



Royal Commission into Aboriginal Deaths in Custody Recommendation

101. Effectiveness of non-custodial sentencing orders

That authorities concerned with the administration of non-custodial sentencing orders take responsibility for advising sentencing authorities as to the scope and effectiveness of such programs.¹

Background²	<p>The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) found that non-custodial sentencing options were underused partly due to limited understanding of Aboriginal culture and a lack of awareness or willingness among decision-makers. In some cases, there were also practical issues due to a lack of resources and systems of support for alternatives to custody. For imprisonment to be a last resort, sentencing authorities need to be well informed:</p> <p style="padding-left: 40px;"><i>If the full range of sentencing options are to be considered, so that imprisonment truly is the option of last resort, it is essential that all sentencing authorities are made fully familiar with the legislation and also with the administrative arrangements which apply to persons placed on community-based orders.</i></p> <p>In Victoria work was underway towards sentencing guidelines for the courts. It was recognised that explicit guidance could increase the use of non-custodial options:</p> <p style="padding-left: 40px;"><i>...under-usage of non-custodial options cannot be overcome by simply leaving the matter to the discretion of the sentencers— some legislative direction or encouragement is required. There is some evidence to suggest that such explicit guidance does increase the usage of non-custodial options.</i></p>
Intent	Ensure sentencing authorities are advised on the effectiveness of non-custodial sentencing orders.
Responsibility	All state and territory governments.
Key contacts	Corrections Victoria, Youth Justice, Department of Justice and Community Safety (DJCS).
Key action taken	
2005 Review³	<p>The Department of Justice assessed Recommendation 101 as fully implemented.</p> <p>Department of Justice</p> <p>Corrections Victoria advised that they had put in place regular meetings with local and Chief Magistrates to share information on correctional practices, program effectiveness, and the development of tailored and alternative services, including for Aboriginal offenders.</p>

¹ Royal Commission into Aboriginal Deaths in Custody (Final Report, 1991) vol 3, 80 ('RCIADIC').

² Ibid vol 3, 74-75.

³ Aboriginal Justice Forum (Vic), Department of Justice (Vic), *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody* (Review Report, October 2005) vol 6, 519-520 ('2005 Review').

101. Effectiveness of non-custodial sentencing orders

	<p>Corrections Victoria expanded opportunities for judicial feedback through consultations and surveys, using this input to refine performance measures. Representatives from Community Correctional Services also met with the judiciary to advise them about changes in their environment.</p> <p>In addition, specialised court advice workers were assigned to each court to improve consistency and information exchange, and new units and committees (like the Melbourne Court Services Unit and Prosecutions Practice Committee) were established to further strengthen communication about community corrections programs and services.</p>
2018 Review⁴	<p>Deloitte concluded that Recommendation 101 was fully implemented in Victoria, as Community Correctional Services advised magistrates and judges on matters related to the administration of non-custodial sentencing orders.</p>
Since then	<p>In 2024-25, Youth Justice and Corrections Victoria within the Department of Justice and Community Safety provided updates on the implementation of this recommendation:</p> <p>Youth Justice⁵</p> <p>A Review of the <i>Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017</i> (Vic) was developed in the context of high-profile and critical incidents in the community and at the Youth Justice precincts. The Youth Justice Reform Act required relevant ministers to undertake a review of the amendments made by the Act within three years of them coming into operation. The review was conducted by an independent reviewer, supported by a small secretariat within Youth Justice. The Statutory Review, tabled in Parliament in May 2022, made 20 recommendations for potential improvements to the Youth Justice system, including suggestions for legislative reform. One of the recommendations related to the state-wide diversion scheme and youth control orders (YCOs).</p> <p>On 1 June 2018, amendments to the <i>Children, Youth and Families Act 2005</i> (CYFA) created a new sentencing option called a 'youth control order'. This order is a non-custodial sentencing option that is available for young people who would otherwise be sentenced to a period of detention in a Youth Justice Centre or a youth residential centre, because of the gravity or habitual nature of their offending. The YCO provides a period of intense supervision, with targeted rehabilitation, education, training, and or employment support, as well as restrictions on the young person's freedom, to assist them to cease offending. YCOs are available across the state and include judicial monitoring, to ensure the conditions of the order remain appropriate to the young person's circumstances, and conducive to their successful completion of the order.</p> <p>As a community-based order, YCOs sit below a sentence of detention. Young people on YCOs and other community-based orders are supported by regionally based Youth Justice case managers and a range of community support organisations. This includes the Aboriginal Intensive Support Program, delivered by Aboriginal Intensive Support Practitioners, with the</p>

