



# **Systemic injustice in the health, housing and education systems.**

**Nuther-mooyoop to the Yoorrook  
Justice Commission**

**Aboriginal Justice Caucus**

*We acknowledge the Traditional Custodians of the lands and waterways upon which our lives depend. We pay our respects to our Ancestors and Elders – past, present and emerging. We extend that respect to all Aboriginal and Torres Strait Islander peoples. We acknowledge the leadership of Aboriginal Communities across Victoria in pursuing true justice for our people.*

## **Advice to readers**

Aboriginal and Torres Strait Islander peoples living in Victoria and involved in the justice sector have diverse cultures. Throughout this document ‘Aboriginal’ refers to Aboriginal and/or Torres Strait Islander People, communities and organisations. The Aboriginal Justice Caucus acknowledge that there are many Aboriginal people in Victoria who have Torres Strait Islander heritage, and many Torres Strait Islander people who now call Victoria home.

The terms ‘Koori’, ‘Koorie’ and ‘Indigenous’ are retained in the names of programs, initiatives, direct quotations, publication titles and in reference to published data.

The word family has many different meanings. Use of the words ‘family’ and ‘families’ is all encompassing and acknowledges the variety of relationships and structures that can make up a family unit, including family-like or care relationships and extended kinship structures.

***To Aboriginal and Torres Strait Islander readers, we advise that this document includes the names of people who have died and references to coronial findings.***

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## Acronyms and Abbreviations

<b>ACCO</b>	Aboriginal Community Controlled Organisation
<b>ACCJS</b>	Aboriginal Community Controlled Justice System
<b>ACJP</b>	Aboriginal Community Justice Panel
<b>AJF</b>	Aboriginal Justice Forum
<b>ALRC</b>	Australian Law Reform Commission
<b>AHV</b>	Aboriginal Housing Victoria
<b>AJA</b>	Aboriginal Justice Agreement
<b>AJA1</b>	Victorian Aboriginal Justice Agreement
<b>AJA2</b>	Victorian Aboriginal Justice Agreement: Phase 2
<b>AJA3</b>	Victorian Aboriginal Justice Agreement Phase 3
<b>AJA4</b>	<i>Burra Lotjpa Dunguludja</i> Victorian Aboriginal Justice Agreement Phase 4
<b>AJA5</b>	Victorian Aboriginal Justice Agreement Phase 5
<b>AJC</b>	Aboriginal Justice Caucus
<b>ASJC</b>	Aboriginal Social Justice Commissioner
<b>CAT</b>	Committee against Torture
<b>CIJ</b>	Centre for Innovative Justice
<b>CCoV</b>	Coroners Court of Victoria
<b>CCYP</b>	Commission for Children and Young People
<b>DJCS</b>	Department of Justice and Community Safety
<b>Djirra</b>	Djirra (formerly the Aboriginal Family Violence Prevention and Legal Service)
<b>JIIR</b>	Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney
<b>IBAC</b>	Independent Broad-based Anti-corruption Commission
<b>IPV</b>	Independent Prison Visitor
<b>KYC</b>	Koorie Youth Council
<b>LAJAC</b>	Local Aboriginal Justice Action Committee
<b>LSIC Inquiry</b>	Legal and Social Issues Committee Inquiry into Victoria's Criminal Justice System
<b>OPCAT</b>	United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
<b>RAJAC</b>	Regional Aboriginal Justice Advisory Committee
<b>RCIADIC</b>	Royal Commission into Aboriginal Deaths in Custody
<b>SAC</b>	Sentencing Advisory Council
<b>SEWB</b>	Social and Emotional Wellbeing
<b>UN</b>	United Nations
<b>UNCRC</b>	United Nations Convention on the Rights of the Child
<b>UNDRIP</b>	United Nations Declaration on the Rights of Indigenous Peoples
<b>VAAF</b>	Victorian Aboriginal Affairs Framework 2018-2023
<b>VACCA</b>	Victorian Aboriginal Child Care Agency
<b>VACCHO</b>	Victorian Aboriginal Community Controlled Health Organisation
<b>VACSAL</b>	Victorian Aboriginal Community Services Association Limited
<b>VAEAI</b>	Victorian Aboriginal Education Association Incorporated
<b>VALS</b>	Victorian Aboriginal Legal Service
<b>Yoorrook</b>	Yoo-rrook Justice Commission

## Aboriginal Justice Caucus

The Aboriginal Justice Caucus (**AJC**) is made up of all the Aboriginal signatories<sup>1</sup> to the Victorian Aboriginal Justice Agreement (**AJA**) and includes Chairpersons of each of the nine Regional Aboriginal Justice Advisory Committees (**RAJACs**), representatives from statewide Aboriginal justice programs, Aboriginal peak bodies and Aboriginal Community Controlled Organisations (**ACCOs**).

The AJC are a crucial conduit between Aboriginal Communities and the Victorian ‘justice’ system. We are privileged to work with and listen to our communities, colleagues and clients and seek to ensure their voices are heard by government, and those responsible for the day-to-day operation of police, corrections, courts and other ‘justice’ services.

The AJC has worked in partnership with Victorian governments for over 24 years. The AJC acknowledge the enormous contributions of Aboriginal leaders, Elders and knowledge holders who have gone before us, and fought tirelessly for our rights. Their efforts paved the way for us to continue the fight for justice for our people.

As the AJA has evolved, so too has the role of the AJC. We participate in a growing number of advisory and governance mechanisms to change laws, develop new strategies, procure programs and services, inform responses to justice issues and reform the system. However, to move beyond reform and *transform* the system into one that can truly deliver justice for our mob requires true self-determination.

Aboriginal leadership has always been central to the AJA, and as partners to successive phases of the Agreement the AJC have been instrumental in the creation of numerous positions, programs, policies and plans<sup>2</sup> to prevent our people coming into contact with the system, and to ensure that, for those caught up in the system, it is more responsive to their needs.

The AJA’s wide-reaching impacts, along with its strong partnerships, are a great strength. However, in the pursuit of true self-determination, there are significant limitations to this partnership approach where ultimate authority remains with the State. True self-determination still necessitates new and greater responsibilities for the AJC, Aboriginal Communities and Organisations to determine, design and deliver services that reflect Aboriginal ways of knowing, being and doing.

We are ready to meet this challenge as we embark upon the next phase of the Aboriginal Justice Agreement.

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<sup>1</sup> Signatories to *Burra Lotjpa Dunguludja*, the fourth phase of the Victorian Aboriginal Justice Agreement, are listed at the back of this submission.

<sup>2</sup> While not an exhaustive list, positions, programs, policies and plans established under the first three phases of the AJA are outlined in *Burra Lotjpa Dunguludja* – Victorian Aboriginal Justice Agreement Phase 4, p.12

## Introduction

The Aboriginal Justice Caucus welcome the opportunity to provide our *nuther-mooyoop* in response to the Yoorrook Justice Commission's (**Yoorrook**) call for submissions on systemic injustice in the health, housing, homelessness and education systems.

We know the Victorian 'justice' system does not work for Aboriginal people. The AJC's vision for the future is an Aboriginal Community-Controlled Justice System that is safe, fair and works for Aboriginal people across Victoria. This requires **transformation** of current systems and institutions, including the health, housing and education systems. Change of this scale will take time but is desperately needed as each day the current systems continues as they are, Aboriginal people experience harm, trauma and injustice. To mitigate these harms and prevent further Aboriginal lives being lost, urgent reforms are also required.

Through this submission, The AJC wish to reaffirm our position on several recommendations put forward in our first *nuther-mooyoop* to Yoorrook on Systemic Injustice in the Criminal Justice and Child Protection Systems. The AJC also recognise and thank our members providing individual and organisational *nuther-mooyoop* to Yoorrook and support their recommendations.

### ***Relationship between health, housing, education, and the justice system***

The first Victorian Aboriginal Justice Agreement (AJA1 2000-2006) was developed in response to recommendations from the 1991 Royal Commission into Aboriginal Deaths in Custody (**RCIADIC**) and subsequent 1997 National Ministerial Summit on Indigenous Deaths in Custody.

The RCIADIC concluded that addressing Aboriginal social and economic disadvantage is crucial for reducing Aboriginal involvement in the criminal justice system. The underlying factors behind socio-economic deprivation and inequalities experienced by those involved in the justice system are linked to broader systemic issues such as poor health outcomes, education, and employment. Reflecting this, the final report of the RCIADIC made 339 recommendations concerning procedures for persons in custody as well as social and economic factors including youth policy, alcohol, health, employment, housing, land rights, self-determination, and reconciliation.

Reducing the overrepresentation of Aboriginal people in custody and deaths in custody requires a response not only from the justice system, but also from health and human service sectors (incorporating mental health, drug and alcohol and housing) and education, as well as working with Aboriginal families, communities and children and young people.

## *Structure of this submission*

There are four parts to our nuther-mooyoop:

### **Section 1: Foundational systemic issues hindering progress towards self-determination.**

This section demonstrates that there are continuing and persistent underlying systemic issues relevant across all policy areas and facets of Aboriginal people's lives which are hindering progress toward the ultimate goal of self-determination. In order to achieve health, housing and education justice for Aboriginal people, as well as address injustices in justice, child protection and other areas, these issues must be addressed.

### **Section 2: Systemic Injustice in Relation to Health and Custodial Healthcare**

This section demonstrates that Aboriginal people have a right to access safe and responsive health care, whether they are incarcerated or living in the community. However, Aboriginal people continue to experience poorer health outcomes and mortality, compounded by culturally unsafe and dangerous health systems both in and outside of custodial settings. Early prevention, support and healing are required but punishment, isolation and harm are supplied, via a justice system that criminalises health issues. To achieve this a self-determined healthcare system is required which resources the Aboriginal community to provide health services to people in custody, and community-based alternatives to health issues.

### **Section 3: Systemic Injustice in Relation to Housing and Homelessness**

This section demonstrates that the continued and entrenched lack of suitable and stable short and long-term housing options for Aboriginal people is undermining the achievement of justice outcomes. The links between secure housing and better justice outcomes are undeniable, with suitable housing a protective factor against experiences of violence/abuse, offending and recidivism. Without commitment to action and investment to remedy housing injustice and meet the housing needs of Aboriginal people involved in the criminal legal system, Victoria will continue to fail to address the over-representation of Aboriginal people in its justice system.

### **Section 4: Systemic Injustice in Relation to Education and Schools**

This section demonstrates that school engagement and education is critical to reducing inequality experienced by Aboriginal people and to counter significant risk factors of incarceration. However, Aboriginal students are perpetually overrepresented in every negative indicator associated with schooling such as discipline events, suspensions, low attendance, low retention, and performance. Too often schools are not safe environments for Aboriginal young people, who experience racism, and overly punitive responses. Schools are a setting that should be leveraged to support young people at risk or in contact with the justice system and provide them with opportunities.



**Section 1:  
Foundational  
systemic issues  
hindering progress  
towards  
self-determination**



## Summary of recommendations related to foundational systemic issues

The Aboriginal Justice Caucus recommend that:

**Recommendation 1.1.** In partnership with the AJC, establish an independent, statutory office of the Aboriginal Social Justice Commissioner, to provide oversight for Aboriginal justice in Victoria, including implementation of coronial recommendations and recommendations from the Royal Commission into Aboriginal Deaths in Custody and associated inquiries. This office should be properly funded, with appropriate powers (including powers to conduct own motion inquiries), and report directly to the Parliament.

**Recommendation 1.2.** All Victorian Government departments and agencies commit to early and ongoing engagement with Aboriginal people and forums in the development, implementation and review of frameworks and standards across all portfolio areas and sectors.

**Recommendation 1.3.** The Department of Treasury and Finance should review procurement guidelines provided to public servants to ensure that ‘probity’ is not used as an excuse to not involve Aboriginal people in the selection of service providers. Ensuring Aboriginal perspectives are reflected in criteria used to select service providers and assess performance are two critical starting points for improvement. Training must be provided to procurement areas in all departments to ensure the advice they provide to public servants is accurate and reflects commitments to self-determination.

**Recommendation 1.4.** Enshrine the *Maiaṃ nayri Wingara* Indigenous Data Sovereignty protocols and principles in legislation and policy that governs data collection, storage and use for government departments and other public sector agencies, and ensure Aboriginal groups and organisations are sufficiently resourced to support Indigenous Data Governance.

**Recommendation 1.5.** Work with the Federal Government and other jurisdictions to amend the Closing the Gap Agreement to include Indigenous Data Governance and Indigenous Data Sovereignty under Priority Reform 4 and commit governments to: (1) reform their existing data systems in line with Indigenous Data Governance, (2) strengthen the technical data capability of ACCOs and the Indigenous data capability of governments, and (3) invest in Aboriginal data infrastructure.

**Recommendation 1.6.** Reform funding arrangements with Aboriginal Community Controlled Organisations and Aboriginal Community Controlled Health Organisations (in line with the recommendations of previous reports and commitments under the National Agreement on Closing the Gap) to provide sustainable, and ongoing support for all aspects of Aboriginal-led service delivery (from design to implementation, workforce development, data collection, and evaluation).

**Recommendation 1.7.** All departments and the VPSC work together to develop a whole of government Aboriginal recruitment and retention strategy to build, support and maintain a strong, sustainable and cross-disciplinary Aboriginal workforce (employed across the community and public sectors), supported by a clear and consistent model of resourcing.

**Recommendation 1.8.** Mandate regular and stepped-up training in Aboriginal cultural awareness, systemic racism, anti-racism and unconscious bias for all agencies and bodies involved in the design, delivery or administration of programs and services that service Aboriginal people, and undertake monitoring and evaluation through professional development plans, outcome measurement to monitor the extent that training is translated into action and changed behaviours.

**Recommendation 1.9.** Implement all the recommendations from the ALRC’s Pathways to Justice – Inquiry into the Incarceration rate of Aboriginal and Torres Strait Islander Peoples.

## 1.1 Advancing Aboriginal Self Determination

*“Our people have long called for self-determination and, in recent times, the notion of self-determination has gained traction with governments. I believe, however, that many are grappling with the true meaning of self-determination.” Dr Lois Peeler AM<sup>3</sup>*

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) stressed the significance of empowerment and self-determination as a means of addressing the over-representation of Aboriginal people in criminal legal systems. The principles of the right to self-determination are central to the report and its 339 recommendations.<sup>4</sup>

Many of the recommendations, including those related to health, education and housing, either implicitly or explicitly refer to the need for negotiation and decision-making with Aboriginal people and organisations, resourcing ACCOs, and support for Aboriginal governance mechanisms. This is succinctly captured in Recommendation 188:

*That governments negotiate with appropriate Aboriginal organisations and communities to determine guidelines as to the procedures and processes which should be followed to ensure that the self-determination principle is applied in the design and implementation of any policy or program or the substantial modification of any policy or program which will particularly affect Aboriginal people. (Johnston, 1991, vol 5, p111).*

The Victorian Government stated its commitment to self-determination as the primary driver of Aboriginal affairs policy in 2015.<sup>5</sup> This commitment is guided by the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**), which defines self-determination as a collective right enabling a group of people to freely determine their political status and economic, social and cultural development:

*Article 3: Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.<sup>6</sup>*

While the UNDRIP definition provides guidance, Indigenous peoples must determine the scope and shape of self-determination in practice.<sup>7</sup>

This section focusses on the underlying systemic issues that are hindering progress toward the ultimate goal of self-determination which are relevant across all policy areas and facets of Aboriginal people’s lives. To achieve health, housing and education justice for Aboriginal people, as well as address injustices in justice, child protection and other areas, these issues must be addressed.

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<sup>3</sup>Aboriginal Justice Caucus member Dr Lois Peeler AM was Principal of Worawa Aboriginal College and is now an Elder in residence. She is also Chairperson, Eastern Metropolitan RAJAC. Quote from *Dungala Kaiela Oration*, 9 September 2020.

<sup>4</sup> Behrendt, L. Jorgensen, M. and Vivian, A. (2017), *Self-Determination within the Justice Context*, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney

<sup>5</sup> Victorian Government, Victorian Aboriginal Affairs Framework 2018-2023

<sup>6</sup> United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, Geneva, 2008. Available at: [DRIPS\\_en.pdf \(un.org\)](https://www.un.org/en/development/dhr/pubs/docs/08/undrip/en.pdf)

<sup>7</sup> Behrendt, L. Jorgensen, M. and Vivian, A. (2017), *Self-Determination within the Justice Context*, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney, p.3

## 1.2 Independent Aboriginal oversight and accountability

### *Establish an Aboriginal Social Justice Commissioner*

Lack of accountability from government further diminishes an already low level of trust of Aboriginal Community in government agencies.

In examining that lack of implementation of RCIADIC recommendations, the Australian Human Rights Commission made a series of reflections that could equally apply to the implementation of recommendations from any Royal Commission or other significant inquiry. The AHRC found that bureaucratic processes serve to distort implementation realities, where departmental employees may prepare ‘frank responses’ but those further up the hierarchy ‘censor unpalatable facts’. There is little incentive for other staff within the same agency/justice institution to submit a critical response or counter an agency’s self-assessment of implementation progress<sup>8</sup>.

Parties that could ensure that reports better reflect reality – such as independent oversight bodies like the Ombudsman, Auditor-General’s Office, Complaints or Human Rights Commissions - are often left out of the reporting process. Similarly, Aboriginal perspectives were rarely sought or incorporated in processes to report on recommendations that significantly affect Aboriginal communities.

The 2005 Victorian Implementation Review of RCIADIC emphasised the critical need for greater accountability and independent oversight of RCIADIC response, recommending that the Victorian Government appoint an ‘independent Commissioner for Aboriginal Social Justice’<sup>9</sup> with ‘appropriate powers’ supported by an ‘adequately resourced Monitoring Unit.’<sup>10</sup>

The AJC continue to advocate for this independent Aboriginal oversight. The Aboriginal Social Justice Commissioner could monitor, review, and conduct own motion inquiries into efforts (or lack thereof) to improve Aboriginal experiences and outcomes across the criminal legal system, whilst also progressing self-determination principles and ensuring Aboriginal rights are protected and cultural safety embedded.

The 2018 ALP Election Platform included a commitment to the Aboriginal Social Justice Commissioner<sup>11</sup>, which is identified as an action under *Burra Lotjpa Dunguludja*<sup>12</sup>. Establishment of an Aboriginal Justice Commissioner has also been recommended by the Victorian Parliamentary Inquiry into Victoria’s Criminal Justice System<sup>13</sup>, and the Yoorrook for Justice report has recommended the establishment of an independent and authoritative oversight and accountability commission with authority to hold responsible government ministers, departments, and entities to

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<sup>8</sup> A Report prepared by the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner for the Aboriginal and Torres Strait Islander Commission, 1996, available at <https://humanrights.gov.au/our-work/indigenous-deaths-custody-2>

<sup>9</sup> Victorian Government, Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody: Review Report, (2005), Recommendation 154: “That the Victorian Government appoint an independent Commissioner for Aboriginal Social Justice charged with reporting annually to both the Government and Indigenous people on the implementation of the criminal justice and more general Recommendations of the Royal Commission into Aboriginal Deaths in Custody,” pp. 703-704

<sup>10</sup> Ibid.

<sup>11</sup> The 2018 ALP Election Platform also included a commitment to report annually on implementation of RCIADIC recommendations. See Victorian Branch Australian Labor Party, Platform 2018, p. 83, available at [Victorian Branch Australian Labor Party platform 2018 \(apo.org.au\)](https://apo.org.au/publication/victorian-branch-australian-labor-party-platform-2018)

<sup>12</sup> *Burra Lotjpa Dunguludja*, p. 51

<sup>13</sup> Victorian Parliament, Inquiry into the Criminal Justice System (2022), Recommendation 79.

account for the success or failure of the programs they develop and deliver<sup>14</sup>. At a national level, the Productivity Commission has identified as an essential action the establishment of an independent mechanism that will drive accountability by supporting, monitoring, and reporting on governments' transformations in each jurisdiction<sup>15</sup>.

The AJC have done further work on the potential role and functions of an Aboriginal Social Justice Commissioner in Victoria (summarised in the below case study), including developing a budget proposal with input from the Victorian Equal Opportunity and Human Rights Commission.

The AJC has been clear in its proposed solution. There must be no further delay in establishing an independent office of the Aboriginal Social Justice Commissioner.

### **Aboriginal Social Justice Commissioner**

Since the RCIADIC made 339 recommendations in 1991, there have been countless others from coronial inquests, parliamentary inquiries and reviews examining matters related to Aboriginal experiences of the legal system and over incarceration. Many have not been implemented.

To address significant failings in accountability and oversight, the AJC advocate for an independent Aboriginal Social Justice Commissioner in Victoria to monitor progress implementing RCIADIC recommendations and those from relevant inquiries and coronial inquests. An ASJC would ensure greater accountability to Community, through fulfilment of functions that protect and uphold Aboriginal human, civil, legal, and cultural rights, including but not limited to:

- Monitoring implementation of RCIADIC recommendations and coronial recommendations from Aboriginal deaths in custody
- Conducting systemic discrimination investigations and independent reviews to further equality and strengthen human rights protections for Aboriginal people
- Preventing and addressing discrimination, unconscious bias, vilification toward Aboriginal people through education and engagement with communities, employers, government and the Victorian public
- Assessing the potential impacts on Aboriginal people of existing and new justice legislation
- Advocating for greater respect for Aboriginal rights and equality
- Improving justice services and outcomes for the Aboriginal community
- Responding to justice services and outcomes for the Aboriginal community
- Supporting Aboriginal people and communities when things go wrong, or human rights are at risk by helping to resolve discrimination complaints and intervening in court cases<sup>16</sup>

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<sup>14</sup> Yoorrook Justice Commission, Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems (2023)

<sup>15</sup> Productivity Commission 2024, Review of the National Agreement on Closing the Gap, Study report, volume 1, Canberra.

<sup>16</sup> Aboriginal Justice Caucus (AJC), Submission on the Legislative Council Legal and Social Issues Committee Inquiry into Victoria's Justice System (2021), p. 12.

The Aboriginal Social Justice Commissioner could also add value to the work of the Ombudsman and other regulators by creating opportunities for collaboration, partnerships, sharing information and expertise and eradicating duplication. Its establishment remains one of the AJC's greatest priorities.

While the AJC advocate for the urgent establishment of the Victorian Aboriginal Social Justice Commissioner in the context of improving outcomes for Aboriginal people across the criminal legal system, we recognise the potential for the Commissioner and Commission to have a broader remit in providing independent oversight for implementation of recommendations arising from other Royal Commissions, inquiries and reviews that seek to further the protection of a broad range of Aboriginal rights.

**Recommendation 1.1.** In partnership with the AJC, establish an independent, statutory office of the Aboriginal Social Justice Commissioner, to provide oversight for Aboriginal justice in Victoria, including implementation of coronial recommendations and recommendations from the Royal Commission into Aboriginal Deaths in Custody and associated inquiries. This office should be properly funded, with appropriate powers (including powers to conduct own motion inquiries), and report directly to the Parliament.

### *Ensure Aboriginal involvement and decision making*

The Aboriginal Community-Government partnership supporting the AJA has grown over time, as has recognition of the need for Aboriginal engagement. Under earlier phases of the AJA, attention was focused on the development and delivery of specific policies, programs and services for Aboriginal people. The most recent agreement *Burra Lotjpa Dunguludja* (AJA4) goes further, highlighting the need for Aboriginal involvement and decision-making in relation to all legislation, policies and frameworks that disproportionately affect Aboriginal people.

While there is greater awareness of the need to involve the Aboriginal people in policy development and decision-making, the degree to which this has occurred has varied across agencies over time. Often assumptions are made about which projects, or aspects thereof, require Aboriginal consideration rather than the full scope of work being described so that Aboriginal people can decide which elements are most critical for consideration.

For example, in development of the new Quality Framework and Service Specifications for custodial healthcare delivery, the AJC were not engaged at the outset nor were we asked for advice or input on the process for developing the new Framework, reviewing the existing Aboriginal cultural safety standards or the associated procurement and performance assessment requirements. Similarly, in the development of the Justice Health Quality Framework 2014 the AJC were not engaged in development of the overall framework but were engaged in relation to the one health service standard for 'Aboriginal and Torres Strait Islander, Cultural and Specific Needs'. The AJC were not engaged in relation to the other 17 health service standards or development of the Performance Assessment and Reporting Requirements.

This piecemeal approach to the incorporation of Aboriginal perspectives is replicated across all sectors and undermines effectiveness in relation to the delivery of high quality, culturally safe services for Aboriginal people.

