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21 November 2022

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Dear Professor Bourke and Yoorrook Commissioners,

Investigation into systemic injustice in the Criminal Justice System

Victoria Legal Aid (**VLA**) welcomes the investigation by the Yoorrook Justice Commission into systemic injustice experienced by First Nations people in the criminal justice system in Victoria. First Nations people experience far-reaching and intergenerational harms at the hands of the criminal justice system. In our practice in every court across Victoria, we see these harms persist today, including disproportionate rates of remand and imprisonment and deaths in custody.

These harms are a consequence of centuries of laws, policies, systems and structures that have entrenched systemic and structural racism, and normalised the exclusion and disempowerment of First Nations people and denied their right to self-determination. As a significant part of the criminal justice system, VLA acknowledges its role in these systemic injustices and recognises and supports that solutions to these problems must be First Nations led. We support meaningful and concrete action to turn the policy commitment to self-determination into reality.

One of the most damaging consequences of the systemic injustice in the criminal justice system is the deaths in custody of First Nations people and the resulting devastation felt by First Nations families and communities. In the three decades since the Royal Commission into Aboriginal Deaths in Custody (**RCIADIC**), despite numerous inquiries and reviews and their comprehensive recommendations for change, the number of deaths in custody has continued to increase. Recent coronial investigations into the deaths in custody of Aunty Tanya Day and Veronica Nelson continue to highlight the imperative for systemic and structural reform.

This investigation is an opportunity to make recommendations to immediately address the harms of the criminal justice system on First Nations people and to avoid further deaths in custody. These reforms have already been the subject of recommendations made in other inquiries and reviews, outlined in **Appendix B**. A strong consensus exists about the need for these changes. They include:

- Raising the age of criminal responsibility to at least 14 years of age
- Reforming the Bail Act
- Implementing the public health response to the decriminalisation of public intoxication
- Ensuring police accountability through an independent police oversight mechanism, and improving the accessibility of the complaints system for First Nations people, and
- Creating an Aboriginal Social Justice Commissioner to monitor and oversee the implementation of recommendations of Royal Commission and other inquiries.

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We also view reforms which reimagine the criminal justice system as critical to establishing lasting change, led by First Nations people in accordance with the principle of self-determination and developed as part of the Treaty process in Victoria. VLA has a role in supporting this work, acknowledging that we also have work to do as part of this change.

About Victoria Legal Aid

VLA operates in offices, courts and tribunals on unceded Aboriginal lands throughout Victoria. In 2021-22 VLA assisted over 79,763 unique clients from our 15 offices.¹ About half of VLA's clients each year receive a criminal law service. Our state-wide criminal practice provides legal advice and representation to children and adult clients in custody or appearing on bail or summons at Magistrates' Courts and Children's Courts across Victoria, and appearing in the County and Supreme Courts.

In 2021-22:

- 5,551 of VLA's unique clients identified as Aboriginal and/or Torres Strait Islander, representing 7% of all unique VLA clients. 14,354 services were provided to Aboriginal and/or Torres Strait Islander identified clients, or approximately 2.6 services per client.
- 3,359 unique clients who identified as Aboriginal and/or Torres Strait Islander received a criminal law service, 8.2% of all criminal law program clients.
- 1482 criminal law duty lawyer services were provided to clients who identified as Aboriginal and/or Torres Strait Islander, 11.9% of our criminal duty lawyer services.

Foundational reforms

Through our work in the criminal justice system we see the capability, strength and resilience of First Nations people, and we are guided by and support their decision-making. VLA supports the advocacy and expertise of Aboriginal Community Controlled Organisations (**ACCOs**), who consistently provide leadership and demonstrate the value of community-led solutions. We particularly highlight the critical role that the Victorian Aboriginal Legal Service (**VALS**) plays in the criminal legal system and we support VALS' leadership on these issues.

We also acknowledge the primacy that should be given to the submissions of ACCOs and to First Nations people with lived experience of the criminal justice system in this investigation. VLA's submission is offered in that spirit and our recommendations are based on our practice experience in working with First Nations clients. We are simultaneously working to assist some of our First Nations clients and community members to share their lived experience directly with the Yoorrook Justice Commission.