⁴ Deloitte Access Economics, Department of Prime Minister and Cabinet, *Review of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody* (Report, August 2018) 200 ('2018 Review').

⁵ Youth Justice, 'Request for Youth Justice information - Custodial Experiences - Recs 168-188'.

101. Effectiveness of non-custodial sentencing orders

support of Koori Court Advice Workers, and Aboriginal focussed teams. These initiatives form part of the broader Aboriginal Youth Justice Program.

Children’s Court Youth Diversion Program

In addition to YCOs, the Youth Justice Reform Act introduced the Children’s Court Youth Diversion (CCYD) program. This program provides an opportunity for children and young people with limited or no criminal history to accept responsibility for their behaviour and address the underlying reasons for their offending before they enter a plea in court. Young people who successfully complete the program can have their charges discharged and avoid the stigma associated with a criminal record, without the need for statutory supervision from Youth Justice. The program was established in line with evidence that shows that prevention, diversion and early intervention are the best ways to support young people and prevent their progression into the criminal legal system.

A 2020-22 evaluation found the CCYD program had a positive impact on reoffending rates:

- less than a quarter of participants reoffended within six months of completing their diversion
- over half of participants had not reoffended after two years
- reoffending among participants was less frequent and less serious than among young people with similar offending history and characteristics who received an alternative court outcome.

Youth Justice Act 2024 (Vic)⁶

The *Youth Justice Act 2024* introduces principles that require a sentence imposed on a child to be the minimum intervention required, with a custodial sentence imposed as a last resort and for the minimum period appropriate and necessary.

The Act also introduces Aboriginal-specific sentencing principles that courts must consider when determining which sentence to impose on an Aboriginal child. These principles recognise that, for Aboriginal children, offending behaviour does not occur in isolation, and sentencing must be considered in the context of each child’s family, kin, community and culture, but also in the context of discriminatory systemic institutional and historical factors that have resulted in Aboriginal children being over-represented in the criminal legal system.

The Aboriginal-specific principles require sentencing courts to consider matters such as supporting the right to self-determination, as well as the impact of the unique and systemic disadvantage that Aboriginal children have faced in the legal system.

The *Youth Justice Act* gives practical effect to these principles by:

- requiring the court to outline how it has considered the Aboriginal-specific sentencing principles when sentencing an Aboriginal child to custody, and
- allowing the court to hear submissions about the unique and systemic background factors affecting the child, which could highlight the strengths and experiences of the child, their family and community or identify culturally appropriate responses for them.

⁶ *Youth Justice Act 2024 (Vic)* ('YJ Act').

101. Effectiveness of non-custodial sentencing orders

Youth Justice Court Advice Service⁷

The Youth Justice Court Advice Service (YJCAS) continues to advise and share information with sentencing authorities regarding the effectiveness of non-custodial sentencing orders. YJCAS staff are present at all courts across Victoria where Children's Court matters are heard. The purpose of the service is to provide quality, evidence-based, impartial advice to assist the court in its decision making to support the rehabilitation of young people. Staff prepare and provide written and verbal advice for the court, conduct key assessments and screenings with young people regarding their suitability for various orders and services, and liaise with case managers and stakeholders about court outcomes.

The Youth Justice Strategic Plan 2020-2030 includes an action for Youth Justice to review its court service to strengthen the quality of advice provide to the courts. This occurred during 2021-22 with Youth Justice introducing a new practice guideline in 2021 to strengthen advice and provide greater clarity on the specialised positions within YJCAS.

