

Aboriginal Justice Caucus



Submission to the Victorian Ombudsman's Investigation into Prison Healthcare

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.

Contents

Aboriginal Justice Caucus	4
Summary of recommendations	5
Introduction.....	7
Deaths in custody	8
Ensuring implementation of recommendations from deaths in custody	13
Aboriginal Social Justice Commissioner.....	14
Health services in custody	15
Culturally safe services	16
Equivalence of care.....	18
Access to Medicare and the Pharmaceutical Benefits Scheme in custody	19
Self-determination – from setting standards to service delivery.....	20
Self-determination.....	20
A self-determined custodial healthcare system.....	21
Effective engagement with Aboriginal perspectives.....	22
Health frameworks and standards	23
Service delivery.....	24
Supporting and resourcing ACCHOs to provide healthcare in custody.....	26
Responsibility for custodial healthcare	28
Independent oversight of the prison healthcare system	29
Advance Aboriginal data sovereignty and governance	30
Prison healthcare complaints	32
Appendix 1 – RCIADIC recommendations relating to healthcare referred to in coronial inquest.....	34
Appendix 2 – Coronial recommendations relating to custodial healthcare, 1991-2023	36

Aboriginal Justice Caucus

The Aboriginal Justice Caucus (AJC) is made up of all the Aboriginal signatories¹ 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 provides statewide representation and leadership to amplify Community voices in all areas relating to justice. 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 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.

Critical to the establishment of the first AJA was the Victorian Aboriginal Justice Advisory Committee (**VAJAC**). Under the leadership of the late Dr Alf Bamblett, the Committee worked tirelessly to create the foundations for the AJA as it exists today. We continue to build on that legacy.

Aboriginal self-determination 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 plans² 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.

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,³ 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.

Self-determination in prison healthcare delivery 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.

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

² 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

³ Like Wirkara Kulpa – Victoria's first Aboriginal Youth Justice Strategy

Summary of recommendations

The Aboriginal Justice Caucus recommend that:

Recommendation 1: The Victorian Government fully implement all Royal Commission into Aboriginal Deaths in Custody recommendations relating to custodial healthcare.

Recommendation 2: All Aboriginal deaths in custody are subject to thorough coronial inquests with no exceptions for deaths considered to be due to natural causes.

Recommendation 3: The Victorian Government, in partnership with the Aboriginal Justice Caucus, 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 RCIADIC 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 4: Mandate regular training in Aboriginal cultural awareness, systemic racism and unconscious bias for: a) All agencies and bodies involved in the design, delivery or administration of programs and services across the Corrections system (Corrections staff, Justice Health, healthcare professionals, all staff involved in organisations currently delivering custodial healthcare).

Recommendation 5: The Victorian Government fully implement all 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 6: Provide people in custody with healthcare (including mental healthcare) 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 7: The Federal Government must ensure that incarcerated people have access to the Pharmaceutical Benefits Scheme (PBS) and the Medicare Benefits Schedule (MBS). The Victorian Government should advocate with other States and Territories and the Commonwealth to enable this access.

Recommendation 8: Enshrine the right of Aboriginal and Torres Strait Islander peoples to self-determination in the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and other relevant justice legislation like the *Corrections Act 1968*.

Recommendation 9: 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 10: That there be early and ongoing engagement with the Aboriginal Justice Caucus in the development, implementation and review of frameworks and standards relating to custodial health care delivery and accountability.

Recommendation 11: The Victoria Government must end privatisation of healthcare in prisons, including by cancelling the new contract with GEO Group, and transferring all prison healthcare services to the public healthcare system.

Recommendation 12: The Victorian Government must 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 13: Responsibility for prison healthcare should be transferred from the Department of Justice and Community Safety to the Department of Health.

Recommendation 14: 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 15: The Government should significantly reform the system for monitoring prison healthcare services, to ensure that prison healthcare outcomes are the primary mechanism for measuring the delivery of prison healthcare services.

Recommendation 16: There must be greater transparency of information on custodial health care provision and outcomes for Aboriginal people. Data needs to be collected and accessible to Aboriginal people and organisations.

Recommendation 17: 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 18: 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 19: The Victorian Government should 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.

Introduction

The Aboriginal Justice Caucus welcome the opportunity to provide our submission in response to the Victorian Ombudsman's investigation into the provision of healthcare to Aboriginal people in Victorian prisons.

Given the short timeframe for responses, and the two decades of AJC involvement with, and advocacy for reforms across Victoria's 'justice' system, only a brief overview of key issues and directions for reform was possible within this submission.

The AJC has worked in partnership with Victorian governments for over 23 years, with the aim of preventing the incarceration of Aboriginal people and deaths in custody; and improving the lives of Aboriginal people, families and communities across Victoria. The AJA is the longest-running agreement of its kind in Australia and has enabled the establishment of significant Aboriginal programs, positions, plans and business units that operate specifically to address the needs of the Victorian Aboriginal Community.

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. Realisation of Aboriginal Community aspirations for change is frequently impeded by lack of political will, and 'tough on crime' agendas that respond to mainstream community perceptions, rather than Aboriginal realities.

We know that in Victoria, prison healthcare delivery does not work for Aboriginal people. Custodial health services are part of an institutionally racist system focused on security and punishment rather than wellbeing and rehabilitation.

The AJC's vision for the future is an Aboriginal Community-Controlled Justice System (ACCJS) that is safe, fair and works for Aboriginal people across Victoria. This requires **transformation** of the existing criminal legal system and its institutions. Change of this scale will take time but is desperately needed as each day the current system continues as is, Aboriginal people enmeshed in it experience harm, trauma and injustice. To mitigate these harms and prevent further Aboriginal lives being lost, urgent reforms are also required.

An overhaul of custodial healthcare is a crucial step in this vision. Urgent reform is needed to ensure the safety of all Aboriginal people involved with Victoria's criminal justice system.

