



Royal Commission into Aboriginal Deaths in Custody Recommendation

62. Reduce rates of involvement in welfare and youth justice systems

*That governments and Aboriginal organisations recognise that the problems affecting Aboriginal juveniles are so widespread and have such potentially disastrous repercussions for the future that there is an urgent need for governments and Aboriginal organisations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise.*¹

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| Background² | The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) highlighted the need for collaboration between governments and Aboriginal organisations to address the challenges faced by Aboriginal young people in the criminal justice and welfare systems. The report noted there was disproportionately high representation of Aboriginal young people in custody and emphasised the importance of negotiating strategies to address these issues comprehensively. Crucially, efforts needed to curtail the separation of Aboriginal children and young people from their families and communities, through care declarations, detention, imprisonment, or other means. |
| Intent | That governments urgently work with Aboriginal organisations on strategies to reduce rates at which Aboriginal young people are involved in child protection and youth justice systems. |
| Responsibility | The Commonwealth and all state and territory governments. |
| Key contact | Department of Families, Fairness and Housing (DFFH); Youth Justice, Department of Justice and Community Safety (DJCS). |
| Key Action Taken | |
| 2005 Review³ | <p>Recommendation 62 was assessed by the Department of Justice (DOJ) and Department of Human Services (DHS) as partially implemented.</p> <p>Department of Justice</p> <p>Legal Policy acknowledged Aboriginal young people were over-represented in the criminal justice system and were ten times more likely to be involved in placement and support services than non-Aboriginal children in Victoria.</p> <p>There was a joint project between the DOJ and DHS to establish a Children’s Koori Court (Criminal Division) in Victoria. The Children’s Koori Court began as a pilot focused on the individual through close collaboration with family, community service providers and justice</p> |

¹ Royal Commission into Aboriginal Deaths in Custody (Final Report, 1991) vol 2, 251-252 ('RCIADIC').

² Ibid vol 2, 151-152.

³ Aboriginal Justice Forum (Vic), Department of Justice (Vic), *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody* (Review Report, October 2005) vol 6, 653-659 ('2005 Review').

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agencies. This aimed to assist Aboriginal people to comply with sentencing orders, by enabling the Court to receive the appropriate advice to formulate sentences in a culturally appropriate manner.

Department of Human Services

DHS funded the Koori Justice Program to provide culturally appropriate juvenile justice support, reduce Aboriginal youth involvement in the justice system, assist reintegration after release, and strengthen connections between Aboriginal communities and justice services.

The Aboriginal Child Specialist Advice and Support Service sought to improve decision-making in relation to Aboriginal young people involved with Child Protection. The underlying premise was that by improving decision-making and engagement with Aboriginal families and community, young people would be removed less frequently, and if removed, care arrangements would be more culturally responsive.

However, implementation difficulties for initiatives included:

- A lack of infrastructure, capacity and resourcing for Aboriginal community organisations.
- An absence of early intervention services and post-intensive support services.
- Aboriginal specific Out-of-Home Care program models needed to be re-assessed regarding cultural responsiveness.
- Kinship care was inadequately supported by Departments (in contrast to Aboriginal communities, who preferred a more cultural appropriate form of care).
- Significant service gaps meant one third of Aboriginal young people in care were placed with mainstream service providers where cultural needs were not met.

2018 Review⁴

Deloitte concluded that the Commonwealth Government and Victorian Government had **fully implemented** Recommendation 62.

Commonwealth Government

The Commonwealth funded initiatives under the Indigenous Advancement Strategy, providing more than \$1 billion over four years to improve community safety and reduce Aboriginal offending and incarceration through services such as prisoner care, youth diversion, substance treatment, family safety, and wellbeing programs. An additional \$287 million in 2016–17 supported school attendance, education outcomes, and early support for Aboriginal children and families.

Department of Social Services

The Department of Social Services funded services, social security payments, and early intervention programs to support economic and social participation, including initiatives like the Reconnect Program, which helped Aboriginal young people reconnect with family, education, and employment.

⁴ Deloitte Access Economics, Department of Prime Minister and Cabinet, *Review of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody* (Report, August 2018) 125-126 ('2018 Review').

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Victorian Government

Deloitte noted the Aboriginal Justice Agreements included several programs targeted at early intervention and breaking the cycle of youth offending. This fitted into the broader Victorian Aboriginal Affairs Framework 2013-18 which intended to close the gap between Aboriginal and non-Aboriginal youth representation in the justice system. Programs introduced included group conferencing, the Frontline Youth Initiatives community grant program and the Victoria Police Youth Cautioning Project. Staff supports were also provided, including a Koori Youth Network.

Since then

The Department of Justice and Community Safety (DJCS) and Department of Families, Fairness and Housing (DFFH) were consulted on this recommendation. Their responses are below.

