



Nuther-mooyoop (submission) to the Yoorrook Justice Commission on Systemic Injustice in the Criminal Justice System

Centre for Innovative Justice (November 2022)

Acknowledgment

The Centre for Innovative Justice (CIJ) at RMIT University acknowledges the people of the Woi wurrung and Boon wurrung language groups of the eastern Kulin Nation on whose unceded lands we conduct the business of the University. CIJ respectfully acknowledges their Ancestors and Elders, past, present and emerging. CIJ also acknowledges the Traditional Custodians and their Ancestors of the lands and waters across Australia where we conduct our business.

In addition, CIJ acknowledges the devastating and ongoing impacts of colonisation on Aboriginal communities, impacts which have a direct and continuing relationship with the vastly disproportionate rate at which Aboriginal people have contact with the criminal justice system, as well as their experiences of racism, discrimination – and disproportionate rates of child removal – once this contact occurs. These impacts are also directly related to the very specific and multiple impacts of intergenerational trauma which Aboriginal communities experience. Despite these impacts, we recognise the extraordinary strength, resilience and capacity of Aboriginal communities and acknowledge their leadership across Victoria in striving to improve Aboriginal justice outcomes.

About the Centre for Innovative Justice

The CIJ was established in 2012 to explore innovative ways to improve the justice system, with a focus on people's lived experiences. The CIJ's objective is to develop, drive and expand the capacity of the justice system to meet and adapt to the needs of its diverse users. The CIJ meets this objective by conducting rigorous research which focuses on having impact – taking our research findings, most of which involve direct engagement with service users, and using them to develop innovative and workable solutions.

The CIJ brings together an experienced team of multi-disciplinary researchers and practitioners to develop solutions to complex problems through research and innovation that is strategic, accessible and practical. Our work includes research on therapeutic jurisprudence, restorative justice, victim services, family violence, women's decarceration and disability in the criminal justice system, as well as the application of human-centred design to legal issues and processes. The CIJ has particular expertise in self-determination in the justice context and this nuther-mooyoop (submission) provides information about some of the important work we have been involved with, alongside Aboriginal-led and community-controlled organisations.

We also work with governments, courts and tribunals, not-for-profit entities, community organisations and private corporations. The CIJ includes Open Circle, a service that provides restorative justice program and policy design consultancy and research services as well as undertaking restorative practice.

1. Introduction

The Centre for Innovative Justice at RMIT University (CIJ) welcomes the opportunity to provide a nuther-mooyoop to the Yoorrook Justice Commission on Systemic Injustice in the Criminal Justice System. As Yoorrook made clear in its interim report, this is a matter of urgency. Despite the findings and recommendations of several reports, commissions and inquiries, Aboriginal rates of incarceration remain at unacceptable levels and are continuing to trend higher;¹ Aboriginal women are being disproportionately remanded in custody compared to other groups in the community;² and at least five-hundred and seventeen Aboriginal people have died in custody since the 1991 Royal Commission into Aboriginal Deaths in Custody (RCIADIC).³ Systemic injustice continues to be a substantial cause of harm to the community.

By describing for Yoorrook some of the work CIJ has done with the community as they continue to work to achieve change, this nuther-mooyoop hopes to contribute to realising the community's vision for justice. This nuther-mooyoop aims to respond to Yoorrook's call for "examples of good practice that should be adopted or expanded to address systemic injustice" and its interest in seeking to understand "why previous recommendations for reform have not been properly accepted or implemented". With permission from community, this nuther-mooyoop shares examples of good practice and approaches that CIJ has researched, or contributed to, including as a part of its role in supporting Aboriginal-led or community-controlled organisations to articulate their vision for justice, to contribute to law reform processes, or to design self-determined justice models.

This nuther-mooyoop also provides examples of CIJ projects which have involved working closely with people with lived experience of justice involvement to advocate for alternative approaches to justice. While not solely addressing the experience of Aboriginal people in the justice system, these examples included Aboriginal participants and are included with the hope that they contribute to the information and evidence available to Yoorrook about alternative approaches and some of the factors that may be relevant in understanding why some attempts to create change succeed while others fail.⁴

¹ According to the Sentencing Advisory Council, 'The imprisonment rate for Aboriginal and Torres Strait Islander Victorians increased by 3.1%, from 1845.4 in June 2020 to 1903.5 in June 2021. During the same period, the imprisonment rate for all Victorians increased by 2.0%, from 136.0 in June 2020 to 138.7 in June 2021. The imprisonment rate for Aboriginal and Torres Strait Islander Victorians is significantly higher than the rate for the total Victorian population. The Aboriginal and Torres Strait Islander imprisonment rate almost doubled between 2011 and 2021, from 965.2 to 1903.5 per 100,000 adults.' See Sentencing Advisory Council, *Victoria's Indigenous imprisonment Rates* accessed at <https://www.sentencingcouncil.vic.gov.au/sentencing-statistics/victorias-indigenous-imprisonment-rates>

² Parliament of Victoria, Legislative Council Legal and Social Issues Committee, *Inquiry into Victoria's criminal justice system*, Finding 37, p449, accessed at <https://www.parliament.vic.gov.au/lsc-lc/inquiries/article/4534>. See also CIJ's *Leaving custody behind: Foundations for safer communities and gender-informed criminal justice systems* (July 2021). This paper draws together evidence about women's involvement in the criminal justice system and the factors behind the escalating female imprisonment rate in Victoria. It highlights the disproportionate harm caused by the incarceration of women and the urgent need to find alternatives that better meet human rights standards. <https://cij.org.au/cms/wp-content/uploads/2021/09/leaving-custody-behind-issues-paper-july-2021-.pdf>

³ VALS, *Community Fact sheet: Ending Aboriginal Deaths in Custody*, accessed at <https://www.vals.org.au/aboriginal-deaths-in-custody/#:~:text=Since%20the%20RCDIAC%20handed%20down,more%20in%20our%20fact%20sheet.>

⁴ All of these examples are summarised in this document, rather than reproduced in full. Links to project reports, related submissions and research have been embedded in this document, to provide more detail of the examples provided. These linked documents are intended to form part of this nuther-mooyoop to the Yoorrook Justice Commission.