The experiences of Aboriginal people in prisons have also been well documented in the Cultural Review into the Adult Custodial Corrections System ("the Cultural Review").⁴ Part 5 of the Cultural Review explores Aboriginal cultural safety, delving into horrific ordeals faced by incarcerated mob in attempts to access their cultural and human rights under international human rights law and Victorian laws and policies. Experiences documented demonstrate a lack of cultural safety, difficulty when seeking timely healthcare and medication, and overwhelming fear of dying from inadequate care.

While under *Burra Lotjpa Dunguludja: the Aboriginal Justice Agreement Phase 4*, the Government committed to increase access to culturally appropriate healthcare models in Victorian prisons, policy commitments and implementation fall short of ensuring that Aboriginal people in prisons can access culturally safe equivalent healthcare provided by an ACCHO.

⁴ 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"), pp. 455-560.

Deaths in custody

The AJC is undertaking a project to assess Victoria's implementation of recommendations from the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) and coronial recommendations arising from Aboriginal deaths in custody in Victoria. Whilst some recommendations have been implemented, AJC believe that robust implementation of these recommendations would have gone a long way to improving justice and health outcomes for Aboriginal people.

Of the 339 RCIADIC recommendations, approximately 60 relate to healthcare and span community, correctional and police custody settings. Many of these have not been given the attention they deserve. Failure to implement them has contributed to Aboriginal deaths in custody that were preventable.

*"I find that, had the RCIADIC recommendations been successfully implemented by the Government and its agencies, Veronica's passing would more likely than not have been prevented."*⁵

Coroner McGregor, January 2023

The Coroner referred to several RCIADIC Recommendations as having been relevant to the passing of Veronica Nelson. Almost half of them (see Appendix 1) 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 RCIADIC 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 RCIADIC suggests that if this statistic is to be believed, 'implementation' of the RCIADIC recommendations has achieved too much policy, and not enough change."*⁶

Coroner McGregor, January 2023

Recommendation 1: That the Victorian Government fully implement all RCIADIC recommendations relating to custodial healthcare.

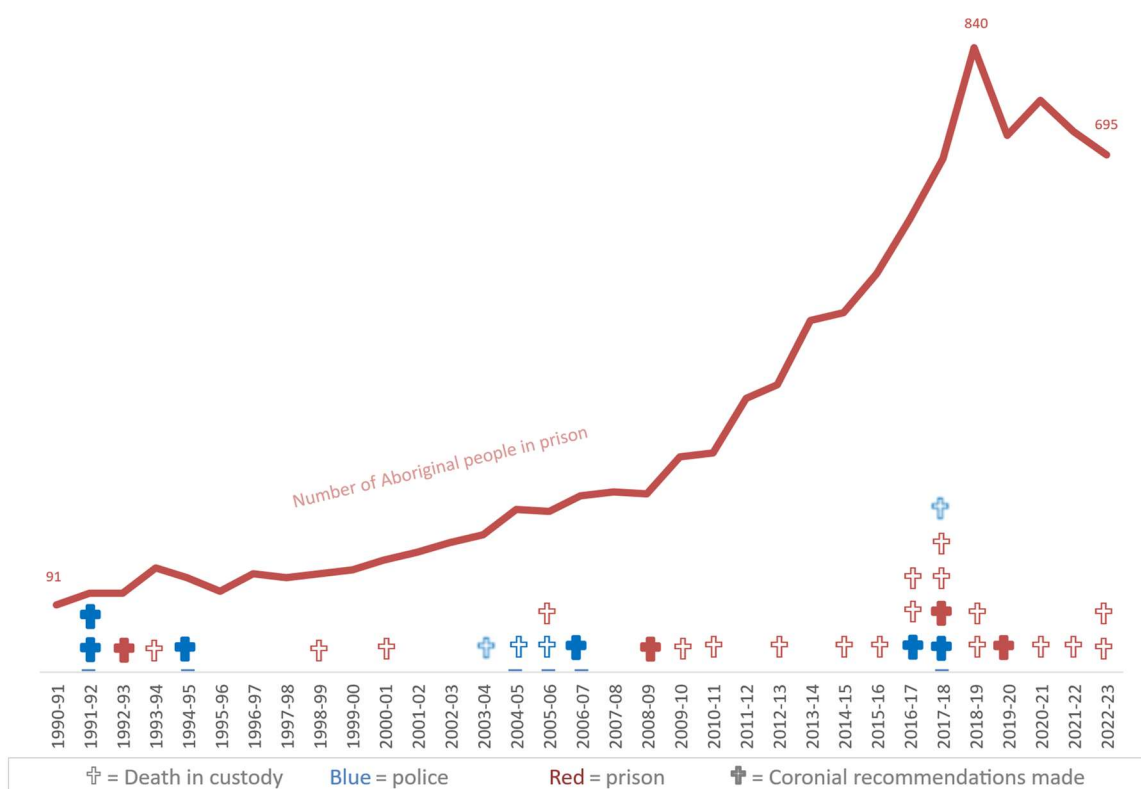
⁵ Coroner Simon McGregor, Inquest into the passing of Veronica Nelson, April 2023

⁶ *ibid*

The over-representation of Aboriginal people in prison increased since 1991

In the 32 years since the RCIADIC recommendations were released, the Aboriginal and Torres Strait Islander proportion of the prison population in Victoria tripled. In 1991, there were 90 Aboriginal people in Victoria's prisons accounting for 3.9 per cent of the total prison population⁷. On 1 May 2023 there were 822 Aboriginal people in Victoria's prisons accounting for 12.5 per cent of the total prison population⁸. 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. The increasing number of Aboriginal people incarcerated in Victoria emphasises the urgency of the need for a robust system of self-determined healthcare in custodial settings.

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



There have been more than 30 Aboriginal deaths in custody in Victoria since the RCIADIC

There have been 34 Aboriginal deaths in custody in Victoria since the RCIADIC findings were handed down in 1991, including 24 in Corrections facilities (see Table 1). Each death has left families and communities grieving. Each death was preventable and should not have happened.

⁷ Australian Bureau of Statistics (ABS), Prisoners in Australia, 2000.