There needs to be ongoing engagement with, and response to Aboriginal perspectives in the development of frameworks and standards. Recommendation 29.1 from the Veronica Nelson

inquest recognises that the process of reform needs to be *‘ongoing, guided by Victoria’s Aboriginal and/or Torres Strait Islander communities and be conducted in the manner determined by these communities.’*

**Recommendation 1.2.** All Victorian Government departments and agencies commit to early and ongoing engagement with Aboriginal people and forums in the development, implementation and review of frameworks and standards across all portfolio areas and sectors.

### ***Include Aboriginal perspectives when procuring services***

In relation to processes to procure and select service providers, lack of engagement by government agencies is often justified on the basis of ‘probity’ and ‘commercial in confidence’ grounds, however there are many examples across the justice sector where AJC members have been involved in these activities (and the probity requirements satisfied).

As an example, Corrections Victoria did not engage with the AJC throughout the procurement process to appoint a provider of custodial health care in Victorian prisons. Doing so aligns with the Victorian Government’s commitment to self-determination as the guiding principle in Aboriginal affairs<sup>17</sup>. When AJC queried this lack of involvement the response was that it was ‘simply a government decision to contract a private provider’. ‘Probity issues’ were frequently offered as the reason Justice Health could not work with the AJC in sourcing a new health service provider for male prisons.

The AJC see no reason why our perspectives (which are shared by many other communities) on whether for-profit corporations or community health organisations could or should provide health custodial health services were not sought or considered by the Victorian Government. This is a clear example of ‘self-determination’ occurring only on government’s terms.

**Recommendation 1.3.** The Department of Treasury and Finance should review procurement guidelines provided to public servants to ensure that ‘probity’ is not used as an excuse to not involve Aboriginal people in the selection of service providers. Ensuring Aboriginal perspectives are reflected in criteria used to select service providers and assess performance are two critical starting points for improvement. Training must be provided to procurement areas in all departments to ensure the advice they provide to public servants is accurate and reflects commitments to self-determination.

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<sup>17</sup> Burra Lotjpa Dunguludja – Victorian Aboriginal Justice Agreement Phase 4, p.11



## 1.3 Prioritise Aboriginal data sovereignty and governance<sup>18</sup>

*“Data sovereignty needs to be advanced. Research, evidence and data should be community owned and controlled. This is a key mechanism for community decision-making.” VACCHO<sup>19</sup>*

Access to data and information that reflects Aboriginal realities is critical for advocacy, planning and decision-making. The AJC have long-held concerns in relation to the collection, use and transparency of data and information reflecting Aboriginal people’s interactions with government services and systems. Data is often deficit-based, and serves government needs rather than those of the Aboriginal Communities<sup>20</sup>.

The Victorian Government recognises ‘Aboriginal ownership and control of data is a key enabler of self-determination’<sup>21</sup> and that ‘Aboriginal communities and organisations should have governance, choice and control over data collected from and about their communities.’<sup>22</sup>

The AJA4 includes a commitment to ‘improve collection and availability of Aboriginal justice data’. While efforts have been made across justice agencies to improve Aboriginal identification in data, there are still areas where it is almost impossible to get any data disaggregated by Aboriginal status. The data that is available rarely reflects the outcomes Aboriginal Communities and organisations are most interested in.

To provide services that meet the needs of Aboriginal people, and support meaningful self-determination, we need better access to data collected about us and greater control over determining what data is collected, and how it is used to construct narratives about Aboriginal experiences.

Under Priority Reform Four of the National Agreement on Closing the Gap, the Victorian Government committed to: share disaggregated regional data with Aboriginal communities; work with Aboriginal partners to guide improved collection, access, management and use of data; be transparent about what data is held and how Aboriginal people can access it; and build capacity in Aboriginal organisations and Communities to collect and use data.<sup>23</sup>

The Victorian Closing the Gap Implementation Plan expands on how these commitments will be fulfilled over the 2021-2023 period, confirming that government departments will ‘develop sector-wide data access and data sharing agreements with and for ACCOs and Traditional Owners in their sector (local, state-wide and peak) with advice and input from the appropriate Aboriginal governance mechanism;’ and ‘prioritise additional investment in ACCO data management and analytics as a core function’ and ‘collaboratively develop options to properly resource this function through allocations from departmental funding programs and through the annual budget process.’

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<sup>18</sup> The Indigenous Data Sovereignty Summit, Communique, 20 June 2018, provides these definitions: Indigenous Data Sovereignty is defined as: ‘the right of Indigenous peoples to exercise ownership over Indigenous Data. Ownership of data can be expressed through the creation, collection, access, analysis, interpretation, management, dissemination and reuse of Indigenous Data.’ Indigenous Data Governance is ‘the right of Indigenous Peoples to autonomously decide what, how and why Indigenous Data are collected, accessed and used. It ensures that data on or about Indigenous peoples reflects our priorities, values, cultures, worldviews and diversity.’

<sup>19</sup> Quoted in the Victorian Aboriginal Affairs Framework 2018-2023

<sup>20</sup> Kukutai, T., & Taylor, J (Eds), 2016, Indigenous Data Sovereignty – Toward an Agenda

<sup>21</sup> Victorian Government 2018, Victorian Aboriginal Affairs Framework, p.59

<sup>22</sup> Victorian State Government, Victorian Closing the Gap Implementation Plan 2021-2023, p. 46.

<sup>23</sup> National Agreement on Closing the Gap, Priority Reform Four [6. Priority Reform Four - Shared Access to Data and Information at a Regional Level | Closing the Gap](#)



As we enter 2024 the AJC consider these commitments have not been fulfilled and should be progressed with some urgency.

The recent Productivity Commission Review of the National Agreement on Closing the Gap found that Aboriginal and Torres Strait Islander organisations continue to have difficulty accessing government-held data, and often the data that is collected by government agencies does not reflect the realities of, or hold meaning for, Aboriginal and Torres Strait Islander people.<sup>24</sup>

Government-held data that cannot be disaggregated at the community level or capture mob affiliation will often be ill-suited to support decision-making at the local level. Moreover, existing data often fails to capture the values, cultural diversity, and social and structural contexts of communities. As a result, it tends to perpetuate deficit narratives that problematise Aboriginal and Torres Islander people and leads to ill-conceived policy ‘solutions’<sup>25</sup>.

**Recommendation 1.4.** Enshrine the *Maiam nayri Wingara* Indigenous Data Sovereignty protocols and principles in legislation and policy that governs data collection, storage and use for government departments and other public sector agencies, and ensure Aboriginal groups and organisations are sufficiently resourced to support Indigenous Data Governance.

**Recommendation 1.5.** Work with the Federal Government and other jurisdictions to amend the Closing the Gap Agreement to include Indigenous Data Governance and Indigenous Data Sovereignty under Priority Reform 4 and commit governments to: (1) reform their existing data systems in line with Indigenous Data Governance, (2) strengthen the technical data capability of ACCOs and the Indigenous data capability of governments , and (3) invest in Aboriginal data infrastructure.

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<sup>24</sup> Productivity Commission 2024, Review of the National Agreement on Closing the Gap, Study report, volume 1, Canberra, p6.

<sup>25</sup> Ibid.

## 1.4 Provide sustainable investment in Aboriginal organisations

*“We should move to a system that transfers the authority and resources to ACCOs to provide culturally appropriate community responses. We need appropriate and sustainable long-term funding models and investment in our workforce and to work independently under true self-determination.” Linda Bamblett<sup>26</sup>*

Building the community-controlled sector is a priority reform area under the National Agreement on Closing the Gap. As a partner to the National Agreement the Victorian Government has committed to building a strong Aboriginal community-controlled sector and organisations in line with the strong sector elements:

- Sustained capacity building and investment.
- Dedicated and identified Aboriginal workforce.
- ACCOs supported by a Peak Body with strong governance, policy development and influencing capacity.
- ACCOs have a dedicated, reliable and consistent funding model designed to suit the types of services required by communities.<sup>27</sup>

Government partners to the agreement also committed to increasing the amount of government funding for Aboriginal programs and services that is provided to ACCOs and to increase the proportion of services delivered by ACCOs.<sup>28</sup> The AJC urges the Victorian Government to progress with these reforms, which align with recommendations from several justice inquiries and reviews including the RCIADIC, to deliver culturally safe custodial healthcare.

The recent Productivity Commission Review of the National Agreement on Closing the Gap states that Governments need to recognise the authority of ACCOs to represent the perspectives and priorities of their communities, and to determine how service systems and models of delivery can best reflect these. ACCOs should be seen as essential partners in commissioning services, not simply as passive funding recipients<sup>29</sup>

The Commission for Children and Young People’s (CCYP) Inquiry, *Our Youth, Our Way*, recommended ‘ACCOs and other Aboriginal organisations must be empowered and resourced sustainably to enable genuine capacity building, and to ensure longevity, reliability and community trust in their programs.’<sup>30</sup> To this end Wirkara Kulpa commits the government to ‘provide stable and sustainable funding and explore outcome-based funding models (minimum three-year cycle) for programs and services delivered by Aboriginal community organisations.’<sup>31</sup>

The lack of sustainable, long-term funding for Aboriginal organisations undermines Aboriginal self-determination. Fulfilment of these commitments by the Victorian Government will enable the Aboriginal community-controlled sector to deliver high quality services to Aboriginal people across the state; provide flexibility for organisations to adapt and continuously improve service delivery to

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<sup>26</sup> Aboriginal Justice Caucus member Linda Bamblett is CEO of the Victorian Aboriginal Community Services Association Limited (VACSAL) and Chairperson, Northern Metropolitan RAJAC. Quote from transcript of Public Hearing, Inquiry into Victoria’s Criminal Justice System, Melbourne, 21 September 2021.

<sup>27</sup> National Agreement on Closing the Gap, Priority Reform Area 2 [Priority Reforms | Closing the Gap](#)

<sup>28</sup> *ibid*

<sup>29</sup> Productivity Commission 2024, Review of the National Agreement on Closing the Gap, Study report, volume 1, Canberra, p 7.

<sup>30</sup> CCYP, *Our Youth Our Way*, Recommendation 2, pp. 116-117

<sup>31</sup> Wirkara Kulpa, p. 50.

meet Community needs; deliver outcomes prioritised by Community; and collect data and other information to demonstrate impact.

**Recommendation 1.6.** Reform funding arrangements with Aboriginal Community Controlled Organisations and Aboriginal Community Controlled Health Organisations (in line with the recommendations of previous reports and commitments under the National Agreement on Closing the Gap) to provide sustainable, and ongoing support for all aspects of Aboriginal-led service delivery (from design to implementation, workforce development, data collection, and evaluation).

### *Support the Aboriginal Workforce*

Across Victoria there are ongoing challenges with recruitment and retention of Aboriginal staff to designated, prioritised and identified positions across both government and community sectors. The inability to attract and retain suitably qualified and experienced Aboriginal staff is significantly impacting the ability to deliver culturally appropriate and responsive programs and initiatives, particularly across the regions.

The evaluation of AJA3 found successful initiatives under the AJA employ Aboriginal staff who are known in the community, respected and trusted by program participants, highly motivated, well-trained, and skilled at providing cultural support to clients. These workers ‘walk between the two worlds’ of community and government and act as a mediator and sometimes translator for both. Successful programs resource workers adequately and provide supports to manage cultural loads and vicarious trauma.<sup>32</sup>

While many Royal Commissions and inquiries have made recommendations to build the Aboriginal workforce, responses are typically program or sector specific and have resulted in movement of staff between sectors rather than significant increases in the available Aboriginal workforce. For example, DFFH received funding under the 2023-24 budget outcome to support workforce development and sector capacity building, however this work did not extend into justice workforces.

There needs to be concerted whole-of-government approaches to building and sustaining an Aboriginal workforce across the health, housing, education and justice sectors, and which includes ongoing support for Aboriginal organisations for workforce development and training. Challenges in recruiting and retaining Aboriginal staff in roles and being unable to fill positions, is one of the most persistent issues raised in reports to the Aboriginal Justice Forum.

**Recommendation 1.7.** All departments and the VPSC work together to develop a whole of government Aboriginal recruitment and retention strategy to build, support and maintain a strong, sustainable and cross-disciplinary Aboriginal workforce (employed across the community and public sectors), supported by a clear and consistent model of resourcing.

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<sup>32</sup> [Evaluation of AJA3 | Aboriginal Justice](#), see the AJA3 – Evaluation synthesis and AJA3 Evaluation – summary of findings.

## 1.5 Transform services and organisations

### *Address systemic and institutional racism*

The RCIADIC Final Report found the most significant factor contributing to the over-representation of Aboriginal people in the criminal legal system was the ‘unequal position in which Aboriginal people find themselves in the society – socially, economically and culturally’.<sup>33</sup>

Racism is both source and sustenance of inequality, operating in both overt and insidious ways that harm Aboriginal people – through racist attitudes, discriminatory laws, and institutional racism.<sup>34</sup> The latter is often not recognised nor well understood. Increased awareness and understanding of all forms of racism and the pernicious effects of systemic racism on Aboriginal people is essential; particularly among those working within the criminal legal system and in custodial environments.

Institutional racism is defined in the RCIADIC as ‘an institution, having significant dealings with Aboriginal people, which has rules, practices, habits which systematically discriminate against or in some way disadvantage Aboriginal people’.<sup>35</sup> It is particularly insidious, as it is difficult to quantify or ‘see’ in operation, and ‘those who practice it generally deny its existence’.<sup>36</sup>

*“Institutional racism is typically initiated by persons of relative power and authority who see themselves as ‘just doing their job’ in accordance with supposedly fair and universal criteria.”  
(AJA1, 1999, p.14).*

Institutional racism is the **process** by which Aboriginal people are systematically discriminated against by police, prison, judicial officers and other actors in ‘justice’ institutions.<sup>37</sup> It occurs ‘irrespective of the intent of the individuals who carry out the activities of the institution’ and reflects organisational failures to understand the impacts of policies and processes on Aboriginal people.

### *Ensure culturally safe services*

Cultural safety is defined as an “environment which is spiritually, socially and emotionally safe, as well as physically safe for people; where there is no assault, challenge or denial of their identity, of who they are and what they need.”<sup>38</sup> The Victorian Aboriginal Community Controlled Health Organisation (VACCHO) describes cultural safety as the provision of “quality service that fits within the cultural values and norms of the person accessing the service that may differ from your own and/or the dominant culture.” During the Veronica Nelson Inquest, experts highlighted that “culturally safe practice is the ongoing critical reflection of health practitioner knowledge, skills, attitudes, practicing behaviours and power differentials in delivering **safe, accessible and responsible health care, free from racism.**”<sup>39</sup>

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<sup>33</sup> Johnston 1991, Final Report, Royal Commission into Aboriginal Deaths in Custody, Vol.1

<sup>34</sup> *ibid*, Vol 1, 1.72

<sup>35</sup> Johnston, 1991, vol 2, p 161.

<sup>36</sup> Blagg, Morgan, Cunneen and Ferrante, 2005, Systemic Racism as a Factor in the Overrepresentation of Aboriginal People in the Victorian Criminal Justice System. <https://tr.uow.edu.au/uow/file/64419d5f-d183-49c2-90d9-d81c8dc44f17/1/2005-blagg-1-210.pdf>

<sup>37</sup> Bowling, Violent Racism: Victimisation, Policing and Social Context, July 1998, paras 21-22, pp 3-4.

<sup>38</sup> A. Eckerman et al, Binang Goomj: Bridging cultures in Aboriginal health (University of New England Press, 1994) cited in R. Williams, “Cultural safety - What does it mean for our work practice?” *Australian and New Zealand Journal of Public Health* (1999) 23, p. 213.

<sup>39</sup> *Inquest into the Passing of Veronica Nelson*, [172].

The lack of culturally safe services, such as health care in prisons, has been a key concern of Aboriginal communities for decades. In 2015, VACCHO recommended that ACCHOs should have a role in delivery of primary health to Aboriginal people in prisons, as they are the primary provider of culturally safe and holistic care for Aboriginal Communities. This means that they can also provide continuity of care for Aboriginal people entering and exiting prison.

In 2017, an investigation by the Victorian Ombudsman found that access to culturally appropriate health care was one of the main issues raised by Aboriginal women at DPFC.<sup>40</sup> When the AJC visited DPFC, we heard very similar stories from the Aboriginal women there.

The Cultural Review of the Adult Custodial Corrections System includes several accounts from Aboriginal people in prison describing their experiences of racism in healthcare delivery and general lack of culturally safe care:

*“Across all locations, Aboriginal people stated that they did not feel culturally safe when trying to access mainstream prison healthcare. . . Some people also told us that they were reluctant to use health services because they had been subjected to racism and discrimination. We heard about the impact of bias and racist stigmas that minimised the role of health conditions or undermined people’s healthcare needs and experiences.”<sup>41</sup> Cultural Review*

To address these issues, the Reviewers noted:

- The health and wellbeing of Aboriginal people cannot be considered without understanding it within the context of colonisation and its ongoing impacts on identity and connections to family, kin, and Country. As well as the ongoing impacts of systemic and interpersonal racism.
- Understanding health from the perspective of Aboriginal people is critical to recognising why incarceration, which demands separation from family, community, and Country, is so damaging to the health of many Aboriginal people.
- Delivery of healthcare to Aboriginal people in prison cannot be a more “culturally safe” version of mainstream health services. It should be designed to support a holistic conception of health.<sup>42</sup>

**Recommendation 1.8.** Mandate regular and stepped-up training in Aboriginal cultural awareness, systemic racism, anti-racism and unconscious bias for all agencies and bodies involved in the design, delivery or administration of programs and services that service Aboriginal people, and undertake monitoring and evaluation through professional development plans, outcome measurement to monitor the extent that training is translated into action and changed behaviours.


**Recommendation 1.9.** Implement all the recommendations from the ALRC’s Pathways to Justice – Inquiry into the Incarceration rate of Aboriginal and Torres Strait Islander Peoples.

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<sup>40</sup> Victorian Ombudsman, [Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre](#) (2017), p. 92.

<sup>41</sup> Cultural Review of the Adult Custodial Corrections System, [Safer Prisons, Safer People, Safer Communities: Final report of the Cultural Review of the Adult Custodial Corrections System](#), (“Cultural Review”), p18

<sup>42</sup> *ibid*

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## **Section 2: Systemic Injustice Experienced by Aboriginal People in Relation to Health and Custodial Healthcare**

## Summary of recommendations in relation to health and custodial health care

The Aboriginal Justice Caucus recommend that:

**Recommendation 2.1.** The Victorian Government must re-establish sobering-up centres across Victoria, in line with Recommendation 80 of the RCIADIC that *“That the abolition of the offence of drunkenness should be accompanied by adequately funded programs to establish and maintain non-custodial facilities for the care and treatment of intoxicated persons.”*

**Recommendation 2.2.** The Victorian Government must decriminalise the possession of all drugs for personal use. The model of decriminalisation must meaningfully reduce the over-policing of people who use drugs in favour of a health response and must not merely eliminate criminal sanctions for drug possession.

**Recommendation 2.3.** The Victorian Government must invest in an expansion of health and social services, including alcohol and other drug treatment services, and residential services, to fully meet the needs of people who use drugs, developed in consultation with relevant stakeholders - including people with lived experience of drug use, the criminal legal system and ACCOs.

**Recommendation 2.4.** The Victorian Government must reform the Summary Offences Act 1966 to repeal offences that disproportionality impact people with mental illness, and mandate training for all police officers and prison staff on how to interact with people with mental illness.

**Recommendation 2.5.** Together with Aboriginal community controlled organisations with specialist expertise, the Victorian Government should develop and implement culturally appropriate screening at the earliest opportunity for disabilities, for all individuals who are or at risk of entering prison or youth detention or engaged in statutory authorities. The Victorian Government must also provide tailored support for Aboriginal individuals with mental health and disability involved in the criminal legal system and ensure there is support in place when they leave custody.

**Recommendation 2.6.** The Victorian Government fully implement all Royal Commission into Aboriginal Deaths in Custody recommendations relating to custodial healthcare.

**Recommendation 2.7.** All Aboriginal deaths in custody must be subject to thorough coronial inquests with no exceptions for deaths considered to be due to natural causes, in line with the *Coroner’s Act 2008* requirement of examination of all matters leading up to a death in custody,

**Recommendation 2.8.** The Victorian Government must legislate specific considerations for investigating Aboriginal deaths under the *Coroners Act 2008* that reflect improvements and lessons learned from implementation of Practice Direction 6 of 2020 – Indigenous Deaths in Custody.

**Recommendation 2.9.** The Victorian Government fully implement all existing and forthcoming coronial recommendations relating to custodial health care in Victoria. Decisions about whether coronial recommendations have been fully implemented must reflect Aboriginal perspectives and decisions, and there must be a documented and consistent process for sharing information on the implementation of coronial recommendations with bereaved family members and the broader Aboriginal community.

**Recommendation 2.10.** The Victorian Government must provide people in custody primary healthcare and social and emotional wellbeing support that is the equivalent of that provided in the community. This means that their physical and mental health needs must be met to an equivalent standard; not just that there is an equivalence of services available.

**Recommendation 2.11.** The Victorian Government must increase education and awareness of fetal alcohol spectrum disorders, acquired brain injuries and other disabilities for those working in custodial environments to ensure greater recognition of and response to the needs of people in custody. Similarly, there must be much greater investment in diagnosis and assessment services.

**Recommendation 2.12.** The Victorian Government must create responsive and appropriate services within custodial settings for people living with disability and appropriate linkages with the National Disability Insurance Scheme (NDIS).

**Recommendation 2.13.** The Victorian Government must work with the Federal Government to ensure that incarcerated people have access to the Pharmaceutical Benefits Scheme (PBS) and the Medicare Benefits Schedule (MBS).

**Recommendation 2.14.** All custodial settings must have a risk management framework to identify people who are at risk of self-harm, appropriately trained staff to identify and manage risk, and facilitate broader community and family supports for people who are identified to be at risk of self-harm.

**Recommendation 2.15.** As recommended by the Royal Commission into Victoria's Mental Health System, the Victorian Government must continue to support and invest in the Aboriginal Community Controlled Health sector to provide Aboriginal Social and Emotional Wellbeing across Victoria, including through the Balit Durn Durn Centre for Aboriginal SEWB, multidisciplinary SEWB teams in ACCHOs, and Aboriginal Healing Centres.

**Recommendation 2.16.** The Victorian government must urgently revise the system for auditing and scrutiny of custodial healthcare services, to ensure that there is a robust oversight and accountability system for all providers of prison healthcare (both public and private), along with public reporting of the outcomes and whether health providers are meeting their contractual obligations.

**Recommendation 2.17.** The Government must significantly reform the system for monitoring prison healthcare services, to ensure that prison healthcare outcomes are the primary mechanism for measuring the performance and delivery of prison healthcare services.

**Recommendation 2.18.** In order to replace criminal legal responses with health-based ones the Victorian Government must invest in holistic, integrated and wrap around support, to prevent contact with the criminal legal system, including culturally safe housing and social services, education, health, mental health, disability screening, and support for parents and families. Funding should be redirected from policing and prisons to community-based, holistic programs that support individuals and their families (justice reinvestment model). Aboriginal Communities and Organisations must be resourced to investigate alternatives to police as first-responders to offending based on existing self-determined examples and potential new responses.

**Recommendation 2.19.** The Victoria Government must end privatisation of healthcare in prisons, including by cancelling the contract with GEO Group, and transferring all prison healthcare services to the public healthcare system along with directly contracting ACCO's to deliver healthcare to Aboriginal and Torres Strait Islander individuals.

**Recommendation 2.20.** The Victorian Government must fund and support Aboriginal organisations and Aboriginal Community Controlled Health Organisations to develop an Aboriginal-led and operated model of health care in Victorian places of detention.

**Recommendation 2.21.** The Victorian Government must fund ACCOs directly to provide health care services in custodial settings, implementing the recommendations from the Cultural Review of the Adult Custodial Corrections System.

**Recommendation 2.22.** Responsibility for custodial healthcare must be transferred from the Department of Justice and Community Safety to the Department of Health.



**Recommendation 2.23.** The Victorian Government must enforce greater transparency of information between healthcare providers in prisons to ACCO's creating Continuity of care. The Victorian Government must enforce healthcare providers to share all information with ACCO's and for the information to be accurate and sighted and for duty of care for prisons to be extended to prisoner discharge.

**Recommendation 2.24.** Collect and publish data on critical health incidents, adverse events and near misses for Aboriginal people in custody and those recently released from prison.

**Recommendation 2.25.** Prison complaints, including complaints against private prisons and contractors, should be handled by an appropriately resourced independent oversight body with sufficient powers to refer matters for criminal investigation. The body must be accessible to people in prison and complainants must have adequate legislative protection against reprisals.