Youth Justice⁵

Since 2018, significant work has occurred in partnership with the Aboriginal Justice Caucus and Youth Collaborative Working Group under the umbrella of Burra Lotjpa Dunguludja – Aboriginal Justice Agreement 4 (AJA4). This includes:

Aboriginal Youth Justice Program

DJCS continues to fund and expand the Aboriginal Youth Justice Program (formerly the Koori Youth Justice Program) which was established in 1992. It provides statewide support and culturally appropriate services to Aboriginal children and young people who may be at risk of entering, or re-entering, the justice system, and is delivered through 15 funded agencies across Victoria. Under its banner are a suite of early intervention, prevention, and diversion supports, including the Community-Based Aboriginal Youth Justice Program, the Aboriginal Early School Leavers Program, and the Aboriginal Intensive Support Program.

Since the launch of the Aboriginal Youth Justice Program, the number of Aboriginal children and young people under Youth Justice supervision on an average day has decreased. In 2022-23, the number of Aboriginal children and young people under Youth Justice supervision on an average day was 43.9, which had decreased significantly from 131.3 in 2015-16.

Youth Diversion

Youth Justice oversees and delivers a broad suite of programs intended to prevent entry into, and divert children and young people away from, the criminal justice system and thereby reduce over-representation. In April 2022, the Victorian Government launched the Youth Diversion Statement. It outlines commitments to diversion, prevention and early intervention that are embedded throughout all services and programs within Youth Justice.

Department of Families, Fairness and Housing⁶

DFFH recognises that the best outcomes are achieved when Aboriginal people lead on the design and delivery of policies and programs for Aboriginal children and families. Aboriginal-led and self-determined approaches are a key mechanism for addressing overrepresentation.

⁵ Youth Justice, 'Request for Youth Justice information - Custodial Experiences - Recs 62, 101, 112, 114, 119 & 235-238'.

⁶ Department of Families Fairness and Housing, 'Review of Recommendations from the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) on Data, Research, Funding, Child Protection & Youth' (Response to AJC Request) 22-25.

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That is why a significant investment has been made, including a record investment of \$140 million through the 2023-24 State Budget, to continue to progress Aboriginal-led and self-determined approaches for Aboriginal children and families. Since the last updates provided in 2005 and 2018, there have been further changes to the Aboriginal Child Specialist Advice and Support Service (ACSASS) and Aboriginal Family-led Decision Making (AFLDM) programs:

- The number of ACSASS providers across the state has grown, with this service now delivered by the Victorian Aboriginal Child and Community Agency (VACCA); Mallee District Aboriginal Services (MDAS); Bendigo & District Aboriginal Co-operative (BDAC), and the Rumbalara Aboriginal Co-operative.
- The AFLDM program is also no longer a pilot and is embedded into practice with 23 AFLDM co-convenors across the state to provide this service to Aboriginal children and families.

The transfer of decision-making power for Aboriginal children involved with Child Protection continues to grow through the Aboriginal Children in Aboriginal Care (ACAC) program and Community Protecting Boorais pilot:

- Section 18 of the *Children, Youth and Families Act 2005 (Vic)* (CYFA) enables the Secretary to authorise Aboriginal Community Controlled Organisations (ACCOs) to undertake specific functions/powers and assume responsibility for Aboriginal children and their siblings subject to Children's Court protection orders. This program is known as the ACAC program.
- The *Statement of Recognition Act (Vic)* came into effect on 1 July 2024, expanding Section 18 of the CYFA to include child protection investigations, which is known as the Community Protecting Boorais pilot.

The number of Aboriginal children in care supported by ACCOs increased from 14 percent in 2014 to 46 percent in April 2025. Victoria has the highest rate in the nation of placing Aboriginal children with relatives/kin, an Aboriginal carer or in Aboriginal residential care. This figure was 73.3 percent as of June 2024. These Aboriginal-led programs better connect Aboriginal children in care to culture and strengthen outcomes for Aboriginal children and families – reducing the rates of Aboriginal children involved in the child protection system.

The department is continuing to undertake significant reform work, in collaboration with the Aboriginal Children's Forum, to improve outcomes for Aboriginal children and families and to support Aboriginal-led and self-determined approaches. This includes through:

- Implementation of the *Statement of Recognition Act* since July 2024, which includes binding principles required to be considered by decision-makers and legislation of all 5 elements of the Aboriginal Child Placement Principle.
- Implementation of the refreshed Wungurilwil Gagapduir Strategic Action Plan to advance Aboriginal-led child and family services.
- Expanding the Community Protecting Boorais pilot, which enables authorised ACCOs to undertake child protection investigations.
- Increasing and formalising the ACCO caucus leadership role in setting the agenda for the Aboriginal Children's Forum.