⁸ Larissa Strong, Commissioner Corrections Victoria, Yoorrook Justice Commission Hearing, 3 May 2023

<https://yoorrookjusticecommission.org.au/video/criminal-justice-systems-hearing-government-and-departmental-day-5/>

The current mechanisms in place are not working and continue to fail Aboriginal people and communities. How many more must die for there to be a re-imagining of the current system, and real accountability? 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.

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 (see Table 2).

Of the nine deaths prior to 2020 for which coronial investigations are complete, an inquest was only undertaken in two cases. 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.⁹

The AJC is particularly concerned about when a death is deemed to be due to ‘natural causes’. It is clearly 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.¹⁰ 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.¹¹ 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’.

Recommendation 2: All Aboriginal deaths in custody are subject to thorough coronial inquests with no exceptions for deaths considered to be due to natural causes.

⁹ As per *Coroners Act 2008* s52 3A

¹⁰ S. Schwartz, The Guardian, [Veronica Nelson’s death was cruel and disturbing. So too was the government cover-up](#). 20 February 2023.

¹¹ *ibid*

Table 1: Aboriginal deaths in Corrections custody 1991 – 2013

Year	Coronial Investigation	Age	Gender	Cause of Death ¹²	Place of passing	Legal Status
1993	Inquest	25	Male	Hanging	Pentridge Prison	Remand
1993	Inquest	33	Male	Epilepsy	Pentridge Prison	Remand
1998	Inquest	23	Female	Compression of the neck	Metropolitan Women's Correctional Centre	Sentenced
2000	Inquest	22	Male	Toxic effects of methadone	Port Philip Prison	Remand
2005	Inquest	43	Male	Ischaemic heart disease Coronary atherosclerosis	Dhurringile Prison	Sentenced
2009	Inquest	50	Male	Chronic liver disease (Alcohol, Hepatitis C)	St Vincent's Hospital (Prior: Port Phillip Prison)	Sentenced
2010	Inquest	72	Male	Pneumonia in a man with metastatic colon cancer	St Vincent's Hospital (Prior: Barwon Prison)	Sentenced
2010	Inquest	53	Male	Hepatocellular carcinoma History of advanced lung cancer	St John's Hospital, Port Phillip Prison	Sentenced
2013	Inquest	49	Male	Ischaemic heart disease	Loddon Prison	Sentenced

A summary of coronial recommendations arising from Aboriginal deaths in custody in Victoria is included in Appendix 2.

¹² Description taken from coronial findings.

Table 2: Aboriginal deaths in Corrections custody 2014 - 2023

Year	Coronial Investigation	Age	Gender	Cause of death ¹³	Place of passing	Legal status
2014	Inquest	45	Male	Undetermined	Port Phillip Prison	Sentenced
2016	Finding WITHOUT Inquest	46	Male	Multi organ failure due to acute pancreatitis	St Vincent's Hospital (Prior: Hopkins Correctional Centre)	Sentenced
2016	Finding WITHOUT Inquest	41	Male	Cardiomegaly	Fulham Correctional Centre	Sentenced
2017	Determination WITHOUT Inquest	63	Male	Complications arising from widely disseminated cancer	St Vincent's Hospital (Prior: Port Phillip Prison)	Sentenced
2017	Inquest	45	Male	Combined drug toxicity	Port Phillip Prison	Sentenced
2017	Finding WITHOUT Inquest	29	Male	Acute Bronchopneumonia in a man with cardiomegaly	Port Phillip Prison	Sentenced
2018	Finding WITHOUT Inquest	36	Male	Acute myocardial infarction Ischaemic heart disease	Fulham Correctional Centre	Sentenced
2019	Finding WITHOUT Inquest	47	Male	Staphylococcus aureus sepsis in the setting of ischaemic heart disease	Port Phillip Prison	Sentenced
2019	Finding WITHOUT Inquest	47	Male	Complications of cirrhosis and metastatic hepatocellular carcinoma	St Vincent's Hospital (Prior: Port Phillip Prison & Hopkins)	Sentenced
2020	Inquest	37	Female	Complications of withdrawal from chronic opiate use and Wilkie Syndrome in the setting of malnutrition	Dame Phyllis Frost Centre	Remand
2021	Inquest	41	Male	To be determined	Ravenhall Correctional Centre	Sentenced
2021	To be determined	30	Female	To be determined	Sunshine Hospital (Prior: Dame Phyllis Frost Centre)	Sentenced
2022	To be determined	32	Male	To be determined	Port Phillip Prison	Sentenced
2022	To be determined	38	Male	To be determined	Loddon Prison	Sentenced
2023	To be determined	70	Male	To be determined	Hopkins Correctional Centre	Sentenced

¹³ Description taken from coronial findings.

Ensuring implementation of recommendations from deaths in custody

To ensure the implementation of coronial and RCIADIC recommendations, and greater accountability to the Aboriginal Community for action in response to deaths in custody, the AJC continue to advocate for independent Aboriginal oversight of the achievement of better justice outcomes with particular focus on corrections, policing and coronial inquests. 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.

Lack of accountability from government further diminishes Aboriginal Community trust 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.

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

The 2005 Victorian Implementation Review 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’¹⁴ with ‘appropriate powers’ supported by an ‘adequately resourced Monitoring Unit.’¹⁵

Similarly, critics of the 2018 Commonwealth Review advocate for independent monitoring of Aboriginal deaths in custody. For over 18 years, the AJC and its members have continued to advocate for the establishment of an Aboriginal Social Justice Commissioner (ASJC) to provide independent oversight for Aboriginal justice in Victoria.¹⁶

The 2018 ALP Election Platform included a commitment to the ASJC¹⁷, which is also identified as an action under Burra Lotjpa Dunguludja¹⁸. The AJC have done further work on the potential role and functions of an Aboriginal Social Justice Commissioner in Victoria (summarised in the ASJC case study), including developing a budget proposal with input from the Victorian Equal Opportunity and Human Rights Commission. To date, funding to establish an ASJC has not been provided by the Victorian Government. Establishment of an Aboriginal Justice Commissioner was recommended by the Victorian Parliamentary Inquiry into Victoria’s Criminal Justice System.¹⁹

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.

¹⁴ 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

¹⁵ Ibid.

¹⁶ VALS Media Release, “It is time for a Victorian Aboriginal and Torres Strait Islander Social Justice Commissioner” (26 March 2021), [Joint Media Release from Djirra and Victorian Aboriginal Legal Service: It is time for a Victorian Aboriginal and Torres Strait Islander Social Justice Commissioner | Djirra – Sharing stories finding solutions](#)

¹⁷ 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

¹⁸ Burra Lotjpa Dunguludja, p. 51

¹⁹ Victorian Parliament, Inquiry into the Criminal Justice System (2022), Recommendation 79.

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 (ASJC) 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 cases²⁰

The ASJC 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 ASJC 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 3: That the Victorian Government, in partnership with the Aboriginal Justice Caucus, 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.

²⁰ Aboriginal Justice Caucus (AJC), Submission on the Legislative Council Legal and Social Issues Committee Inquiry into Victoria's Justice System (2021), p. 12.

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.” VACCHO²¹

The Guardian’s 2021 analysis of almost 500 Aboriginal deaths in custody found the most common cause of death was medical problems, with Aboriginal people three times more likely than others not to receive all necessary medical care. For Aboriginal women the 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 people²².

Both in Australia²³ and internationally,²⁴ 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.²⁵ 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.²⁶

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.²⁷ 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.²⁸ Most people with mental

²¹ VACCHO are members of the Aboriginal Justice Caucus, quote from VACCHO submission to Yoorrook, December 2022

²² [The facts about Australia’s rising toll of Indigenous deaths in custody | Deaths in custody | The Guardian](#)

²³ 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.

²⁴ 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.

²⁵ Australian Institute for Health and Welfare (AIHW), [The Health of Australia’s Prisoners](#), (2018) pp. 57-58.

²⁶ 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.

²⁷ 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.

²⁸ 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.

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.²⁹

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. Aboriginal people with a disability are 14 times more likely to be imprisoned than the general population.³⁰ Disability adds complexity to health care that the AJC does not believe is being adequately catered for.

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.

Culturally safe services

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.³¹ 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’.³² It is particularly insidious, as it is difficult to quantify or ‘see’ in operation, and ‘those who practice it generally deny its existence’.³³

“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.” (AJA, 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.³⁴ 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.

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.”³⁵

²⁹ 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.

³⁰ 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.

³¹ *ibid*, Vol 1, 1.72

³² Johnston, 1991, vol 2, p 161.

³³ 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>

³⁴ Bowling, Violent Racism: Victimisation, Policing and Social Context, July 1998, paras 21-22, pp 3-4.

³⁵ 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.

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.**”³⁶

The lack of culturally safe 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.³⁷ When the AJC recently 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.”*³⁸

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.³⁹

Recommendation 4: Mandate regular training in Aboriginal cultural awareness, systemic racism and unconscious bias for: a) All agencies and bodies involved in the design, delivery or administration of programs and services across the Corrections system (Corrections staff, Justice Health, healthcare professionals, all staff involved in organisations currently delivering custodial healthcare).

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.”

³⁶ [Inquest into the Passing of Veronica Nelson](#), [172].

³⁷ Victorian Ombudsman, [Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre](#) (2017), p. 92.

³⁸ 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

³⁹ *ibid*

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 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 Coroner’s 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.⁴⁰ 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 continue to 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.

⁴⁰ [Inquest into the Passing of Veronica Nelson](#), COR 2020 0021, 30 January 2023, Findings 50 and 19.

Recommendation 5: The Victorian Government fully implement all 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 6: Provide people in custody with healthcare (including mental healthcare) 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.

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.⁴¹ 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.

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.⁴² This includes:

- Aboriginal Health Checks, which aim to improve detection and early treatment⁴³
- Access to allied mental health services for people with a diagnosed mental health condition⁴⁴
- 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.

Recommendation 7: The Federal Government must ensure that incarcerated people have access to the Pharmaceutical Benefits Scheme (PBS) and the Medicare Benefits Schedule (MBS). The Victorian Government should advocate with other States and Territories and the Commonwealth to enable this access.

⁴¹ 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).

⁴² 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.

⁴³ See Medicare Benefits Schedule, Item 715, Aboriginal and Torres Strait Islander Peoples Health Assessment.

⁴⁴ See Department of Health, [Better Access Initiative](#).

Self-determination – from setting standards to service delivery

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 AM⁴⁵

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.⁴⁶

Many of the recommendations 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).

Progressing self-determination has been at the heart of the AJA since its inception in 2000, and the establishment of local, regional and statewide governance mechanisms for Aboriginal justice (LAJACs, RAJACs and the AJF) to bring together Aboriginal organisations and communities on justice matters. With each subsequent phase of the Agreement, the role of the AJC has evolved, and resources provided for Aboriginal organisations to deliver programs and services have grown, but government have retained ultimate decision-making authority.

The Victorian Government committed to self-determination as the primary driver of Aboriginal affairs policy in 2015.⁴⁷ 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.⁴⁸

While the definition provides guidance, Indigenous peoples must determine the scope and shape of self-determination in practice.

⁴⁵ Dr Lois Peeler AM is Elder in Residence of Worawa Aboriginal College and Chairperson, Eastern Metropolitan RAJAC. Quote from *Dungala Kaiela Oration*, 9 September 2020.

⁴⁶ 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

⁴⁷ Victorian Government, *Victorian Aboriginal Affairs Framework 2018-2023*

⁴⁸ 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/desa/indigenouspeoples/wp-content/uploads/2018/12/UNDRIP_en.pdf)

The Victorian Government acknowledges that ‘Aboriginal people in Victoria are the people best placed to know what works when it comes to achieving better outcomes for their own communities’.⁴⁹ Commitments to self-determination abound in government policy documents and frameworks, yet it remains a ‘guiding principle’ rather than a right enshrined in legislation.