2. Aboriginal-led projects and self-determined justice

Key insights

- Positive outcomes are achieved when Aboriginal people and communities lead change.
- Power and resources need to be shifted from government back to community.
- The voices of people with lived experience are critical for change.

2.1 The Yallum Yallum Project – Developing a self-determined justice model

This community-led project used co-design practices to support the development of an independent self-determined justice model incorporating an ‘Elders and Respected Persons Council’, to be known as Yallum Yallum.

The project’s origins stemmed from the wishes of the local community in the region—which includes five Traditional Owner groups, the Wotjobaluk, Wergaia, Jupagalk, Jaadwa and Jadawadjali people—who through the RAJAC and in other forums resisted the proposed expansion of Koori Court in the region. The community did not consider the Koori Court model—a sentencing court for Aboriginal people who plead guilty to a criminal offence—to represent a fully self-determined model of justice. Instead, they wanted to create an alternative approach that would promote cultural healing, social and emotional wellbeing and a stronger role in culture and community.

The model developed by the community is a process for referring willing community members to the Yallum Yallum Elders and Respected Persons Council. The Council will assist the referred person to find their cultural identity; drawing on local connections to tailor referrals to programs to engage the person with culture and community, with the aim of preventing or reducing offending. The Council will set cultural milestones and acknowledge and celebrate when those milestones are met. This engagement is envisioned as a process, with regular check ins and meetings over a period of time, rather than a once off event.

Project governance and co-design methodology

The project was developed at the request of, and in collaboration with, the Victorian Aboriginal Community Services Association (VACSAL) and the Grampians Regional Aboriginal Justice Advisory Committee (RAJAC). It was important to the community that the governance and co-design process that informed the development of the model was Aboriginal-led.

An essential first step in achieving this was the establishment of the Yallum Yallum Steering Committee, comprising two community Elders and leaders from the Goolum Goolum Aboriginal Cooperative, RAJAC and VACSAL. The CIJ undertook a project management and research role in support of the local community and the Steering Committee.

The model was developed through a process of co-design across four workshops with key Aboriginal community members, organisations, and other non-Aboriginal stakeholders. This process involved constant refinement as each workshop drew on the learnings of the previous workshop.

Community members and stakeholders engaged in workshops in two separate streams. The decision to keep the community members and stakeholders who are part of the formal justice system (including police officers and magistrates) separate, was a considered one, to address the power imbalance that

might be felt between the two groups. One of the goals of adopting a co-design process to develop a self-determined justice model was to shift the power from the traditional decision makers (the state and its agencies) to the community.

The separate groups had different functions. The community had control over imagining and creating the Yallum Yallum model, while the stakeholders were asked for their perspective on how the model—once envisioned by community—could be implemented and how it might interface with the existing processes of the courts and police. Keeping the groups separate also negated the potential for the community to feel inhibited in speaking freely in front of the traditional decision makers and holders of power. It ensured that the community could form its own vision for justice, unimpeded by the influence of stakeholders representing the interests of the conventional justice system.

Co-design with community provided the foundation for the vision and values statement for Yallum Yallum that was then refined by the Steering Committee.

Yallum Yallum Values

- Self-determination through community control of both the process and outcome
- Enabling voice of ancestors, elders and participants
- Embedding culture through place, process, participation and outcome
- Accountability to community, through support, healing and return to community
- Centring on the strength of community relationships
- Providing meaningful, restorative and problem-solving outcomes
- Participation does not require admission of guilt but does require acknowledgment of obligation
- Accessible to willing participants (of any age) who identify as part of community

The final report outlined the proposed model for Yallum Yallum, including vision and values, governance and administration, and program processes. It also set out a high-level implementation plan, with suggestions for the approach to evaluation, and the establishment of a pilot to be run by Goolum Goolum Aboriginal Cooperative. The next stage of the project will involve the implementation of the model.

Originating from the wishes of the local community and the priorities of the RAJAC, the project is a good example of the way in which the Aboriginal Justice Agreement (AJA)—which was established in 2000 as an agreement between the Victorian Government and the Victorian Aboriginal community, with the principle of self-determination at its core—has provided a framework for community to agree on its own priorities for justice and to design and develop its own solutions to the challenges it faces.

The Yallum Yallum Elders and Respected Council Report can be accessed [here](#).

2.2 The Yallum Yallum Project – Australian and International First Nations Justice Models Research

The workshops held as part of the co-design process to develop the Yallum Yallum self-determined justice model were informed by research undertaken by CIJ documenting examples of Australian and international First Nations justice models.

The research prepared by CIJ provides examples of a range of self-determined justice processes in other jurisdictions. The research identifies two broad categories of justice models. The first are described as 'hybrid' justice models, such as First Nations sentencing courts.

These hybrid models do not operate separately from the existing justice system but provide a mechanism for First Nations input into the system. The second type are models that are closer to community controlled or self-determining justice models, such as Law and Justice Groups which provide a vehicle for Northern Territory Aboriginal communities to respond to local circumstances in a way that affords Aboriginal people greater control in dispute resolution and healing.

In addition to documenting these examples, CIJ considered the extent to which different models featured elements of self-determination by analysing them against the following criteria:

- Is the model Aboriginal led?
- Is the program design Aboriginal led?
- Is the model partially or entirely community controlled?
- Are cultural customs/practices involved?
- To what extent is the process punitive or coercive or linked to non-Aboriginal justice system?
- Who makes decisions about sentencing or other outcomes?

This analysis is documented in a self-determination table that examines features of Rangatahi and Pasifika courts, Gladue courts and Gladue reports, Circle sentencing, Cree courts, Tsuu T'ina Peacemaking courts, an Aboriginal Legal Service Community Council, Hollow Waters Community Holistic Healing Circle Initiative, First Nations sentencing courts, Aboriginal Community Justice reports, Family Group Conferencing, Laws and justice Groups, Indigenous Justice of the Peace courts from Australia, Canada and Aotearoa New Zealand.

The research informed the co-design workshops and discussions, providing concrete examples of embedding cultural practices and community voice into justice processes. It supported the community in thinking about ways to move towards a self-determining justice process. The research could similarly inform Yoorrook's findings and recommendations.

The research report and self-determination table can be accessed [here](#).

2.3 Woor-Dungin Criminal Records Discrimination Project

Woor-Dungin is an alliance of Aboriginal organisations and Aboriginal and non-Aboriginal individuals that work together for self-determination, community development, reconciliation, and advocacy.

The Woor-Dungin Criminal Records Discrimination Project is an example of an Aboriginal-led collaboration between Aboriginal and non-Aboriginal community and legal organisations, established to respond to systemic injustice impacting community members across generations, namely the unregulated disclosure of, and inappropriate reliance on, old and irrelevant criminal history. Social and economic exclusion and poor justice and health outcomes were a consequence of the absence of regulation of criminal records, all of which limit the capacity of Aboriginal community members to achieve self-determination.

The project commenced in 2015, governed by a Project Advisory Committee which was convened by Uncle Michael "Mookeye" Bell, then the CEO of Winda Mara Aboriginal Corporation. The Project Advisory Committee included representatives from a wide range of Aboriginal community-controlled

organisations, Aboriginal people working in legal, human rights and justice organisations, as well as stakeholders from the legal, university and community sectors.

The project's aims were to drive the establishment of a legislated spent convictions scheme in Victoria, and to seek an amendment to the *Equal Opportunity Act 2010* (Vic) to prohibit discrimination on the basis of an irrelevant criminal record.

A number of different strategies were adopted by the project team to bring about these reforms, all of which involved Aboriginal people directly impacted. In addition to the extensive policy and legal research work undertaken, the project team formed a Case Study Working Group, which gathered the stories of Aboriginal people in Victoria who have faced discrimination because of their criminal history. In total, 12 case studies were written up and included in a submission which the project team presented to the Aboriginal Justice Forum established under the AJA.

The case studies, which retold the real-life experiences of Aboriginal people affected by these practices, were able to illustrate the impacts of unjust policy and practice around criminal records disclosure, powerfully and persuasively.

A vital part of the CRDP project has been to gather the stories of Aboriginal people in Victoria who have faced discrimination because of their criminal history, to present them as case studies. Telling these stories was raised as a priority by Woor-Dungin's Aboriginal partner organisations. The stories bring the arguments for reform to life and mean that the voices of Aboriginal people with lived experience of the criminal justice system are heard.⁵

The stories clearly demonstrated the special disadvantage suffered by Aboriginal people with a criminal record and provided a voice for Aboriginal people to challenge a significant barrier affecting their self-determination, social and economic independence.⁶

The stories became a critical part of the advocacy work required to garner support for the reforms.

These personal narratives demonstrate the real and continuing harm caused by old and irrelevant criminal records and are a very powerful element of our advocacy strategy for a spent convictions scheme and for anti-discrimination legislation to be enacted by the Victorian government.⁷

The subsequent unanimous endorsement by the Aboriginal Justice Caucus of the project team's recommendations, as outlined in the submission at the Aboriginal Justice Forum at Swan Hill in 2017 also highlighted the potential for the effective use of the AJA as a policy development process and as a platform for highlighting reforms sought by community.

A copy of the Woor-Dungin Criminal Records Discrimination Project Submission to the Aboriginal Justice Forum, which includes the case studies, can be accessed [here](#).

Expunging historical criminal records for members of the Stolen Generation

By undertaking research into past practices and collecting the stories of members of the Stolen Generation who had criminal records, the Woor-Dungin Criminal Records Discrimination Project also contributed to the correction of an historic injustice, whereby children who were forcibly removed from their parents by the state were given criminal records.

⁵ Christa Momot and Michael Bell, *Rethinking Criminal Records Check: Woor-Dungin Criminal Record Discrimination Project (CRDP) and Aboriginal Ex-Offender Employment Project (AEOEP)* Woor-Dungin/Centre for Innovative Justice, 2020, p11, accessed at <https://cij.org.au/cms/wp-content/uploads/2020/11/criminal-record-discrimination-project-and-aboriginal-ex-offender-employment-project-background-.pdf>.

⁶ Ibid p12.

⁷ Ibid p12.

Giving children criminal records as part of the process of removal is a stark example of how historic injustice associated with colonisation persists to this day as systemic injustice within the criminal justice system. By labelling Aboriginal children as ‘convicts’ in the course of traumatically removing them from their families and communities, the state established many of the preconditions for adverse interactions with the criminal justice system in later life.

The practice of giving children criminal records as part of their removal was uncovered when Uncle Larry Walsh, a Taungurung Elder, shared his story as part of the Criminal Records Discrimination Project:

As part of his interview the Taungurung elder told us that throughout his life the police have referred to a criminal record he supposedly had dating back to 1956 when he was two years old. Uncle Larry had been telling other organisations about this for years, but nobody had ever done anything about it.

Legal volunteers carried out investigations, including obtaining Uncle Larry’s full criminal record revealing a ‘conviction’ for being in need of care and protection, recorded when he was two years old, and identifying the legal provisions that made this a common practice for children who were made wards of the state by court order.⁸

Uncle Larry’s story and others like it led the Victorian government to apologise in Parliament for these practices, and in 2018, to enact laws to ensure that such records are no longer treated as criminal history.⁹ A spent convictions scheme and protection against discrimination on the basis of spent convictions was also subsequently legislated by the Victorian Parliament.¹⁰

2.4 A self-determined youth justice system

Substantial work has been carried out by the Aboriginal Justice Caucus (AJC) to reimagine the current system of youth justice in Victoria as part of the process of consultation around future reform. The CIJ has provided policy and research support to the AJC in some aspects of this work, which builds upon the vision for a self-determined justice system in Victoria, as set out in *Burra Lotjpa Dunguludja – Senior Leaders Talking Strong*,¹¹ the fourth iteration of the Victorian Aboriginal Justice Agreement.