We highlight six foundational reforms to address the disproportionate over-criminalisation of First Nations people and which seek to put an end to deaths in custody and other harms.

1. **Build a self-determined criminal justice system** which prioritises First Nations experience and knowledge and recognises their leadership in building culturally safe services, practices and institutions throughout the system. This includes embedding First Nations people's lore, cultural practices and other cultural interventions and supports; ensuring that the right to choose an ACCO service can be realised; strong and sustainable ACCOs, who are best placed to participate in and make decisions about their communities; and First Nations data governance and sovereignty.

¹ Victoria Legal Aid internal data; this is fewer than the number of people we usually help each year due to the COVID-19 restrictions and courts adjourning matters.

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2. **Identify and address systemic racism within the criminal justice system**, and its role in perpetuating the over-criminalisation of First Nations people and deaths in custody. Addressing systemic racism requires building cultural safety and awareness across the system and the individuals that work in the system, including law enforcement, legal services, court services, judicial decision-making and corrections services.
3. **Address intersecting system failures which create and compound disadvantage**, including in child protection, health, disability and mental health, education, employment, accommodation, family violence; support victims; resource unmet civil legal need.
4. **Keep First Nations people out of the criminal justice system** by maximising the use of cautioning and diversion; increasing the minimum age of criminal responsibility; reforming bail laws and minor offences; implementing a health-based response to public intoxication.
5. **Make imprisonment a sanction of last resort and reduce the harms of imprisonment**, by replacing short sentences of imprisonment with culturally appropriate community sentencing options; repealing mandatory sentencing and expanding restorative justice processes; funding culturally appropriate and safe corrections services and transition support.
6. **Strengthen criminal justice system oversight and accountability** for First Nations people, including oversight of police, the Corrections system, prosecution agencies, the courts and the legal profession.

Further information about these six areas for reform is set out in **Appendix A**.

We would be happy to provide further information on any of the issues raised in this letter if that would assist. Should you have any questions, please contact me on [REDACTED] at [REDACTED].

Yours faithfully

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LOUISE GLANVILLE
Chief Executive Officer

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APPENDIX A – Foundational criminal justice system reforms

1. Build a self-determined criminal justice system

The sovereignty of First Nations people has never been ceded and no reform of the criminal justice system should take place unless it acknowledges this and builds self-determination into its design. Victorian Aboriginal communities must have the right to participate in and make decisions about all aspects of the system and its impacts on their communities. Only through genuine self-determination can there be a culturally safe justice system which has equitable outcomes for First Nations Victorians.

The multi-party report of the Inquiry into the Victorian Criminal Justice System (**Criminal Justice System Inquiry**) found: “self-determination must be foundational in any intervention to reduce the overrepresentation of Aboriginal people in the criminal justice system” and recommended the implementation and continued support for self-determination initiatives and agreements including the National Agreement on Closing the Gap, the Victorian Aboriginal Affairs Framework and Burra Lotjpa Dunguludja (Rec 15).

Meaningful self-determination has several facets, including:

- Building **First Nations people’s lore, cultural practices and other cultural interventions** and supports into the criminal justice system to provide safe support for First Nations people.
- Recognising the importance and value of **self-determined and culturally appropriate service responses** across all areas of the justice system, including for diversionary processes and supports, court processes and supports, and corrections services.
- Supporting a **strong and sustainable Aboriginal community controlled sector** to ensure that the right to choose an ACCO service can be realised.² The Criminal Justice System Inquiry recommends developing long-term funding arrangements which support the expansion of ACCO’s 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 (Rec 14).
- Supporting **First Nations data governance and sovereignty**, as recommended by VALS in their submission to this Investigation, including developing data access and sharing agreements with and for ACCOs and Traditional Owners in their sector (as provided for under the Victorian Closing the Gap Implementation Plan), and enshrining the right of First Nations people and communities to exercise control over the collection, access and utilisation of data obtained about First Nations individuals and communities.
- