-cost program should be rolled out to all Magistrates' and Family Violence Specialist Courts.

A highly successful model of integrated legal support has been developed by WEstjustice in partnership with McAuley.²

Between mid-2018 and early 2021, 137 women were assisted with their legal and financial problems. These clients were women who were victim-survivors of family violence being supported by McAuley. The legal help led to the waiving of \$900,000 worth of legal and financial problems for economic abuse victim-survivors, mostly without attending court (thereby avoiding the stress of seeing the perpetrator and the court process).

These outcomes ultimately removed the financial burden from women who had recently fled family violence, and contributed to improving mental health, ameliorating homelessness and making it easier to secure ongoing housing.

It is noteworthy that many women involved, however, had struggled with the debts or legal issues for months or in some cases years. Alleviation of these problems at an earlier

¹ Report is available on McAuley website www.mcauley.org.au

² https://www.westjustice.org.au/cms_uploads/docs/westjustice_restore_fin_safety_web-version.pdf

stage, with that help integrated into court systems, could have seen some of these women be in a better position to maintain their housing.

Perpetrator accountability and interventions

Women we consulted had a strong belief that perpetrators lacked respect for the law and were not made accountable for their actions. The overall prevalence and severity of family violence will have an impact on workloads and responsiveness in police and courts and therefore reflect women's confidence in staying home safely.

While all other types of crime are declining, family violence incidents continue to rise; in the 12 months leading up to March 2021, family violence-related offences increased 11.3% to 112,432 offences, and breaches rose 18.4% to 53,285 offences.³

This evidence – especially the ever-increasing number of breaches — suggests that the criminal justice system response to family violence is not stopping the cycle of violence and that perpetrator accountability remains a serious issue.

'Safe at home' solutions within the criminal justice system

Strengthened provisions for perpetrator accountability: barring orders

A model which is worth exploring is that of Austria— the first country in Europe to introduce emergency barring orders against those who use violence.

In this approach specific language about removing perpetrators is used and the victim's right to remain home is clearly communicated. **Language in the Austrian act is direct and unambiguous:** *'The police are obliged to intervene promptly in cases of violence. It is the duty of officers to evict the endangering person from the dwelling immediately, so that the victim can stay there safely.'*

This is complemented by clear information to the public including statements in brochures, such as: *'WHO IS PROTECTED BY A BARRING ORDER? Every person has the right to live in surroundings without violence and is guaranteed protection by law.'*

These messages convey an expectation of the victim-survivor's rights to remain home as the starting point of all interactions with police, and in so doing also conveys in strong terms that the violence is unacceptable:

"If a perpetrator threatens or injures a person living in the same household, the police have to evict the perpetrator from the common home and its immediate surroundings and to bar him from re-entering it – even if he is the owner of the house or apartment. Such an order has to be imposed if a dangerous attack on life, health or freedom is imminent.

The victim cannot influence the imposition of a barring order.

³ <https://www.crimestatistics.vic.gov.au/media-centre/media-releases/media-release-1-in-5-criminal-offences-in-victoria-were-family-violence>

A barring order is valid for fourteen days ... and it is controlled by the police during the first three days. The perpetrator has to hand over his keys to the police; if he wants to pick up some belongings, he has to inform the victim of his visit.

When the perpetrator is found at home during the validity of the barring order, he is fined for this offence under the Administrative Criminal Law and can even be arrested if he refuses to leave (if the victim has allowed the offender to come back home, she can be fined, too)."

We believe that many of these aspects of the Austrian legislation and approach should be explored for replication in the Victorian context.

Electronic monitoring of perpetrators

In Tasmania an evaluation of electronic monitoring of family violence offenders has demonstrated promising outcomes and recommended its continuation and expansion. It demonstrated increased safety to women and children as well as increased perpetrator accountability. Of 52 perpetrators fitted with electronic monitoring there was:

- An overall reduction in violent incidents by 82%.
- The majority (87%) of the incidents involved breach only such as technical breaches (failing to be contacted or battery not charged)
- Violent breaches decreased from 83 to 13 (a 78% reduction)
- High risk incidents were down to 9 from 50
- 80% of perpetrators had no reported family violence incidents following the removal of the electronic monitor.

The evaluation indicated that the introduction had been welcomed by most magistrates, prosecutors and defence barristers. Some perpetrators themselves saw benefits:

I've been able to use the time to rehabilitate myself. It's given us a year apart. I've had time to see a psychologist, go to anger management. A year apart so there's no more damage to our relationship

It's made me a lot stronger, to be able to relate to bail conditions and stuff like that. It's been a help to me. It's better than prison and proves you can change (to the Court)

It's actually quietened me down a lot. I know what I've done wrong. I know I've created the issue. I'm trying to get help, counselling.

Overall, victims' views of the program were positive. They understood that the program alone would not end the violence they experienced but they felt that it provided them with a number of benefits: a sense of safety through greater connection with police and other support services, a reprieve from constantly being in a state of hypervigilance, an enhanced sense of agency and personal control in relation to decisions about their own lives, and ultimately a greater sense of freedom from constant control.

The evaluation also strongly recommended an increase in support services for perpetrators, noting that research has shown they are unlikely to be sufficient to change criminal behaviour long-term⁴.

A South Australia trial also demonstrated the possibilities of electronic monitoring in keeping women safe. Between January 2017 and November 2018, the South Australian Department of Corrections tracked the movements of 394 men who had been released on bail after being charged with domestic violence crimes.

Half the men (197) were monitored 24/7 via GPS-enabled ankle bracelets.

Among that group, 27 committed another offence, including 16 who were charged with a domestic violence offence.

Among those who were not electronically monitored 64 men reoffended, including 44 charged with domestic violence offences – or a 163 per cent increase.

A study by the Australian National Research Organisation into Women's Safety has noted some potential unintended consequences of electronic surveillance in elevating risk

- Continued emotional abuse and coercive control through means (including using a third party or communications technology) that are not detected by GPS tracking.
- Inadvertently alerting the defendant/offender to the whereabouts of the victim/survivor through the use of exclusion zones
- Creating a false sense of security for victims/survivors if their expectations of the technology exceed its actual capabilities

They conclude however that: 'None of these issues is sufficient to conclude that EM is not appropriate in the context of DFV (domestic and family violence). However, they do warrant careful consideration in the design and implementation of such [programs].'⁵

Summary

We know that family violence responses are in the main predicated on women 'leaving', 'fleeing' and escaping' their homes; more than 50 per cent of women endangered by family violence report that they, and not their partner, move out of the home they share⁶.

We need to see it as normal — a community responsibility — to make that home safe, with the perpetrator excluded by whatever legal, security and policing protections are necessary. It must also be acknowledged that leaving and separation are the most dangerous actions a woman can take; but a change in community mindset and expectations, including among police, legal and courts, of 'who should stay and who should leave' violence, is also needed.

⁴ *Evaluation of project vigilance: electronic monitoring of family violence offenders* (Final report, July 2021) by Tasmanian Institute of Law Enforcement Studies

⁵ Nancarrow, H., & Modini, T. (2018) *Electronic monitoring in the context of domestic and family violence: Report for the Queensland Department of Justice and Attorney-General*. ANROWS.

⁶ Australia's National Research Organisation for Women's Safety (ANROWS) (2019) *Domestic and family violence, housing insecurity and homelessness: Research synthesis* (2nd ed. Ed: ANROWS Insights, 07/2019) Sydney, NSW: ANROWS