The CIJ has documented the AJC’s vision in the course of supporting the development of reform proposals. Consistent with the AJC’s aspiration for self-determination within the context of the entire justice system, the AJC vision is for an Aboriginal community-controlled youth justice system. This vision for a self-determined justice system would see 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 justice responses for Aboriginal children and young people. Fundamental to achieving the AJC vision for youth justice is the need to shift from approaches that blame, isolate and punish individual children, towards justice approaches that:

- promote the social and emotional wellbeing of children
- build connections to families, communities and cultures

⁸ Ibid pp12-13.

⁹ *Victims and Other Legislation Amendment Act 2018 (Vic)*. See also <https://www.theage.com.au/national/victoria/criminal-records-that-branded-children-and-babies-as-criminals-to-be-expunged-20171127-gztgquo.html>

¹⁰ *Spent Convictions Act 2021 (Vic)*.

¹¹ *Burra Lotjpa Dunguludja - Senior Leaders Talking Strong*, Victorian Aboriginal Justice Agreement, Phase 4, A partnership between the Victorian Government and Aboriginal Community. <https://files.aboriginaljustice.vic.gov.au/2021-02/Victorian%20Aboriginal%20Justice%20Agreement%20Phase%204.pdm>.

- adopt culturally safe and trauma responsive approaches that are tailored to address unique causes of offending by each child or young person
- prioritise culturally responsive, healing and therapeutic approaches.

Critical in a reimagined youth justice system is the need to prioritise alternatives to youth justice custody. The AJC has articulated the importance of keeping children connected to family, community and culture, and out of the youth justice system. In their view, custody is inconsistent with the emotional and social wellbeing and development of children. To the extent that a youth justice system is necessary, the system must promote and respect the self-determination of Aboriginal children, families and communities and improve outcomes for Aboriginal children.

The AJC has also expressed its support for alternatives to custody and provided examples that include:

- Aboriginal designed and controlled residential facilities, that move away from an institutional prison model and towards a home-like environment. Examples of alternative models exist in other jurisdictions including Spain (Diagrama)¹² and Canada (Healing Lodges).¹³ An example in Victoria, albeit for adult males, is the Wulgunggo Ngalu Learning Place,¹⁴ a residential program to assist men to fulfil their Community Correction Orders. This is an initiative from the Aboriginal Justice Agreement.
- Expansion of diversionary options for children and young people such as warnings or cautions – these should be viewed as an opportunity to connect children and young people to the supports and programs they need, with no further intervention by the formal legal system.

Other important steps to move closer to a self-determined justice system for young people in Victoria articulated by the AJC include:

- Strengthening the role of Aboriginal controlled community organisations including ensuring that funding and service agreements provide certainty and stability; noting that ACCOs are frequently under-funded for the functions they perform including the provision of legal assistance and access to justice for community members.
- The principle that arresting and charging a child or young person should be the option of last resort; there should be a range of dispositions available to a court, including increasing the availability of lower-level options that would best achieve individualised justice, and which promote healing and give children the best chance to avoid custody.
- Youth justice reforms should recognise that a child has the right to express views on matters affecting them, and that they have a right to be heard in the processes that lead to decisions that affect them in accordance with Article 12 of the United Nations Convention of the Rights of the Child.¹⁵

The CIJ wishes to draw Yoorrook's attention to other submissions made by CIJ in relation to youth justice that include examples of innovative justice approaches to youth justice such as restorative justice, justice reinvestment, and evidence-based therapeutic programs:

- CIJ Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory, November 2016 (NT Royal Commission). A copy can be accessed [here](#).

¹² <https://www.fundaciondiagrama.es/en/who-we-are/about-us> See also CIJ's article *A European alternative approach to juvenile detention* <https://cij.org.au/news-and-views/a-european-alternative-approach-to-juvenile-detention/>

¹³ <https://www.csc-scc.gc.ca/002/003/002003-2000-en.shtml>

¹⁴ https://files.corrections.vic.gov.au/2021-06/wulgunggodl2015_acc.pdf

¹⁵ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

- CIJ Submission to the Council of Attorneys-General as part of their review of the age of criminal responsibility in Australia, February 2020. A copy can be accessed [here](#).

2.5 Ensuring that Aboriginal perspectives inform responses to Aboriginal victims of crime

The CIJ also wishes to draw Yoorook's attention to the experience of Aboriginal people who are victims of crime or other forms of interpersonal harm. As *Burra Lotjpa Dungaludja* recognises, Aboriginal people are dramatically overrepresented as victims of crime.¹⁶ Crucial to note, however, available statistics are likely to underrepresent the reality dramatically, as Aboriginal people face significant barriers to reporting crime victimisation. For example, studies indicate that approximately 90 percent of violence against Indigenous women is not disclosed.¹⁷

Barriers to reporting include ongoing mistrust of police, the criminal justice system and other government agencies, such as Child Protection; a lack of services that are culturally safe and adapted to the specific needs of Aboriginal people; as well as language and geographic barriers. Underreporting is further compounded by multiple layers of disadvantage created by the legacy of colonisation; intergenerational trauma associated with oppressive government policies; and the ongoing experience of discrimination, marginalisation and racism.

A specific outcome sought under *Burra Lotjpa Dungaludja* is therefore that Aboriginal victims and witnesses be better supported to manage and minimise the effects of crime. Evidence also suggests that support for people to manage and minimise the impacts of crime victimisation can have flow-on effects for other outcomes under the Agreement by reducing or disrupting trajectories into further contact with the criminal justice system, as well as by contributing to improved community safety and wellbeing.

In response to the clear need to ensure that Aboriginal people have access to culturally responsive and safe support when they experience crime victimisation, the Koori Justice Unit, in collaboration with the Victim Services, Support and Reform (VSSR) unit, commissioned the CIJ to conduct research into the needs and experiences of Aboriginal victims of crime – to give direct voice and context to the calls from community and Caucus.

From the outset, the CIJ worked in partnership with Djirra, Dardi Munwurro and Elizabeth Morgan House Aboriginal Women's Service (EMHAWs), as well as a representative from the Koori Engagement Worker network that is based at local Victims' Assistance Programs around the state. This was to ensure that the project was designed, conducted and oversighted in a way that was genuinely Aboriginal-led and consistent with the principle of self-determination, while also acknowledging the significant pressure that Aboriginal community controlled organisations had been under as a result of the impacts of COVID-19.