In 2023 the Youth Justice Bail After-hours Service (YJBAS) commenced. It delivers a Youth Justice-run bail assessment and advice service for after-hours decision-makers. This includes both bail justices and magistrates in the Children's Court Weekend Online Remand Court (WORC). When police seek to remand a young person after-hours, this application must be heard by either a magistrate of the WORC or a bail justice. YJBAS staff conduct bail assessments with young people, to determine their suitability for Youth Justice supervised bail, and provide written and verbal advice to after-hours bail decision-makers to support their deliberations.

In locations where regional court user meetings are convened, Youth Justice will also participate in meetings to strengthen and maintain stakeholder relationships and address any local court related issues.

Corrections Victoria⁸

Since June 2016, more than \$322 million has been invested in strengthening Community Correctional Services (CCS) in Victoria; \$89 million was invested in 2015-16 and \$233 million in 2016-17 to deliver an expansion and reform program which significantly changed the management of offenders subject to Community Correction Orders (CCOs). This investment supported required changes to CCS case management practice due to the increasing complexity and risk of people under CCS supervision. This was a result of a guideline judgement and the increased use of CCOs combined with imprisonment orders (which the abolition of suspended sentences contributed to). The investment included an additional 300 staff (including 100 new advanced case managers), specialist training to support sentencing advice to the judiciary, new practice and standards positions to ensure the application of evidence-based case management practice, new treatment services, and workforce

⁷ Youth Justice, 'Request for Youth Justice information - Custodial Experiences - Recs 62, 101, 112, 114, 119 & 235-238'; Department of Justice and Community Safety (DJCS), 'Youth Justice Bail After-Hours Service (YJBAS)' (Web Page 2025) <<https://www.justice.vic.gov.au/justice-system/youth-justice/youth-justice-bail-after-hours-service-yjbas>>.

⁸ Corrections and Justice Services, 'Corrections and Justice Services Response to the AJC Review of Recommendations from the Royal Commission into Aboriginal Deaths in Custody'.

101. Effectiveness of non-custodial sentencing orders

development. In line with this system overhaul, the way sentencing authorities are advised on the scope and effectiveness of non-custodial sentences continues to evolve.

Day-to-day operations sees trained teams of skilled CCS Court Assessment and Prosecutions Service staff providing sentencing courts with advice about administration of non-custodial orders. They provide evidence-based recommendations about a person's suitability for a CCO, information about their identified risks and recommend order conditions targeted to address their needs. Cultural considerations inform this advice. Established in 2017 as part of CCS service reforms, Court Assessment and Prosecutions Staff provide a professional and specialist court service across the state, including Koori Courts across both the Magistrates' and County Court jurisdictions. Consultation between Justice Services in the department and the Magistrates' and County Courts occurs at least quarterly. The nature of this consultation varies but does include meetings that focus on statewide CCS practice trends and themes, data and CCS performance and provides the judiciary with a forum to raise issues and express their views about CCS service delivery.

Locally, CCS management teams routinely meet with regional coordinating magistrates to discuss trends and themes specific to their catchment areas. Information about programs and services available to key groups such as Aboriginal people is also shared at these meetings.

Evidence of impact

Authorising documents

Youth Justice Act 2024 (Vic)⁹

This Act provides an outline of effective sentencing options for children and young people through its guiding principles, specific principles that apply to Aboriginal children and young people and sentencing principles.

Correctional Practice Framework¹⁰

Issued in 2024, this document outlines the correctional system's (custodial and community) theoretical framework and evidence base for reducing recidivism and details 'what works' in practice to meet this remit. A suite of guidance materials supports practical application of the Correctional Practice Framework, CCS case management and operations, and Court Assessment and Prosecutions Staff.

Outputs

Youth Justice¹¹

- Implemented legislative amendments to the *Children, Youth and Families Act 2005* in 2018 to create a new sentencing option — the Youth Control Order (YCO).
- Established statewide access to YCOs, providing intensive community-based supervision and judicial monitoring for eligible young people.
- Provided targeted rehabilitation, education, training, and employment support to young people under YCOs to reduce reoffending.

⁹ YJ Act 19, 24, 203, 208-10.