“We believe that the Victorian government must continue to meaningfully act on its commitment to Aboriginal self-determination and continue to shift towards greater Aboriginal community control and decision-making across the justice system.” Professor Muriel Bamblett AO⁵⁰

The right to self-determination is not included in the *Charter of Human Rights and Responsibilities Act 2006* (Vic). As part of the 2010 review of the Charter, consultation was undertaken with Aboriginal community members around inclusion of the right to self-determination. Those consultations supported its inclusion on the basis that it is fundamental for the acknowledgment of the status of Aboriginal people and our unique rights and status.⁵¹

The Charter requires public authorities, such as Victorian state and local government departments and agencies, and people delivering services on behalf of government, to act consistently with the human rights in the Charter. Including the right to self-determination in the Charter would provide the AJC and other Aboriginal group further avenues to highlight instances when public authorities have not given proper consideration to this right when making decisions.

Recommendation 8: Enshrine the right of Aboriginal and Torres Strait Islander peoples to self-determination in the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and other relevant justice legislation like the *Corrections Act 1968*.

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.

⁴⁹ Department of Premier and Cabinet, 2016, *Victorian Government Aboriginal Affairs Report*, Victoria State Government. p.10.

⁵⁰ Professor Muriel Bamblett AM is CEO of the Victorian Aboriginal Child Care Agency and a member of the AJC. Quote from transcript Public Hearing, Inquiry into Victoria’s Criminal Justice System, 20 September 2021.

⁵¹ Larissa Behrendt and Alison Vivian, Victorian Equal Opportunity and Human Rights Commission, Indigenous self-determination and the Charter of Human Rights and Responsibilities: A framework for discussion (March 2010); SED Consulting for Victorian Equal Opportunity & Human Rights Commission, Talking Rights: Consulting with Victoria’s Indigenous community about the right to self-determination and the Charter (March 2011)

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.⁵²

Recommendation 9: 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.

Effective engagement with Aboriginal perspectives

The Aboriginal Justice Agreement has been active for 23 years, across four iterations. It is founded upon a need for government and justice agencies to engage and work with the Aboriginal Community, through the Aboriginal Justice Caucus. Unfortunately, Caucus does not believe current engagement is satisfactory or in line with the partnership principles outlined in the Agreement, particularly the first principle to prioritise 'Self-determination for Aboriginal Peoples'⁵³.

"Meaningful and effective reforms must be guided by the expertise of the AJC and supported by the Regional Aboriginal Justice Advisory Committees (RAJACs) and the many leaders, Elders and members of Aboriginal communities across Victoria. This approach recognises that Aboriginal experiences and voices must be at the centre of decision-making to deliver better policies and programs that reflect community needs and aspirations. This is critical to moving beyond partnership and towards true self-determination." (Minister for Corrections, Youth Justice, Victim Support; The Hon. Enver Erdogan⁵⁴)

While this principle was recognised repeatedly during Yoorrook hearings by Ministers and departmental executives, particularly those who are signatories to the AJA, there are several recent examples of failures to put this principle into practice:

- Failure to engage early and proactively with the AJC, particularly in the formulation stage of policy, program or legislative development.
- Government creation of policies/frameworks that AJC are 'consulted' on without any real opportunity for changes to be made that reflect our feedback
- Engaging Aboriginal public servants, or an individual Aboriginal organisations or Elder instead of capturing the collective views of the AJC (and the communities and organisations that our members represent)

⁵² [Cultural Review](#), Recommendation 5.8

⁵³ Burra Lotjpa Dunguludja, p. 54

⁵⁴ Minister Erdogan, Yoorrook Witness Statement

Health frameworks and standards

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.⁵⁵ Whereas Burra Lotjpa Dunguludja (AJA4) highlights the need for Aboriginal involvement and decision-making in relation to all legislation, policies and frameworks that disproportionately affect Aboriginal people including those related to the provision of health care in custody.

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

The development of the Justice Health Quality Framework 2014 is an example of this. The AJC were not engaged in development of the overall framework (Part I) but were engaged in relation to the one health service standard (5.2.1) for 'Aboriginal and Torres Strait Islander, Cultural and Specific Needs'. The AJC were not engaged in relation to the other 17 health service standards (in Part II of the Framework) or development of the Performance Assessment and Reporting Requirements (Part III). This piecemeal approach to the incorporation of Aboriginal perspectives into the Framework, undermined its effectiveness in relation to the delivery of high quality, culturally safe health services for Aboriginal people in prison. No reporting was required for the service standard relating to Aboriginal Needs (5.2.1) and none of the performance assessment or reporting for the other standards required disaggregation of information by Aboriginal status. In effect, this rendered the quality and provision of health services to Aboriginal people in prison invisible to Justice Health contract managers and their decision-making.

There needs to be ongoing engagement with, and response to Aboriginal perspectives in the development of frameworks and standards relating to custodial health care delivery and accountability. 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.'*

In development of the new Quality Framework and Service Specifications (the Framework) for custodial healthcare delivery, the AJC (as the collective of Aboriginal partners under the AJA) 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 and the associated procurement and performance assessment requirements.

Once these development and review processes were underway, we were engaged on some aspects of the work, and understand that Aboriginal people in prison were also involved in the review (which we strongly support), but not others.

⁵⁵ For example, AJA3 encouraged collaborative work between the Department of Health and relevant government agencies and Aboriginal community organisations at strategic points across the justice system, to develop and deliver better mental health services, and alcohol and drug services for Aboriginal men and women in prison and during transition back to Community. Key to this was the design and delivery of the Aboriginal Social and Emotional Wellbeing Framework that applied to all prison and community-based corrective 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).

We are disappointed Corrections did not engage with the AJC throughout the recent procurement process to appoint a provider of custodial health care. Doing so aligns with the Victorian Government’s commitment to self-determination as the guiding principle in Aboriginal affairs⁵⁶. When AJC queried this lack of involvement at AJF 65 in Shepparton (July 2023) 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.

Greater effort is required to bring Aboriginal perspectives into decision-making about custodial healthcare. Ensuring Aboriginal perspectives are reflected in criteria used to select service providers and assess performance are two critical starting points for improvement.

We have raised these concerns with Corrections and Justice Services and acknowledge their commitment, and that of Justice Health and the Aboriginal Health Unit to early and extensive engagement with the AJC in future.

Recommendation 10: That there be early and ongoing engagement with the Aboriginal Justice Caucus in the development, implementation and review of frameworks and standards relating to custodial health care delivery and accountability.

Service delivery

AJC believe that healthcare service provision should be 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 known⁵⁷.

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.⁵⁸ Wellpath, formerly named Correct Care Solutions, has allegedly been sued more than 140 times⁵⁹ and is accused of contributing to more than 70 deaths in the US between 2014 and 2017.⁶⁰

⁵⁶ Burra Lotjpa Dunguludja – Victorian Aboriginal Justice Agreement Phase 4, p.11

⁵⁷ See AJC submission to Yoorrook Justice Commission

⁵⁸ S. Schwartz, The Age, [Indigenous Victorians pay a high price when prisons prioritise profit](#), 4 November 2022.

⁵⁹ 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.

⁶⁰ 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.



In January 2023 GEO Group were awarded the new contract to provide healthcare across 13 of Victoria's public prisons from July 2023.⁶¹ GEO Group were actually the signatory to the previous contract when Correct Care Australasia was still a subsidiary of GEO Group.⁶² 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."⁶³ 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.^{64,65,66}

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 65th 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 11: The Victoria Government must end privatisation of healthcare in prisons, including by cancelling the new contract with GEO Group, and transferring all prison healthcare services to the public healthcare system.

⁶¹ Businesswire, [The GEO Group Signs Contract for Delivery of Primary Health Services in Prisons Across the State of Victoria, Australia](#), 9 January 2023.

⁶² S. Schwartz, The Age, [Indigenous Victorians pay a high price when prisons prioritise profit](#), 4 November 2022.

⁶³ J. Dunstan, ABC Online, [Calls for overhaul as Victoria continues to outsource prison health care to private companies](#), 12 January 2023.

⁶⁴ J. Diaz, NPR, [GEO Group sickened ICE detainees with hazardous chemicals for months, a lawsuit says](#), 25 March 2023.

⁶⁵ J. Iannelli, Miami New Times, [Five Reasons South Florida's Pro-Trump Private-Prison Company Is Evil](#), 7 January 2018.

⁶⁶ D. Sadler, The Saturday Paper, [Controversial prison health contractor back in business](#), 22 April 2023.

Supporting and resourcing ACCHOs to provide healthcare in custody

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, VACCHO⁶⁷ 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-reach health services in prisons.⁶⁸ 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.⁶⁹

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.⁷⁰

“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 Bamblett⁷¹

The lack of sustainable, long-term funding for Aboriginal organisations undermines Aboriginal self-determination. The UNDRIP outlines Indigenous peoples ‘have the right to autonomy of self-government in

⁶⁷ VACCHO, [Victorian Election 2022 Platform: Aboriginal Health in Aboriginal Hands](#) (2022).

⁶⁸ [Inquest into the Passing of Veronica Nelson](#), Recommendation 25.

⁶⁹ [Cultural Review](#), Recommendation 5.8.

⁷⁰ [Evaluation of AJA3 | Aboriginal Justice](#), see the AJA3 – Evaluation synthesis and AJA3 Evaluation – summary of findings.

⁷¹ 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.

matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions'.⁷²

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.⁷³

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.⁷⁴ 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 Parliamentary Inquiry into Victoria's Criminal Justice System recommended 'long-term funding arrangements which support the expansion of Aboriginal community-controlled organisations' leadership and service provision with the justice and social services sectors and diversify and expand the social, health, forensic and legal services provided by these organisations to the Aboriginal community.'⁷⁵

Similarly, 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.'⁷⁶ 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.'⁷⁷

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

ACCHO's 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.

⁷² Article 4, UNDRIP

⁷³ National Agreement on Closing the Gap, Priority Reform Area 2 [Priority Reforms | Closing the Gap](#)

⁷⁴ *ibid*

⁷⁵ Parliament of Victoria, Legal and Social Issues Committee, Inquiry into Victoria's Criminal Justice System (2022) Recommendation 14

⁷⁶ CCYP, *Our Youth Our Way*, Recommendation 2, pp. 116-117

⁷⁷ Wirkara Kulpa, p. 50.



GEO 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 has announced that the local public health service, Barwon Health⁷⁸ will partner with Wathaurong Aboriginal Co-operative to provide culturally safe healthcare for Aboriginal and Torres Strait Islander people.

Recommendation 12: That the Victorian Government 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).

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. Caucus 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'⁷⁹ 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 13: Responsibility for prison healthcare should be transferred from the Department of Justice and Community Safety to the Department of Health.

⁷⁸ J. Taylor, Times News Group, [Barwon Health to provide services at Cherry Creek](#), 19 July 2023.

⁷⁹ Victoria Law, *"Prisons Make Us Safer": and 20 Other Myths about Incarceration* (Beacon press, 2021).

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.⁸⁰ Accordingly, the Coroner recommended that the Government must revise the system for auditing and scrutiny of custodial health care services.⁸¹

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.

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'.⁸²

⁸⁰ [Inquest into the Passing of Veronica Nelson](#), [638].

⁸¹ [Inquest into the Passing of Veronica Nelson](#), Recommendation 18.

⁸² Burra Lotjpa Dunguludja, p.51



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 14: 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 15: The Government should significantly reform the system for monitoring prison healthcare services, to ensure that prison healthcare outcomes are the primary mechanism for measuring the delivery of prison healthcare services.

Advance Aboriginal data sovereignty and governance⁸³

“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.” VACCHO⁸⁴

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 Communities⁸⁵.