**Recommendation 2.26.** The Victorian Government must resource a legal service dedicated to providing legal advice and representation for people in prison, and properly resource Aboriginal legal services to provide such services to Aboriginal people in prison.

## 2.1 Criminalisation and incarceration of Aboriginal people for health issues

In the 33 years since the RCIADIC recommendations were released, the Aboriginal and Torres Strait Islander proportion of the prison population in Victoria almost tripled. In 1991, there were 90 Aboriginal people in Victoria's prisons accounting for 3.9 per cent of the total prison population<sup>43</sup>. On an average day in 2022-23 there were 800 Aboriginal people in Victoria's prisons accounting for 12.1 per cent of the total prison population<sup>44</sup>. While there are around 9 times more Aboriginal people in Victorian prisons than in 1991, there are only 3 times as many non-Aboriginal people in prison.

Relationships between criminal legal institutions and Aboriginal people in Victoria are 'forged within the context of a colonial political process and a colonial 'mentality'<sup>45</sup>. Cycles of criminalisation and incarceration persist, with policing and the criminal legal system playing a critical role in their continuation. The Police surveillance of public spaces often results in the **criminalisation of Aboriginal people for disability and health issues** (including public intoxication, fetal alcohol spectrum disorders and/or acquired brain injury, mental illness and substance use and addiction).

Where prevention, support and healing are needed, punishment, isolation and harm are supplied. For decades, the AJC have echoed Aboriginal Community calls for greater investment in community-based prevention and early intervention, where ACCOS are funded to provide holistic, wrap around services that support people to heal and improve their health and social and emotional wellbeing. These services need to be available across the state, culturally safe, and support Aboriginal people's diverse identities, particularly those facing discrimination in the form of ableism, sexism, transphobia and homophobia.<sup>46</sup>

*"A lot can be learned from the Aboriginal way of doing, being and seeing . . . holistic wraparound services that embed culture and that embed communities, families and in particular elders. As we know . . . for Aboriginal people, our connection to our family and our connection to our elders is paramount." Indi Clarke<sup>47</sup>*

### **Invest in health-based response to public intoxication**

*"Our Mum – Tanya Louise Day – would still be here with us if the Victorian Government had implemented the Royal Commission's recommendations and abolished the offence of public drunkenness... Please let our family be the last to endure the pain, suffering and heartache of losing a loved one in these circumstances. The time for change is now." Day Family<sup>48</sup>*

Over thirty years ago, the RCIADIC recommended this offence of public drunkenness be abolished due to the harmful and disproportionate impact on Aboriginal people. Of the 99 Aboriginal deaths in custody that were investigated as part of the Royal Commission, 35% involved Aboriginal people

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<sup>43</sup> Australian Bureau of Statistics (ABS), Prisoners in Australia, 2000.

<sup>44</sup> Productivity Commission, Report on Government Services 2024, Table 8A.5

<sup>45</sup> Cunneen, C, Colonial Processes, Indigenous Peoples, and Criminal Justice Systems (2014). In M. Tonry and S. Bucerius (Eds), The Oxford Handbook of Ethnicity, Crime, and Immigration. New York: Oxford University Press, pp. 386-407, UNSW Law Research Paper No. 2013-19, Available at SSRN: <https://ssrn.com/abstract=2218865>

<sup>46</sup> In Ngaga-dji, 2018, the Koorie Youth Council emphasise the need to provide services 'that work' which include those able to respond to the intersectional needs of Aboriginal children and young people.

<sup>47</sup> Indi Clarke was formerly the Executive Officer of the Koorie Youth Council and a member of the AJC. Quote from transcript of Public Hearing, Inquiry into Victoria's Criminal Justice System, 20 September 2021. [2. FINAL - Justice - YACVic KYC.pdf \(parliament.vic.gov.au\)](#)

<sup>48</sup> Belinda, Warren, Apryl and Kimberly Day, [Open letter calling for the offence of public drunkenness to be abolished](#)

who were detained in relation to public intoxication. Since 1991, there have been numerous inquiries in Victoria that have reaffirmed the need to decriminalise public intoxication, including a Parliamentary Inquiry into Public Drunkenness in 2001 and a 2005 review of the Government's progress in implementing the RCIADIC recommendations.

In December 2017, much-loved mother, grandmother, sister and proud Yorta Yorta woman, Tanya Day, passed away after falling and hitting her head in a police cell in Castlemaine, Victoria. Ms. Day was locked in the police cell for being intoxicated in a public place after falling asleep on a train. After five years of courageous advocacy by Tanya Day's family, and over 30 years since the RCIADIC first recommended decriminalisation, the Government finally passed a law to decriminalise public intoxication which was due to come into effect in November 2022 however this was delayed until November 2023.

The AJC stand with the Day family in their unflagging advocacy to this reform. The government must remain committed to a health-based response. The current model relies heavily on Victoria Police officers to provide responses where alternative health services are not available. The AJC remains concerned about the ability of law enforcement officers to provide a health response rather than a justice one.

The AJC are concerned that if police officers are not adequately educated and prepared for a diminished role in incidents of public intoxication then the objectives will not be met. Police involvement provides opportunities for escalation which we fear will result in up-charging of Aboriginal people who are intoxicated. The AJC understand that up-charging is addressed in the guidance material. However, historically this has been insufficient to safeguard against systemic racism. Data and oversight is necessary if police are to have any involvement in the health response.

In addition, the AJC reiterate our position that the Victorian Government must open Aboriginal specific sobering-up centres across Victoria that are adequately resourced, holistic and culturally appropriate. The establishment of sobering up centres was a key RCIADIC recommendation that is not implemented in Victoria.

**Recommendation 2.1.** The Victorian Government must re-establish sobering-up centres across Victoria, in line with Recommendation 80 of the RCIADIC that *"That the abolition of the offence of drunkenness should be accompanied by adequately funded programs to establish and maintain non-custodial facilities for the care and treatment of intoxicated persons."*

### ***Decriminalise drug possession for personal use***

To the extent that the use of drugs is a problem in Victoria, it should be understood as a public health issue and not a criminal one. Public health issues must be addressed via public health responses, not criminalisation. Criminalising people who use drugs only leads to more trauma by way of incarceration, with children being funnelled into the child protection system because their parents are imprisoned, disruption to protective factors such as community supports, housing and connection to culture and country, and criminal records which, in turn, limit future employment prospects of people upon release from custody.

The confronting reality is that Victoria's current approach to drug use is not grounded in evidence, harms individuals and communities, and does not make the community safer. Instead, it fills up Victoria's prisons with people who should be provided care and support. Further, the link between colonisation, trauma, drug use, systemic racism and Aboriginal deaths in custody is a clear one.

The Victorian Parliament made several important findings in the 2021 Inquiry into the use of cannabis in Victoria. These include that:

- Harms arising from the criminalisation of cannabis affect a larger number of people and ‘have a greater negative impact than the mental health and other health harms associated with cannabis use’
- Aboriginal people are ‘significantly overrepresented in sentencing statistics for minor cannabis offences compared to other Victorians’
- Aboriginal people face particular trauma from interaction with the criminal legal system.
- Criminal records for cannabis offences act as an obstacle to accessing housing, employment and other services, which raises the risk of further contact with the criminal legal system.
- There is no need for further inquiries to investigate cannabis decriminalisation, which should be adopted as policy by the Victorian Government without delay.<sup>49</sup>

The Victorian Government’s current drug policy subjects people dealing with addiction to intrusive policing and excessive punishment, instead of giving them the support they need. The criminalisation of drugs interacts with Victoria’s punitive bail laws and leaves people in prison awaiting trial for drug charges that will not result in a prison sentence when they finally reach court.

Aboriginal people in Victoria are disproportionately impacted by the criminalisation of drug use. Criminalisation of drug use has not succeeded in reducing the number of people who use drugs or mitigating any of the harms caused by addictive substances. It is time to adopt a different approach - a public health approach to drug use, focused on harm reduction has a strong human rights orientation, with a focus on non-coercive measures that do not require people to stop using drugs to receive support.<sup>50</sup>

**Recommendation 2.2.** The Victorian Government must decriminalise the possession of all drugs for personal use. The model of decriminalisation must meaningfully reduce the over-policing of people who use drugs in favour of a health response and must not merely eliminate criminal sanctions for drug possession.

**Recommendation 2.3.** The Victorian Government must invest in an expansion of health and social services, including alcohol and other drug treatment services, and residential services, to fully meet the needs of people who use drugs, developed in consultation with relevant stakeholders - including people with lived experience of drug use, the criminal legal system and ACCOs.

### *Stop criminalising mental illness and other disabilities*

The criminal legal system criminalises individuals with a disability - including mental illness, fetal alcohol spectrum disorders (FASDs), acquired brain injuries (ABIs) and others - leading to trauma, imprisonment and a heightened risk of violence, abuse, neglect and exploitation.<sup>51</sup> This is apparent from the high rates of disabilities and mental health issues amongst Aboriginal people in custody.

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<sup>49</sup> Legislative Council Legal and Social Issues Committee, Inquiry into the use of Cannabis in Victoria, August 2021

<sup>50</sup> Harm Reduction International, “What is Harm Reduction?”.

<sup>51</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Issues Paper – Criminal Justice System (2020).

Aboriginal people with a disability are 14 times more likely to be imprisoned than the general population.<sup>52</sup> Research with Aboriginal people in prisons in Victoria found 72% of incarcerated Aboriginal men and 92% of incarcerated Aboriginal women had received a lifetime diagnosis of mental illness.<sup>53</sup> Data from 2019 indicates that 66% of Aboriginal children and young people involved with youth justice in Victoria had mental health issues and 49% had a cognitive disability.<sup>54</sup>

*‘Children with a disability are also denied access to the right supports and pushed into the system at high rates instead of receiving the help they need.’ Koorie Youth Council<sup>55</sup>*

This issue persists. At a recent Aboriginal Justice Forum, a RAJAC Chairperson raised concerns about a young person with an intellectual disability that Victoria Police had interacted with on approximately 80 occasions within a 13-month period. That young person was understandably distressed and felt harassed by police.

The significant over-policing and criminalisation of people with a disability must be replaced with well-resourced and evidence-based health responses.

**Recommendation 2.4.** The Victorian Government must reform the Summary Offences Act 1966 to repeal offences that disproportionality impact people with mental illness, and mandate training for all police officers and prison staff on how to interact with people with mental illness.

**Recommendation 2.5.** Together with Aboriginal community controlled organisations with specialist expertise, the Victorian Government should develop and implement culturally appropriate screening at the earliest opportunity for disabilities, for all individuals who are or at risk of entering prison or youth detention or engaged in statutory authorities. The Victorian Government must also provide tailored support for Aboriginal individuals with mental health and disability involved in the criminal legal system and ensure there is support in place when they leave custody.

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<sup>52</sup> According to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, the available information suggests that Aboriginal and/or Torres Strait Islander people with a disability are about 14 times more likely to be imprisoned than the general population. See Issues Paper – Criminal Justice System (2020) p. 1.

<sup>53</sup> . Ogloff, J. Patterson, M. Cutajar, K. Adams, S. Thomas and C. Halacas, Koori Prisoner Mental Health and Cognitive Function Study – Final Report (2013) p. 13.

<sup>54</sup> Wirkara Kulpa, p. 20.

<sup>55</sup> Koorie Youth Council, 2018, Ngaga-dji, p.40

## 2.2 The right to health of Aboriginal people

All people have a right to access safe and responsive health care, whether they are incarcerated or living in the community<sup>56</sup>

The concept of a right to health has been enumerated in international agreements which include the United Nations Universal Declaration on Human Rights (UDHR), International Covenant on Civil and Political Rights (OHCHR) and the Convention on the Rights of Persons with Disabilities.

The AJC advocates a human rights-based approach for people who have contact with the legal system. This is consistent with Australia's obligations as a signatory to the UNDR and our legal obligations as a signatory to the OHCHR.

The AJC affirm, that the fundamental human rights of Aboriginal people in custodial settings must be upheld, including through equity of access to safe and appropriate health care.

### *Aboriginal Deaths in custody*

There have been 35 Aboriginal deaths in custody in Victoria since the RCIADIC findings were handed down in 1991, including 24 in Corrections facilities. Each death has left families and communities grieving. Each death was preventable and should not have happened.

The AJC is undertaking a project to assess Victoria's implementation of recommendations from the RCIADIC and coronial recommendations arising from Aboriginal deaths in custody in Victoria. Of the 339 RCIADIC recommendations, approximately 60 relate to healthcare and span community, correctional and police custody settings. Whilst some recommendations have been implemented, AJC believe that robust implementation of these recommendations would have gone a long way to improving health outcomes for Aboriginal people in custody and prevent many if not all of these deaths. Failure to implement them has contributed to Aboriginal deaths in custody that were preventable.

*"I find that, had the RCADIC recommendations been successfully implemented by the Government and its agencies, Veronica's passing would more likely than not have been prevented."*<sup>57</sup>

*Coroner McGregor, January 2023*

In the 2023 inquest into the passing of Veronica Nelson, Coroner McGregor referred to several RCIADIC Recommendations as having been relevant in his findings. Almost half of those recommendations related to the provision of health and medical services in custody, and were, from the perspectives of government agencies responsible for them, considered fully implemented in previous implementation reviews. Clearly there is a life-threatening gap between the assessments of government agencies and the realities faced by Aboriginal people in custody in Victoria, with Coroner McGregor further noting that:

*"In 2018, a federal government found that only 6% of the RCADIC recommendations were yet to be implemented partially or in full. The congruence of the recommendations arising from my investigation into Veronica's passing and those of the RCADIC suggests that if this statistic is to be believed, 'implementation' of the RCADIC recommendations has achieved too much policy, and not enough change."*<sup>58</sup> *Coroner McGregor, January 2023*

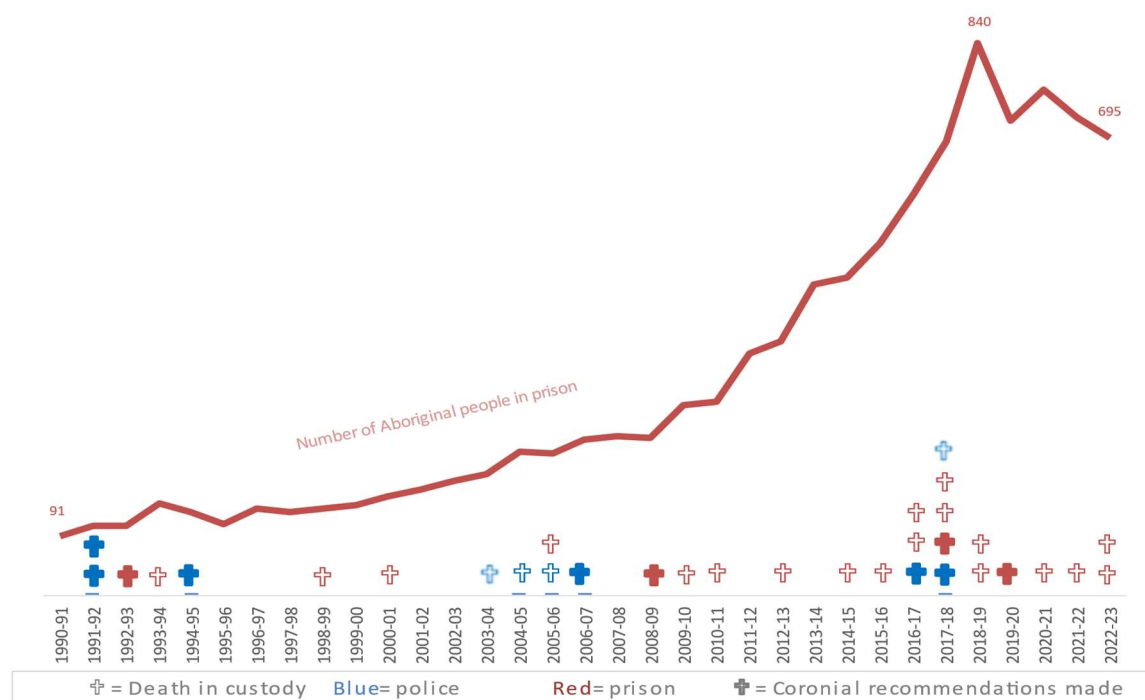
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<sup>56</sup> Australian Medical Association position statement on Health Care in Custodial Settings, 2023

<sup>57</sup> Coroner Simon McGregor, Inquest into the passing of Veronica Nelson, April 2023

<sup>58</sup> *ibid*

Figure 1 Aboriginal deaths in custody and number of Aboriginal people in prison (as at May 2023)



Fifteen Aboriginal people have died in Corrections custody since 2014 (when the *Justice Health Quality Framework 2014* was introduced). Where a cause of death is known, all except for 1 (undetermined) related to medical conditions or the provision of medication.

Of the nine deaths prior to 2020 for which coronial investigation are complete, an inquest was only undertaken in two cases and coronial recommendations made for one. In the remaining seven cases coronial findings were issued without inquest. The AJC assume this was because the cause of death was determined to be 'natural causes.' While inquests into Aboriginal deaths in custody are mandatory, the coroner can decide not to hold one if the death was caused naturally and there were no other issues that needed to be explored.<sup>59</sup>

How many more lives are to be lost and loved ones left grieving before there is a re-imagining of the current system, and real accountability? The mechanisms in place are not working and continue to fail Aboriginal people and communities. The circumstances of these tragedies provide a strong indicator of the extent and effectiveness of implementation of RCIADIC recommendations by the Victorian Government since 1991 to prevent such deaths from occurring.

**Recommendation 2.6.** The Victorian Government fully implement all Royal Commission into Aboriginal Deaths in Custody recommendations relating to custodial healthcare.

<sup>59</sup> As per *Coroners Act 2008* s52 3A

## Deaths in custody due to ‘natural causes’

The AJC seek is particularly concerned about the context in which a death is deemed to be due to ‘natural causes’. It is decidedly unnatural for young Aboriginal men and women in their 20s, 30s and 40s to die in custody from medical conditions that are preventable, and for which the lifestyle risks that contribute to them could have been managed and addressed during their time in custody. The AJC suggest that in cases where a death may be considered ‘natural causes’ that additional attention is given to the physical, social and emotional health circumstances of the individual, how these might have changed over time, and whether institutional or systemic racism may have contributed to their death.

After the death of Veronica Nelson, multiple reviews by government agencies and Correct Care Australia (the private health services provider) found no serious failings in the care provided.<sup>60</sup> The coroner said these “grossly inadequate and misleading” reviews highlighted a “disturbing ‘don’t ask, don’t tell’ arrangement” between the government and Correct Care.<sup>61</sup> If it had not been for the advocacy of Veronica’s family and loved ones, the true circumstances of her passing would not have been revealed. The “inhumane” and “degrading” treatment, failures of prison and health staff to transfer her to hospital that causally contributed to her death, and “significant departures” from reasonable standards of care by prison health services may never have been known had her passing initially been attributed to ‘natural causes’.

The *Coroner’s Act 2008* requires examination of all matters leading up to a death in custody, and all deaths – including those considered to be from ‘natural causes’ should be subject to coronial inquest on that basis. Practice Direction 6 requires the investigating coroner to consider, when investigating the circumstances of the death of an Aboriginal person in custody, the quality of care, treatment and supervision of the deceased prior to death. This will entail making specific directions to the appointed coroner’s investigator to provide a comprehensive coronial brief that includes statements from persons that can give evidence in relation to these factors.

**Recommendation 2.7.** All Aboriginal deaths in custody must be subject to thorough coronial inquests with no exceptions for deaths considered to be due to natural causes, in line with the *Coroner’s Act 2008* requirement of examination of all matters leading up to a death in custody.

**Recommendation 2.8.** The Victorian Government must legislate specific considerations for investigating Aboriginal deaths under the *Coroners Act 2008* that reflect improvements and lessons learned from implementation of Practice Direction 6 of 2020 – Indigenous Deaths in Custody.

## State obligation to provide health services in custody

*“For Aboriginal people who end up in prison, it is essential that they have access to culturally appropriate and responsive services and receive a higher standard of care and support than what the current system provides.” VACCHO<sup>62</sup>*

The Guardian’s 2021 analysis of almost 500 Aboriginal deaths in custody since 1991 found that for both Aboriginal and non-Aboriginal people, the most common cause of death was medical problems. However, Aboriginal people who died in custody were three times more likely not to receive all necessary medical care, compared to non-Aboriginal people. For Aboriginal women the

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<sup>62</sup> VACCHO are members of the AJC, quote from VACCHO submission to Yoorrook, December 2022



situation was even more dire, with less than half receiving the required medical care prior to their passing. Aboriginal women were less likely to have received all appropriate medical care before death (54%) compared to men (36%). Police watch houses, prisons, and hospitals did not follow all their own procedures in 43% of the cases in which Aboriginal and Torres Strait Islander people died, compared to 19% of the cases of non-Indigenous people<sup>63</sup>.

Both in Australia<sup>64</sup> and internationally,<sup>65</sup> it is well recognised that the health needs of people in prison are more complex than those of the general population. Many people, if not most people in Victorian prisons, have complex and intersecting health needs, including pre-existing health conditions, cognitive and intellectual disabilities, a history of drug and alcohol dependence and poor mental health. Research carried out by the Australian Institute for Health and Wellbeing (AIHW) in 2018 showed that nationally, 1 in 3 people entering prisons had a chronic health condition.<sup>66</sup> Mental health needs amongst people in prisons are also extremely high, with the rates of mental illness for people in Victorian prisons approximately three times higher than for the general population.<sup>67</sup>

Additionally, the health needs of Aboriginal people who are incarcerated are even more pronounced than the non-Aboriginal prison population. According to research by the Victorian Aboriginal Community Controlled Health Organisation (VACCHO) in 2015, Aboriginal people in Victorian prisons are less healthy than both Aboriginal people in the community and non-Aboriginal people in prison.<sup>68</sup> The prevalence of mental illnesses and substance dependence is also much higher for Aboriginal people in custody in Victoria than other cohorts.

Research with Aboriginal people in prisons in Victoria found 72% of incarcerated Aboriginal men and 92% of incarcerated Aboriginal women had received a lifetime diagnosis of mental illness.<sup>69</sup> Most people with mental illnesses also had a substance misuse or dependence condition, with 93% of Aboriginal women and 76% of Aboriginal men in prison found to have these conditions.<sup>70</sup>

The health needs of Aboriginal people in custody are complex, with high quality care required for physical and mental health conditions as well substance dependence and a range of disabilities. Clearly, people in prison require greater care than the general population and the Victorian Government must acknowledge this reality and respond appropriately. However, people in prison experience the opposite reality, receiving substandard care that is below what is available in the community.

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<sup>63</sup> [The facts about Australia's rising toll of Indigenous deaths in custody | Deaths in custody | The Guardian](#)

<sup>64</sup> Royal Australian College of General Practitioners [Custodial health in Australia: Tips for providing healthcare to people in prison](#), (2019) pp. 3-4; and Australian Medical Association [Position statement on Health and the Criminal Justice System](#) (2012) p. 3.

<sup>65</sup> United Nations, [United Nations System Common Position on Incarceration](#), (2021) p. 12; and World Health Organisation Europe, [Health in Prisons: A WHO guide to the essentials in prison health](#), (2007) pp. 15-17.

<sup>66</sup> Australian Institute for Health and Welfare (AIHW), [The Health of Australia's Prisoners](#), (2018) pp. 57-58.

<sup>67</sup> See Royal Commission into Victoria's Mental Health System, [Interim Report](#) (2019) p. 49; Victoria Ombudsman, [Investigation into the rehabilitation and reintegration of prisoners in Victoria](#) (2015); J. Ogloff, [Good mental health care in prisons must begin and end in the community](#), The Conversation, 24 April 2015.

<sup>68</sup> Victorian Aboriginal Community Controlled Health Organisation (VACCHO), [Keeping our mob healthy in and out of prison: Exploring Prison Health in Victoria to Improve Quality, Culturally Appropriate Health Care of Aboriginal People](#) ("Keeping our mob healthy") (2015), 9, 13.

<sup>69</sup> Ogloff, J. Patterson, M. Cutajar, K. Adams, S. Thomas and C. Halacas, [Koori Prisoner Mental Health and Cognitive Function Study – Final Report](#) (2013) p. 13.

<sup>70</sup> Ogloff, J. J. Patterson, M. Cutajar, K. Adams, S. Thomas and C. Halacas, [Koori Prisoner Mental Health and Cognitive Function Study](#) – Final Report (2013) p. 7.

## *Supporting people in custody with disabilities*

Aboriginal people with a disability are 14 times more likely to be imprisoned than the general population.<sup>71</sup> Sadly, in too many cases conditions like foetal alcohol spectrum disorders (FASDs), and acquired brain injuries (ABIs) go undiagnosed, and illness or injuries<sup>72</sup> sustained in custody can exacerbate harm and trauma.