¹⁰ Corrections and Justice Services, 'Corrections and Justice Services Response to the AJC Review of Recommendations from the Royal Commission into Aboriginal Deaths in Custody'.

¹¹ Youth Justice, 'Request for Youth Justice information - Custodial Experiences - Recs 62, 101, 112, 114, 119 & 235-238'.

101. Effectiveness of non-custodial sentencing orders

- Delivered Aboriginal-specific supports for young people on YCOs through the Aboriginal Intensive Support Program, Koori Court Advice Workers, and Aboriginal focussed teams as part of the broader Aboriginal Youth Justice Program.

Youth Justice Court Advice Service:

- Deployed Youth Justice Court Advice Service (YJCAS) staff across all Victorian courts where Children’s Court matters are heard.
- Provided written and verbal advice to courts on non-custodial sentencing options and young people’s rehabilitation needs.
- Conducted assessments and screenings with young people to determine suitability for specific orders and services.
- Implemented a new practice guideline in 2021 to strengthen court advice quality and clarify specialised YJCAS roles.
- Commenced the Youth Justice Bail After-hours Service (YJBAS) in 2023, providing after-hours bail assessments and advice to magistrates and bail justices.
- Delivered written and verbal advice after-hours to bail decision-makers through YJBAS to support informed determinations.
- Participated in regional court user meetings to maintain stakeholder relationships and address local court-related issues.

Corrections Victoria¹²

Performance data, including the rate of return to corrective services and the successful completion of community-based orders is published in the DJCS annual report. Information about the effectiveness and efficiency of corrective services in Victoria, alongside all other Australian jurisdictions is published annually in the Australian Government, Productivity Commission Report on Government Services. The Sentencing Advisory Council (SAC) also publishes information about CCOs and Aboriginal people in the justice system.

The manner, extent or frequency with which CCS advises sentencing authorities on the scope or effectiveness of non-custodial sentencing options is not formally captured.

Outcomes

Youth Justice¹³

In 2022-23, Youth Justice commissioned an independent review of the key reforms delivered by the *Children and Justice Legislative Amendment (YJ Reform) Act 2017*, which included the introduction of Youth Control Orders, strengthening of the Children’s Court Youth Diversion program and other miscellaneous reforms.

This review was conducted with the involvement of the Victorian Aboriginal Legal Service, Aboriginal Justice Caucus, First People’s Assembly of Victoria, Commissioner for Aboriginal Children and Young People, key government departments, community agencies, and young people with lived experience.

¹² Corrections and Justice Services, 'Corrections and Justice Services Response to the AJC Review of Recommendations from the Royal Commission into Aboriginal Deaths in Custody'.

¹³ Youth Justice, 'Request for Youth Justice information - Custodial Experiences - Recs 62, 101, 112, 114, 119 & 235-238'.

101. Effectiveness of non-custodial sentencing orders

	<p>The review concluded that these programs had contributed to positive outcomes and effort should be made to:</p> <ul style="list-style-type: none"> • enhance opportunities for young people from groups who are over-represented in the Youth Justice system to participate in the Children’s Court Youth Diversion program • build on positive features associated with Youth Control Orders in the new Act, and • strengthen cultural considerations for Aboriginal children and young people when making orders. <p>Corrections and Justice Services¹⁴</p> <p>Corrections and Justice Services were not aware of any reviews or evaluations that reflected the views of Aboriginal individuals, communities or organisations in relation to the advice CCS provide to sentencing authorities in Victoria.</p>
Community views	None identified.
Related recommendations	
Pathways to Justice¹⁵	<p>Recommendation 6-3</p> <p>State and territory governments, in partnership with relevant Aboriginal organisations and communities, should develop options for the presentation of information about unique systemic and background factors that have an impact on Aboriginal peoples in the courts of summary jurisdiction, including through Elders, community justice groups, community profiles and other means.</p>
2005 Review¹⁶	<p>Recommendation 121</p> <p>That Department of Justice (Corrections Victoria):</p> <ol style="list-style-type: none"> a) conduct a review of the information provided to sentencing authorities on the scope and effectiveness of non-custodial sentences, and b) provide a report to the Aboriginal Justice Forum on the outcome of (a). <p>That the Victorian Government continue to implement and monitor Recommendation 101 through any monitoring process established as a consequence of this Review.</p>

¹⁴ Corrections and Justice Services, 'Corrections and Justice Services Response to the AJC Review of Recommendations from the Royal Commission into Aboriginal Deaths in Custody'.