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- Expanding Aboriginal-led earlier intervention services, including the Aboriginal Family Preservation and Reunification Response – which was funded to support over 200 more families in 2024-25.

Evidence of impact

Authorising Document

Burra Lotjpa Dunguludja – Aboriginal Justice Agreement Phase 4⁷

Since 2000, successive Aboriginal Justice Agreements (AJAs) have each focused on prevention, early intervention and diversion for Aboriginal children and young people. Burra Lotjpa Dunguludja (AJA4) included a commitment to develop and implement an Aboriginal Youth Justice Strategy to addresses recommendations to reduce Aboriginal over-representation in youth justice outlined in the Youth Justice Review and Strategy: Meeting needs and reducing offending.

Victorian Aboriginal Affairs Framework 2018-2023⁸

The Victorian Indigenous Affairs Framework was established under AJA1. The current Victorian Aboriginal Affairs Framework 2018-2025 includes commitments to closing the gap in rates of Aboriginal and non-Aboriginal young people under youth justice supervision.

Roadmap for Reform: strong families, safe children⁹

This strategy was developed by DFFH in response to the Victorian Royal Commission into Family Violence. It includes the following relevant guiding principle: ensuring Aboriginal self-determination around decision making and care for Aboriginal children and families.

The Victorian Government committed to work with Aboriginal communities to develop an Aboriginal children and families strategy. The goal of the strategy is to develop and implement earlier, more culturally competent and effective supports for Aboriginal families. It will also set out a plan for transferring responsibility over time for the care and support of Aboriginal children in out-of-home care to Aboriginal service providers and families.

Wungurilwil Gapgapduir – Aboriginal Children and Families Agreement¹⁰

Wungurilwil Gapgapduir aims to address the over-representation of Aboriginal children and young people in out-of-home care and progress self-determination for Aboriginal people. It is a partnership between the Victorian Government, Victorian Aboriginal communities and the child and family services sector. Relevant guiding principles within the agreement are below.

Self-determination

The agreement acknowledges the need to listen to the Aboriginal community as the primary guide for improved services and outcomes for Aboriginal families. As such, Aboriginal

⁷ Department of Justice (Vic), *Burra Lotjpa Dunguludja: Victorian Aboriginal Justice Agreement Phase 4* (Agreement, 2018) ('AJA4').

⁸ Victorian State Government, *Victorian Aboriginal Affairs Framework 2018–2023* (Framework, 2018) ('VAAF 2018-2023').

⁹ Department of Families Fairness and Housing, *Roadmap for Reform: strong families, safe children* (13 April 2016) 7, 11, 15 ('Roadmap for Reform').

¹⁰ Department of Health and Human Services, *Wungurilwil Gapgapduir - Aboriginal Children and Families Agreement* (Partnership Agreement, April 2018) 1, 16, 27, 31 ('Wungurilwil Gapgapduir'); Department of Families Fairness and Housing, 'Review of Recommendations from the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) on Data, Research, Funding, Child Protection & Youth' 24.

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community control makes service providers more accountable to community members and increases the likelihood that service offerings will be tailored to the community.

Relevantly, in November 2017, the Victorian Aboriginal Child Care Agency (VACCA) launched and implemented Section 18 of the CYFA, known as Nugel ('belong' in Woi Wurrung language) as part of the Aboriginal Children in Aboriginal Care reforms.

Aboriginal Children in Aboriginal Care underpins the Victorian Government's commitment to the principles of self-determination for Aboriginal people, and increased capacity for ACCOs to have greater responsibility and authority for care of Aboriginal children and young people.

Aboriginal children and families are strong in culture and proud of their unique identity

Many Aboriginal children in out-of-home care have become disconnected from their community, kinship groups and Country. The Aboriginal Return to Country initiative is aimed at achieving better outcomes for Aboriginal young people through the provision of support to reconnect them with their communities and Country. It builds on existing programs that strengthen culture through place-based learning.

Support Aboriginal organisations to care for their children, families and communities

Aboriginal organisations should be empowered to take on a greater role in the care and case management of children and families within the child protection system. Transferring responsibility for the case management and care of Aboriginal children to ACCOs will enable the Victorian Government to ensure Aboriginal young people, their families and carers, are receiving culturally appropriate supports and services.

Framework to reduce criminalisation of young people in residential care¹¹

The Department of Health and Human Services (now DFFH) developed the framework, which aims to reduce the unnecessary and inappropriate contact of young people in residential care with the criminal justice system. It includes the guiding principle: For Aboriginal young people, strengthening connection to culture and community is a key consideration in providing services, in addition to providing a healing and sensitive trauma-informed approach to care.