The Victorian Government recognises ‘Aboriginal ownership and control of data is a key enabler of self-determination’⁸⁶ and that ‘Aboriginal communities and organisations should have governance, choice and control over data collected from and about their communities.’⁸⁷

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, particularly in relation to outcomes. 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 in custody and the broader criminal legal system.

⁸³ 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.’

⁸⁴ Quoted in the Victorian Aboriginal Affairs Framework 2018-2023

⁸⁵ Kukutai, T., & Taylor, J (Eds), 2016, Indigenous Data Sovereignty – Toward an Agenda

⁸⁶ Victorian Government 2018, Victorian Aboriginal Affairs Framework, p.59

⁸⁷ Victorian State Government, Victorian Closing the Gap Implementation Plan 2021-2023, p. 46.

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.⁸⁸

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.’ The AJC consider these commitments have not been fulfilled across the criminal legal system and should be progressed with some urgency.

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 16: There must be greater transparency of Information on custodial health care provision and outcomes for Aboriginal people. Data need to be collected and accessible to Aboriginal people and organisations.

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 exist⁸⁹. 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

⁸⁸ 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](#)

⁸⁹ Amanda Porter, [Quantifying an Australian Crisis: Black Deaths in Custody](#)

mitigation strategies. Accurate and accessible data will provide insight into these occurrences and the specific needs of the people involved.

Recommendation 17: 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 bodies⁹⁰:

- Victorian Ombudsman⁹¹
- Health Complaints Commissioner⁹²
- Mental Health Complaints Commissioner⁹³
- Independent Broad-Based Anti-Corruption Commission⁹⁴ (IBAC) which receives complaints and notifications of public sector corruption.

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.⁹⁵ 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.⁹⁶ 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).

⁹⁰ 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."

⁹¹ 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.

⁹² <https://hcc.vic.gov.au/make-complaint>

⁹³ <https://www.mhcc.vic.gov.au/what-expect>

⁹⁴ <https://www.ibac.vic.gov.au/report>

⁹⁵ Victorian Ombudsman, [2022 Annual Report](#) (2022) p. 29.

⁹⁶ 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



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.⁹⁷

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 18: 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 19: The Victorian Government should 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.

at DPFC and Ravenhall. The Djirra Prison Support Program provides after-hours support for Aboriginal women and focuses on the prevention of family violence.

⁹⁷ A. Ore and M. Davey, The Guardian, [No action taken against Victorian mental health services despite more than 12,000 complaints](#), 26 May 2022.

Appendix 1 – RCIADIC recommendations relating to healthcare referred to in coronial inquest

The '2005' and '2018' columns refer to agency assessments of implementation in reviews published in those years. FI = fully implemented, PI= Partially implemented

RCIADIC Recommendation	2005	2018
<p>150. That the health care available to persons in correctional institutions should be of an equivalent standard to that available to the general public. Services provided to inmates of correctional institutions should include medical, dental, mental health, drug and alcohol services provided either within the correctional institution or made available by ready access to community facilities and services. Health services provided within correctional institutions should be adequately resourced and be staffed by appropriately qualified and competent personnel. Such services should be both accessible and appropriate to Aboriginal prisoners. Correctional institutions should provide 24 hour a day access to medical practitioners and nursing staff who are either available on the premises, or on call.</p>	FI	FI
<p>152. That Corrective Services in conjunction with Aboriginal Health Services and such other bodies as may be appropriate should review the provision of health services to Aboriginal prisoners in correctional institutions and have regard to, and report upon, the following matters together with other matters thought appropriate:</p> <ul style="list-style-type: none"> a. The standard of general and mental health care available to Aboriginal prisoners in each correctional institution; b. The extent to which services provided are culturally appropriate for and are used by Aboriginal inmates. Particular attention should be given to drug and alcohol treatment, rehabilitative and preventative education and counselling programs for Aboriginal prisoners. Such programs should be provided, where possible, by Aboriginal people; c. The involvement of Aboriginal Health Services in the provision of general and mental health care to Aboriginal prisoners; d. The development of appropriate facilities for the behaviourally disturbed; e. The exchange of relevant information between prison medical staff and external health and medical agencies, including Aboriginal Health Services, as to risk factors in the detention of any Aboriginal inmate, and as to the protection of the rights of privacy and confidentiality of such inmates so far as is consistent with their proper care; f. The establishment of detailed guidelines governing the exchange of information between prison medical staff, corrections officers and corrections administrators with respect to the health and safety of prisoners. Such guidelines must recognise both the rights of prisoners to confidentiality and privacy and the responsibilities of corrections officers for the informed care of prisoners. Such guidelines must also be public and be available to prisoners; and g. The development of protocols detailing the specific action to be taken by officers with respect to the care and management of: <ul style="list-style-type: none"> i. persons identified at the screening assessment on reception as being at risk or requiring any special consideration for whatever reason; ii. intoxicated or drug affected persons, or persons with drug or alcohol related conditions; iii. persons who are known to suffer from any serious illnesses or conditions such as epilepsy, diabetes or iv. persons who have made any attempt to harm themselves or who exhibit, or are believed to have exhibited, a tendency to violent, irrational or potentially self-injurious behaviour, 	FI a, d, e, f and g PI b & c	FI