¹⁵ Australian Law Reform Commission, *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Final Report No 133, December 2017) 14 ('Pathways to Justice').

¹⁶ 2005 Review, vol 6, 635.

101. Effectiveness of non-custodial sentencing orders

Assessment summary¹⁷

The intent of Recommendation 101 was to ensure authorities that administer non-custodial sentences advise sentencing authorities of their effectiveness.

Young people

The Youth Justice Court Advice Service (YJCAS) advises sentencing authorities about the effectiveness of non-custodial sentencing orders. However, successful, community-based programs for Aboriginal young people may be less well known to the YJCAS as they operate in specific locations and are rarely statewide. This may limit the information and advice provided to sentencing authorities, and ultimately undermine the use of place-based, Aboriginal-led programs as alternatives to custody for our children and young people.

The introduction of youth cautioning and diversion programs over the last few years, that's proved very successful. It's certainly reduced numbers of young people in the system; both being incarcerated as well as on Youth Justice orders...

The introduction of the restorative justice [Lotjpadhan] programs has been a success in the Eastern region. The hope is with more of these programs, that they'll be used as another form of non-custodial sentencing option. (Marion Hansen, Co-chairperson, AJC and Member, Youth Parole Board)

There's more work to be done with the courts in terms of them understanding restorative justice programs. (Lawrence Moser, Chairperson, Eastern Metropolitan RAJAC)

We are also concerned that participation in Youth Justice Group Conferencing under the new *Youth Justice Act 2024* relies on an 'opt in' process rather than an 'opt out' one that would compel more young people to engage in restorative justice processes. We continue to advocate for this change.

The 2020-22 evaluation of the Children's Court Youth Diversion, statutory review of the Youth Justice Reform Act amendments, and new practice guidelines are all evidence of Youth Justice efforts to advise sentencing authorities on the scope and effectiveness of non-custodial options for children and young people.

Adults

Corrections Victoria noted the considerable investment made (over \$322 million) to strengthen Community Correctional Services (CCS) and the Court Assessment and Prosecutions Service which provides sentencing courts with evidence-based recommendations about a person's suitability for a Community Correction Order, information about their identified risks, and order conditions to address their needs, including cultural considerations. This service is available across the state, including Koori Courts across both the Magistrates' and County Court jurisdictions. The investment included an additional 300 staff (including 100 new advanced case managers), specialist training to support sentencing advice to the judiciary, new practice and standards positions to ensure the application of evidence-based case management practice, new treatment services, and workforce development.

Although Corrections Victoria highlighted their 'at least' quarterly consultations with the Magistrates' and County Courts which broadly cover statewide CCS practice, trends and themes, data and CCS performance, it was unclear to what extent the effectiveness of non-custodial sentencing options for Aboriginal adults were covered in these meetings.

¹⁷ Meeting with Aboriginal Justice Caucus Working Group (Project Team, Online, 23 January 2025) ('Working Group Meeting (23 January 2025)'); Meeting with Aboriginal Justice Caucus (Project Team, In person, 26 March 2025) ('Aboriginal Justice Caucus Meeting (26 March 2025)').

Assessment of Recommendation 101¹⁸

Is the intent of the recommendation accurately described?

Yes No

Does the action taken align with the intent of the recommendation?

0 – No action taken

1 – Action taken is of little relevance to the intent of the recommendation

2 – Action taken partially aligns with the intent of the recommendation

3 – Action taken fully aligns with the intent of the recommendation

YJ: 1.5

CV: 1

(Score out of 3)

Is there evidence of the desired impact or outcome/s?

0 – No evidence

1 – Evidence of output rather than outcome

2 – Some evidence action contributed to outcome/s

3 – Clear link between action and impact or outcome/s

YJ: 1.5

CV: 1

(Score out of 3)

How relevant is the recommendation in the current context?