Youth Justice Strategic Plan 2020-2023¹²

Released by Youth Justice in 2020, the Plan is Victoria's roadmap for reforming the Youth Justice system, anchored by the landmark Armytage and Ogloff Youth Justice Review and Strategy. One of the ten principles that underpin the plan is that Youth Justice understands that Aboriginal self-determination and Aboriginal communities must be at the centre of efforts to address the overrepresentation of Aboriginal children and young people in Youth Justice. The Plan sets out action to further Aboriginal self-determination and address overrepresentation.

¹¹ Department of Health and Human Services (Vic), *Framework to reduce criminalisation of young people in residential care* (Framework, February 2020) 2, 13 ('Framework to reduce criminalisation of young people in residential care').

¹² Youth Justice, 'Request for Youth Justice information - Custodial Experiences - Recs 62, 101, 112, 114, 119 & 235-238'. Department of Justice and Community Safety, *Youth Justice Strategic Plan 2020-2030* (May 2020) ('Youth Justice Strategic Plan 2020-2030').

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Wirkara Kulpa – Aboriginal Youth Justice Strategy 2022-2032¹³

On 17 February 2022, Victoria released its first Aboriginal Youth Justice Strategy, Wirkara Kulpa, with a vision to eliminate the overrepresentation of Aboriginal children and young people in the Youth Justice system. The development of Wirkara Kulpa was led by the Aboriginal Justice Caucus as a key initiative of Burra Lotjpa Dunguludja (AJA4) and the Youth Justice Strategic Plan 2020-2030.

Wirkara Kulpa is a 10-year strategy which seeks to see no Aboriginal children and young people in the Youth Justice system because they are strong in their culture, connecting to their families, and living culturally safe, healthy, and thriving lives. Implementation of Wirkara Kulpa is occurring in four tranches, guided by the Aboriginal Justice Caucus. Tranche one of Wirkara Kulpa has fully commenced, with six actions completed and/or ongoing, and 20 actions underway. Tranche two of Wirkara Kulpa commenced from late 2024.

Wirkara Kulpa prioritises early intervention and prevention in several key actions:

- increasing pre-charge diversion and cautioning opportunities through expansion of the Aboriginal Youth Cautioning Program and a tiered pre-charge diversion scheme in the *Youth Justice Act 2024*
- continuing to deliver the Community Based Aboriginal Youth Justice Program which provides a suite of Aboriginal-led early intervention, prevention, and diversion (including tertiary diversion) programs
- improving after-hours support via the Children’s Court Weekend Online Remand Court to reduce unnecessary remand.

***Youth Justice Act 2024 (Vic)*¹⁴**

The *Youth Justice Act* has a dedicated focus on supporting Aboriginal self-determination and reducing Aboriginal over-representation in Youth Justice. The Act includes a statement of recognition that Aboriginal children and young persons are overrepresented in the Youth Justice system because of inequality and structural and institutional racism caused by colonisation and historical laws, policies and systems which explicitly excluded and harmed Aboriginal people and culture. The Act introduced a positive obligation on the DJCS Secretary to develop strategic partnerships with Aboriginal communities by, amongst other things:

- providing opportunities and inviting proposals to improve justice outcomes for Aboriginal children and young persons
- working with the Koori Court, the Commissioner for Aboriginal Children and Young People, Aboriginal communities and representatives of the Aboriginal community on justice-related issues to set justice-related targets for Aboriginal children and young persons

¹³ Youth Justice, 'Request for Youth Justice information - Custodial Experiences - Recs 62, 101, 112, 114, 119 & 235-238'. Koorie Youth Council and Department of Justice and Community Safety (Vic), *Wirkara Kulpa: Aboriginal Youth Justice Strategy 2022-2032* (Strategy, February 2022) ('Wirkara Kulpa').

¹⁴ Youth Justice, 'Request for Youth Justice information - Custodial Experiences - Recs 62, 101, 112, 114, 119 & 235-238'. *Youth Justice Act 2024 (Vic)* ('YJ Act').

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- enabling the progressive transfer of authority, resources and responsibilities to an Aboriginal-controlled justice system in consultation with representatives of the Aboriginal community on justice-related issues and Aboriginal communities, and
- developing accountability measures to improve outcomes for Aboriginal children and young persons.

The *Youth Justice Act* also seeks to reduce unnecessary contact with the formal criminal justice system through the introduction of a tiered pre-charge diversion scheme, including a new pre-charge Early Diversion Group Conference (EDGC) model. The Act provides for an Aboriginal-led EDGC model, which must be developed by the DJCS Secretary in collaboration with representatives of the Aboriginal community on justice related issues. This model must be tailored to the needs of Aboriginal children by incorporating Aboriginal culture, knowledge and expertise.

Outputs

Youth Justice¹⁵

Statistics about children and young people involved with the Youth Justice system are reported by the Australian Institute of Health and Welfare (AIHW) in Youth Justice in Australia, the Productivity Commission Report on Government Services, Closing the Gap outcomes, Budget Paper 3 performance measures, and Aboriginal Justice Forum updates.

Youth Justice noted the following relevant data outputs in 2024:

- In 2022-23, Aboriginal children and young people aged 10 to 17 were 10 times more likely to be under Youth Justice supervision, reduced from 12 times more likely in 2016-17.
- The AJA4 milestone to reduce the number of Aboriginal young people (aged 10 to 17) under Youth Justice supervision on an average day by 43 (a target of 89 children and young people on an average day by 2023) was achieved and significantly exceeded.
- Victoria is on track to meet the national Closing the Gap target to reduce the rate of Aboriginal young people (aged 10 to 17 years) in detention by at least 30 per cent by 2031.
- Victoria has one of the lowest rates of 10- to 17-year-old Aboriginal children and young people under Youth Justice supervision in Australia.
- More work must be done to end overrepresentation and deliver on Wirkara Kulpa's vision.

Department of Families, Fairness and Housing¹⁶

DFFH is working towards these outcomes for the ACAC and Community Protecting Boorais programs:

- Expanding the ACAC program to an additional 774 children by June 2027, and through providing time-limited support for ACCOs to uplift existing ACAC programs by way of workforce and training support over four years.

¹⁵ Youth Justice, 'Request for Youth Justice information - Custodial Experiences - Recs 62, 101, 112, 114, 119 & 235-238'.

¹⁶ Department of Families Fairness and Housing, 'Review of Recommendations from the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) on Data, Research, Funding, Child Protection & Youth' 24-25.

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- Increasing the Community Protecting Boorais program to enable 348 Aboriginal children to have their reports to child protection investigated by an authorised ACCO annually by 2026-27.

Outcomes

Aboriginal Justice Caucus, Submission to the Yoorrook Justice Commission¹⁷

The AJC wrote to Yoorrook about issues relating to Aboriginal children in out-of-home care and involved with the youth justice system.

Criminalisation of children involved with child protection

Aboriginal young people that have early contact with the criminal legal system as a witness, victim or alleged offender have a significantly increased chance of repeated contact into adulthood. Relevantly, Arie Frieberg, the chair of the Sentencing Advisory Council told the Inquiry into Victoria's Criminal Justice System:

The kids who come in early, are the ones who have gone through child protection, out-of-home care, they're the ones who are really and truly damaged and we've not been able to intervene effectively with them, and the justice system is not a great place to deal with them.

The AJC calls for the child protection system to support children to avoid contact with the criminal legal system and to provide support for children when early contact occurs.

Criminalisation in residential care

The AJC is concerned about incidents where residential care staff call police over relatively minor issues involving an Aboriginal young person in care. The AJC advocates for additional training for residential care staff on de-escalation techniques and cultural awareness training to address systemic racism and unconscious bias and curb the overreliance on police to discipline young people. In addition, the AJC calls for greater compliance with the Framework to Reduce Criminalisation of Young People in Residential Care.

Australian Institute of Health and Welfare, Youth justice in Australia 2023–24¹⁸

On an average day in 2023–24, in Victoria:

- Aboriginal young people made up 2.1 percent of those aged 10–17 in the general population, but 18 per cent (47 young people) of those of the same age under youth justice supervision.
- Similar proportions of Aboriginal young people aged 10–17 were under community-based supervision (17 percent, 38 young people) and in detention (19 percent, 10 young people).
- Aboriginal young people aged 10–17 were 10 times as likely as non-Aboriginal young people to be under supervision (34 per 10,000 compared with 3.4 per 10,000)
- Aboriginal over-representation was similar in community-based supervision (9.8 times the non-Aboriginal rate) and in detention (11 times the non-Aboriginal rate).

¹⁷ Aboriginal Justice Caucus, Nuther-mooyoop (NUT.0001.0074.0004) to Yoorrook Justice Commission (12 January 2023) ('AJC Nuther-mooyoop to Inquiry into Systemic Injustice in the Criminal Justice and Child Protection Systems (Yoorrook Justice Commission)').

¹⁸ Australian Institute of Health and Welfare, *Youth Justice in Australia 2023-24* (Report, 28 March 2025) ('Youth Justice in Australia 2023-24').

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Community Views

Our Youth, Our Way¹⁹

The inquiry spoke to Aboriginal young people who spent most of their childhood entangled in both the child protection and youth justice systems.

I was in the DHHS system for 18 years straight. I went from town to town, and suburb to suburb. I went to 6 different schools. I spent time with family for about 4 months. I went through 11 different units, through foster care, to resi and back again, and it didn't change. I just kept going back... From 13 to 19, I've been in [youth justice custody] about 10 times. The longest time I got sentenced was 2 years. It was pretty easy because I knew the system. – Malkar

First time I could get charged, I was 11 years old. Punched a hole in the wall in resi. I was first in resi from age 8 or 9. They would call the police when I was younger, but they were building it up. They 'back-charged' me when I turned 11 – 44 charges at least. That's the first time I ever went to court. They couldn't send me to custody cos I was too young. They just put me on good behaviour bonds. Once I got to like 12, they put me on probations and stuff like that. I been in and out of the system for ages. – Frazer, 17

The first time I got in trouble, I got released because I was very young. The second time was worse. I kept absconding from resi to go to mum's, but they couldn't find me, so they had to put me in the cells. – Aaron, 16

Related recommendations

Yoorrook for Justice²⁰

Recommendation 1

The Victorian Government must:

- a) transfer decision-making power, authority, control and resources to Aboriginal people, giving full effect to self-determination in the Victorian child protection system. Transferring or creating decision-making power includes but is not limited to:
 - i) system design
 - ii) obtaining and allocating resources
 - iii) powers of, and appointments to bodies or institutions, and
 - iv) accountability and oversight functions including new Aboriginal-led bodies, oversight processes or complaints pathways
- b) negotiate this through the Treaty process including through potential interim agreements
- c) in doing so, go beyond the transfer of existing powers and functions under the *Children, Youth and Families Act 2005* (Vic), which will require new, dedicated legislation, developed by Aboriginal people, for the safety, wellbeing and protection of Aboriginal children and young people, and

¹⁹ Commission for Children and Young People (Vic), *Our Way: Inquiry into the Over-Representation of Aboriginal Children and Young People in the Victorian Youth Justice System Our Youth* (Report, June 2021) 288, 297, 300 ('Our Youth, Our Way').

²⁰ Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems* (Report, August 2023) 26, 37 ('Yoorrook for Justice').

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- d) recognising the urgent need for immediate reform and without delay, take all necessary steps to begin and diligently progress the establishment of a dedicated child protection system for Aboriginal children and young people supported by stand-alone legislation based on the right of Aboriginal people to self-determination and underpinned by human and cultural rights to be developed by the First Peoples' Assembly of Victoria which must be sufficiently resourced by government for this purpose.

Recommendation 2

The Victorian Government must give full effect to the right of Aboriginal people to self-determination in the Victorian criminal justice system as it relates to Aboriginal people. This includes negotiating through the Treaty process, including through potential interim agreements, the transfer of decision-making power, authority, control and resources in that system to Aboriginal people. Transferring or creating decision-making power includes but is not limited to:

- a) system design
- b) obtaining and allocating resources
- c) powers of, and appointments to bodies or institutions, and
- d) accountability and oversight functions including new Aboriginal-led oversight processes or complaints pathways.

Recommendation 35

The Victorian Government must urgently introduce legislation to raise the minimum age of criminal responsibility in Victoria to 14 years without exceptions and to prohibit the detention of children under 16 years.

Our Youth, Our Way²¹

Recommendation 6

That the Aboriginal Youth Justice Strategy prioritise early intervention and prevention strategies and justice reinvestment programs led by the Aboriginal community.

Recommendation 8

That the *Children, Youth and Families Act 2005* be amended to increase the minimum age of criminal responsibility in Victoria to 14 years. This should not be subject to any exceptions.

Recommendation 9

That the Victorian Government, in partnership with Aboriginal organisations, develop and provide a range of culturally responsive and gender-specific programs and services that are tailored to meet the needs of Aboriginal children under the age of 14 years who are engaging in anti-social behaviour, and to address the factors contributing to the behaviour.

Inquiry into Victoria's criminal

Recommendation 7

That the Victorian Government extend the Youth Crime Prevention Grants to enable community led place-based early intervention initiatives which are achieving demonstrable benefits to continue, and to expand access to the Grants Program to additional communities.

²¹ *Our Youth, Our Way* 41, 45.

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| justice system ²² | |
| ALCR, Pathways to Justice ²³ | <p>Recommendation 15-1</p> <p>Acknowledging the high rate of removal of Aboriginal children into out-of-home care and the recognised links between out-of-home care, juvenile justice and adult incarceration, the Commonwealth Government should establish a national inquiry into child protection laws and processes affecting Aboriginal children.</p> |
| 2005 Review ²⁴ | <p>Recommendation 150</p> <p>That the Victorian Government continue to implement and monitor Recommendation 62 through any monitoring process established as a consequence of this Review.</p> |

