

**Paving the roads to recovery:**  
Building a better system for  
people experiencing mental  
health issues in Victoria

The Royal Commission into Victoria's Mental Health System provides a once-in-a-lifetime opportunity to build a coordinated mental health system with the voices, rights and recovery of people experiencing mental health issues at its centre.

In our vision for Victoria's mental health system, all Victorians experiencing mental health issues can access tailored and safe services, including Aboriginal and Torres Strait Islander people, people from CALD communities, LGBTIQ+ people, older people, women, people diagnosed with dual disability, and people in regional areas.

We have made **57 recommendations** for reform to create a better system for all Victorians.

## CONSUMER LEADERSHIP

Consumers of mental health services are the people most directly affected by mental health and related systems. Embedding **consumer leadership** and engagement is critical to ensuring the mental health system is focused on the human rights of those who use it.

We recommend embedding consumer leadership in mental health services, ensuring **consumers co-produce the implementation of the Royal Commission's recommendations**, and extending consumer leadership to systems that intersect with the mental health system.

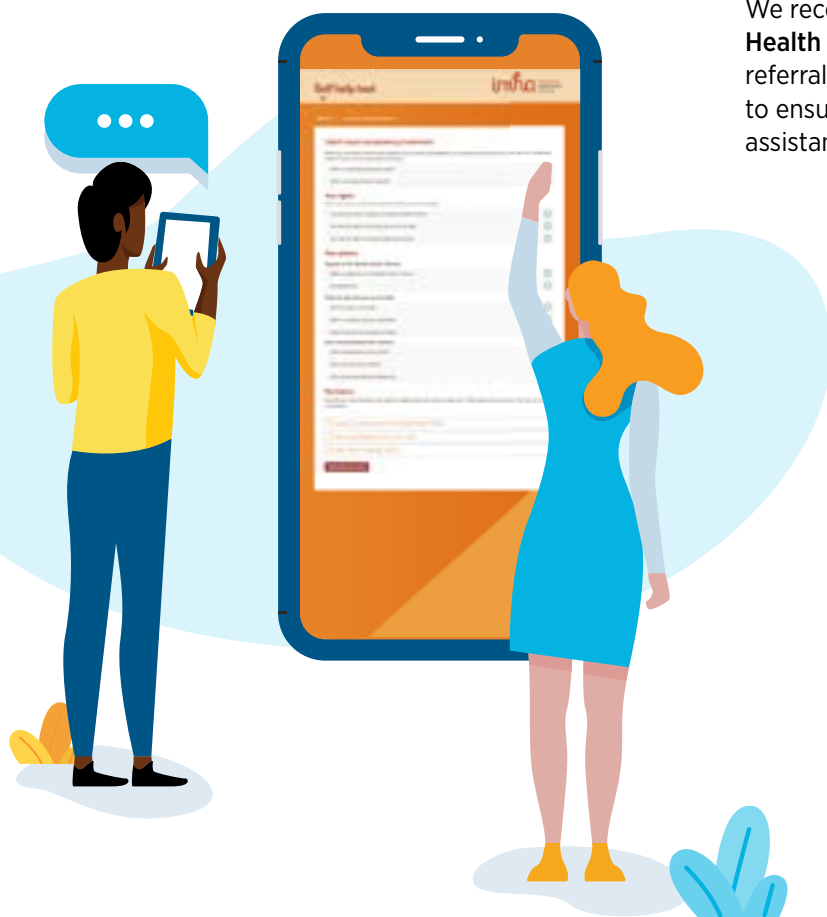
## ACCESS TO ADVOCACY

People receiving, or at risk of receiving, compulsory treatment should have as much say as possible in their assessment, treatment and recovery. The Independent Mental Health Advocacy Service (IMHA) supports people through representational advocacy and supported decision-making. An independent evaluation of IMHA found it is instrumental to maintaining the rights of people subject to compulsory treatment, and it should be accessible to everyone who needs it.

We recommend making **IMHA an opt-out advocacy service** for consumers on compulsory treatment orders.

Legal information, advice and representation provides multiple benefits to people appearing before the Mental Health Tribunal, but unfortunately legal assistance is not available for many consumers.

We recommend **additional funding for Mental Health Tribunal legal assistance**, and improved referral, information-sharing and processes to ensure all consumers can access free legal assistance.



## ACCESSIBILITY AND SAFETY OF SERVICES

Many of our clients and consumers experiencing mental health issues have experienced trauma and/or family violence, but it is often under-recognised or poorly understood. This can lead to clients missing out on early access to legal and non-legal support and family violence services and cause or exacerbate mental health issues. This puts women in particular at greater risk of experiencing legal problems, including child protection involvement, and the continuation of family violence.

We recommend requiring **mental health services screen for family violence risks** at intake. All aspects of the mental health and justice systems must **improve their responses to people who use family violence** and are experiencing mental health issues.

Through our work we see that there are disparities between metropolitan and regional areas when seeking access to services and treatment. The Victorian Government should ensure people can access **specialist and high-quality** mental health treatment across **rural, regional and remote Victoria**.