0 – No relevance – refers to practices, agencies or laws that no longer exist

1 – Low – some relevance, but most aspects of the recommendation no longer apply

2 – Moderate – remains relevant, but some aspects of recommendation no longer apply

3 – High – entirely relevant to current context

3

(Score out of 3)

Does full implementation have the potential to reduce incarceration, increase safety in custody and/or progress Aboriginal self-determination?

0 – No potential to improve Aboriginal justice outcomes

1 – Low – potential to improve Aboriginal justice outcomes, but none of the three identified

2 – Moderate – potential to progress one or two of the outcomes identified

3 – High – potential to reduce incarceration AND increase safety in custody AND self-determination

1.5

(Score out of 3)

Potential actions for further work

Enhanced data collection and distribution

- Increase availability of information about the operation of the Children’s Court Youth Diversion program, and community-based orders for Aboriginal young people. Ensure annual, public reporting of relevant data.
- Capture and publish data on the effectiveness of non-custodial orders for various Aboriginal cohorts.

Increase access to diversion

- Remove barriers to diversion for Aboriginal young people by removing the exclusion of certain offences, repeal requirements for the accused young person to acknowledge responsibility for the offence to be eligible for diversion and remove the need for the prosecutor to consent to diversion.

¹⁸ The Aboriginal Justice Caucus provided separate assessments of actions taken and evidence of outcomes for Youth Justice (YJ) and Corrections Victoria (CV) as indicated in the assessment scores and matrix.

- Ensure members of the judiciary are aware of available diversion programs, including local Aboriginal-led initiatives (like Yallum Yallum and Lotjpadhan).
- Support and strengthen opportunities for Aboriginal young people to participate in CCYD. Establish designated Aboriginal diversion coordinator positions to work with Aboriginal young people and their families. *(Recommendations from 2022 Statutory Review which engaged AJC, VALS, FPAV, CACYP and others).*

Increase restorative justice programs

- Increase availability of restorative justice programs; support and fund ACCOs to implement them.
- Ensure courts are aware of these programs, their outcomes and how to make referrals to them.
- Develop an Aboriginal Youth Group Conferencing model (as per Youth Justice Act 2024) that can also demonstrate the benefits of an ‘opt out’ model.

Moderate priority for further work

Relevance and potential impact

		Low (0-2)	Moderate (3-4)	High (5-6)
<i>Extent of action taken and evidence of outcomes</i>	High (5-6)			
	Moderate (3-4)		<i>Rec 101 (YJ)</i>	
	Low (0-2)		<i>Rec 101 (CV)</i>	

Bibliography

Meeting with Aboriginal Justice Caucus (Project Team, In person, 26 March 2025)

Meeting with Aboriginal Justice Caucus Working Group (Project Team, Online, 23 January 2025)

Aboriginal Justice Forum (Vic), Department of Justice (Vic), *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody* (Review Report, October 2005)

Australian Law Reform Commission, *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Final Report No 133, December 2017)

Corrections and Justice Services, Department of Justice and Community Safety 'Corrections and Justice Services Response to the AJC Review of Recommendations from the Royal Commission into Aboriginal Deaths in Custody' (31 December 2024)

Deloitte Access Economics, Department of Prime Minister and Cabinet, *Review of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody* (Report, August 2018)

Department of Justice and Community Safety (DJCS), 'Youth Justice Bail After-Hours Service (YJBAS)' (Web Page 2025) <<https://www.justice.vic.gov.au/justice-system/youth-justice/youth-justice-bail-after-hours-service-yjbas>>

Royal Commission into Aboriginal Deaths in Custody (Final Report, 1991)

Youth Justice, Department of Justice and Community Safety 'Request for Youth Justice information - Custodial Experiences - Recs 62, 101, 112, 114, 119 & 235-238' (December 2024)

Youth Justice, Department of Justice and Community Safety 'Request for Youth Justice information - Custodial Experiences - Recs 168-188' (December 2024)

Youth Justice Act 2024 (Vic)