Approach

As well as conducting the project in a way that was genuinely Aboriginal-led, an aim of the research was that the diversity of Aboriginal victims of crime be reflected. As a result, an innovative approach to recruitment was adopted, whereby pathways that were identified by community members during the project could be followed.

¹⁶ Chris Cunneen, 'Decolonising Indigenous Victimisation' in Wilson and Ross (eds) *Crime, Victims and Policy* (Palgrave Macmillan, 2015).

¹⁷ Matthew Willis, 'Non-disclosure of violence in Australian Indigenous communities' (2011) 405 *Trends & Issues in crime and criminal justice*.

During the first phase of the project, the CIJ consulted regularly with the Aboriginal Justice Caucus, the Aboriginal Justice Agreement's Women, Families and Victims Collaborative Working Group; multiple Regional Aboriginal Justice Advisory Committees; as well as key services and programs which may be accessed by Aboriginal victims of crime. These included Koori Engagement Workers (KEWs), Koori Court Officers, Court staff supporting the Koori List at the Victims of Crime Assistance Tribunal (VOCAT), Local Justice Workers, Koori Women's Diversion Program practitioners, Aboriginal Community Liaison Officers (ACLOs) at Victoria Police and practitioners from a wider range of ACCOs supporting Aboriginal people with complex needs.

These consultations were followed by the yarning phase of the project, in which yarns were conducted with 23 Aboriginal people who had experienced crime and interpersonal harm. This was a significant number in the context of any qualitative research but particularly so in light of the impacts of COVID, referred to above. The sample of participants was diverse and included intersecting experiences of:

- Aboriginal people who had experienced extensive histories of childhood sexual abuse and/or family violence;
- Aboriginal people who had experienced violent crime and other isolated incidents from members of the public;
- Aboriginal people who had also experienced physical harm at the hands of police;
- Aboriginal people who were in the criminal justice system, including Correctional environments;
- Aboriginal people living in metro and regional areas;
- Aboriginal people being supported for a range of complex needs; and
- Aboriginal people being directly supported by victim services.

It also included a diversity of experiences in relation to whether participants had reported to police or seen the relevant offence progress to prosecution.

Findings

Community consultations and yarns highlighted strong and consistent themes, with the direct voices of Aboriginal people who have experienced crime validating and confirming calls that have been coming from community and, specifically, the Aboriginal Justice Caucus, for many years.

While the CIJ's final report is being drafted at the time of writing, priority opportunities identified by the research include:

- The clear need for alternative reporting pathways so that Aboriginal victims of crime can access relevant supports without the need to report to police.
- The clear need for independent police accountability mechanisms through which Aboriginal people can make supported complaints.
- The clear need for Aboriginal community-controlled organisations to be directly funded to deliver victim-specific services, rather than mainstream services being the only option. This echoes and confirms the call in Goal 1.2.1 of the AJA Justice Outcomes Framework.
- The clear need for greater support and information in navigating the justice process where matters were reported, echoing the CIJ's own recommendations in its Victims Services Review, released in 2020.
- The clear need for a cross-Departmental project to lay the foundations for workforce development.

Overall, the research pointed to the need for Aboriginal voices and expertise to be heard and centred in responses to experiences of victimisation. As one participant emphasised:

I think that's what the Government needs to realise ... that we need to be heard – victims, homeless people, Aboriginal people, everyone! Everyone needs to be heard.... Because when you're not heard, you feel like you've been put in the reject bin.

The CIJ therefore urges Yoorook to engage with the recommendations and priorities of the *Ensuring that Aboriginal perspectives inform responses to Aboriginal victims of crime* project when it is released to ensure that the voices of Aboriginal victims of crime – and the recommendations over many years of the Aboriginal Justice Caucus – are heard and acknowledged.

2.6 Residential program for Aboriginal women in contact with the criminal justice system.

Burra Lotjpa Dunguludja emphasises the Victorian Government's commitment to ensure that “fewer Aboriginal people progress through the criminal justice system”.¹⁸ In recognition of the clear service gap for women, this includes an action to “explore the feasibility of a residential program similar to Wulgunggo Ngalu Learning Place to provide cultural and gender-specific supports for Aboriginal women involved in the corrections system”.

Accordingly, the Koori Justice Unit commissioned Djirra to undertake the *Aboriginal women's residential program feasibility study* in partnership with the CIJ. The aim of the project was to assess the feasibility of establishing a culturally-responsive and gender-specific residential program for Aboriginal women in Victoria who are involved, or at risk of involvement, with the criminal justice system. This included articulating a clear and comprehensive model for the delivery of trauma-informed support to justice-involved Aboriginal women in a residential setting, as well as a strong evidence base for the proposed model drawing on the available literature and the perspectives and deep expertise of Aboriginal community members.

The approach involved multiple strands of data collection, analysis and iterative engagement with community, including:

- a scan of literature and available datasets aimed at identifying residential programs for Aboriginal and other First Nations women, the needs of justice-involved Aboriginal women and promising interventions both within Australia and internationally;
- an environmental scan of existing residential programs in Victoria, comprising a survey of all residential programs and site visits to seven cultural and/or gender-specific residential programs;
- initial co-design consultations with practitioners, community leaders and other stakeholders;
- yarning circles with Aboriginal women who were in custody at DPFC, or who have had past criminal justice involvement, to explore and better understand the supports they felt would make a difference to their experience, and how they would like to receive those supports;¹⁹ and

¹⁸ Aboriginal Justice Agreement Justice Outcomes Framework, Goal 2.3.

¹⁹ This yarning was led by Aboriginal Elders and conducted in a safe and supported way with opportunities for debriefing afterwards. Cunneen C and Rowe S (2014) Changing narratives: colonised peoples, criminology and social work. *International Journal for Crime, Justice and Social Democracy* 3(1): 49–67; Dean C (2010) A yarning place in narrative histories. *History of Education Review* 39(2): 6–13.