All Victorians should have access to tailored, culturally safe services that recognise and respond to their individual needs. In our practice experience, too often, this is not the case for our clients and consumers. We recommend requiring all mental health services to implement **specific strategies** to provide **trauma-informed and responsive** services.

## SERVICE DELIVERY AND COMMUNITY SUPPORTS

The Mental Health Act was intended to embed supported decision-making, recovery and least restrictive practice into the Victorian mental health system, but consumers frequently tell us this is not their experience.

We recommend requiring and funding mental health services to embed these key principles into their practice to **increase rates of voluntary mental health services and treatment in the community**. Clinicians who can make compulsory treatment decisions must be regularly trained on key aspects of the Mental Health Act and application of the Victorian Charter, including supported decision making, recovery and least restrictive treatment.

Currently, Victoria's mental health system is skewed towards a crisis response. Our system should respect people's choice and autonomy to decide what they need and when they need it. Community-based services should be adequately resourced to play a crucial prevention role in Victoria's mental health system, including alternative forms of supports.

We recommend **improving access to holistic and flexible treatment options**, and expanding funding to **bridge the gap** between a Mental Health Care Plan and someone's mental health support needs. There also needs to be **cross-governmental co-ordination** to ensure consumers have a **seamless experience of mental health, health and NDIS supports**.

Secure extended care units (SECUs) are intended to provide medium to long-term treatment and rehabilitation. Many of our clients receive compulsory treatment in SECUs for lengthy periods of time, without transition or discharge planning. People who have been in SECUs for many years face significant financial and socioeconomic disadvantage, which makes transitioning to the community harder.

There should be standards to regulate **inpatient care, liveability standards, discharge and transition planning** in SECUs. We also recommend funding of broader options for accommodation in the community, including **step-down programs and community based treatment**.

We also recommend the Victorian government resource the supply of **safe, stable and affordable housing**. This is particularly important for people experiencing family violence, leaving custody or inpatient units and for integrated rehabilitation housing programs and Specialist Disability Accommodation.



## MENTAL HEALTH SYSTEM OVERSIGHT

Detaining a person in a mental health facility and performing treatment without their consent should only be authorised where absolutely necessary, and as a last resort. Victoria continues to have some of the highest rates of compulsory treatment in Australia. We have made several recommendations to improve how decisions are made under the Mental Health Act, and to improve alignment with the Convention on the Rights of People with Disabilities.

The Victorian Government should amend the Mental Health Act to allow **all consumers with decision-making capacity to refuse treatment**, unless immediate treatment is necessary to prevent serious harm to another person, taking into account less restrictive options.

The Victorian Government should update the Mental Health Act to require a **substitute decision-maker** gives **all practical and appropriate effect** to a person's will and preference. It should also insert a **presumption that treatment criteria do not apply**, which would effectively create a presumption of capacity. The Victorian Government should also make changes to ensure the Mental Health Tribunal can make prospective community treatment orders for a future date.

Currently, the Mental Health Act creates rights for consumers and guidelines for supported decision-making, but there are no mechanisms for accountability. The Victorian Government should consider ways to provide **increased oversight** of decisions that **restrict a person's rights**, but are not currently subject to review by the Mental Health Tribunal. We also recommend the introduction of quality assurance mechanisms and measures to evaluate the effectiveness of the tribunal.

The Department of Health and Human Services and the Mental Health Tribunal should **publicly report service level and demographic data** to improve transparency and accountability, and support service planning and delivery. There should be a state-wide monitoring and evaluation framework for the mental health system, and consumers should co-produce these frameworks.

We recommend the Royal Commission consider **greater oversight and regulation** of the mental health system, and **improving complaint handling mechanisms** for consumers to ensure greater accountability.



## HUMAN RIGHTS AND DISCRIMINATION LAW

In our practice experience, people experiencing mental health issues are more likely to interact with public authorities or be subject to decisions that have an impact on their rights. We recommend a range of reforms to safeguard consumers' human rights.

Restrictive practices are harmful and traumatising to many consumers. They represent a loss of dignity and autonomy and can reduce the likelihood of seeking help in the future. We recommend the Department of Health and Human Services publish a commitment to the **reduction and elimination of restrictive practices** and implement **co-produced strategies** to achieve this.

The Victorian Charter is an important tool to promote and enforce human rights. It could be strengthened to broaden the scope of protected rights, including the **right to self-determination** for Aboriginal and Torres Strait Islander peoples, and **the right to health**. The Victorian Government should strengthen human rights protections for consumers by implementing recommendations from the 2015 Human Rights Charter Review.

The Victorian Government should consider how Victorian laws can **better implement** the **Convention on the Rights of People with Disabilities**, and ensure effective implementation of the **Optional Protocol of the Convention Against Torture**.

The Victorian Government should also take positive steps to reduce the mental health impacts of discrimination and workplace sexual harassment.

## CHILDREN AND YOUNG PEOPLE

Children and young people require specialist support and mental health services that are appropriate for their age and cognitive development but often they are unable to access them. The Victorian Government should ensure **young people across the state** can access **tailored youth services**, including inpatient care.

Children with child protection involvement are already vulnerable but they face further difficulties in accessing appropriate mental health support when they need it. The Victorian government should ensure that **all children in out of home care** have access to the **mental health supports they need**.

In our practice experience we also see assumptions being made about people's capacity to parent due to current or former experiences of mental health issues. These assumptions can result not only in parents having children removed from their care but also not being supported to have contact with their children or be involved in decisions regarding their children's care. The Victorian Government should provide **clear guidance and greater support**, to **improve the child protection system's response** to families experiencing mental health issues.

Children caught up in the family violence court system may have undiagnosed mental health issues driving their behaviour but not previously identified or addressed. The Victorian Government should implement and resource **a specialised response for adolescent family violence**.

To keep children experiencing mental health issues from entering the youth justice system, the Victorian Government should **raise the minimum age of criminal responsibility to 14**. There is an urgent need for a joined up and systems focused **youth forensic mental health system**, which is also available to young adults. This system should include appropriately resourced facilities, a specialist youth forensic workforce that is culturally sensitive, trauma informed and has specialist capacity to care for multiple co-existing needs, and integrated early intervention services and programs which are linked to families.





## CRIMINAL JUSTICE

VLA recommends measures to reduce the number of people with mental health issues entering the criminal and youth justice systems and reduce the harm of criminal justice involvement for people experiencing mental health issues.

This includes increased access to diversion, therapeutic programs and courts, community-based sentencing options, and appropriate mental health facilities in custody, including dedicated forensic facilities. People should also be supported to access rehabilitation and recovery-based services and live well in the community.

The Victorian Government should resource **community mental health care and treatment options**, particularly between primary care and acute care, to help people manage their mental health needs before they escalate to crisis.

The Royal Commission should consider ways to **reduce the reliance on Victoria Police** as first responders for people experiencing mental health issues. People experiencing mental health issues often face multiple challenges such as homelessness, problematic alcohol or drug use, or insufficient supports, and are more likely to be visible in public spaces. This means they are more likely to have ongoing and regular contact with police. Criminal enforcement of minor offences does not address the underlying causes of these problems, and can further entrench them.

Short periods on remand and short sentences of imprisonment are highly disruptive to a person's employment, education, healthcare, relationships and community engagements. These disruptions significantly hinder recovery and rehabilitation, making it difficult to break the cycle of offending.

The Victorian Government should **decriminalise or amend offences** that penalise mental health issues, addiction and poverty, as is already underway in relation to public drunkenness. There should be greater use of **cautions and diversions** and improved access to services which can help people address underlying issues. Where a prosecution is necessary, police should issue a **summons or notice to appear** rather than arrest where possible, to keep people experiencing mental health issues connected to treatment and support.

The Victorian Government should make **minor changes to bail laws** to avoid people charged with minor offending being held on remand. There should be a **presumption against short sentences of imprisonment** for people experiencing mental health issues, in favour of sentences which allow the person to stay in the community under supervision.

Proper transition support upon release into the community is critical to averting relapses and reducing the risk of re-entry back into the justice system, but our clients are often released into the community without supports. We recommend the Victorian Government **improve and resource practical transition planning** and support for people leaving custody and improve access to **supervision or parole** upon release

The justice system should be an opportunity to intervene positively in a person's life and support their recovery. It should provide an opportunity for integrated support to help people address the causes of their offending. To do this, the Victorian Government should expand bail support programs across the state and resource a **specialist mental health bail program**.

Specialist and problem-solving courts such as the Assessment and Referral Court (ARC), Drug Court, Koori Court and Neighbourhood Justice Centre, recognise that recovery takes time and is not linear, and requires a collaborative and multidisciplinary approach that works towards a common outcome. We recommend the Victorian Government roll out **state-wide access to ARC and the Drug Court**.

The Victorian Government and the Magistrates' Court should develop a mechanism for assessing and determining **fitness to plead or** participate in proceedings in the **summary jurisdiction**. This should be accompanied by an increase the range of sentencing options available in the summary jurisdiction, to enable tailored responses that can support rather than hinder a person's recovery.

Victoria's Community Correction Order regime has many positive characteristics and has been praised for its flexibility, but support for people experiencing mental health issues could be improved. We recommend changes to ensure **Community Corrections Orders have a therapeutic focus**, with improved case management and access to services.

Secure forensic treatment facilities provide for more humane compulsory treatment of people in secure custody, compared with providing that treatment in prison or not at all, but the number of beds has not kept pace with growth in the prison population. The growing offender and prison population in Victoria has added to the challenges of health care and support for people experiencing mental health issues in the criminal justice system. The Victorian government should **expand secure forensic mental health facilities** to resource a sufficient number of beds for compulsory treatment and improve **access and availability of voluntary assessment**, treatment and therapeutic supports in custody.

Read our full recommendations and the stories of people with a lived experience of the mental health system at [www.legalaid.vic.gov.au/roadstorecovery](http://www.legalaid.vic.gov.au/roadstorecovery)





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