Assessment Summary²⁵

The intent of Recommendation 62 was that governments urgently work with Aboriginal organisations on strategies to reduce rates at which Aboriginal young people are involved in child protection and youth justice systems. Several strategies have been implemented in Victoria to reduce the rates at which Aboriginal children and young people are separated from their families and communities, including:

- Successive Aboriginal Justice Agreements (2000-present) have had a strong focus on prevention, early intervention and diversion for Aboriginal children and young people.
- Victorian Aboriginal Affairs Framework (VAAF) 2018-2025 commitments to closing the gap in rates of Aboriginal and non-Aboriginal young people under youth justice Supervision.
- Roadmap for Reform: strong families, safe children includes principles to ensure Aboriginal self-determination in decision-making and care for Aboriginal children and families.
- Wungurilwil Gagapduir – Aboriginal Children and Families Agreement (2018)
- Framework to reduce criminalisation of young people in residential care (2020)
- Wirkara Kulpa – Aboriginal Youth Justice Strategy 2022-2032

Despite these efforts, there is little evidence of the desired impacts across the child protection system. The numbers of Aboriginal children in the child protection system have continued to increase. Victoria's rate of Aboriginal children in out of home care is the worst in the country. Yoorrook for Justice found that in June 2022 there were 2,595 Aboriginal children and young people in out of home care in Victoria. This was an increase from 1,673 in June 2013. The Productivity Commission's Report on Government Services showed that in 2024-25 there were 3,047 Aboriginal children in out of home care in Victoria, a rate of over 95 children per thousand, indicating that almost 10 per cent of the population of Aboriginal children aged up to 17 are in out of home care.

²² Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 24 March 2022) vol 1,113.

²³ Australian Law Reform Commission, *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Final Report No 133, December 2017) 18 ('Pathways to Justice').

²⁴ 2005 Review, vol 6, 673.

²⁵ Meeting with Aboriginal Justice Caucus Working Group (Project Team, Online, 17 June 2025) ('Working Group Meeting (17 June 2025)'); Meeting with Aboriginal Justice Caucus (Vic) (Project Team, In Person, 6 August 2025) ('Aboriginal Justice Caucus Meeting (6 August 2025)').

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Yoorrook also noted that 83 percent of Aboriginal children were reunified with their parents or family when case managed by an Aboriginal Community Controlled Organisation (ACCO) under a section 18 authorisation compared to 64 percent when case managed by the Department of Families, Fairness and Housing (DFFH) Child Protection. Although this shows that Aboriginal children fare better when engaged with culturally safe services, there is still room for improvement, with several Caucus members raising concerns about the supports available to young people in out of home care.

Services were supposed to be looking after a young person. Under Section 18 there was funding there to support that young one, but they weren't supported and committed suicide. (Marion Hansen, Co-chair, Aboriginal Justice Caucus (AJC) and Chairperson, Southern Metropolitan Regional Aboriginal Justice Advisory Committee (RAJAC))

There have been more significant reductions in the number and rates of Aboriginal children and young people involved in the youth justice system, but these improvements are very sensitive to politically motivated policy and legal changes affecting our most vulnerable young people.

The AJA4 milestone to reduce the number of Aboriginal young people (aged 10 to 17) under youth justice supervision on an average day by at least 43 between 2018 and 2023 was achieved and exceeded. On an average day in 2023–24, in Victoria there were 48 Aboriginal children and young people under youth justice supervision, 38 under community-based supervision and 10 in detention. Victoria has one of the lowest rates of 10- to 17-year-old Aboriginal children and young people under Youth Justice supervision in Australia. Against the backdrop of an ever-increasing number of Aboriginal young people involved with Child Protection makes the reduction even more significant. However, we are concerned recent 'tough on crime' bail law amendments will lead to more Aboriginal children being remanded, thus, derailing these efforts.

Considering that 64 percent of Aboriginal young people subject to youth justice supervision have also had child protection involvement, it is essential that Child Protection supports children to avoid contact with the criminal legal system and provides support to children when early contact does occur to reduce the chances of repeat contact into adulthood.

Most kids go through Child Protection, end up in YJ, and then end up in the big house. It's so sad. That's why we've really got to look at doing something about the way the Department is funding programs and organisations that are supposed to be looking after our kids. (Marion Hansen, Co-chairperson, AJC)

To improve current strategies, we call for the Victorian Government to ensure Aboriginal decision-making on matters that affect us. A partnership strategy between Aboriginal community and government is not enough when government are the ultimate decision-makers on all policies and programs relating to Aboriginal people.

The government talk about self-determination, but when are these people going to stop interfering in our business? When are they going to listen to us? (Jemmes Handy, Chairperson, Loddon Mallee RAJAC)

To give full effect to self-determination in both the Child Protection and Youth Justice systems, there need to be Aboriginal community-controlled systems. This requires moving beyond delegating authority to Aboriginal organisations for administration of parts of the existing systems where Aboriginal people are involved, to transforming them so that all aspects reflect Aboriginal cultural protocols, principles, ethics and standards.