- additional consultations with the Aboriginal Justice Caucus (AJC) and other key stakeholders to test and refine the model during and following the design phase.

The study highlighted the need for multiple options to be available, given the diverse needs of Aboriginal women in contact with the criminal justice system. Across the options, however, an overarching need for healing from trauma was evident as the priority. This included experiences of interpersonal trauma, such as family violence and child sexual abuse, as well as the intergenerational trauma that continues to be fuelled by colonisation. Connection to culture and country, as well as to community, was unsurprisingly seen as central – as was the emphasis on reconnecting women with their children where these children had been removed by the state.

While the proposed model is still in the process of being finalised and endorsed by Aboriginal Justice Caucus, it is important to recognise that this initiative has been called for by community for many years. In supporting Djirra in this project, therefore, the CIJ has been about working in a way that is community-led and directed – providing the detail and evidence that can strengthen this call for an overdue government response. Similarly, therefore, the CIJ urges Yoorook to engage with the proposed model once it is endorsed and released.

2.7 Community-led restorative approaches to justice

The CIJ has worked with several communities to develop restorative responses to a range of harms, including harms associated with racism. CIJ has established Open Circle, a restorative justice service which designs restorative processes adapted to different contexts of harm, and supports the delivery of restorative processes. Open Circle is part of a panel of providers accredited by the Commonwealth Ombudsman to support redress schemes including those established to respond to victims of institutional abuse and child removal.

Restorative approaches, where designed and developed by Aboriginal communities, may provide a way of advancing self-determination in the justice system. They may also provide an alternative or diversionary option and contribute to reducing contact with the justice system for Aboriginal communities.

For example, restorative approaches can enable the community to take ownership of responses to wrongdoing. Removing formal criminal justice processes as a standard response and replacing them with restorative alternatives enables ‘conflict stolen by the State’²⁰ to be returned to the community. There are several First Nations examples of these approaches. In 1989, for example, the Aotearoa New Zealand youth justice system was overhauled and Family Group Conferencing (FGC) and Youth Justice Family Group Conferencing (YJFGC) because primary responses to child (tamariki) wellbeing and youth (rangatahi) offending. FGC and YJFGC draw on principles of restorative justice and Maori culture and bring together offenders, victims, families and communities to repair and respond to harm. These reforms led to a dramatic reduction in the number of young people in court and detention. Interestingly, these practices are expressly stated to recognise and provide a practical commitment to the principles of te Tiriti o Waitangi, the Treaty of Waitangi.

The CIJ notes there are existing Aboriginal-led restorative justice models being developed or in operation in Victoria, including the Lotjpadhan project, which recently received funding from the Victorian Legal Services Board to undertake a 3 year pilot, with a focus on addressing harm through conciliation and providing opportunities for Aboriginal children and young people to stay out of the

²⁰ See Nils Christie, ‘Conflicts as Property’, *The British Journal of Criminology*, Vol. 17, No. 1 (1977), pp. 1-15. See also William R Wood and Masahiro Suzuki, ‘Are Conflicts Property? Re-examining the Ownership of Conflict in Restorative Justice’, *Social & Legal Studies*, Vol. 29, Issue 6 (2020).

justice system and connect with self, family, community and culture. The long-term goal is to embed restorative convening skills in Aboriginal Community Controlled Organisations across Victoria.²¹

²¹ <https://lsbc.vic.gov.au/grants-and-funding/grants/grants-funded>

3. The importance of lived experience and co-design in driving reform

Key insights

- People most affected by problems in the justice system are closest to the solutions, but often furthest from the power and resources needed to achieve change.
- Lived experience is a critical source of expertise in system change.
- The adoption of user-centred or co-design practices can provide innovative solutions to entrenched and systemic justice problems.

3.1 The Enabling Justice Project

Victorian men's and women's prisons are populated by people who experience mental illness, intellectual disability and cognitive impairment. A 2011 report by Corrections Victoria estimated that about 42 per cent of male prisoners and 33 per cent of female prisoners have an acquired brain injury (ABI). This compares with rates of ABI in the general population of approximately 2-3 per cent.²²

Putting people who have direct experience of the criminal justice system and experience of incarceration at the centre of the discussion guided the Enabling Justice Project, a partnership between the CIJ and Jesuit Social Services, which explored ways to address the over-incarceration of people with ABI. A key strategy was to involve people with lived experience in providing their perspective on the challenges and in developing solutions by establishing a 'Justice User Group' of people with ABI. The group included Aboriginal people and men and women who had ABIs and who had experienced imprisonment.

Justice User Group participants provided powerful examples of how the criminal justice system failed to recognise their disability and failed, time and again, to provide them with respect and support. Drawing on these accounts, the Enabling Justice report found that the gross over-representation of people with an acquired brain injury in our prison system will only be reduced if the voices of people with an ABI are heard and they are given recognition, respect and support.

The Enabling Justice report also suggested that some fundamental changes to the way the system develops responses to the challenges it faces will also need to occur. Lasting solutions are unlikely if they do not involve meaningful participation by people who have been drawn into the justice system and have lived and living experience of it. The Enabling Justice report made 35 recommendations which have driven widespread change in how the justice system recognises and responds to people with ABI. The report and its recommendations were drawn on by the Royal Commission into violence, Abuse, Neglect and Exploitation of People with Disability. The Royal Commission issued the State of Victoria with a Notice to Produce in relation to its response to the report's findings and recommendations. The project led to the establishment of [Voices for Change](#), an independent self-advocacy and peer support group run by and for people with ABI and experience of the criminal justice system and a co-designed resource to improve justice and support outcomes for people with disability in the criminal justice system, supportingjustice.net.

The Enabling Justice report can be accessed [here](#).

²² Martin Jackson, Glen Hardy, Peter Persson and Shasta Holland, 'Acquired Brain Injury in the Victorian Prison System', 2011, Corrections Victoria accessed at <https://www.corrections.vic.gov.au/acquired-brain-injury-in-the-victorian-prison-system>

3.2 The Just Voices Project – Building justice workforce capability in understanding and responding to disability through lived experience

The influence of the Enabling Justice project on government was clear in the Department of Justice and Community Safety's (DJCS) subsequent decision to include lived experience as a central part of its approach to building the capacity of its corrections workforce in relation to disability awareness and capability.