There needs to be much greater investment in education and awareness and services for diagnosis and assessment. Proper recognition of and responses to the needs of individuals with ABI and other disabilities are invaluable both during their period of incarceration but can also assist with rehabilitation and may reduce the likelihood of reoffending.

A study published by Corrections Victoria in 2011 noted that around two per cent of the Australian community have an ABI, but that figure was many times higher in the Victorian prison population. Forty-two per cent of male and 33 per cent of female prisoners in the study had an ABI.<sup>73</sup>

A lack of appropriate support for people with disabilities in custody can result in more frequent and enduring contact with the criminal justice system and undermine rehabilitation and reintegration efforts.

As well as better access to services for diagnosis and assessment and provision of services and supports during incarceration that are appropriate to their needs, individuals also require assistance applying to, accessing and maintaining support through the NDIS.

The AJC feel much more can be done to improve education and awareness of those working in custodial environments to respond to the needs of people with disabilities. Similarly, access to assessment and support services needs to increase significantly.

## *Equivalence of care*

The provision of high-quality healthcare in prison is essential to maintaining adequate conditions and treatment in custody, avoiding re-traumatisation, and reducing risk factors for reoffending. It is also necessary for upholding the human rights and wellbeing of people in prison. Incarcerated people have a right to equivalence of healthcare. This is the basis of the 'equivalence of care' principle, according to which the Government has an obligation to provide equivalent access to medical care for people in detention as those in the community. People held in prisons are completely dependent on the state to provide adequate healthcare.

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) make clear that 'prisoners should enjoy the same standards of health care that are available in the community and should have access to necessary healthcare services free of charge, without discrimination on the grounds of their legal status.' The obligation to provide equivalence of medical care to people deprived of their liberty is echoed in the International Covenant on Economic, Social

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<sup>71</sup> According to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, the available information suggests that Aboriginal and/or Torres Strait Islander people with a disability are about 14 times more likely to be imprisoned than the general population. See Issues Paper – Criminal Justice System (2020) p. 1.

<sup>72</sup> <https://www.theage.com.au/national/victoria/after-less-than-a-week-in-police-custody-sony-was-rendered-a-quadruplegic-20210505-p57p9s.html>;

<sup>73</sup> Department of Justice, Acquired Brain Injury in the Victorian Prison System, Corrections Research Paper Series Paper No. 04 April 2011

and Cultural Rights, which emphasises ‘the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.’ The Victorian Charter of Human Rights and Responsibilities requires that ‘all persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person’.

The Victorian Coroners Court found, in its inquest into the death of Yorta Yorta woman Tanya Day, that in custodial settings this requires police and prison staff to ensure access to medical care, given that people detained are completely dependent on the state to provide for their health.

In January 2020, Veronica Marie Nelson – a proud and strong Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman – passed away at the Dame Phyllis Frost Centre (DPFC), after days of crying out for help. The Coronial Inquest into Veronica’s passing found that Veronica’s death was preventable, and that she did not have access to health services equivalent to those available to her in the community.<sup>74</sup> Veronica could have been saved by any one of the people in charge who she asked to help her. She needed to go to hospital and could have been saved by something as simple as an intravenous drip.

Coroner McGregor found Veronica was culturally isolated and provided with no culturally competent or culturally-specific care or support from the moment of her arrest to her passing. This included a lack of culturally safe medical care. Correct Care Australasia (CCA) failed to provide Veronica with care equivalent to the care she would have received from the public health system in the community, and that this failing causally contributed to her passing.

The provision of high-quality healthcare in prison is essential to maintaining adequate conditions and treatment in custody, avoiding re-traumatisation, and reducing risk factors for reoffending. It is also necessary for upholding the human rights and wellbeing of people in prison who have a right to equivalence of healthcare. This is the basis of the ‘equivalence of care’ principle, according to which the Government has an obligation to provide equivalent access to medical care for people in detention as those in the community. People in prison are completely dependent on the state to provide adequate healthcare.

The AJC strongly advocate for public provision of culturally safe and accessible health care services for Aboriginal people in custody, equivalent to that available in community, with oversight from the Department of Health.

**Recommendation 2.9.** The Victorian Government fully implement all existing and forthcoming coronial recommendations relating to custodial health care in Victoria. Decisions about whether coronial recommendations have been fully implemented must reflect Aboriginal perspectives and decisions, and there must be a documented and consistent process for sharing information on the implementation of coronial recommendations with bereaved family members and the broader Aboriginal community.

**Recommendation 2.10.** The Victorian Government must provide people in custody primary healthcare and social and emotional wellbeing support that is the equivalent of that provided in the community. This means that their physical and mental health needs must be met to an equivalent standard; not just that there is an equivalence of services available.

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<sup>74</sup> [Inquest into the Passing of Veronica Nelson](#), COR 2020 0021, 30 January 2023, Findings 50 and 19.

**Recommendation 2.11.** The Victorian Government must increase education and awareness of fetal alcohol spectrum disorders, acquired brain injuries and other disabilities for those working in custodial environments to ensure greater recognition of and response to the needs of people in custody. Similarly, there must be much greater investment in diagnosis and assessment services.

**Recommendation 2.12.** The Victorian Government must create responsive and appropriate services within custodial settings for people living with disability and appropriate linkages with the National Disability Insurance Scheme (NDIS).

### *Access to Medicare and the Pharmaceutical Benefits Scheme in custody*

Healthcare in prison is inherently inequivalent to the healthcare in the community, as incarcerated peoples are excluded from the national Medicare and the PBS.<sup>75</sup> This exclusion exists because prison healthcare providers are funded by State and Territory Governments and are therefore prevented from receiving Commonwealth funding. It is contrary to recommendations from the Victorian Parliamentary Inquiry into the Criminal Legal System and the Cultural Review.

It is assumed that the intent of this clause is to avoid duplication of services and expenditure between the Commonwealth and states and territories, however this is premised on the assumption that an equivalence of health service is being provided by jurisdictions in custodial settings<sup>76</sup>. Excluding prison healthcare services from Medicare and PBS has important implications for access to certain healthcare services in prisons, as services that would otherwise attract Medicare and PBS rebates in the community, are too expensive to offer at scale in prisons.<sup>77</sup> This includes:

- Aboriginal Health Checks, which aim to improve detection and early treatment<sup>78</sup>
- Access to allied mental health services for people with a diagnosed mental health condition<sup>79</sup>
- Mental Health Care Treatment Plan.

Additionally, excluding prison healthcare services from Medicare and PBS undermines continuity for care for people transitioning out of prison, due to challenges with information exchange between prison healthcare providers and community providers as well as administrative barriers (individuals leaving prison are required to reapply for a Medicare Card).

Access to Medicare and PBS for people who are incarcerated would also support in-reach services provided by ACCHOs, who currently provide culturally safe healthcare services, including Aboriginal Health Checks, through access to both Commonwealth and State/Territory Government funding.

Noting the various challenges faced by people when they are released into the community after serving a custodial sentence – having to reapply for Medicare access can present a significant barrier

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<sup>75</sup> Section 19(2) of the *Health Insurance Act 1973* (Cth) provides that Medicare does not apply to a health service provided by, on behalf of, or under arrangement with, any government entity (including both State, Territory and Federal).

<sup>76</sup> Australian Medical Association position statement on Health Care in Custodial Settings, 2023

<sup>77</sup> Craig Cumming et al, In Sickness and in Prison: The Case for Removing the Medicare Exclusion for Australian Prisoners (2018) *Journal of Law and Medicine* 26.

<sup>78</sup> See Medicare Benefits Schedule, Item 715, Aboriginal and Torres Strait Islander Peoples Health Assessment.

<sup>79</sup> See Department of Health, [Better Access Initiative](#).

to health care to an already disadvantaged group of people. Amending the current MBS provisions presents significant opportunity to enhance health outcomes by allowing continuity of access to the MBS at all stages of engagement in the justice system, including through transition back to the community.

**Recommendation 2.13.** The Victorian Government must work with the Federal Government to ensure that incarcerated people have access to the Pharmaceutical Benefits Scheme (PBS) and the Medicare Benefits Schedule (MBS).

### *Mental health and suicide prevention in custody*

Mental health and emotional wellbeing is inherently connected to physical health and life outcomes. Mental health service provision in custodial settings must be comprehensive and holistic, factoring in intersectional factors such as drug and alcohol dependence, trauma, social and cultural determinants of mental health and cultural needs. Treatment must be patient-centred and build necessary supports to minimise risks of reoffending and recidivism after the person is released from custody.

Custodial health services must ensure adequate resourcing across the mental health workforce, including psychiatrists, GPs, psychologists, mental health nurses and Aboriginal and Torres Strait Islander health workers to ensure ongoing, responsive, and multi-disciplinary mental health care is available at all stages of the custodial journey. This includes early assessment and screening, ongoing check-ups, and care through a period of custody and supports to ensure mental health and wellbeing is maintained on release into the community and beyond.

Suicide and self-harm prevention strategies are fundamental to custodial health care. It is vital that barriers to seeking support are dismantled and culturally appropriate practices are in place in order to strengthen prevention and appropriate responses for people suffering serious mental distress. It is imperative that mental health services, including preventive and early intervention measures are provided in a culturally safe manner, responsive to the diverse cultural and spiritual needs of the population.

The ACCO sector needs to be adequately resourced to provide community led responses to this crisis, involved in the implementation of the recommendations from the Royal Commission and empowered to self-determine responses within the justice system that work for our community. There also needs to be accountability – especially when the data is reflecting repeat instances of self-harm.

**Recommendation 2.14.** All custodial settings must have a risk management framework to identify people who are at risk of self-harm, appropriately trained staff to identify and manage risk, and facilitate broader community and family supports for people who are identified to be at risk of self-harm.

### *Culturally safe and effective mental health services in community*

The Royal Commission into Victoria's Mental Health System heard extensive evidence regarding the lack of culturally safe mental health services in Victoria and the importance of incorporating a model of care based on Aboriginal Social and Emotional Wellbeing (SEWB). The Commission made recommendations to address this issue, including the establishment of the Balit Durn Durn Centre for Aboriginal SEWB, new SEWB Teams embedded in ACCHOs across Victoria and two Healing Centres, codesigned with Aboriginal communities. The Commission also recommended that the Government resource ACCHOs to provide SEWB services for children and young people and to

design and to design and establish a culturally appropriate, family-oriented service for infants and children who require intensive SEWB supports.

Despite significant work to date in implementing the Royal Commission recommendations on Aboriginal SEWB, there continues to be a lack of culturally safe mental health services in Victoria, and a lack of cultural competency in mainstream mental health providers and hospitals.

The RAJACs have indicated that Aboriginal people in regional Victoria in particular are suffering, due to a continued lack of culturally appropriate mental health services and facilities, with available services having little understanding of the specific experiences of Aboriginal mental health and trauma, and of effective therapeutic practices with Aboriginal clients.<sup>80</sup> Families, including children and young people, are left having to care for of Aboriginal people with a mental health condition which can mean having to monitor them hourly as they are discharged from hospitals and services without adequate treatment and medication.

The AJC continues to advocate for comprehensive reforms across the mental health system to increase access to culturally safe services provided by ACCHOs and to improve cultural competency in mainstream services providers.

**Recommendation 2.15.** As recommended by the Royal Commission into Victoria's Mental Health System, the Victorian Government must continue to support and invest in the Aboriginal Community Controlled Health sector to provide Aboriginal Social and Emotional Wellbeing across Victoria, including through the Balit Durn Durn Centre for Aboriginal SEWB, multidisciplinary SEWB teams in ACCHOs, and Aboriginal Healing Centres.

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<sup>80</sup> These deficiencies in care are life-threatening. <https://www.abc.net.au/news/2023-05-17/indigenous-mans-rights-breached-victorian-hospital-coroner-finds/102351166>

## 2.3 Achieving Health Justice for Aboriginal people

### *Independent oversight of the prison healthcare system*

The system is failing by not providing a robust independent oversight system of prison healthcare providers. This includes monitoring of contracts, independent auditing and scrutiny, clinical oversight and robust mechanisms for reviewing any deaths in custody that relate to access to healthcare.

Justice Health is responsible for setting standards for health and AOD services in prisons, managing the contract for prison healthcare, and monitoring delivery of healthcare in prisons, including compliance with the Justice Health Quality Framework, which establishes minimum standards for custodial healthcare.

The current mechanisms for monitoring delivery of health services in prison are not effective. These include requirements through the tender process, regular reporting and compliance submissions, regular meetings, bi-annual contract performance reviews (including monitoring against Key Performance Measures as set out under the Primary Healthcare Performance Framework 2023), and annual reviews.

At the Veronica Nelson Inquest, the Coroner found that there are substantial gaps in policies and procedures, which were not identified through Justice Health's monitoring of the prison healthcare contract, or through its oversight of Corrections Victoria and custodial healthcare.<sup>81</sup> Accordingly, the Coroner recommended that the Government must revise the system for auditing and scrutiny of custodial health care services.<sup>82</sup>

We are concerned about quality monitoring for private healthcare providers. In tender documents relating to the new contract for prison healthcare services, GEO Group Australia is subject to a series of Key Performance Measures, including the requirement to report monthly on the number of Aboriginal Health Checks it has carried out and the number of Integrated Care Plans for Aboriginal people. They must also report quarterly on the number of occasions on which an Aboriginal person requested attendance of an Aboriginal support role and whether the support was provided (either Aboriginal health or CV worker), as well as occasions of wellbeing and cultural support for Aboriginal people.

As outlined earlier in this submission, these measures do not reflect Aboriginal perspectives. These measures are 'quantity' based only, and do not refer to 'quality' of care. It is unclear what is measured by 'quantity' of services, and what 'quantity' of service provision is considered satisfactory. Crucially however, there are no Key Performance Measures to assess 'quality' of healthcare outcomes. This is particularly concerning considering the complex needs of Aboriginal people in prison, and the time and care that is required to build trust in a prison environment. Measuring quantity alone may incentivise providers to cut quality, for example, offer short appointments and different practitioners. This is further compounded by the privatised nature of healthcare, where GEO group may face significant financial penalties for failure to achieve certain quantity KPIs, which incentivises a reduction in quality. The Department must ensure that the new service model will actually improve the quality of healthcare being provided in prisons, that healthcare outcomes for Aboriginal people in prison are clearly articulated and measured.

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<sup>81</sup> [Inquest into the Passing of Veronica Nelson](#), [638].

<sup>82</sup> [Inquest into the Passing of Veronica Nelson](#), Recommendation 18.



Being able to measure outcomes, rather than only report on action taken, is critical to enhance accountability. It is fundamental that custodial health care outcomes are evaluated 'based on criteria that reflect Aboriginal values and measures of success'<sup>83</sup>.

The Victorian government must urgently revise the system for auditing and scrutiny of custodial healthcare services, to ensure that there is a robust oversight and accountability system for all providers of prison healthcare (both public and private).

**Recommendation 2.16.** The Victorian government must urgently revise the system for auditing and scrutiny of custodial healthcare services, to ensure that there is a robust oversight and accountability system for all providers of prison healthcare (both public and private), along with public reporting of the outcomes and whether health providers are meeting their contractual obligations.

**Recommendation 2.17.** The Government must significantly reform the system for monitoring prison healthcare services, to ensure that prison healthcare outcomes are the primary mechanism for measuring the performance and delivery of prison healthcare services.

### *Community based alternatives to police led responses to health issues*

The AJC advocate for criminal legal responses to be replaced with health and wellbeing-based ones particularly in relation to the decriminalisation of public intoxication, drug use and response to mental health incidents. The AJC advocate for resourcing for Aboriginal Communities and Organisations to further investigate alternative models based on self-determined examples (i.e. Aboriginal Community Patrols, Yallum Yallum Elders Council, Lotjpadhan, Family-Centred Approaches) and potential new responses.

Redirecting funding from policing and prisons to prevention would support progress towards a system that prioritises health, housing, education and employment, and is built upon restorative and therapeutic approaches, cultural, spiritual and physical healing, and strengthening culture and community. This is likely to be cheaper and more effective than existing punitive responses, can reduce the incarceration of Aboriginal people and eliminate reliance on degrading and dehumanising prisons.

**Recommendation 2.18.** In order to replace criminal legal responses with health-based ones the Victorian Government must invest in holistic, integrated and wrap around support, to prevent contact with the criminal legal system, including culturally safe housing and social services, education, health, mental health, disability screening, and support for parents and families. Funding should be redirected from policing and prisons to community-based, holistic programs that support individuals and their families (justice reinvestment model). Aboriginal Communities and Organisations must be resourced to investigate alternatives to police as first-responders to offending based on existing self-determined examples and potential new responses.

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<sup>83</sup> Burra Lotjpa Dunguludja, p.51



## *A self-determined custodial healthcare system*

In line with the AJC's vision for an Aboriginal Community Controlled Justice System, the AJC continue to advocate for the progressive transfer of resources, authority and responsibilities from government to the Aboriginal community over time until the Aboriginal community has full control over all custodial health and wellbeing responses for Aboriginal people.

In working towards this end, AJA4 included commitments to 'consider culturally appropriate, holistic health care models in prisons' and to 'develop cultural safety standards for health services in the adult and youth justice systems.' More work is required to realise these commitments and the AJC believe Aboriginal organisations should be adequately funded and supported to develop a model and associated standards.

We strongly support the Corrections Cultural Review's recommendation for the Government to commission Aboriginal organisations to develop a model of healthcare for Aboriginal people in custody<sup>84</sup> which is high quality, culturally safe, person-centred and comprehensive. AJC's opposition to profit-driven companies being involved in the running of prisons, and delivering medical services in custody, is well known<sup>85</sup>.

Until July 2023, all healthcare in Victorian prisons was contracted out to a multinational corporation, Correct Care Australasia, a subsidiary of Wellpath, the largest prison healthcare provider in the United States.<sup>86</sup> Wellpath, formerly named Correct Care Solutions, has allegedly been sued more than 140 times<sup>87</sup> and is accused of contributing to more than 70 deaths in the US between 2014 and 2017.<sup>88</sup>

In January 2023 GEO Group were awarded the new contract to provide healthcare across 13 of Victoria's public prisons from July 2023.<sup>89</sup> GEO Group were actually the signatory to the previous contract when Correct Care Australasia was still a subsidiary of GEO Group.<sup>90</sup> Early on, it appeared that the healthcare model provided by GEO Group would remain similar to that of their former subsidiary, with the company saying that "All staff currently working at these service delivery sites as employees of Correct Care Australasia will be invited to join GEO Healthcare's team."<sup>91</sup> GEO Group are regularly subject to a number of lawsuits and inquiries across the world due to the poor quality of services they provide in prisons.<sup>92,93,94</sup>

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<sup>84</sup> [Cultural Review](#), Recommendation 5.8

<sup>85</sup> See AJC submission to Yoorrook Justice Commission

<sup>86</sup> S. Schwartz, The Age, [Indigenous Victorians pay a high price when prisons prioritise profit](#), 4 November 2022.

<sup>87</sup> F. Tomazin, The Age, [Global group linked to jail deaths wins \\$50m youth justice contract](#), 24 October 2018; J. Purpich, [Prison Health Care Provider Sued 140 Times Now Blamed for at Least Six Deaths](#), 22 November 2017.

<sup>88</sup> B. Ellis and M. Hicken, CNN, [CNN investigation exposes preventable deaths and dangerous care in jails and prisons across the country](#). This includes: an inmate who died after allegedly being misdiagnosed, and a 60-year old inmate who died from a perforated stomach ulcer, and a 15-year old boy who took his life in prison in October 2016. See also, F. Tomazin, The Age, [Global group linked to jail deaths wins \\$50m youth justice contract](#), 24 October 2018.

<sup>89</sup> Businesswire, [The GEO Group Signs Contract for Delivery of Primary Health Services in Prisons Across the State of Victoria, Australia](#), 9 January 2023.

<sup>90</sup> S. Schwartz, The Age, [Indigenous Victorians pay a high price when prisons prioritise profit](#), 4 November 2022.

<sup>91</sup> J. Dunstan, ABC Online, [Calls for overhaul as Victoria continues to outsource prison health care to private companies](#), 12 January 2023.

<sup>92</sup> J. Diaz, NPR, [GEO Group sickened ICE detainees with hazardous chemicals for months, a lawsuit says](#), 25 March 2023.

<sup>93</sup> J. Iannelli, Miami New Times, [Five Reasons South Florida's Pro-Trump Private-Prison Company Is Evil](#), 7 January 2018.

<sup>94</sup> D. Sadler, The Saturday Paper, [Controversial prison health contractor back in business](#), 22 April 2023.

Private security corporations cannot be trusted to prioritise healthcare outcomes of their patients, especially when providing a no fee service to people in prison. Private corporations prioritise profits, and this situation is no different. There is no incentive for GEO Group to provide quality care to people in prison, if the ‘quality’ of care required is not clearly described in their contracts, and effectively assessed over time.

The lack of recognition of Aboriginal and Torres Strait Islander peoples in their public facing website is concerning and suggests insufficient attention to the concerns of and consideration for Aboriginal clients. When presenting to the Aboriginal Justice Forum, GEO Healthcare highlighted their ‘Aboriginal Wellbeing Strategy 2021-2024’ despite it not being publicly available at the time.

The Strategy is a basic tick-box document with minimal detail. The AJC are concerned that Geo Healthcare’s provision of health services in Victoria’s men’s prisons may reflect this lack of consideration and care in the face of a high degree of complexity and need for health services among incarcerated Aboriginal men.

At the 65<sup>th</sup> Aboriginal Justice Forum in July 2023, the Minister for Corrections expressed an expectation that the AJC would be involved in oversight for GEO Health’s delivery of custodial healthcare. The AJC hold the same expectation, until GEO are replaced by a provider more closely aligned with community expectations.

**Recommendation 2.19.** The Victoria Government must end privatisation of healthcare in prisons, including by cancelling the contract with GEO Group, and transferring all prison healthcare services to the public healthcare system along with directly contracting ACCOs to deliver healthcare to Aboriginal and Torres Strait Islander individuals.

### *Resourcing ACCHOs to provide healthcare in custody and community*

The AJC believes that VACCHO and Aboriginal Community Controlled Healthcare (ACCHO) providers should be at the forefront of prison healthcare. Aboriginal people who are incarcerated – either on remand or serving a sentence – must be able to access culturally safe healthcare, as is available in the community.

The trust developed between ACCHOs and their clients in the provision of custodial healthcare would enable and encourage continuity of care, connecting people in with their community health providers. On a broader scale, this connection can encourage people to address underlying causes of offending over time which reduces recidivism and increases community safety. ACCHOs should not, and do not want to be used to plug holes in the failings of for-profit healthcare providers. They should be empowered to deliver their services for Aboriginal people in prisons in the way they see fit.

To ensure that Aboriginal people who are incarcerated can access culturally safe healthcare in prisons, it is critical that Aboriginal Community Controlled Health Organisations (ACCHOs) are funded by governments to provide in-reach health services in prisons. This is the position of the AJC, VACCHO<sup>95</sup> and VALS.

In the Veronica Nelson Inquest, the Coroner recommended that DJCS and/or Justice Health, in partnership with VACCHO, must take concrete steps to build the capacity of VACCHO to provide in-

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<sup>95</sup> VACCHO, [Victorian Election 2022 Platform: Aboriginal Health in Aboriginal Hands](#) (2022).

reach health services in prisons.<sup>96</sup> This was also echoed by the Cultural Review, which recommended that the Government commission an Aboriginal organisation to develop a model of healthcare for Aboriginal people in custody.<sup>97</sup>

For decades, ACCHOs have been providing culturally safe and trauma-informed primary healthcare (and other services) to Aboriginal communities in Victoria. This is not the case for Aboriginal people in custody, who are forced to access healthcare from the mainstream healthcare system, which is not culturally safe.

The evaluation of AJA3 found successful programs under the AJA employ Aboriginal staff who are known in the community, respected and trusted by program participants, highly motivated, well-trained, and skilled at providing cultural support to clients. These workers ‘walk between the two worlds’ of community and government and act as a mediator and sometimes translator for both. Successful programs resource workers adequately and provide supports to manage cultural loads and vicarious trauma.<sup>98</sup>

ACCHOs are currently facing a staffing crisis, with a shortage of qualified Aboriginal staff. VACCHO are responsible for training many Aboriginal medical professionals. The resources invested by VACCHO should be kept within the community sector, not lining the profits of private companies who profit from incarceration. ACCHOs should be funded in a manner that allows them to be competitive in the market.

GEO Group Australia have floated the idea of subcontracting ACCHOs for providing specific cultural care to fulfill their continuity of care obligations under Standard 5.5 of the Justice Health Quality Framework. The Winnunga Nimmityjah Aboriginal Health and Community Services is an ACCHO that delivers custodial healthcare in ACT prisons. Based on their experience, they ardently believe that subcontracting arrangements do not work. The AJC maintain that it is preferable for a contract to be between the Department and Aboriginal services directly.

There are examples of this in other jurisdictions; Winnunga Nimmityjah Aboriginal Health and Community Services provide comprehensive primary health services for incarcerated Aboriginal people in Canberra, whilst in the Northern Territory, the Danila Dilba Health Service has provided healthcare at the Don Dale Youth Detention Centre since 2020 and also provides a Youth Support program.

In the new youth prison at Cherry Creek, the Victorian Government announced that the local public health service, Barwon Health<sup>99</sup> will partner with Wathaurong Aboriginal Co-operative to provide culturally safe healthcare for Aboriginal and Torres Strait Islander people.

**Recommendation 2.20.** The Victorian Government must fund and support Aboriginal organisations and Aboriginal Community Controlled Health Organisations to develop an Aboriginal-led and operated model of health care in Victorian places of detention.

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<sup>96</sup> [Inquest into the Passing of Veronica Nelson](#), Recommendation 25.

<sup>97</sup> [Cultural Review](#), Recommendation 5.8.

<sup>98</sup> [Evaluation of AJA3 | Aboriginal Justice](#), see the AJA3 – Evaluation synthesis and AJA3 Evaluation – summary of findings.

<sup>99</sup> J. Taylor, Times News Group, [Barwon Health to provide services at Cherry Creek](#), 19 July 2023.

**Recommendation 2.21.** The Victorian Government must fund ACCOs directly to provide health care services in custodial settings, implementing the recommendations from the Cultural Review of the Adult Custodial Corrections System.

### *State responsibility for custodial healthcare*

In Victoria, custodial healthcare is provided through the Department of Justice and Community Safety (DJCS). Justice Health within DJCS is responsible for the delivery of health services for persons in Victoria's prisons. Justice Health contract private or regional health service providers.

By contrast, in many jurisdictions in Australia, health departments oversee healthcare provision in prisons. the AJC propose that such a change should occur in Victoria. Intrinsically, the Department of Health contains higher levels of health expertise and experience in health service delivery than DJCS, where the focus is on criminological and security matters. Accordingly, security concerns and 'management' of prisoners are prioritised over independent medical services that are in the best interests of the patient.

Medical staff in prisons are influenced by 'dual loyalty'<sup>100</sup> or conflicting demands from their employer and the patient. As a result, medical decision making and interactions with patients are influenced by the correctional culture of management and security rather than health outcomes, which leads to limited quality and availability of care.

**Recommendation 2.22.** Responsibility for custodial healthcare must be transferred from the Department of Justice and Community Safety to the Department of Health.

### *Greater transparency of and access to data*

*"Data sovereignty needs to be advanced. Research, evidence and data should be community owned and controlled. This is a key mechanism for community decision-making." VACCHO<sup>101</sup>*

To enable the Aboriginal Community to hold government to account and improve the healthcare experience of Aboriginal people in prison, greater transparency of and access to data is of paramount importance. To this end custodial health service providers must collect and provide data that reflects the experiences of Aboriginal people in prison, not just aggregate information about the broader prison population.

Information on custodial health care outcomes for Aboriginal people needs to be accessible and transparent and not concealed by 'commercial in confidence' clauses of private healthcare providers.

**Recommendation 2.23.** The Victorian Government must enforce greater transparency of information between healthcare providers in prisons to ACCOs creating Continuity of care. The Victorian Government must enforce healthcare providers to share all information with ACCOs and for the information to be accurate and sighted and for duty of care for prisons to be extended to prisoner discharge.

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<sup>100</sup> Victoria Law, "Prisons Make Us Safer": and 20 Other Myths about Incarceration' (Beacon press, 2021).

<sup>101</sup> Quoted in the Victorian Aboriginal Affairs Framework 2018-2023

## *Collect and publish data on ‘near misses’*

There is currently no mechanism in Victoria for reporting on critical health incidents, adverse events or near misses in relation to the provision of custodial healthcare. While data on deaths in custody is collected and made publicly available by the Australian Institute of Criminology, limitations exist<sup>102</sup>. In particular, if people pass away shortly after release from prison, these tragedies do not fall within the definition of ‘deaths in custody’ so no data is published on them.

Having additional data available on near misses and critical health incidents that occur for Aboriginal people in custody, or shortly after release would provide much needed evidence on the effectiveness of custodial healthcare, throughcare and transition from custodial to community health. The collection and analysis of this information could be used to further enhance custodial health care and prevent Aboriginal deaths in custody or upon release from prison.

Without data demonstrating the rates of and reasons for ‘near misses’, and the opaqueness of the Corrections system, it is difficult for the AJC, the Aboriginal community, and organisations like VACCHO to develop effective mitigation strategies. Accurate and accessible data will provide insight into these occurrences and the specific needs of the people involved.

**Recommendation 2.24.** Collect and publish data on critical health incidents, adverse events and near misses for Aboriginal people in custody and those recently released from prison.

## *Prison healthcare complaints*

The existing system for complaints relating to prison healthcare is inadequate, meaning that many people in custody have little faith in the process, and have few incentives to report issues.

Individuals who are incarcerated (or who have been incarcerated) can make a complaint to their Unit Manager, the General Manager of the prison, or the health care provider. However, in many cases, this may not be appropriate, if the individual is still incarcerated and is concerned about reprisals or unfair treatment as a result of making a complaint.

Complaints relating to prison healthcare in either public or private prisons can also be made to the following independent bodies<sup>103</sup>:

- Victorian Ombudsman<sup>104</sup>
- Health Complaints Commissioner<sup>105</sup>
- Mental Health Complaints Commissioner<sup>106</sup>
- Independent Broad-Based Anti-Corruption Commission<sup>107</sup> (IBAC) which receives complaints and notifications of public sector corruption.

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<sup>102</sup> Amanda Porter, [Quantifying an Australian Crisis: Black Deaths in Custody](#)

<sup>103</sup> [S. 47\(1\)\(j\) Corrections Act](#) provides that people who are incarcerated have “the right to make complaints concerning prison management to the Minister, the Secretary, the Commissioner, the Governor, an independent prison visitor, the Ombudsman, the Health Complaints Commissioner and the Human Rights Commissioner.”

<sup>104</sup> The Victorian Ombudsman does not have publicly available data on the number of complaints it received about prison healthcare. However, in 2020-2021, prisons were in the top two agencies that people complained about.

<sup>105</sup> <https://hcc.vic.gov.au/make-complaint>

<sup>106</sup> <https://www.mhcc.vic.gov.au/what-expect>

<sup>107</sup> <https://www.ibac.vic.gov.au/report>

In 2021-2022, the Victorian Ombudsman received more complaints about Corrections Victoria than any other public authority, and healthcare was the most complained about issue within prisons.<sup>108</sup> In Corrections and Justice Services' reports provided to the Aboriginal Justice Forum, complaints relating to the provision of and access to health services, opioid substitution therapy, AOD programs and nicotine replacement are particularly frequent.

For individuals who are incarcerated at the time of making a complaint, there are multiple obstacles which deter/prevent individuals from accessing many of these bodies, including limited awareness of complaints processes and limited access to prison legal services.<sup>109</sup> In addition, the high cost of making a phone call from prison also acts as a barrier (only the Ombudsman and VLA has a free call service).

Aside from challenges in accessing complaints processes, another issue that may deter people from making a complaint is the limited outcome from the complaints process. For example, between 2014 and 2022, the Mental Health Complaints Commissioner received more than 12,000 complaints, but [did not taken compliance action](#) against a single mental healthcare provider.<sup>110</sup>

Similarly, the outcome of a complaint submitted to the Victorian Ombudsman may be limited by the lack of enforcement mechanism for the Ombudsman's recommendations.

More robust safeguards against systemic abuses are urgently needed, including an independent complaints system, which is culturally appropriate and can be accessed by people who are incarcerated without fear of reprisals.

Prison complaints, including complaints against private prisons and contractors, should be handled by an appropriately resourced independent oversight body with sufficient powers to refer matters for criminal investigation. The body must be accessible to people in prison and complainants must have adequate legislative protection against reprisals.

The Victorian Government should also resource a legal service dedicated to providing legal advice and representation for people to prison, and properly resource Aboriginal Legal Services to provide such services to Aboriginal people in prison.

**Recommendation 2.25.** Prison complaints, including complaints against private prisons and contractors, should be handled by an appropriately resourced independent oversight body with sufficient powers to refer matters for criminal investigation. The body must be accessible to people in prison and complainants must have adequate legislative protection against reprisals.


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<sup>108</sup> Victorian Ombudsman, [2022 Annual Report](#) (2022) p. 29.

<sup>109</sup> Fitzroy Legal Service operates a Prison Law Advice Line one day a week; VLA runs a Prisoners Legal Help phone line in 5 prisons (MRC, Port Phillip, DPFC, Loddon and Ravenhall; people in prison can make a free 12 minute call to the service five days a week). VALS runs a prison outreach program. The Mental Health Legal Centre provides civil legal services and other support services to people with cognitive impairment and mental health issues at DPFC and Ravenhall. The Djirra Prison Support Program provides after-hours support for Aboriginal women and focuses on the prevention of family violence.

<sup>110</sup> A. Ore and M. Davey, The Guardian, [No action taken against Victorian mental health services despite more than 12,000 complaints](#), 26 May 2022.

**Recommendation 2.26.** The Victorian Government must resource a legal service dedicated to providing legal advice and representation for people in prison, and properly resource Aboriginal legal services to provide such services to Aboriginal people in prison.

A decorative graphic on the right side of the page consists of several large triangles pointing towards the center. The triangles are colored in shades of blue, orange, and red, creating a symmetrical, star-like pattern.

## **Section 3: Systemic Injustice Experienced by Aboriginal People in Relation to Housing and Homelessness**



## Summary of recommendations related to housing and homelessness

The Aboriginal Justice Caucus recommend that:

**Recommendation 3.1.** All recommendations from *Mana-na woorn-tyeen maar- takoort* Victorian Aboriginal Housing and Homelessness Framework must be implemented.

**Recommendation 3.2.** Given the close relationship between housing policy and justice outcomes, the Victorian Government must have a strategic focus on improving housing for Aboriginal people at-risk of, involved in, or exiting the criminal justice system. Further investment must be made in housing for Aboriginal people at risk of entering the criminal justice system and Aboriginal people exiting custody.

**Recommendation 3.3.** The Victorian government explore ways to increase suitable and stable housing options across the state. Significant investment is required to increase housing availability and reduce the massive waiting lists. Both short- and long-term options should be prioritised.

**Recommendation 3.4.** In the development of housing projects the Victorian Government ensures funding for Cultural safety and inclusion measures, so that housing comes with the supports Aboriginal people need. New investment models, which bring together capital investment in accommodation and culturally appropriate, structured service supports that can make the accommodation for people with complex needs sustainable, should be developed.

**Recommendation 3.5.** The *Blueprint for an Aboriginal-specific Homelessness System in Victoria* and the *2022 Victorian Aboriginal Housing and Homelessness Summit Report* be fully funded and implemented.

**Recommendation 3.6.** The Victorian Government work with the Federal Government and other jurisdictions to establish an annual count of homelessness deaths to inform policy responses and drive accountability, and a reporting framework to guide hospitals, police, coroners and homelessness services on how to consistently and adequately report on the deaths of people experiencing homelessness.

**Recommendation 3.7.** The Victorian Government fully implement all Royal Commission into Aboriginal Deaths in Custody recommendations relating to housing.

**Recommendation 3.8.** A commitment to action and investment to ‘*meet the housing needs of Aboriginal people involved in the criminal legal system*’ be made in the next iteration of the Aboriginal Justice Agreement.

**Recommendation 3.9.** Embodying the principle of ‘housing first’, increase provision of, and access to housing for Aboriginal people exiting the justice system at various points (diversion, bail, parole, post-release), and look to innovative ways to provide self-contained, supported accommodation i.e. dedicate prison industries to the construction of tiny homes to be occupied by people exiting prison and/or young people ageing out of residential care or exiting detention.

**Recommendation 3.10.** Holistic services in prison are improved, in preparation for managing the transition out, including access to housing and require that each person exiting has a plan in place providing for three months of transitional accommodation.

**Recommendation 3.11.** *Our Youth Our Way* recommendations must be implemented including: establishing Aboriginal community-controlled crisis accommodation for Aboriginal children and young people in every region, especially those experiencing or at risk of homelessness, informed by the Nungurra Youth Accommodation Services model.

**Recommendation 3.12.** The Victorian Government must explore how to bring together funding across multiple departments and embed the Housing First model within the service system.

**Recommendation 3.13.** The Victorian Government fully implement all Royal Commission into Aboriginal Deaths in Custody recommendations relating to economic development and increasing Aboriginal employment at all levels and in all sectors, in particular for people engaged in the justice system.

### 3.1 Aboriginal experiences of housing and homelessness

Housing is a huge concern for Aboriginal people in Victoria. The lack of suitable and stable short and long-term housing options for our mob gets worse over time, with Aboriginal young people, families and Elders particularly affected.

Based on data from the Australian Bureau of Statistics, Victoria witnessed a notable growth in its Aboriginal and Torres Strait Islander population, surging from 47,788 in 2016 to 65,646 in 2021. Similarly, the estimated count of Aboriginal and/or Torres Strait Islander individuals facing homelessness grew to 11,860 in 2022-23, reflecting a 47% rise from the 2015-16 figure of 8,077. The proportion of Aboriginal Victorians accessing homelessness services also grew, from 14.16% in 2015-16 to 18.4% in 2022-23<sup>111</sup>.

Aboriginal individuals are disproportionately affected by homelessness, being 14.6 times more likely more likely than non-Aboriginal people to be homeless and fifteen times more likely to be staying in impoverished, overcrowded dwellings or sleeping rough<sup>112</sup>. Since 2019-20 homelessness for non-Aboriginal Victorians has decreased by 14%, whilst during the same period, homelessness for Aboriginal Victorians increased by 14%. In 2022-23, 12.1% of all specialist homelessness services clients in Victoria were Aboriginal up from approximately 8% in 2017-18<sup>113</sup>.

Further, the numbers of Aboriginal people considered homeless on census night are likely to be underestimated given practical challenges participating in the census<sup>114</sup>, reluctance to self-identify and different conceptions of 'home'. Questions regarding 'usual residence' may not reflect Aboriginal cultural contexts, as it is couched within a western cultural frame of reference that does not correlate with some Indigenous understandings of home. Because 'home' is understood in a different way for Aboriginal Australians when staying with their extended family, it may result in masking their homelessness<sup>115</sup>.

Homelessness serves as a prominent example of societal disadvantage and social exclusion, underscoring the harsh realities individuals face without stable housing and reflecting broader issues of marginalisation and systemic challenges in fostering inclusive communities<sup>116</sup>. Being homeless impacts on every aspect of a person's life – it contributes to poorer health and wellbeing outcomes, higher levels of incarceration, and exacerbates prejudice and racism<sup>117</sup>. Aboriginal Housing Victoria note that 'Access to safe, affordable, long-term housing provides a foundation for closing the gap on

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<sup>111</sup> AIHW, Specialist homelessness services 2022–23, Supplementary tables - Historical tables SHSC 2011–12 to 2022–23

<sup>112</sup> ABS, 2021, Estimating Homelessness: Census, 2021, abs.gov.au.

<sup>113</sup> AIHW, Specialist homelessness services 2022–23, Supplementary tables - Historical tables SHSC 2011–12 to 2022–23

<sup>114</sup> Morphy, F. 2010, Population, people and place: The Fitzroy valley population project, CAEPR working paper no. 70/2010 Centre for Aboriginal economic policy review, Canberra.

<sup>115</sup> Chamberlain, C. & Chamberlain, C. & McKenzie, D. 2008, Counting the homeless 2006, Australian census analytic program, ABS, Canberra.

<sup>116</sup> Productivity Commission, 2021, Report on Government Services; Housing and homelessness sector overview data tables. Australian Government, Canberra.

<sup>117</sup> Browne- Yung, K., Ziersch, A., Baum, F. & Gallaher, G. 2016, When you sleep on a park bench, you sleep with your ears open and one eye open: Australian Aboriginal peoples' experiences of homelessness in an urban setting, Australian Aboriginal studies, vol. 2, pp. 3 – 17.

socio economic outcomes for Aboriginal people in relation to education, training, employment, health and financial independence<sup>118</sup>.

The links between secure housing and better justice outcomes are undeniable, with suitable housing a protective factor against experiences of violence/abuse, offending and recidivism. Housing continues to be regularly raised at Aboriginal Justice Forums, with RAJAC Chair Reports highlighting ongoing issues with:

- Youth homelessness leading to criminalisation and incarceration.
- Individuals on community-based orders unable to prioritise addressing underlying offending behaviours and concerns in the absence of suitable and stable housing.
- Post release housing is almost impossible to secure. The lack of it undermines community reintegration.

The AJC recognise the importance of the Victorian Aboriginal Housing and Homelessness Framework, '*Mana-na woorn-tyeen maar-takoort*'. *Mana-na woorn-tyeen maar-takoort* has a broad objective to ensure that all Aboriginal people in Victoria will have a home within a generation. The Framework sets out a plan to achieve this through five strategic goals that capture the full housing spectrum. This includes increased stock of social housing in the hands of ACCOs, increasing access to private rental accommodation, increasing access to home ownership opportunities and building an Aboriginal homelessness system. *Mana-na woorn-tyee maar-takoort* provides the way forward to achieve quality housing outcomes for all Aboriginal Victorians.

Deficient housing is a vulnerability to criminalisation, and therefore of great concern to the AJC. Across the state, a lack of affordable and appropriate housing for Aboriginal people in contact with justice is reported to be increasing. In 2022-23 7.5% of Aboriginal Victorians (889) accessing homelessness services did so upon exit from custody<sup>119</sup>. It is becoming more difficult for community members to access housing upon release from custody, when on Community Corrections Orders, and when on parole. It is difficult for offenders to address their underlying offending behaviours and fulfil their orders without suitable and stable housing. Community integration is made exceedingly difficult when post-release housing does not suit people's economic, social, and locational needs.

**Recommendation 3.1.** All recommendations from *Mana-na woorn-tyeen maar-takoort* Victorian Aboriginal Housing and Homelessness Framework must be implemented.

### ***Lack of affordable and secure housing***

Housing affordability is an issue facing many Australians, however Indigenous Business Australia notes that achieving home ownership poses a greater challenge to Aboriginal people. Victoria's Aboriginal and Torres Strait Islander home ownership rate saw a rise from 10,303 in 2016 to 15,217 in 2021<sup>120</sup>. However, only making up 0.1% of the Victorian population, the representation of Aboriginal and Torres Strait Islander individuals in the home-owner market highlights evident social disadvantage

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<sup>118</sup> Aboriginal housing Victoria, 2016, Introducing competition informed user choice in human services: Identifying sectors for reform. Aboriginal housing Victoria's response to the productivity commission preliminary findings report.

<sup>119</sup> AIHW, Specialist homelessness services 2022–23, Supplementary tables - Historical tables SHSC 2011–12 to 2022–23

<sup>120</sup> ABS, 2021, Housing Statistics for Aboriginal and Torres Strait Islander Peoples, 2021, abs.gov.au.

compared to their non-Indigenous counterparts<sup>121</sup>. As a result of this, Aboriginal people have less opportunity to enjoy the wealth creation benefits and security that home ownership can provide.

Aboriginal people comprise an especially high proportion of the homeless population in regional and remote areas and in major cities<sup>122</sup>, which are the two areas where there is a chronic shortage of available or affordable housing<sup>123</sup>. Rental markets throughout Victoria are dwindling and it is expected that low income tenants will be hit hardest by rising rents and a lack of choice<sup>124</sup>. The REIV, claims that a 3% rental vacancy is required for a healthy rental market where there is enough supply to meet demand<sup>125</sup>. The Victorian rental vacancy rate has fallen to 1.07% with the problem particularly pronounced in outer suburbs and regional, where low income earners can afford to live<sup>126</sup>.

Median rents in metropolitan Melbourne are now \$515 per week and \$430 per week in regional Victoria<sup>127</sup>. In the twelve months to September 2023, the Melbourne Rent Index (MRI) increased by 15.8 per cent, the highest annual increase since this Rental Report series began in 2000. This annual rate of change is well above that in the twelve months to September 2022 (10.0%) and well above the long-term average annual increase (over the past ten years) (3.1%).<sup>128</sup>

Lack of long-term, affordable stable housing contributes to the over-incarceration of Aboriginal people. This occurs in several ways – tenancy matters can quickly escalate to homelessness in the absence of early, culturally-safe legal assistance and support; fleeing family violence often results in homelessness; homelessness increases the likelihood of criminalisation for poverty and/or public order related offences; refusal of bail due to absence of suitable accommodation increases the number of people on remand, and time spent in custody; lack of housing reduces the likelihood of people being granted parole and extends periods of incarceration; exiting prison to homelessness/unstable housing significantly inhibits successful reintegration and increases the likelihood of a rapid return to the system<sup>129</sup>.

In 2022, the AIHW found that one-third (54 per cent) of people entering prison were homeless in the four weeks prior, and over half of people in prison expected to be homeless upon release<sup>130</sup>. Nationally, Aboriginal people (46 per cent) were more likely than non-Aboriginal people entering prison (33 per

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<sup>121</sup> Australian Institute of Health and Welfare (AIHW), 2021, Specialist Homelessness Services Collection, Australian Government, Canberra

<sup>122</sup> Australian institute of health and welfare, 2014, Homelessness amongst Indigenous Australians report, Australian Government, Canberra.

<sup>123</sup> Barbour, L. 2016, Census 2016: Affordable housing shortage in rural Australia has homelessness at 'crisis point'. ABC News, <https://www.abc.net.au/news/2016-07-31/homelessness-at-crisis-point-in-rural-australia/7673780>

<sup>124</sup> The Guardian, 2018, Melbourne rental fears put tenants' advocates and real estate industry at loggerheads. <https://www.theguardian.com/australia-news/2018/sep/12/melbourne-rental-fears-put-tenants-advocates-and-real-estate-industry-at-loggerheads>

<sup>125</sup> Kerr, J. & Anderson, S. 2018, Victoria's rental vacancy rate hits new low as population booms and banks crack down, ABC news, <https://www.abc.net.au/news/2018-08-24/rental-vacancy-rate-drops-again-in-victoria/10155782>

<sup>126</sup> Kusher, C., 2023, PropTrack Rental Report: December 2023 Quarter, PropTrackRentalReportDecember2023.pdf

<sup>127</sup> Department of Families, Fairness and Housing, 2023, Homes Victoria Rental Report: September quarter 2023. Homes Victoria Rental Report - September quarter 2023.docx (live.com)

<sup>128</sup> Ibid.

<sup>129</sup> Lack of housing and accommodation is raised regularly in RAJAC Chairperson reports to the AJF. While the situation is particularly dire in regional Victoria where it has persisted for years, it is an issue commonly reported by all RAJACs. See for example Loddon Mallee and Grampians RAJAC reports to AJF 62 and RAJAC Chairperson reports to previous AJFs.

<sup>130</sup> AIHW, (2022), The health of Australia's prisoners 2022

cent) to be in short-term or emergency accommodation. Upon exit, Aboriginal people were more likely than non-Aboriginal people to expect being homeless on release<sup>131</sup>.

People exiting prison now made up 12 per cent of all Aboriginal Specialist Homeless Support clients (935 people in 2020-21). More than double the 2011-12 figure of 5 per cent<sup>132</sup>. These people have literally nowhere to go.

Failing to house people who have been incarcerated also ignores the needs of their families and wider communities. Lack of appropriate housing after prison drives reoffending as prisoners who are homeless upon exiting prison return in greater numbers. Upon release, the absence of stable housing acts as a barrier to reunification with children, keeping children and parents apart as children are left languishing in child protection and out-of-home-care (OOHC) services.

A significant proportion of people in contact with the criminal legal system require specialist support to access and maintain housing. Too often government silos and a lack of coordination results in sub-optimal outcomes. One department may provide funding for infrastructure, but not for operational costs and another may provide grants to operate programs but no capital funding. Targeted, timely services that provide accommodation *and* support can improve individual outcomes, increase the likelihood of successful reintegration and reduce recidivism. This requires simultaneous consideration of housing *and* justice policy and programs.

**Recommendation 3.2.** Given the close relationship between housing policy and justice outcomes, the Victorian Government must have a strategic focus on improving housing for Aboriginal people at-risk of, involved in, or exiting the criminal justice system. Further investment must be made in housing for Aboriginal people at risk of entering the criminal justice system and Aboriginal people exiting custody.

**Recommendation 3.3.** The Victorian government explore ways to increase suitable and stable housing options across the state. Significant investment is required to increase housing availability and reduce the massive waiting lists. Both short- and long-term options should be prioritised.

### *Experiences of prejudice and racism*

Aboriginal people continue to experience prejudice and racism, which impacts on all aspects of life and affects their health and wellbeing<sup>133</sup>. Individuals dealing with homelessness encounter enduring stigmatisation and discrimination across various contexts, with the most common discrimination occurring in the private rental and accommodation markets. This discrimination often manifests in landlords or housing providers being hesitant to rent to individuals with a history of homelessness, perpetuating the cycle of housing instability.<sup>134</sup> However, the repercussions extend beyond housing, influencing access to education, employment, and healthcare, thus deepening the challenges faced by those already navigating the complexities of homelessness.

Aboriginal Housing Victoria note that racial discrimination within the private rental market is a significant barrier to Aboriginal people, even those in regular well-paid employment. Aboriginal people

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<sup>131</sup> *ibid*

<sup>132</sup> AHV submission to Yoorrook

<sup>133</sup> Atkinson, R., Taylor, E. & Walter, M. 2010, Burying Indigeneity: The spatial construction of reality and Aboriginal Australia, *Social and legal studies*, vol. 19, pp. 311 – 330.

<sup>134</sup> Fragkou, R., Tsadiras, A., 2023, Breaking the Vicious Circle between Discrimination and Homelessness: Homelessness as a Protected Ground of Discrimination. *International Human Rights Law Review*, 12(2), 213-242.

on low or statutory incomes are perceived as 'high risk' tenants and the private rental market is effectively inaccessible to them, particularly in tight markets when vacancy rates are low<sup>135</sup>.

Aboriginal Victorians often find themselves at risk of losing their tenancies or find it impossible to find long term accommodation. The lack of security has been linked to poverty<sup>136</sup> and also to the practices of unscrupulous landlords, who evict possible long-term tenants in order to obtain higher rental payments during holiday periods in camping grounds and caravan parks<sup>137</sup>. Landlords may also be unwilling to renew leases because of perceived overcrowding related to kinship obligations, where taking in extended family and family friends is common<sup>138</sup>.

Not surprisingly Aboriginal people are consistently overrepresented in social housing. In 2019 there were 2,754 Aboriginal Victorians living in public housing and 1,565 in social housing, with a further 4,143 households on the Victorian Housing Register<sup>139</sup>. Given that social housing in Australia represents less than 5% of the total housing sector, options for accessing social housing are relatively limited<sup>140</sup>.

### ***Lack of culturally appropriate housing***

Social housing provides low-income people who do not have suitable alternative housing options with access to social housing that supports their well-being and contributes to their social and economic participation. It seeks to achieve these aims through the provision of accommodation that is timely and affordable, safe, appropriate, of high quality and sustainable<sup>141</sup>.

Aboriginal Housing Victoria note that Aboriginal tenants accessing social housing have lower levels of satisfaction with their housing than the public housing cohort as a whole. They are fifteen times more likely to be staying in impoverished or overcrowded dwellings than non-Aboriginal people<sup>142</sup>. This can be attributed to a number of factors. Firstly, it is a result of a supply demand mismatch in social housing and because of the ageing and deteriorating nature of the housing stock due to under-investment in maintenance and replacement of public housing by successive federal and state governments<sup>143</sup>. Secondly, those who are considered to be in immediate need of housing as a result of homelessness, which includes Aboriginal tenants<sup>144</sup> are often housed in some of the worst maintained, undesirable

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<sup>135</sup> Aboriginal housing Victoria, 2016, Introducing competition informed user choice in human services: Identifying sectors for reform. Aboriginal housing Victoria's response to the productivity commission preliminary findings report.

<sup>136</sup> Memmott, P., Birdsall-Jones, C. & Greenop, K. 2012, Why are special services needed to address Indigenous homelessness? Institute for social science research, University of Queensland, St Lucia.

<sup>137</sup> Gray, B & Young, A, 2012 Not a brown paper bag or shopping trolley: Digital media storytelling with people who have experienced homelessness, [journal.colab.org.nz/article/15](http://journal.colab.org.nz/article/15).

<sup>138</sup> Memmott, P., Birdsall-Jones, C. & Greenop, K. 2012, Why are special services needed to address Indigenous homelessness? Institute for social science research, University of Queensland, St Lucia.

<sup>139</sup> Mana-na woorn-tyeen maar-takoort

<sup>140</sup> Aboriginal housing Victoria, 2016, *op cit*.

<sup>141</sup> Australian Government, Homelessness services, Productivity commission preliminary report, 2018.

<sup>142</sup> Homelessness Australia, 2017, Homelessness and Aboriginal and Torres Strait Islanders, viewed 27 March 2019, < [www.homelessnessaustralia.org.au](http://www.homelessnessaustralia.org.au).

<sup>143</sup> Aboriginal housing Victoria, 2016, *ibid*.

<sup>144</sup> Australian Institute of Health and welfare, 2018, Housing assistance in Australia: Priority groups and wait lists, Australian Government, Melbourne



and unsafe housing stock, because it is these properties that are underutilized and therefore available<sup>145</sup>.

In rental properties, overcrowding can be related to cultural factors, where taking in extended family and family friends is common, and forms part of kinship responsibilities, or for other cultural reasons, such as attendance at funerals. This can lead to houses deteriorating prematurely, and possibly to the development of unsafe or unhealthy housing<sup>146</sup>. A lack of understanding of kinship practices on the part of the wider society, including affirming kinship relations, capitalising on kinship rights when in need of food, shelter or money, values of respect and mourning behaviours, can lead to discrimination, impacting on housing security and in developing pathways into homelessness.

**Recommendation 3.4.** In the development of housing projects the Victorian Government ensures funding for Cultural safety and inclusion measures, so that housing comes with the supports Aboriginal people need. New investment models, which bring together capital investment in accommodation and culturally appropriate, structured service supports that can make the accommodation for people with complex needs sustainable, should be developed.

### ***Lack of culturally safe and adequate funded homelessness service***

Whilst definitions of Aboriginal homelessness have become more culturally specific in social science literature, this has not been reflected in policies, where there has been a trend to more mainstreaming of homeless services catering for Aboriginal people<sup>147</sup>. This leads to a risk of oversimplifying Aboriginal homeless people's needs, which may then be misunderstood or neglected altogether<sup>148</sup>. Policy development needs to be flexible to the cultural specifics and diversity of Aboriginal needs depending on their cultural situation and the socio-economic context of the environment in which they would prefer to live.

Victoria must invest in a culturally safe and adequate funded homelessness service system that is responsive to the specific and unique needs of Aboriginal Victorians. ACCOs have the capacity to meet the needs of their communities. Aboriginal Victorians represent 13% of all people accessing homelessness services in Victoria, however they only receive 3% of all homelessness funding. Aboriginal Victorians therefore are reliant on mainstream service systems. Aboriginal Victorians need to be given the choice to get support from an Aboriginal homelessness service and for this to happen, ACCOs need the necessary funding to meet this need.

**Recommendation 3.5.** The *Blueprint for an Aboriginal-specific Homelessness System in Victoria* and the *2022 Victorian Aboriginal Housing and Homelessness Summit Report* be fully funded and implemented.

### ***Homelessness impacts on mortality***

Being homeless has profound impact on mortality. A longitudinal study undertaken at St Vincents Hospital in Melbourne found that, over a 15-year period, emergency department attendees who have experienced at least one episode of homelessness within a two-year period are at approximately

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<sup>145</sup> Gray, B. 2012, The babushka project: Mediating between the margins and wider community through public art creation, *Art therapy: Journal of the American art therapy association*, vol. 29, no.3, pp. 113 – 119.

<sup>146</sup> Memmott, P., Birdsall-Jones, C. & Greenop, K. 2012, *ibid*

<sup>147</sup> *ibid*

<sup>148</sup> *ibid*

double the risk of mortality compared to those who were non-homeless. Furthermore, homeless individuals died almost 12 years younger than non-homeless individuals<sup>149</sup>.

Deaths among younger homeless individuals are commonly related to accidental and/or drug/alcohol causes, while deaths among older homeless individuals are most often related to cardiovascular disease and cancer. It has also been found that nearly one-third of these deaths in homeless individuals are from conditions amenable to timely and appropriate provision of healthcare<sup>150</sup>

Using analysis of state and territory coronial inquests, Guardian Australia have investigated 627 homelessness deaths across Australia, and showed that that Australians experiencing homelessness have an average life expectancy of just 44 years (45.2 for men and 40.1 for women) – more than 30 years lower than the median age at death for the general population. Aboriginal and Torres Strait Islander people are also vastly overrepresented among the homeless deaths examined by the Guardian - about 20% of the 627 reported deaths involved an Aboriginal or Torres Strait Islander person.

Deaths of homeless people are not recorded and reported, so the true scale of the problem is unknown, and therefore unable to be addressed and the success of interventions measured and evaluated.

**Recommendation 3.6.** The Victorian Government work with the Federal Government and other jurisdictions to establish an annual count of homelessness deaths to inform policy responses and drive accountability, and a reporting framework to guide hospitals, police, coroners and homelessness services on how to consistently and adequately report on the deaths of people experiencing homelessness.

### *Housing insecurity compounds family violence risk*

An ANROWS literature synthesis of the intersection of housing insecurity, homelessness and family violence<sup>151</sup> highlighted that overcrowded and poorly maintained housing exacerbate the risk of violence and make women and children more vulnerable to abuse from a broad range of potential abusers<sup>152</sup>. Inadequate housing is a factor that can perpetuate abusive relationships: if women need stable housing, particularly if they need housing to maintain custody, they are more likely to return to an abuser<sup>153</sup>.

Evidence from the regions also suggests that where alleged offenders are housed with Elders and/or other community members for the purposes of obtaining bail, Elder abuse and other conflicts have arisen in some cases.

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<sup>149</sup> Seastres, R.J., Hutton, J., Zordan, R., Moore, G., Mackelprang, J., Kiburg, K.V. and Sundararajan, V. (2020), *Long-term effects of homelessness on mortality: a 15-year Australian cohort study*. Australian and New Zealand Journal of Public Health, 44: 476-481. <https://doi.org/10.1111/1753-6405.13038>

<sup>150</sup> Seastres et al.

<sup>151</sup> Australia's National Research Organisation for Women's Safety. (2019). Domestic and family violence, housing insecurity and homelessness: Research synthesis (2nd Ed.; ANROWS Insights, 07/2019). Sydney, NSW: ANROWS.

<sup>152</sup> Blagg, H., Williams, E., Cummings, E., Hovane, V., Torres, M., & Woodley, K.N. (2018). Innovative models in addressing violence against Indigenous women: Final report (ANROWS Horizons, 01/2018). Sydney: ANROWS.

<sup>153</sup> ibid



## 3.2 Housing and the over-representation of Aboriginal people in custody

*“Without a vast improvement in housing provision for Aboriginal families and former prisoners - rates of remand will continue to rise; rates of recidivism will continue to deteriorate; children will continue to move into child protection as their parents are incarcerated; and the harmful impacts on families of prisoners returning to their communities with unresolved trauma will continue unabated.” Darren Smith, Aboriginal Housing Victoria<sup>154</sup>*

The RCIADIC highlighted the relationships that exist between poor and inappropriate housing and the over-representation of Aboriginal people in custody<sup>155</sup>. A central theme of the housing chapter of the RCIADIC report is that colonisation and policies of assimilation denied Aboriginal people legitimate control over the ‘location, design and functions of their living spaces, with serious adverse consequences.’<sup>156</sup> Welfare presumptions about what constituted a ‘good home’ served to undermine family structures and identity. Separation of children from their families in response to housing conditions was destructive of Aboriginal identity and frequently led to a cycle of institutionalisation<sup>157</sup>

The RCIADIC summarised a range of problems confronting Aboriginal communities in their efforts to access adequate housing. Sadly, those issues persist to this day:

- **Insufficient consultation**, misunderstanding and limited involvement of tenants and local Aboriginal communities in providing housing. Communication failures led to unsuitable housing because of poor design, location or the materials used.
- Aboriginal people living in urban areas are unable to obtain suitable housing through the private rental market due to **low incomes, racism and discrimination**.
- **Accommodating temporary visitors** can strain household resources, particularly in urban centres where people must visit to access medical, legal and other services. While not confined to Aboriginal households, the disruptive effects of visitors with drug and alcohol, mental health or other issues may be exacerbated by kinship ties.
- **Insufficient permanent housing** in areas preferred by Aboriginal people.
- **Bureaucratic control** of Aboriginal housing programs with poorly designed projects pushed through to completion to conform with funding cycles.
- The **variety of Aboriginal housing schemes and multiplicity of agencies** can hamper project development and deny Aboriginal people a knowledge of relevant procedures and processes.
- **Unmet expectations and needs of Aboriginal communities**. Some Aboriginal communities have all the skills necessary to obtain and manage their own housing and simply need a secure title and income; others need more intensive support.<sup>158</sup>

The RCIADIC outlined possible responses to these programs which share common characteristics of increasing Aboriginal control of housing and infrastructure through Aboriginal housing organisations and consultative mechanisms.<sup>159</sup> Importantly, these responses required more than just physical

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<sup>154</sup> Aboriginal Justice Caucus member Darren Smith is CEO of Aboriginal Housing Victoria. Quote from AHV submission to Yoorrook, November 2022.

<sup>155</sup> Royal Commission into Aboriginal Deaths in Custody (National Report, 1991) vol 2, p 425 (‘National Report’).

<sup>156</sup> *ibid*

<sup>157</sup> *Ibid*, p 425

<sup>158</sup> *Ibid*, pp 426-427

<sup>159</sup> *Ibid*, p 425

infrastructure to ensure related resources were provided for housing management and administration and support services for newly housed individuals and families.

**Recommendation 3.7.** The Victorian Government fully implement all Royal Commission into Aboriginal Deaths in Custody recommendations relating to housing.

**Recommendation 3.8.** A commitment to action and investment to *'meet the housing needs of Aboriginal people involved in the criminal legal system'* be made in the next iteration of the Aboriginal Justice Agreement.

### ***Lack of transitional houses for Aboriginal people seeking bail***

Given recent tightening of bail laws in Victoria it is increasingly difficult for alleged offenders to obtain bail. One's ability to provide a residential address and have access to suitable and secure accommodation is a critical determining factor when bail decisions are made. The difficulty of accessing housing to assist with obtaining bail is exacerbated for Aboriginal women, particularly those who have had to leave other housing arrangements to escape family or domestic violence.

Better Pathways was a four-year initiative introduced by Corrections Victoria in 2005 to address increasing female imprisonment. It included a commitment to provide additional transitional housing for women on bail, including Aboriginal women<sup>160</sup>. Twelve transitional houses for women were established, with two specifically for Aboriginal women and their children. While a great initiative, these houses were only able to accommodate two Aboriginal women and their families for a period of up to twelve months. In addition, in order to access these houses, Aboriginal women may need to relocate themselves and their family to regional areas where they have few family and community connections, no employment and have to move their children from their school. Further, bail houses do not provide long-term accommodation, which is pivotal to reducing further contact with the criminal justice system. In practice the properties were usually full because of lack of move-on accommodation and high levels of demand for housing by women seeking bail. This model was a relatively static one as it relied on a vacancy being available at the same time that a bail order was being made. This limitation was exacerbated by the small number of properties available.

### ***Post release housing availability.***

The first six to twelve months following release from prison has been identified as a high-risk time where people either transition back into society or re-enter the justice system<sup>161</sup>. Limited access to stable and affordable housing has been identified as the most overwhelming issue facing Aboriginal people post release from prison<sup>162</sup>. Former prisoners are entitled to a crisis payment at release from prison, equal to a week's pay at the maximum basic rate of an income support payment or ABSTUDY Living Allowance (approximately \$500) to assist them with establishing a normal life outside of prison<sup>163</sup>. In December 2023, the average cost of renting in Melbourne was \$530 a week, and \$430 in regional Victoria<sup>164</sup> and landlords can request one month of rent in advance, and a four-week bond to secure a property, meaning that renting a house for any recently released prisoner is impossible

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<sup>160</sup> Victorian government, 2005, Better pathways, Department of corrections, Melbourne.

<sup>161</sup> Krieg, A. 2006, Aboriginal incarceration: Health and social impacts, Medical journal of Australia, vol. 184, no. 2 pp. 535.

<sup>162</sup> Parliament of Victoria, 2010, Drugs and crime prevention committee, report no 371, Inquiry into the impact of drug related offending on female prisoner numbers.

<sup>163</sup> Services Australia - [Crisis Payment for release from prison or psychiatric confinement - Services Australia](#)

<sup>164</sup> [Department of Families Fairness and Housing Victoria | Rental report \(dffh.vic.gov.au\)](#)

without financial support from family and friends. This policy places an additional burden on already disadvantaged Aboriginal families to provide financial support for newly released family members.

A lack of stable housing and homelessness is a well-documented driver of cycles of offending. Further Aboriginal people often lack the identification papers that allow them to access crisis payments and cannot provide references that indicate their suitability as tenants, which seriously disadvantages them when trying to access housing in a competitive market.

Research suggests Aboriginal prisoners have an almost 10 times greater risk of death after release from prison than the general population and three times greater risk of death compared with their Aboriginal peers in the community<sup>165</sup>. Post release attempts to offer health services to Aboriginal clients are undermined as a result of their inability to find suitable housing. Apart from issues in locating recent releasees to provide them with ongoing treatment, when basic needs such as shelter can't be met, the incentive and capacity to attend to ongoing medical issues becomes diminished<sup>166</sup>.

Aboriginal people (in particular, women) have the highest rates of homelessness. The type of housing afforded to them can determine whether they succeed in reintegrating into society or find themselves in cycles of reoffending<sup>167</sup>. The story is similar for Aboriginal parolees who may end up breaching their orders due to a lack of suitable accommodation. Discrimination when looking for housing often accelerates their pathway into homelessness and more often than not re-offending.

Homelessness and unstable housing are often related to an inability to access appropriate accommodation that caters for Aboriginal people's complex social and cultural needs<sup>168</sup>. A lack of suitable housing has been identified as the key factor to a successful transition to outside life<sup>169</sup>. Aboriginal people exiting the prison system often leave unsupported<sup>170</sup> and find themselves in the very same conditions of daily existence that contributed to their offending in the first place<sup>171</sup>.

Furthermore, where you live and with whom you live may also be determined by conditions set in your parole order<sup>172</sup>. They may have to relocate themselves to areas where they may not have family and community connections, or opportunities for employment. They may be unable to return to their community because of the fear of further violence that may have been perpetrated against them by family or an ex-partner. The lack of available housing in their traditional habitus, where they experience safety as a result of attachment to communal places, and a separation from family and kinship networks<sup>173</sup> can lead to profound depression causing the person to lose interest in a conventionally housed lifestyle and to take up homelessness instead<sup>174</sup>. The type and location of housing available

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<sup>165</sup> Stewart, L., Henderson, C. & Hobbs, M. 2004, Risk of death after release from jail, *Australian and New Zealand journal of public health*, vol. 28, pp. 32 – 36.

<sup>166</sup> Krieg, A. 2006, Aboriginal incarceration: Health and social impacts, *Medical journal of Australia*, vol. 184, no. 2 pp. 535.

<sup>167</sup> Magistrates court of Victoria, Annual report.

<sup>168</sup> Birdsall – Jones, C., Corunna, V., Turner, N., Smart, G. & Shaw, W, 2010, Indigenous homelessness, Australian housing and urban research institute, Western Australia.

<sup>169</sup> Baldry, E., McDonnell, D., Maplestone, P. & Peeters, M. 2002, Ex-prisoners and accommodation: What bearing do different forms of housing have on social re-integration?, Housing, crime and stronger communities conference, Australian institute of criminology, Melbourne.

<sup>170</sup> Memmott, P., Birdsall-Jones, C. & Greenop, K. 2012, *ibid*.

<sup>171</sup> Dodson, M. 2006, Aboriginal and Torres Strait Islander social justice commission 4<sup>th</sup> report, Human rights and equal opportunity commission, Sydney.

<sup>172</sup> Corrections Victoria, 2015, Home assessments and environmental scans.

<sup>173</sup> Bourdieu, P. 1999, *The weight of the world: Social suffering in contemporary society*, Polity press, Cambridge.

<sup>174</sup> Memmott, P., Birdsall-Jones, C. & Greenop, K. 2012, *ibid*

post release is noted as a significant factor in whether someone is able to reintegrate back into the community and break the cycle of re-incarceration<sup>175</sup>. Currently as a result of the lack of access to safe and affordable housing, 43% of prisoners exit incarceration into homelessness<sup>176</sup>.

The Corrections Victoria Housing Program provides housing and support to individuals who are at risk of homelessness and at increased risk of reoffending upon release from prison. However demand far outstrips availability of placements, and none are specifically for Aboriginal people who have unique needs. There is a need for an Aboriginal specific corrections housing pathway which provides wrap around supports and interfaces with the homelessness entry point system to support transition from custody to the community.

**Recommendation 3.9.** Embodying the principle of ‘housing first’, increase provision of, and access to housing for Aboriginal people exiting the justice system at various points (diversion, bail, parole, post-release), and look to innovative ways to provide self-contained, supported accommodation i.e. dedicate prison industries to the construction of tiny homes to be occupied by people exiting prison and/or young people ageing out of residential care or exiting detention.

**Recommendation 3.10.** Holistic services in prison are improved, in preparation for managing the transition out, including access to housing and require that each person exiting has a plan in place providing for three months of transitional accommodation.

### *Transition of young people from out-of-home care*

Aboriginal children and young people are over-represented at all stages of the child protection system and comprise just over one third of children and young people in out-of-home care nationwide, despite encompassing only 5% of the Australian population from birth to 17 years<sup>177</sup>. Aboriginal young people in care are one of the most vulnerable, disadvantaged and traumatised populations in the Australian community, with many having experienced some form of abuse, neglect, family violence or parental substance abuse prior to entering care<sup>178</sup>.

Between the ages of 16 – 18, formal support networks offered by state care cease, and as a result many care leavers face significant barriers to accessing the same educational, employment and housing opportunities as other young Australians<sup>179</sup>. There is no formal expectation that Victorian child protection services provide housing for young people transitioning from care, even though it is well established that securing safe, secure and affordable accommodation is a crucial component in the transition from care to independent living.

Numerous studies have found a high correlation between state care and later housing instability, transience and homelessness, with at least one third of care leavers have had at least one experience of homelessness in their first year of independence<sup>180</sup>. In addition, care leavers often experience relationship breakdowns with partners or friends, exposure to violence or harassment, eviction, poor

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<sup>175</sup> Krieg, A. 2006, Aboriginal incarceration: Health and social impacts, Medical journal of Australia, vol. 184, no. 2 pp. 535.

<sup>176</sup> Jesuit social services, 2014, Strengthening prisoner transition to create a safer Victoria.

<sup>177</sup> Australian institute of health and welfare, 2015, Child protection Australia 2013 – 2014, Child welfare series, no. 55, Cat no CWS 43, AIHW, Canberra.

<sup>178</sup> Mendes, P., Baldwal, S. & Snow P. 2014, op cit.

<sup>179</sup> Mendes, P, 2016, Young people transitioning from out-of-home care and housing/homelessness, Victorian youth refuge forum, the home stretch., Melbourne.

<sup>180</sup> Mendes, P. & Saunders, B..2016, Indigenous care leavers in Victoria, Final report, Social inclusion and social policy research unit, Monash university, Melbourne

quality accommodation or living in an unsafe area, and lack the option to return home if their independent living arrangements don't work out<sup>181</sup>.

Aboriginal care leavers exit care at a younger age than non-Aboriginal care leavers, many at the age of 14. As such they are not entitled to leaving care assistance until the age of 16, which results in poorer post-care outcomes<sup>182</sup>. They are also less likely to have finished school, are less likely to go onto further education and training and are overrepresented in the youth criminal justice system<sup>183</sup>.

The concept of emerging adulthood refers to the period from late teens to the mid late twenties and is characterized by explorations of identity, instability and self-focus<sup>184</sup>. Young people leaving care face this period without family support and for many Aboriginal young people in care, without connection to their community or kinship ties, which leads to difficulties in negotiating the transition to independence successfully. A report from the Commission for children and young people in Victoria found that the residential care system eroded the connections of Aboriginal children to culture and community, which leads them vulnerable to further disadvantage<sup>185</sup>. It has been argued that safe, affordable, secure and stable housing options for young care leavers are vital to improving the smooth transition to independence<sup>186</sup>.