We're the experts. When it comes to our young kids, get them out bush, get our people involved, instead of shoving them in the jails and taking them away from their families. (Jemmes Handy, Chairperson, Loddon Mallee RAJAC)

62. Reduce rates of involvement in welfare and youth justice systems

It is imperative that representatives of our Aboriginal communities are included in decision-making regarding Aboriginal children.

The government needs to start listening to us on issues around Youth Justice and Child Protection. We're independent, we're elected by our communities to sit around that table and make these decisions. (Marion Hansen, Co-chairperson, AJC and Chairperson, Southern Metropolitan RAJAC)

Overall, this recommendation remains highly relevant and is therefore a high priority for further work.

Assessment of RCIADIC Recommendation 62²⁶

Is the intent of the recommendation accurately described?

Yes No

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

- 0 – No action taken
- 1 – Action taken is of little relevance to the intent of the recommendation
- 2 – Action taken partially aligns with the intent of the recommendation
- 3 – Action taken fully aligns with the intent of the recommendation

**CP 0.5
YJ 2**

(Score out of 3)

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

- 0 – No evidence
- 1 – Evidence of output rather than outcome
- 2 – Some evidence action contributed to outcome/s
- 3 – Clear link between action and impact or outcome/s

**CP 0.5
YJ 1.5**

(Score out of 3)

How relevant is the recommendation in the current context?

- 0 – No relevance – refers to practices, agencies or laws that no longer exist
- 1 – Low – some relevance, but most aspects of the recommendation no longer apply
- 2 – Moderate – remains relevant, but some aspects of recommendation no longer apply
- 3 – High – entirely relevant to current context

3

(Score out of 3)

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

- 0 – No potential to improve Aboriginal justice outcomes
- 1 – Low – potential to improve Aboriginal justice outcomes, but none of the three identified
- 2 – Moderate – potential to progress one or two of the outcomes identified
- 3 – High – potential to reduce incarceration AND increase safety in custody AND self-determination

3

(Score out of 3)

Potential actions for further work

Transformative change of the child protection system (Yoorrook for Justice, Recommendation 1)

The Victorian Government must:

- a) transfer decision-making power, authority, control and resources to Aboriginal people, giving full effect to self-determination in the Victorian child protection system. Transferring or creating decision-making power includes but is not limited to:
 - i) system design

²⁶ The Aboriginal Justice Caucus provided separate assessments of actions taken and evidence of outcomes for the Child Protection (CP) and Youth Justice (YJ) systems as indicated in the assessment scores and matrix.

- ii) obtaining and allocating resources
 - iii) powers of, and appointments to bodies or institutions, and
 - iv) accountability and oversight functions including new First Peoples led bodies, oversight processes or complaints pathways
- b) negotiate this through the Treaty process including through potential interim agreements
 - c) in doing so, go beyond the transfer of existing powers and functions under the *Children, Youth and Families Act 2005* (Vic), which will require new, dedicated legislation, developed by Aboriginal people, for the safety, wellbeing and protection of Aboriginal children and young people, and
 - d) recognising the urgent need for immediate reform and without delay, take all necessary steps to begin and diligently progress the establishment of a dedicated child protection system for Aboriginal children and young people supported by stand-alone legislation based on the right of Aboriginal people to self-determination and underpinned by human and cultural rights to be developed by the First Peoples' Assembly of Victoria which must be sufficiently resourced by government for this purpose.

Self-determined criminal justice system (*Yoorrook for Justice, Recommendation 2*)

The Victorian Government must give full effect to the right of Aboriginal peoples to self-determination in the Victorian criminal justice system as it relates to Aboriginal peoples. This includes negotiating through the Treaty process, including through potential interim agreements, the transfer of decision-making power, authority, control and resources in that system to First Peoples. Transferring or creating decision-making power includes but is not limited to:

- a) system design
- b) obtaining and allocating resources
- c) powers of, and appointments to bodies or institutions, and
- d) accountability and oversight functions including new Aboriginal-led oversight processes or complaints pathways.

Membership to the Aboriginal Children’s Forum

That the Department of Families, Fairness and Housing (DFFH) and the Aboriginal Children’s Forum (ACF) provide the Aboriginal Justice Caucus with membership to the ACF.

High priority for further work

Relevance and potential impact

| | | Low (0-2) | Moderate (3-4) | High (5-6) |
|--|----------------|-----------|----------------|-------------|
| Extent of action taken and evidence of outcomes | High (5-6) | | | |
| | Moderate (3-4) | | | Rec 62 (YJ) |
| | Low (0-2) | | | Rec 62 (CP) |

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