The aim of the Just Voices project was to design, pilot and evaluate workforce development initiatives or interventions (tools, training or resources), to support capability uplift (build skills, knowledge and understanding) around disability for the mainstream frontline corrections and youth justice workforce. To do this, Just Voices supported genuine participation of, and co-design with, people with disability who have lived experience of the justice system. This was done by:

- Including a lived experience staff member in the project team to provide ongoing advice and insight on the day-to-day decisions of the project;
- Establishing an advisory committee with supported lived experience members to guide the overall direction of the project; and
- Committing resources to ensuring people with lived experience are supported to participate meaningfully in an accessible co-design process.

The CIJ worked with its partners in disability advocacy and self-advocacy networks to draw lived experience and disability expertise into the project. Voices for Change, a self-advocacy group for people with acquired brain injury and lived experience of the criminal justice system and VALID, an intellectual disability advocacy organisation were invited to participate in co-design activities and recruited to sit on the Project Advisory Committee to provide expert oversight and input into the project's direction and progress.

People with lived experience of disability and the justice system were engaged to participate in co-design workshops and other activities as necessary to:

- Develop a deep understanding of the experience of people with disability in the justice system from a lived experience perspective;
- Develop concepts for the workforce development design;
- Test and provide feedback on prototype initiatives;
- Provide feedback on the process of co-design to evaluate the developmental and learning process for future DJCS lived experience led reform.

The project recognised that people with lived experience have insights, knowledge and experiences that can help shape and design solutions to improve the way the justice system operates. The project is a good example of the potential for lived experience and co-design approaches to drive reform.

The Just Voices project report is currently with DJCS.

4. Moving towards self-determination in justice – the Aboriginal Justice Agreement

Key insights

- Aboriginal self-determination is a matter for Aboriginal people.
- Recognition of the right to self-determination contributes to effective justice policy.
- Enabling self-determination promotes community-led local and specific responses that best fit the needs of individuals and communities.
- The Victorian Aboriginal Justice Agreement (AJA) has provided the most effective framework for moving towards self-determination in justice for the community to date.

The evidence is settled that self-determination is the only strategy that has generated the sustainable wellbeing – cultural, physical, spiritual, economic and social – that Aboriginal and Torres Strait Islander communities and the broader community desire. Self-determination relates to the capacity of the Aboriginal community itself to determine its preferred future and to create the human, institutional and financial infrastructure to bring those aspirations into being.²³

The United Nations Declaration on the Rights of Indigenous Peoples²⁴ defines self-determination as the right of Indigenous peoples to pursue their economic, cultural and social development. The Declaration acknowledges the right of Indigenous peoples to live by their own law, make law and administer law.

The right to self-determination is also effective justice policy. Research indicates that self-determination is associated with positive social and economic outcomes, including reduced crime.²⁵ Another benefit of self-determination as a guiding principle for justice is that it can improve the legitimacy of the justice system for First Nations people – whereas historically it has been a tool of the colonising settler state.

Enabling self-determination also promotes local and specific responses that best fit the needs of individuals and communities, rather than the ineffective and inflexible ‘cookie cutter’ approach which has contributed to the poor outcomes seen to date. For these and other reasons, self-determination has been a central theme of the recommendations of several inquiries into how the justice system could be improved for First Nations including the 1991 RCIADIC and the 2017 NT Royal Commission.

The Aboriginal Justice Agreement

In Victoria, the Aboriginal Justice Agreement (AJA) was established in response to the RCIADIC, and has provided the most effective framework for moving towards greater self-determination in justice for the community to date. The AJA and the work of the Aboriginal Justice Caucus has led to many important outcomes over the course of the four phases of the Agreement.

²³ Larissa Behrendt, Amanda Porter, Alison Vivien, *Indigenous self-determination within the justice context: a literature review*, 2017, University of Technology Sydney: Jumbunna Indigenous House of Learning, p 5.

²⁴ https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

²⁵ See generally: Doreen Chen, ‘Self-determination in the criminal justice system’, Indigenous Justice Clearinghouse, Research Brief 28, October 2020 accessed at <https://www.indigenousjustice.gov.au/publications/self-determination-in-the-criminal-justice-system/>

Among many others, and in addition to the outcomes discussed above, these include the establishment of several identified cultural support roles within the justice system, the development of Koori Courts and Aboriginal hearing days in the Children's Court, a cultural healing place as an alternative to corrections, the Wulgunggo Ngalu Learning Place, the abolition of the offence of public drunkenness and successful advocacy for a legislated spent convictions scheme.ⁱ

The AJA and the work of the Aboriginal Justice Caucus provide a clear template for achieving self-determination in the justice system. In *Burra Lotjpa Dunguludja*, the fourth iteration of the AJA, the Aboriginal Justice Caucus have developed their long term priorities for realising self-determination in the justice system. These include the aspirations of the Aboriginal community to:

- determine goals and aspirations for that system as it applies to Aboriginal people
- set the direction for government policy and programs as they apply to Aboriginal people's interaction with the justice system
- hold governments to account against benchmarks set by the Aboriginal community
- establish justice institutions to exercise self-determination.²⁶

Burra Lotjpa Dunguludja also sets out the characteristics of self-determination:

- community control over design, process and preferred outcomes
- cultural leadership and authority
- systems, services and programs reflecting community values
- a holistic approach to wellbeing and healing
- jurisdictional influence
- focusing on outcomes rather than outputs
- flexibility in resourcing and time to grow and evolve
- high levels of competence and capacity
- realistic targets and control over parameters of evaluation processes²⁷

The CIJ supports the aspirations of the Aboriginal Justice Caucus, as set out in *Burra Lotjpa Dunguludja* and recognises its many achievements since its establishment.