<p>v. apparently angry, aggressive or disturbed persons;</p> <p>vi. persons suffering from mental illness;</p> <p>vii. other serious medical conditions;</p> <p>viii. persons on medication; and</p> <p>vii. such other persons or situations as agreed.</p>		
<p>153. a. Prison Medical Services should be the subject of ongoing review in the light of experiences in all jurisdictions;</p> <p>b. The issue of confidentiality between prison medical staff and prisoners should be addressed by the relevant bodies, including prisoner groups; and</p> <p>c. Whatever administrative model for the delivery of prison medical services is adopted, it is essential that medical staff should be responsible to professional medical officers rather than to prison administrators.</p>	FI	FI
<p>154. That:</p> <p>a. All staff of Prison Medical Services should receive training to ensure that they have an understanding and appreciation of those issues which relate to Aboriginal health, including Aboriginal history, culture and life-style so as to assist them in their dealings with Aboriginal people;</p> <p>b. Prison Medical Services consult with Aboriginal Health Services as to the information and training which would be appropriate for staff of Prison Medical Services in their dealings with Aboriginal people; and</p> <p>c. Those agencies responsible for the delivery of health services in correctional institutions should endeavour to employ Aboriginal persons in those services.</p>	PI	FI
<p>156. That upon initial reception at a prison all Aboriginal prisoners should be subject to a thorough medical assessment with a view to determining whether the prisoner is at risk of injury, illness or self-harm. Such assessment on initial reception should be provided, wherever possible, by a medical practitioner. Where this is not possible, it should be performed within 24 hours by a medical practitioner or trained nurse. Where such assessment is performed by a trained nurse rather than a medical practitioner then examination by a medical practitioner should be provided within 72 hours of reception or at such earlier time as is requested by the trained nurse who performed such earlier assessment, or by the prisoner. Where upon assessment by a medical practitioner, trained nurse or such other person as performs an assessment within 72 hours of prisoners' reception it is believed that psychiatric assessment is required then the Prison Medical Service should ensure that the prisoner is examined by a psychiatrist at the earliest possible opportunity. In this case, the matters referred to in Recommendation 151 should be taken into account.</p>	FI	FI
<p>161. That police and prison officers should be instructed to immediately seek medical attention if any doubt arises as to a detainee's condition.</p>	FI	FI

Appendix 2 – Coronial recommendations relating to custodial healthcare, 1991-2023

Recommendation	Reference
Scrutiny and oversight	
<p>That the Victorian Government revise the system for auditing and scrutiny of custodial health care services to ensure that it is:</p> <ol style="list-style-type: none"> 1. independent; 2. comprehensive; 3. transparent; 4. regular; 5. designed to enhance the health, wellbeing and safety outcomes for Victorian prisoners; 6. designed to ensure custodial health care services are delivered in a manner consistent with Charter obligations; and 7. that the implementation of any recommendations for improved practice identified by the system for auditing and scrutiny is monitored. 	VN, 2023 Rec 18
<p>That the Department of Health and the Department of Justice and Community Safety:</p> <ol style="list-style-type: none"> 1. consult to determine, from a clinical patient outcome perspective, which department should have oversight of custodial health services; and 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. 	VN, 2023 Rec 19
That Justice Health review and, if necessary, revise the Justice Health Quality Framework.	VN, 2023 Rec 21
Assessment and communication	
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.	VN, 2023 Rec 24
<p>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.</p> <ol style="list-style-type: none"> 1. The medical practitioner’s certification should include: <ol style="list-style-type: none"> i. confirmation that the prisoner is medically fit to leave the Medical/Health Centre; ii. whether the medical practitioner recommends any medical or management observations to ensure the prisoner’s health or wellbeing; iii. identification of any specific clinical deterioration risk indicators the medical practitioner recommends custodial and health staff monitor; and iv. instructions to guide the response, including escalation of the prisoner’s care, if clinical deterioration risk indicators are observed. 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. 	VN, 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	VN, 2023 Rec 28

Recommendation	Reference
guidelines to assist custodial and clinical staff to identify a prisoner's clinical deterioration, including 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.	VN, 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
Culturally safe care	
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.	VN, 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.	VN, 2023 Rec 26
That Justice Health require custodial Health Service Providers to: <ol style="list-style-type: none"> 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 	VN, 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.	VN, 2023 Rec 30
Addiction	
That Justice Health: <ol style="list-style-type: none"> 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 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. 	VN, 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.	VN, 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	VN, 2023 Rec 23

Recommendation	Reference
public hospital for the provision of equivalent community health services not presently provided at the Medical/Health Centre.	
<p>That Justice Health require custodial Health Service Providers to:</p> <ol style="list-style-type: none"> 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; 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; identify alternative alcohol and other drugs training programs for medical practitioners; 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. 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"> addressing AOD Use in Diverse Communities; and opioid Withdrawal Nursing Care and Management. employ medical practitioners and nurse practitioner qualified to practise opioid pharmacotherapy; employ a full-time specialist who has completed Advanced Training in Addiction Medicine. 	VN, 2023 Rec 29
<p>That Correct Care Australasia:</p> <ol style="list-style-type: none"> encourage and facilitate the doctors it employs to become members of the RACGP to enable them to access RACGP training programs; and identify alternative alcohol and other drugs training programs for CCA medical practitioners; and 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; 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"> addressing AOD Use in Diverse Communities; and opioid Withdrawal Nursing Care and Management; employ medical practitioners and nurse practitioner qualified to practise opioid pharmacotherapy; employ a full-time specialist who has completed Advanced Training in Addiction Medicine. 	VN, 2023 Rec 31
Dispensing medication	
<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"> 'Trap-to-trap' dispensation and alternatives including but not limited to opening cell doors to dispense medication, Dispensing medication directly to prisoners from a central point in the Unit; and 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. 	GH, 2020 Rec 1

Recommendation	Reference
Cell access	
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.	VN, 2023 Rec 33
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]).	GH, 2020 Rec 2
Cultural awareness training	
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: 1. CV; and 2. Correct Care Australasia and/or the Health Service Provider at Dame Phyllis Frost Centre.	VN, 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.	VN, 2023 Rec 35
Debriefs	
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: 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 2. a process to optimise the participation of relevant staff in any debrief.	VN, 2023 Rec 37
Assurance and review	
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: 1. are independent; 2. receive input from relevant staff who interacted with or were responsible for decisions affecting the prisoner proximate to their death; 3. are comprehensive; 4. identify opportunities for improved practice and to enhance the wellbeing and safety of prisoners, rather than merely assess compliance with relevant policies; 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 6. are timely.	VN, 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>	NR, 2011 Rec 1

Recommendation	Reference
<ul style="list-style-type: none"> • amend the Notifiable Incident/Event Report template and guidelines including review of medical alert rating, risk rating, medical status and outcome; • develop a template palliative care plan to be used with palliative care prisoners; and • 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. 	
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