The Victorian Government has also implemented and funded mentoring and post-care support services in eight regions across the state and recently indicated an intention to introduce a social impact bond targeted at care leavers.

Evaluations, studies and government reviews/inquiries, however, have demonstrated that there are continuing shortfalls in policy and legislation, and that young people continue to face difficulties in the transition period<sup>187</sup>.

**Recommendation 3.11.** *Our Youth Our Way* recommendations must be implemented including: establishing Aboriginal community-controlled crisis accommodation for Aboriginal children and young people in every region, especially those experiencing or at risk of homelessness, informed by the Nungurra Youth Accommodation Services model.

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<sup>181</sup> Mendes, P., Baldwal, S. & Snow P. 2014, Young people transitioning from out of home care: A critical analysis of leaving care policy, legislation and housing support in the Australian state of Victoria, *Child abuse review*, vol. 23, no. 6, pp. 402 – 414.

<sup>182</sup> Mendes, P. & Saunders, B. 2016, Indigenous care leavers in Victoria, Final report, Social inclusion and social policy research unit, Monash university, Melbourne.

<sup>183</sup> Mendes, P., Saunders, B. & Baidawi, S..2016, *op cit*.

<sup>184</sup> Arnett, J. 2007, Emerging adulthood: what is it and what is it good for?, *Childhood development perspectives*, vol. 1, no. 2, pp. 68 – 73.

<sup>185</sup> Jackomos, A. 2015, International human rights day oration, Linking our past with our future: How cultural rights can shape identity and build resilience in Koori kids, *Indigenous law bulletin*, vol. 8, no. 17, pp. 20-23.

<sup>186</sup> Australian institute of family studies, 2016, Supporting young people leaving out of home care, CFCA paper no. 41, Australian government, Canberra.

<sup>187</sup> Child Protection Systems Royal Commission. (2016). *The life they deserve: Child Protection Systems Royal Commission Report*. Adelaide: Government of South Australia. Retrieved from <[www.agd.sa.gov.au/child-protection-systems-royal-commission](http://www.agd.sa.gov.au/child-protection-systems-royal-commission)>.

## 3.3 Remedying housing injustices

### *Implement a Housing First model*

Housing First was established as a service response model to homelessness in the US through the 'Pathways to Housing' program in the early 1990s. Rather than requiring people to prove their housing readiness through engaging with support services before being accommodated, Housing First programs offer people experiencing homelessness immediate access to permanent housing.

Housing First has been adopted internationally as best practice for providing sustainable housing for people who have experienced long term or recurring homelessness. It is broadly accepted as the gold standard in terms of its delivery of positive housing and health outcomes for individuals who are chronically homeless and has a strong evidence base in reducing homelessness

At the heart of Housing First lies rapid housing access, consumer choice, the separation of housing from support, holistic recovery and harm minimisation, and community integration. A set of Housing First Principles for Australia have been developed by Homelessness Australia to support the adoption of the model:

- people have a right to a home,
- housing and support are separated,
- flexible support for as long as it is needed,
- choice and self-determination,
- active engagement without coercion, and
- social and community inclusion.

An evidence review of the implementation, effectiveness and outcomes of the Housing First Model undertaken by the Australian Housing and Urban Research Institute shows that Housing First is highly effective in providing housing stability for people with a history of chronic homelessness and complex needs. Evaluations of Housing First programs consistently report high levels of tenants sustaining their housing (typically ranging from 66% to 90%), which is significantly higher compared to 'treatment as usual' approaches. In addition, as Housing First programs provide access to health, mental health and other support services, tenants are less likely to be admitted to hospitals and emergency departments and are less involved with the criminal justice system<sup>188</sup>.

The development of Housing First in Australia has been constrained by the lack of appropriate affordable housing stock necessary to quickly house those experiencing homelessness. To date, Housing First projects have run as pilot programs or with time limited funding, rather than as part of a government supported approach to addressing homelessness<sup>189</sup>.

**Recommendation 3.12.** The Victorian Government must explore how to bring together funding across multiple departments and embed the Housing First model within the service system.

### *Economic development and employment*

National labour force data paints a grim picture for Aboriginal and Torres Strait people, with:

- higher rates of unemployment
- significantly lower rates of labour force participation
- higher rates of part-time employment

<sup>188</sup> Roggenbuck, C. (2022) Housing First: An evidence review of implementation, effectiveness and outcomes, report prepared by AHURI, Australian Housing and Urban Research Institute Limited, Melbourne.

<sup>189</sup> AHURI Brief, What is the Housing First model and how does it help those experiencing homelessness?

- higher rates of employment in relatively low-paid and low-skilled roles.

Employment lies at the heart of socioeconomic opportunity, providing direct economic benefit to individuals and families, including financial security, increased social mobility and access to higher standards and more secure housing.

There are many reasons why Aboriginal people may not be participating in the labour force. These include:

- lack of available and appropriate employment options,
- need for further education or training for employment,
- health concerns, including disability,
- family responsibilities, including caregiving duties,
- community responsibilities,
- use of criminal record checks, irrespective of the relevance of the criminal history,
- experiences of racism and lack of cultural safety in workplaces.

Aboriginal economic participation and development is a vital foundation for self-determination.

**Recommendation 3.13.** The Victorian Government fully implement all Royal Commission into Aboriginal Deaths in Custody recommendations relating to economic development and increasing Aboriginal employment at all levels and in all sectors, in particular for people engaged in the justice system.

**Section 4: Systemic  
Injustice Experienced by  
Aboriginal People in  
Relation to Education and  
Schools**





## Summary of recommendations related to education and schools

The Aboriginal Justice Caucus recommend that:

**Recommendation 4.1.** Incidences of bullying and racism in schools are recorded and reported to an Aboriginal forum for independent monitoring. Penalties for schools, sporting clubs and bodies that do not uphold their duty of care in preventing racism and providing culturally safe environment need to be developed, made clear, and enforced.

**Recommendation 4.2.** The Department of Education must ensure that information is provided to all Aboriginal students and their parents on their rights and who to contact when issues like racism and bullying arise.

**Recommendation 4.3.** The Victorian Government must, as a matter of urgency: identify Aboriginal overrepresentation in school suspension and exclusion, and any patterns related to it; challenge implicit bias, racism, and discrimination wherever they may exist; and strengthen culturally appropriate evidence-based prevention and intervention frameworks, and implement them on a system-wide basis.

**Recommendation 4.4.** Achieving equity in school discipline outcomes will require legislative reform and the introduction of safeguards to protect Aboriginal students from inappropriate use of suspension and exclusion with mechanisms to monitor system compliance, as well as systemic reform to test viable alternatives suitable for the Victorian context and to reduce schools' reliance on exclusionary discipline.

**Recommendation 4.5.** Rather than attend schools for 'engagement' programs, Police should engage with communities on their terms, in spaces where young people are opting into that engagement – for example through programs held outside of schools such as blue light discos and sporting events like the Massive Murray Paddle.

**Recommendation 4.6.** Given the close relationship between education and justice outcomes, the Victorian Government must have a strategic focus on improving educational engagement for Aboriginal people, in particular young people and implement recommendations from the Koori Youth Council *Ngaga Dji* report.

**Recommendation 4.7.** The Victorian Government must increase education and awareness of fetal alcohol spectrum disorders, acquired brain injuries, language disorders and neurodevelopmental conditions among workers in educational environments to ensure earlier screening, identification and referrals for children. There must also be support for families to access diagnosis and assessment services.

**Recommendation 4.8.** Victorian schools should proactively use restorative justice principles and models to manage challenging behaviours, including when responding to incidences of racism between students, teachers and/or families.

**Recommendation 4.9.** Expand the Koori Education Justice Initiative across the state.

**Recommendation 4.10.** All Aboriginal children and young people involved in youth justice should be able to access culturally safe, quality and consistent education, and their transition to mainstream education must be supported.

**Recommendation 4.11.** Improve support to address young people's transitional needs, with a focus on education, vocational and employment transitions. Any recommendations that emerge from the *Understanding Pathways for transition from detention to education and employment* being undertaken by the RMIT Centre for Innovative Justice should be implemented.

**Recommendation 4.12.** The Victorian Government fully implement all Royal Commission into Aboriginal Deaths in Custody recommendations relating to education, including appropriately remunerating Aboriginal people for their specialised knowledge and skills that they bring into schools.

**Recommendation 4.13.** The curriculum of schools at all levels must reflect the fact that Australia has an Aboriginal history and Aboriginal viewpoints on social, cultural and historical matters. It is essential that Aboriginal viewpoints, interests, perceptions and expectations are reflected in curricula, teaching and administration of schools.

**Recommendation 4.14.** Work with the Federal Government to simplify and streamline access to ABSTUDY to provide a wider range of educational options for Aboriginal children and young people.

## 4.1 Aboriginal young people's experiences of school and education

School engagement is important to reducing inequality experienced by Aboriginal and Torres Strait Islander people, including in literacy, numeracy, and economic participation. The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) recognised that greater school engagement had the potential to counter significant risk factors of high incarceration rates through consequential improvements in education, employment and economic participation.

However systematic literature reviews have found that Aboriginal students are perpetually overrepresented in every negative indicator associated with schooling such as discipline events, suspensions, low attendance, low retention and performance<sup>190</sup>. This overrepresentation and perpetuating inequities in student performance are usually blamed on individual students rather than systemic failure of the education system to support young people to engage in school effectively, and to deal with challenging behaviours in appropriate ways.

There are glaring gaps in public policy in relation to addressing inequality experienced by Aboriginal young people's experiences of school and education. The most recent analysis of progress against the 17 agreed targets in the *National Agreement on Closing the Gap* found that there has been no improvement in the school attendance rate of Aboriginal and Torres Strait Islander students in the last 10 years (DPMC, 2020). The report however is silent on the use of exclusionary school discipline and nor does the Agreement include targets to reduce its use, despite its known negative effects on school attendance, early school leaving, and increased contact with the criminal justice system.

### *Racism and lack of cultural safety*

Racism continues to be faced by Aboriginal community members in all facets of life. Of particular concern to the AJC is the impact of racism on young people in school environments. The 2023 Attitudes to School Survey (AtoSS) found that over one quarter (26%) of Victorian Aboriginal students had had experienced racism at their school in the past 12 months, with regional areas largely having higher rates of experiences of racism than metropolitan<sup>191</sup>. This is unacceptable.

Experiences of racism at schools and inadequate responses are consistently raised by RAJAC chairs at AJFs, including incidences of both children and teachers and principals making racist comments

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<sup>190</sup> Llewellyn, L. L., Boon, H. J., & Lewthwaite, B. E. (2018). Effective Behaviour Management Strategies for Australian Aboriginal and Torres Strait Islander Students: A Literature Review. *Australian Journal of Teacher Education*, 43(1). <https://doi.org/10.14221/ajte.2018v43n1.1>

<sup>191</sup> Department of Education presentation *Addressing Racism in Schools* to Aboriginal Justice Forum 66 – October 2023

to children. The AJC are concerned that racism is under-reported in schools as often no response or action taken. If Aboriginal young people respond to racism they are often blamed or punished instead of the perpetrator.

A 2014 study into the ways racism are harmful to the health and wellbeing of children and young people in Australia found that bullying and unfair treatment have a considerable effect on the health and wellbeing of young people and on school attendance<sup>192</sup>. The research reported that it was 'likely to be difficult to achieve attendance targets without children feeling that school is a safe place, where their race or ethnicity is not going to adversely affect their treatment'<sup>193</sup>. The findings of the study highlight that racism in school is an important issue that needs to be addressed to improve the health and wellbeing of young people and school attendance rates among Aboriginal students.

Racial rifts and racism at schools is unacceptable. These are places where young people should feel safe and supported to fulfil their potential. Racism can result in a young person's alienation from education – having life-long consequences for themselves and their community. At schools across the state, racism impacts the education and wellbeing outcomes for Aboriginal children and young people. Poor health contributes to poor attendance and a reduced capacity to engage in learning, and racial discrimination can contribute to poorer health and wellbeing<sup>194</sup>. This a problem that fosters immediate and long-term consequences for young people. It needs to be addressed as a priority, with discernible results.

**Recommendation 4.1.** Incidences of bullying and racism in schools are recorded and reported to an Aboriginal forum for independent monitoring. Penalties for schools, sporting clubs and bodies that do not uphold their duty of care in preventing racism and providing culturally safe environment need to be developed, made clear, and enforced.

**Recommendation 4.2.** The Department of Education must ensure that information is provided to all Aboriginal students and their parents on their rights and who to contact when issues like racism and bullying arise.

### *Overly punitive responses to behaviors in school environments*

RCIADIC found that high levels of non-attendance at school by Aboriginal students was likely to trigger further intervention by state welfare and/or justice systems with the potential to begin a cycle of involvement with the criminal justice system.<sup>195</sup> Rather than penalise children or their families, the RCIADIC urged governments to try to understand and solve the underlying problem/s of non-attendance and avoid responses that *"blame, punish and locate the source of 'difficulty' with Aboriginal children and their families."*<sup>196</sup> Schools tend to ignore issues of teaching style, service delivery and social environment which often make schools an unpleasant and unsafe place for Aboriginal children.

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<sup>192</sup> Biddle N & Priest N 2014. Indigenous students skipping school to avoid bullying and racism. *The Conversation*, 11 April. Viewed 14 May 2014,

<sup>193</sup> Ibid

<sup>194</sup> Priest N, Paradies Y, Trenerry B, Truong M, Karlsen S & Kelly Y 2013. A systematic review of studies examining the relationship between reported racism and health and wellbeing for children and young people. *Social Science & Medicine* 95:115–27. doi:10.1016/j.socscimed.2012.11.031

<sup>195</sup> Royal Commission into Aboriginal Deaths in Custody (National Report, 1991) vol 2, p 369 (16.7.4)

<sup>196</sup> National Report, vol 2, p 368 (16.6.16)

The AJC echo this call. Too often the behaviour of young people is responded to with overly punitive responses, such as involvement of the police or child protection, intervention orders being taken out against children, and disproportionate use of expulsions and exclusions.

Aboriginal children and young people are suspended and excluded from school at disproportionate rates, and exclusionary school discipline is linked to criminal justice trajectories. Schools must commit to reforming how they deal with challenging behaviours.

Aboriginal students and parents need information about their rights in school settings including that before any Aboriginal student is expelled the Regional Director and Aboriginal workforce must be consulted and the family supported.

**Recommendation 4.3.** The Victorian Government must, as a matter of urgency: identify Aboriginal overrepresentation in school suspension and exclusion, and any patterns related to it; challenge implicit bias, racism, and discrimination wherever they may exist; and strengthen culturally appropriate evidence-based prevention and intervention frameworks, and implement them on a system-wide basis.

**Recommendation 4.4.** Achieving equity in school discipline outcomes will require legislative reform and the introduction of safeguards to protect Aboriginal students from inappropriate use of suspension and exclusion with mechanisms to monitor system compliance, as well as systemic reform to test viable alternatives suitable for the Victorian context and to reduce schools' reliance on exclusionary discipline.

### *Isolation of young people to 'alternative' or flexible learning settings*

A Flexible Learning Option (FLO) is an education setting that supports students at risk or already disengaged from education. Department of Education policy states that students at risk of disengagement should be attending FLOs only in instances where their needs are not able to be met in mainstream school and should only be used as a short to medium term option and retain a strong focus on supporting a student's pathway back into mainstream school, or onto further education or training <sup>197</sup>.

The AJC are concerned that alternative school settings are being used to 'move on' Aboriginal students that require better supports, and that Aboriginal young people are being left in alternative schools for too long. As alternative school settings are unregulated, the young people moved to these settings are denied equity of access to quality curriculum, resulting in poorer educational outcomes, employment opportunities, and increasing risk factors for involvement in the justice system.

The Navigator Program is the Department of Education's primary program to support disengaged children and young people to return to education. However, the appropriateness and effectiveness of Navigator for Aboriginal young people is unclear. The Victorian Auditor-General's Office (VAGO) reviewed the Navigator Program in 2020 and found that DE could not demonstrate that it is an effective intervention or is delivered equitably. Students' access to Navigator varied depending on where they lived, as did the support they received at school before being referred to the program.

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<sup>197</sup> Department of Education Flexible Learning Options Policy - Flexible Learning Options (FLOs)

Aboriginal young people need access to a culturally sensitive and targeted approach to support their school engagement, tailored to their specific needs and experiences.

### *Presence of police in classrooms and on school grounds*

The AJC wish to see the end of police/school “engagement” programs, where police attend schools with the stated intent to build relationships. The AJC are concerned about this practice for several reasons:

- Police are taking weapons onto school grounds.
- Regular attendance of police on school grounds could impact the attendance of young people, particularly those at risk of involvement in the justice system, or who have parents and family members involved in the justice system.
- Police members may use school access for operational purposes, with children and young people being questioned by police in school, without parental knowledge or consent.
- Bias and systemic racism among police members, and the risk that Aboriginal young people being profiled and increased targeting occurring outside of school.

There needs to be careful consideration of whether there is benefit to Aboriginal children of engaging with police in schools.

**Recommendation 4.5.** Rather than attend schools for ‘engagement’ programs, Police should engage with communities on their terms, in spaces where young people are opting into that engagement – for example through programs held outside of schools such as blue light discos and sporting events like the Massive Murray Paddle.

## 4.2 Addressing injustice in education

The AJC support the Koori Youth Council's advocacy in their report 2018 report *Ngaga Dji*, which calls for an inclusive education state that supports children's needs and pathways to independence, including:

- The expansion of curriculum in mainstream schools to cater for a broader range of interests, increasing focus on assisting children into employment pathways and trade courses.
- Support for all children to thrive in schools, replacing the current approach that isolates some students by placing them in alternative schools and programs.
- Support for schools and teachers to find positive alternatives to address student disengagement, replacing formal and informal exclusion from school.
- Provision of adequate support services in schools such as social workers, youth workers and diverse extra-curricular activities to engage children in school and provide safe spaces outside school hours.

**Recommendation 4.6.** Given the close relationship between education and justice outcomes, the Victorian Government must have a strategic focus on improving educational engagement for Aboriginal people, in particular young people and implement recommendations from the Koori Youth Council *Ngaga Dji* report.

### *Leveraging school settings to support young people at risk or in contact with the justice system*

Schools provide a setting to engage and support young people who are or at risk of involvement in the justice system at all points - from early intervention through to reintegration following periods of custody. Much more can be done to ensure early screening to identify children and young people requiring healing-informed, strengths-based and culturally responsive services and supports early on in their involvement with formal educational settings.

**Screening for FASD, ABI and neurodevelopmental conditions** – The physical, emotional, mental and spiritual scars of colonisation manifest in various ways. One of the most insidious is 'the extensive, complex and compounding effects of historical and contemporary trauma from which fetal alcohol spectrum disorder (FASD) was borne.'<sup>198</sup> FASD can have lifelong impacts on cognition, behaviour and learning which contribute to academic, emotional and social challenges and difficulties at home, school and elsewhere.<sup>199</sup> These challenges can be significantly exacerbated with FASD goes unrecognised.<sup>200</sup> This is also the case when other disabilities, trauma and neurodevelopmental conditions are not screened for early in life and opportunities for formal assessment, diagnosis, early intervention, healing and strengths-based supports are missed. A simple preliminary assessment to determine cognitive ability to request a neuropsychological assessment for confirmation of an ABI is available through Arbias ABI Screening Tool.

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<sup>198</sup> Hewlett N, Hayes L, Williams R, Hamilton S, Holland L, Gall A, Doyle M, Goldsbury S, Boaden N, Reid N. Development of an Australian FASD Indigenous Framework: Aboriginal Healing-Informed and Strengths-Based Ways of Knowing, Being and Doing. *Int J Environ Res Public Health*. 2023 Mar 22;20(6):5215. doi: 10.3390/ijerph20065215. PMID: 36982125; PMCID: PMC10049125. p.

<sup>199</sup> Ibid, p.

<sup>200</sup> Ibid, p.

*“Aboriginal culture offers a foundation to heal the physical, emotional, mental and spiritual scars imposed by colonisation.”<sup>201</sup>*

**Diagnosing language disorders** - Research undertaken by Latrobe University found that 50 per cent of young people in Victoria’s youth prisons have a previously undiagnosed language disorder.<sup>202</sup> There’s a strong link between the severity of offending and the severity of disordered language skills. Schools have an opportunity to identify risk factors like language disorders early in a young person’s life, and target supports such as speech pathologists to address them.

**Restorative practice** - Restorative practice could be used in school settings in response to conflict, racism, challenging behaviours and as an alternative to suspensions/expulsions. Restorative practice is a whole school teaching and learning approach that encourages behaviour that is supportive and respectful. It puts the onus on individuals to be truly accountable for their behaviour and to repair any harm caused to others as a result of their actions.

In line with the commitment of AJA partners to ‘consider restorative justice practices across the criminal justice system’, the Eastern Metropolitan RAJAC has prioritised the establishment of Lotjpadhan (“Talking Together”) – a Restorative Justice Project for Connecting and Healing. Lotjpadhan seeks to ensure young Aboriginal people and their families have access to culturally appropriate restorative processes, with the aims of reducing their likelihood of entering the criminal justice system, assisting them to address factors that contribute to offending behaviour, supporting pathways to safer and rewarding lifestyles, and improving their emotional wellbeing. The underlying principles of the model are to do no further harm, work with people rather than for them, and set relations right so that culture is strengthened, opportunities for healing are created, and individuals and communities develop enhanced resilience and skills.

During community discussions about Lotjpadhan, children and young people shared their thoughts on the many benefits of having access to restorative approaches in schools:

*“Lotjpadhan would be good to have in school cause when you are around in a circle everyone can say what happened and you cannot lie.”*

*“It’s important for young people to have 5 minutes to reflect quietly by themselves before talking to teachers” (Child participants in community sessions about Lotjpadhan)<sup>203</sup>*

**Re-engagement programs** - Re-engagement in education and training is vital for preventing recidivism in Aboriginal children and young people involved in the Children’s Court. Engagement with young people and their support networks is paramount for delivering educational outcomes to all who are eligible.

The Koori Education Justice Initiative is an information, referral and advocacy service that provides specialist expertise in education to help vulnerable young people involved with the criminal justice system to re-engage with education and/or training. The Education Justice Initiative is designed to deliver targeted interventions to young people who are experiencing vulnerabilities and who can be

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<sup>201</sup> Ibid, p.

<sup>202</sup> Pamela C. Snow & Martine B. Powell (2011) Oral language competence in incarcerated young offenders: Links with offending severity, *International Journal of Speech-Language Pathology*, 13:6, 480-489

<sup>203</sup> Dr Lois Peeler, ‘Lotjpadhan – Pilot: The Journey of Lotjpadhan – a Restorative Justice Project for Connecting and Healing’ presentation to Aboriginal Justice Forum, 8 & 9 December 2022



at a heightened risk of disengaging from education after becoming involved with the criminal justice system.<sup>204</sup>

*“I can’t speak highly enough of the importance of this program, not just for Koorie children, but for all children who come before the court because almost without exception they’re either totally or partly disengaged from education. I strongly believe that education is arguably the most important form of rehabilitation.” Judge Couzens—former President, Children’s Court of Victoria*

The AJC support the Education Justice Initiative and call for it to be expanded across the state.

**Recommendation 4.7.** The Victorian Government must increase education and awareness of fetal alcohol spectrum disorders, acquired brain injuries, language disorders and neurodevelopmental conditions among workers in educational environments to ensure earlier screening, identification and referrals for children. There must also be support for families to access diagnosis and assessment services.

**Recommendation 4.8.** Victorian schools should proactively use restorative justice principles and models to manage challenging behaviours, including when responding to incidences of racism between students, teachers and/or families.

**Recommendation 4.9.** Expand the Koori Education Justice Initiative across the state.

### *Provision of education and vocational training opportunities in custody*

Time spent in custody is an opportunity for an individual to engage in education and training, which can reduce likelihood of recidivism and return to custodial environments.

Research from the USA found that prison inmates who receive general education and vocational training are significantly less likely to return to prison after release and are more likely to find employment than peers who do not receive such opportunities<sup>205</sup>. In the UK, a report produced by the Justice Data Lab which analysed nearly 6,000 prisoner records found that participants in training provided by the Prisoners’ Education Trust re-offended a quarter less than the control group (19% compared to 26%, a reduction of between 5 and 8%)<sup>206</sup>.

This is true also in An Australian context. A cross-jurisdictional study on Australian prison vocational education and training and returns to custody the impact of vocational education and training (VET) in the custody setting on returns to custody among Australian adult prisoners from selected jurisdictions. VET, education, and behavioural change program participation in custody and demographic and risk assessment data were provided by correctional services in NSW, SA, ACT and NT for 10,834 Australian prisoners released from custody in 2010-11. This information was used to predict returns to custody by 2015-2016. Overall, the results showed that participating in VET in custody contributed to the likelihood of remaining custody free at two- and five-years post-release for both male and female prisoners<sup>207</sup>.