5. Conclusion – opportunities presented by justice reinvestment, Yoorrook and Treaty

Despite being good policy, self-determination has been difficult to achieve. The approaches to addressing systemic injustice in the criminal justice system highlighted in this nuther-mooyoop illustrate the challenge for achieving reform. Each of these represent individual examples of how the community has found a way of mitigating injustices reinforced by the criminal justice system. Though positive, some of these examples are hopeful visions for a future yet to be realised, while others remain relatively minor features of a criminal justice system that continues to create untold harm for the community.

²⁶ *Burra Lotjpa Dunguludja - Senior Leaders Talking Strong*, Victorian Aboriginal Justice Agreement, Phase 4, A partnership between the Victorian Government and Aboriginal Community, p13.

<https://files.aboriginaljustice.vic.gov.au/2021-02/Victorian%20Aboriginal%20Justice%20Agreement%20Phase%204.pdm>

²⁷ Ibid p13.

As the research analysis conducted by the CIJ and linked to this nuther-mooyoop suggests,²⁸ existing justice reforms—such as Koori Courts—permit a degree of participation in existing processes, but there are fewer examples of independent or self-determined processes that involve Aboriginal-led decision making. This may reflect a perception that self-determination in justice is a direct challenge to the authority of the settler state in its function of administering the criminal justice system. It will continue to be difficult for Aboriginal people to develop and implement an alternative approach if the state does not agree to relinquish some degree of control over this function.

A related challenge is that the state largely controls the funding and resources necessary to establish alternative and self-determined approaches to justice. Together with the significant allocation of resources to the carceral system,²⁹ funding uncertainty or inadequate funding for Aboriginal community-controlled services limits the capacity of the community to develop alternatives.

Aboriginal control over funding has the potential to be expanded through treaty mechanisms by enabling greater self-determination in the delivery of services to Aboriginal communities. This has been the effect of some aspects of treaties negotiated with First Nations in Canada and some of the models of service delivery in Aotearoa New Zealand which provide more scope for communities to define their own goals, rather than having them imposed by government.³⁰

Another potential opportunity to achieve self-determination in justice through greater access to resources—and the means to demonstrate the effectiveness of community designed and led programs—is the prospect of justice reinvestment. Broadly, justice reinvestment reflects the idea that funding should be redirected from prisons to early intervention and prevention programs. Justice reinvestment promotes self-determination by prioritising community-led decision making. The Albanese Labor Government has recently announced that it will invest \$79 million in justice reinvestment. Among other things, this funding is intended to “establish an independent national justice reinvestment unit to assist communities and evaluate program performance”.³¹

In CIJ’s view, self-determination is the key to addressing systemic injustice in the criminal justice system and the many harms that the system, as a central tool in the colonisation process, has caused for the Aboriginal community.

Yoorook, together with the work of the First Peoples Assembly of Victoria and the treaty process now underway in Victoria together with the community have the potential to bring about public recognition of these harms and to effect change. It is to be hoped that in highlighting the urgent need for reform, these processes will also provide the means for structural reform, enabling the transfer of power, resources and responsibility to Aboriginal people as a means of promoting self-determination and addressing systemic injustice.

²⁸ Centre for Innovative Justice, Australian and International First Nations Justice Models Research (February 2020) <https://cij.org.au/cms/wp-content/uploads/2022/11/yallum-yallum-research.pdf>

²⁹ Productivity Commission 2021, *Australia’s prison dilemma*, Research Paper, Canberra; Martin McKenzie-Murray, *Corrections System in Lockdown*, The Saturday Paper, June 1-7, 2019 accessed at <https://www.thesaturdaypaper.com.au/news/politics/2019/06/01/corrections-system-lockdown/15593112008224?cb=1669026447>.

³⁰ See, for example, the Whanau Ora Commissioning Agency, accessed at <https://whanauora.nz/>. See also Doreen Chen, ‘Self Determination in the criminal justice system’, Indigenous Justice Clearinghouse, Research Brief 28, October 2020, accessed at <https://www.indigenousjustice.gov.au/publications/self-determination-in-the-criminal-justice-system/>.

³¹ Mark Dreyfus KC, MP, *Labor to Expand Justice Reinvestment to Reduce First Nations Incarceration*, Media Release 15 April 2021 accessed at <https://www.markdreyfus.com/media/media-releases/labor-to-expand-justice-reinvestment-to-reduce-first-nations-incarceration-mark-dreyfus-qc-mp/>.

i The Aboriginal Justice Agreement – Outcomes

Positions	Programs
<ul style="list-style-type: none"> • Victoria Police Aboriginal Community Liaison Officers • Sheriff's Aboriginal Liaison Officers • Local Justice Workers • Aboriginal Justice Caucus and Secretariat • RAJAC Executive Officers • LAJAC Project Officers • Aboriginal Dispute Resolution Team • Koori Court Officers • Aboriginal Wellbeing Officers • Aboriginal Community Corrections Officers, Case Managers and Parole Officers • Aboriginal Victims Assistance Support Workers • Advanced Aboriginal Case Managers 	<ul style="list-style-type: none"> • Koori Women's Diversion Program • Wulgunggo Ngalu Learning Place • Koori Courts • Koori Youth Justice Program • Reporting Racism Project • Koori Independent Prison Visitor Scheme • Local Justice Worker Program • Frontline Youth and Community Initiatives Programs • Koori Youth Crime Prevention Grants • Family Violence funding for ACCOs • Kaka Wangity Wangin-Mirrie Cultural Programs in Correctional Services (programs that focus on cultural strengthening; family violence; parenting and healing)

Partnerships	Plans
<ul style="list-style-type: none"> • Victorian Aboriginal Justice Advisory Committee • Aboriginal Justice Agreement Partnership • Aboriginal Justice Caucus • Regional Aboriginal Justice Advisory Committees • Local Aboriginal Justice Action Committees • Indigenous Family Violence Partnership Forum 	<ul style="list-style-type: none"> • DJR Koori Careers and Employment Strategy • DJR Yarrwul Loitjba Yapaneyepuk (Koori Inclusion Action Plan) • DJR Cultural Respect Framework • Corrections Victoria and Justice Health Aboriginal Social and Emotional Wellbeing Plan • Court Services Victoria Self-determination Plan 2021-2025