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<sup>204</sup> Department of Education Education Justice Initiative (EJI) Operating guidelines

<sup>205</sup> Davis, L.M., Bozick, R., Steele, J.L., Saunders, J, and Miles, J.N.V. (2013) Education and Vocational Training in Prisons Reduces Recidivism, Improves Job Outlook. Rand Corporation. [http://www.rand.org/pubs/research\\_reports/RR266.html](http://www.rand.org/pubs/research_reports/RR266.html)

<sup>206</sup> Justice Data Lab (2015) Report on Education in Prisons <https://www.gov.uk/government/publications/justice-data-lab>

<sup>207</sup> Cale, J., Day, A., Casey, S., Bright, D., Wodak, J., Giles, M., & Baldry, E. (2019). Australian prison vocational education and training and returns to custody among male and female ex-prisoners: A cross-jurisdictional study. *Australian and New Zealand Journal of Criminology*, 52(1), 129-147.



When education and training is provided, it should reflect the job landscape to improve likelihood that people departing prison can apply their skills in employment.

The RCIADIC emphasised the importance of education within a custodial setting, including in relation to maintaining health and wellbeing, and potential to alleviate stresses and trauma than in some cases lead to the premature death of Aboriginal people. A National Education and Training Strategy designed specifically for Aboriginal people in custody was recommended to address these issues.<sup>208</sup>

**Recommendation 4.10.** All Aboriginal children and young people involved in youth justice should be able to access culturally safe, quality and consistent education, and their transition to mainstream education must be supported.

### *Support transition of young people out of Parkville College to education*

Young people released from detention commonly face difficulties re-integrating into the community, particularly in continuing education or training. Programs that reintegrate young people into the community can reduce the risk that young people will enter the adult criminal justice system.

An 18-month qualitative study carried out in Canberra with a group of young people who had been in juvenile detention found that young people recognise the benefits of education. While incarcerated, young people were supported to take lessons, learn new skills, and overcome the anxiety that many had about education. Many were proud of their success and felt that they would like to remain engaged in education post-release. Apart from the benefits of education, young people saw real challenges in continuing their engagement with education as most had encountered difficulties in going to and achieving at school. For some, it was because they lost interest or confidence in education, or found distractions among their friends; but for others it was related to poor planning or resistance from schools to support their return.<sup>209</sup>

Most young people leaving detention in Victoria transition to flexible learning environments with only a few hours of schooling per week. As stated above, this is often inadequate. There must be improved support to address young people's transitional needs, with the goal to support young people towards full-time engagement in education and training upon release.

**Recommendation 4.11.** Improve support to address young people's transitional needs, with a focus on education, vocational and employment transitions. Any recommendations that emerge from the *Understanding Pathways for transition from detention to education and employment* being undertaken by the RMIT Centre for Innovative Justice should be implemented.

### *Family and community involvement in schools*

The involvement of Aboriginal and Torres Strait Islander parents and community members in decisions regarding education services for their children has been identified as critical to achieving equity in education as well as to the empowerment of Aboriginal and Torres Strait Islander people, as promoted by the National Aboriginal and Torres Strait Islander Education Policy.

The RCIADIC includes several recommendations which highlight the importance of engaging local Aboriginal parent and community in the delivery of school programs and initiatives. However, the

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<sup>208</sup> National Report, vol 3, 25.9.

<sup>209</sup> McArthur, Morag & Moore, Tim. (2013). Young People Talk about Transitioning from Youth Detention to the Community: Making Good. Australian Social Work. 10.1080/0312407X.2012.752020.

RCIADIC noted that Aboriginal parent and community involvement needed to go beyond small and short-term grants and towards decision-making in school policy itself.<sup>210</sup> Aboriginal communities and perspectives should be incorporated in the development of programs in schools and Aboriginal people should be appropriately remunerated for their specialised knowledge and skills that they bring into schools.

It is also critical for Aboriginal families and communities to be involved in the development of Individual Education Plans and cultural plans for Aboriginal students.

**Recommendation 4.12.** The Victorian Government fully implement all Royal Commission into Aboriginal Deaths in Custody recommendations relating to education, including appropriately remunerating Aboriginal people for their specialised knowledge and skills that they bring into schools.

### *Inclusion of Aboriginal history and culture in school curricula*

The RCIADIC highlighted the links between culturally-relevant curricula and improved self-esteem, engagement and educational achievement for Aboriginal students.<sup>211</sup> It will also help address persistent racist views, reduce experiences of racism and increase cultural safety.

The RCIADIC also emphasised the need for student teachers to be appropriately educated on Aboriginal issues, culture and history and that these courses become mandatory units. The RCIADIC found that various educational institutions around Australia provided Aboriginal studies as electives in their courses, however, they were not compulsory. The lack of knowledge and cultural awareness of teachers has a detrimental impact on the social, cultural and learning outcomes on students both Aboriginal and non-Aboriginal.<sup>212</sup> Aboriginal people should be employed in the training of teachers to ensure student teachers have the required their skill, knowledge and understanding on Aboriginal issues; so that curriculum is consistently taught in a manner that reflects truth-telling and engages with Aboriginal perspectives.

An example of contemporary resources that could be used in Victorian schools is the Aboriginal Change Makers education resources developed by Worawa Aboriginal College and the Parliament of Victoria. Aboriginal Change Makers is a unique teaching and learning e-book for Victorian schools. It shares the stories of strong, determined and committed Aboriginal Australians who throughout the 19th and 20th centuries paved the way for present and future generations.

**Recommendation 4.13.** The curriculum of schools at all levels must reflect the fact that Australia has an Aboriginal history and Aboriginal viewpoints on social, cultural and historical matters. It is essential that Aboriginal viewpoints, interests, perceptions and expectations are reflected in curricula, teaching and administration of schools.

### *Improving access to and suitability of ABSTUDY*

Given the limited access to secondary education within their home communities, many Aboriginal students from remote areas of Australia attend boarding schools in Victoria, including Worawa Aboriginal College. ABSTUDY plays a critical role in enabling these students to access secondary education but is not fit for purpose. In the case of Aboriginal boarding schools like Worawa, the way

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<sup>210</sup> National Report, vol 4, 312-314.

<sup>211</sup> National Report, vol 4, pp 304-308.

<sup>212</sup> National Report, vol 4, 319-321.

ABSTUDY funding is structured limits the provision of wrap around services that students require which undermines the highly effective integrated education, culture and well-being model. In addition, young people are usually directed to public schools, regardless of whether they are conducive to their educational needs and home conditions.

*“...I made a lot of wrong choices before I came here that got me nowhere in life. I had common sense but it was nothing compared to what Worawa has done to change me and make me the person I am now. So, for the last two terms I have entered a new life at boarding school for the first time, and it isn’t a school like any other boarding school. It’s a boarding school where the staff cares for you and supports you. Where the house parents make you feel at home. Where the wellbeing staff make you feel like there’s hope.”<sup>213</sup>*

Researchers from the Centre for Aboriginal Economic Policy Research (CAEPR) examined the impacts and experiences of individuals, organisations, school and families with the ABSTUDY program.<sup>214</sup> Key findings included:

- Locating ABSTUDY under the auspices of Centrelink, was incongruous with ABSTUDY’s educational purposes.
- ABSTUDY did not sufficiently fund boarding education for Aboriginal students from remote areas, particularly the wraparound services students needed to get the most out of their education. Schools subsidised these services from other sources; however, for boarding schools that only provided education to Aboriginal secondary students from remote areas, this was unsustainable.
- ABSTUDY funding lacked transparency, consistency and predictability.
- Many remote communities lacked adequate infrastructure (e.g., transport, postal services, telephones, internet) to support information and other requirements of ABSTUDY applications. Many families spoke a language other than English, had poor English literacy skills, and/or lacked official documents such as birth certificates. ABSTUDY procedures and systems did not sufficiently accommodate these Transition Support Units, where they existed, played a bridging role, helping to facilitate communication between schools and communities.
- There were many issues related to travel which limited students’ opportunities to return home/to school and/or seek required family support<sup>215</sup>

Under the ABSTUDY guidelines, a student’s family situation must meet specific eligibility criteria for the student to receive financial support for boarding and tuition fees and travel funding where required. These ‘unreasonable to live at home’ criteria only cover conditions that consistently deprive students of basic necessities; represent a serious threat to the student’s health or wellbeing; or excessively disrupt or prevent the student’s ability to study at home.<sup>216</sup>

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<sup>213</sup> Past student quoted in Worawa Aboriginal College, Submission to House of Representatives Standing Committee on Indigenous Affairs – Inquiry into Education Opportunities for Aboriginal and Torres Strait Islander Students, March 2017, p. 11

<sup>214</sup> H. Crawford and RG Schwab, (2017) Barriers and Bureaucracy, Bridges and Brokers, Centre for Aboriginal Economic Policy Research, ANU (Commissioned by Independent Schools Council of Australia).

<sup>215</sup> H. Crawford and RG Schwab, (2017) Barriers and Bureaucracy, Bridges and Brokers, Centre for Aboriginal Economic Policy Research, ANU (Commissioned by Independent Schools Council of Australia).

<sup>216</sup> Worawa Aboriginal College, Submission to House of Representatives Standing Committee on Indigenous Affairs – Inquiry into Education Opportunities for Aboriginal and Torres Strait Islander Students, March 2017, p

There are excessive administrative burdens on student's families and schools when trying to demonstrate these criteria are met. In addition, requirements in relation to travel bookings and travel funding coverage deny families opportunities to counsel and support students in times of high need. When this occurs in relation to a suspension, or temporary absence from school this may result in students withdrawing from education all together.<sup>217</sup>

**Recommendation 4.14.** Work with the Federal Government to simplify and streamline access to ABSTUDY to provide a wider range of educational options for Aboriginal children and young people.

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<sup>217</sup> Ibid, p 14

## **Appendices**



## Appendix 1 – Coronial recommendations relating to custodial healthcare, 1991-2023

Recommendation	Reference
<b>Scrutiny and oversight</b>	
That the Victorian Government revise the system for auditing and scrutiny of custodial health care services to ensure that it is: <ol style="list-style-type: none"> <li>1. independent;</li> <li>2. comprehensive;</li> <li>3. transparent;</li> <li>4. regular;</li> <li>5. designed to enhance the health, wellbeing and safety outcomes for Victorian prisoners;</li> <li>6. designed to ensure custodial health care services are delivered in a manner consistent with Charter obligations; and</li> <li>7. that the implementation of any recommendations for improved practice identified by the system for auditing and scrutiny is monitored.</li> </ol>	Nelson, 2023 Rec 18
That the Department of Health and the Department of Justice and Community Safety: <ol style="list-style-type: none"> <li>1. consult to determine, from a clinical patient outcome perspective, which department should have oversight of custodial health services; and</li> <li>2. consult with stakeholders (including peak clinical bodies, organisations representing the lived experience of prison, public health services, private health providers, Aboriginal and Torres Strait Islander community representatives) to determine what model of healthcare delivery in will achieve the best health outcomes for people in Victorian prisons.</li> </ol>	Nelson, 2023 Rec 19
That Justice Health review and, if necessary, revise the Justice Health Quality Framework.	Nelson, 2023 Rec 21
<b>Assessment and communication</b>	
That The Victorian Government establish at the Medical/Health Centre at the Dame Phyllis Frost Centre Point-of-Care testing in accordance with requirements that are equivalent to the Royal Australian College of General Practitioners Standards for Point-of-Care testing.	Nelson, 2023 Rec 24
That Corrections Victoria and Correct Care Australasia and/or the Health Service Provider at the Dame Phyllis Frost Centre develop and implement a robust procedure for ‘clearance’ of a prisoner (at initial reception or subsequently) from the Medical/Health Centre to a cell elsewhere at Dame Phyllis Frost Centre that requires certification in writing by a medical practitioner that the prisoner is fit to be confined in an unobserved cell. <ol style="list-style-type: none"> <li>1. The medical practitioner’s certification should include: <ol style="list-style-type: none"> <li>i. confirmation that the prisoner is medically fit to leave the Medical/Health Centre;</li> <li>ii. whether the medical practitioner recommends any medical or management observations to ensure the prisoner’s health or wellbeing;</li> <li>iii. identification of any specific clinical deterioration risk indicators the medical practitioner recommends custodial and health staff monitor; and</li> <li>iv. instructions to guide the response, including escalation of the prisoner’s care, if clinical deterioration risk indicators are observed.</li> </ol> </li> <li>2. If no medical practitioner is available, written certification may be provided by a registered nurse, but any prisoner cleared by a registered nurse should be placed on 60/60 management observations pending medical practitioner review of the prisoner as soon as practicable thereafter.</li> </ol>	Nelson, 2023 Rec 27
That Correct Care Australasia and/or the Health Service Provider at the Dame Phyllis Frost Centre, in collaboration with Corrections Victoria and Justice Health, develop and implement clear guidelines to assist custodial and clinical staff to identify a prisoner’s clinical deterioration, including	Nelson, 2023 Rec 28

Recommendation	Reference
the indicators that must result in an escalation of a prisoner's care to clinical staff, a medical practitioner or transfer to hospital. (Nelson, 2023[28])	
That Correct Care Australasia report the deficiencies in care identified in this Finding to its current accreditation providers before it participates in any further tender for the provision of custodial health services in Victoria.	Nelson, 2023 Rec 32
That consideration be given to implementing procedures that would ensure communication of relevant information from medical staff to custodial staff, so that all prisoners can be classified, not only according to correctional needs, but also their mental and physical needs.	WW, 1994 Rec 1
<b>Culturally safe care</b>	
That the Department of Justice and Community Safety and/or Justice Health, in partnership with the Victorian Aboriginal Community Controlled Health Organisation (VACCHO), take concrete steps to build the capacity of VACCHO to provide in-reach health services in prisons.	Nelson, 2023 Rec 25
That Justice Health and Correct Care Australasia and/or the Health Service Provider at Dame Phyllis Frost Centre ensure that all Aboriginal and/or Torres Strait Islander prisoners have the option during the reception medical assessment of consulting with an Aboriginal Health Practitioner or Aboriginal Health Worker, either in person or by telehealth, within 48 hours. The prisoner's response to this offer should be documented.	Nelson, 2023 Rec 26
That Justice Health require custodial Health Service Providers to: 1. engage with Victoria's Aboriginal and Torres Strait Islander communities to learn how culturally safe and culturally appropriate principles can be embedded into their delivery of health services to Victorian prisoners. This process should be ongoing, guided by Victoria's Aboriginal and/or Torres Strait Islander communities and be conducted in the manner determined by these communities	Nelson, 2023 Rec 29, part 1
That Correct Care Australasia engage with Victoria's Aboriginal and Torres Strait Islander communities to learn how it can embed culturally safe and culturally appropriate principles into their delivery of health services to Victorian prisoners. This process should be ongoing, guided by Victoria's Aboriginal and/or Torres Strait Islander communities and be conducted in the manner determined by these communities.	Nelson, 2023 Rec 30
<b>Addiction</b>	
That Justice Health: 1. immediately amend the Justice Health Opioid Substitution Therapy Guidelines (OST Guidelines) to enable medical practitioners to prescribe opioid substitution therapy to women whose health may be at significant risk by being required to undergo opiate withdrawal; and 2. urgently review of the OST Guidelines to ensure that all women with opioid dependencies are given access to opioid substitution pharmacotherapy upon reception to prison, including the option of methadone or suboxone and their long-acting injectable buprenorphine formulations, irrespective of the length of incarceration.	Nelson, 2023 Rec 20
That the Victorian Government establish a subacute unit at the Medical/Health Centre at Dame Phyllis Frost Centre available to all prisoners who require it, and that includes oversight by a specialist who has completed Advanced Training in Addiction Medicine.	Nelson, 2023 Rec 22
As an interim measure, until a subacute unit on site at Dame Phyllis Frost Centre is operational, I recommend that an agreement or Memorandum of Understanding be agreed as a matter of urgency between Corrections Victoria, Justice Health and Correct Care Australasia and/or the Health Service Provider at the Dame Phyllis Frost Centre and the most appropriate proximate public hospital for the provision of equivalent community health services not presently provided at the Medical/Health Centre.	Nelson, 2023 Rec 23
That Justice Health require custodial Health Service Providers to: 1. engage with Victoria's Aboriginal and Torres Strait Islander communities to learn how culturally safe and culturally appropriate principles can be embedded into their delivery of health services	Nelson, 2023 Rec 29

Recommendation	Reference
<p>to Victorian prisoners. This process should be ongoing, guided by Victoria's Aboriginal and/or Torres Strait Islander communities and be conducted in the manner determined by these communities;</p> <ol style="list-style-type: none"> <li>encourage and facilitate the doctors employed by the Health Service Provider to become members of the RACGP to enable them to access RACGP training programs;</li> <li>identify alternative alcohol and other drugs training programs for medical practitioners;</li> <li>ensure medical practitioners employed or contracted by the Health Service Provider for a period of more than six months complete training equivalent to the Royal Australian College of General Practitioners' Alcohol and Other Drugs GP Education program within six months of the practitioners commencing.</li> <li>ensure registered nurses employed by the Health Service Provider complete the Australian College of Nursing's Continuing Professional Development modules in: <ol style="list-style-type: none"> <li>addressing AOD Use in Diverse Communities; and</li> <li>opioid Withdrawal Nursing Care and Management.</li> </ol> </li> <li>employ medical practitioners and nurse practitioner qualified to practise opioid pharmacotherapy;</li> <li>employ a full-time specialist who has completed Advanced Training in Addiction Medicine.</li> </ol>	
<p>That Correct Care Australasia:</p> <ol style="list-style-type: none"> <li>encourage and facilitate the doctors it employs to become members of the RACGP to enable them to access RACGP training programs; and</li> <li>identify alternative alcohol and other drugs training programs for CCA medical practitioners; and</li> <li>ensure medical practitioners employed or contracted by CCA for a period of more than six months, have completed training which is equivalent to the Royal Australian College of General Practitioners' Alcohol and Other Drugs GP Education program;</li> <li>ensure registered nurses employed by the Health Service Provider complete the Australian College of Nursing's Continuing Professional Development modules in: <ol style="list-style-type: none"> <li>addressing AOD Use in Diverse Communities; and</li> <li>opioid Withdrawal Nursing Care and Management;</li> </ol> </li> <li>employ medical practitioners and nurse practitioner qualified to practise opioid pharmacotherapy;</li> <li>employ a full-time specialist who has completed Advanced Training in Addiction Medicine.</li> </ol>	Nelson, 2023 Rec 31
<b>Dispensing medication</b>	
<p>G4S commission independent research into the safest efficient way to dispense medication to prisoners in the Borrowdale Unit of Port Phillip Prison incorporating consideration of:</p> <ol style="list-style-type: none"> <li>'Trap-to-trap' dispensation and alternatives including but not limited to opening cell doors to dispense medication,</li> <li>Dispensing medication directly to prisoners from a central point in the Unit; and</li> <li>Whether different dispensation methods ought to be used for difference prisoners taking into account the nature of the medication being dispensed and each prisoners' history of medication and drug use and abuse.</li> </ol>	Hietanen, 2020 Rec 1
<b>Cell access</b>	
<p>That Corrections Victoria review its practice whereby only two Prison Officers have access to cell keys during the Second Watch overnight at Dame Phyllis Frost Centre and address any impediment to the timely entry to cells that might arise so to ensure prisoner health, welfare and safety.</p>	Nelson, 2023 Rec 33
<p>G4S reiterate to staff undertaking the 'lock-down' of the Borrowdale Unit that verbal, spoken response must be obtained from each and every prisoner. If such a response is not forthcoming from an enquiry made through the 'trap', the cell door is to be opened and a verbal response then obtained from the prisoner. (Hietanen, 2020[2]).</p>	Hietanen, 2020 Rec 2



Recommendation	Reference
<b>Cultural awareness training</b>	
That the Department of Justice and Community Safety partners with appropriate Aboriginal Community Controlled Organisations to develop and implement a strategy for ongoing cultural awareness training, monitoring and performance review, which is applicable to: <ol style="list-style-type: none"> <li>1. CV; and</li> <li>2. Correct Care Australasia and/or the Health Service Provider at Dame Phyllis Frost Centre.</li> </ol>	Nelson, 2023 Rec 34
That the Department of Justice and Community Safety develop and implement a policy and deliver training to Corrections Victoria staff about the operation of that policy, to ensure that cultural considerations are incorporated into management of a deceased Aboriginal or Torres Strait Islander person in custody and, to the extent possible, the scene of that person's passing.	Nelson, 2023 Rec 35
<b>Debriefs</b>	
That Justice Health, Corrections Victoria and Correct Care Australasia and/or the Health Service Provider at Dame Phyllis Frost Centre each review, and if necessary, amend any policy or practice relating to staff 'debriefs' following a death in custody or other sentinel events. The review should consider and clarify: <ol style="list-style-type: none"> <li>1. the purpose of debriefs, including whether they are intended to serve a staff welfare function, evaluate practice and/or policy to identify systems or other deficits, or a combination of these matters; and</li> <li>2. a process to optimise the participation of relevant staff in any debrief.</li> </ol>	Nelson, 2023 Rec 37
<b>Assurance and review</b>	
That the Department of Justice and Community Safety urgently redesign the Justice Assurance and Review Office and Justice Health Death In Custody reviews to ensure reviews: <ol style="list-style-type: none"> <li>1. are independent;</li> <li>2. receive input from relevant staff who interacted with or were responsible for decisions affecting the prisoner proximate to their death;</li> <li>3. are comprehensive;</li> <li>4. identify opportunities for improved practice and to enhance the wellbeing and safety of prisoners, rather than merely assess compliance with relevant policies;</li> <li>5. if the deceased is an Aboriginal and/or Torres Strait Islander person, that adequacy of their cultural care (including post-death treatment) is assessed by a suitable member of the Aboriginal community; and</li> <li>6. are timely.</li> </ol>	Nelson, 2023 Rec 36
Both the OCSR and Justice Health should ensure the smooth implementation of the proposals contained in their submissions in accordance with best practice principles and including: <u>Justice Health proposals to:</u> <ul style="list-style-type: none"> <li>• amend the Notifiable Incident/Event Report template and guidelines including review of medical alert rating, risk rating, medical status and outcome;</li> <li>• develop a template palliative care plan to be used with palliative care prisoners; and</li> <li>• review the process to be followed for the purpose of a plea for mercy, so that a formal protocol is provided to contracted health service providers.</li> </ul>	NR, 2011 Rec 1
That the Office of Correctional Services Review proposal to amend the terms of reference and content of their reports and identify any deficiencies to better inform.	NR, 2011 Rec 2

## Aboriginal Justice Caucus – Signatories to *Burra Lotjpa Dunguludja*

<b>Organisation</b>	<b>Signatory to AJA4</b>
<b>Aboriginal Community Justice Panel</b>	Chairperson
<b>Aboriginal Housing Victoria</b>	Chief Executive Officer
<b>Dhelk Dja Indigenous Family Violence Partnership Forum</b>	Koori Caucus representative
<b>Djirra</b>	Chief Executive Officer
<b>Independent Prison Visitor Scheme</b>	Koori Independent Prison Visitor
<b>Koorie Youth Council</b>	Executive Officer
<b>Barwon South West Regional Aboriginal Justice Advisory Committee</b>	Chairperson
<b>Eastern Metropolitan Regional Aboriginal Justice Advisory Committee</b>	Chairperson
<b>Gippsland Regional Aboriginal Justice Advisory Committee</b>	Chairperson
<b>Grampians Regional Aboriginal Justice Advisory Committee</b>	Chairperson
<b>Hume Regional Aboriginal Justice Advisory Committee</b>	Chairperson
<b>Loddon Mallee Regional Aboriginal Justice Advisory Committee</b>	Chairperson
<b>Northern Metropolitan Regional Aboriginal Justice Advisory Committee</b>	Chairperson
<b>Southern Metropolitan Regional Aboriginal Justice Advisory Committee</b>	Chairperson
<b>Western Metropolitan Regional Aboriginal Justice Advisory Committee</b>	Chairperson
<b>Victorian Aboriginal Child Care Agency</b>	Chief Executive Officer
<b>Victorian Aboriginal Community Controlled Health Organisation</b>	Chief Executive Officer
<b>Victorian Aboriginal Education Association Incorporated</b>	President
<b>Victorian Aboriginal Justice Advisory Committee</b>	Chairperson
<b>Victorian Aboriginal Legal Service</b>	Chief Executive Officer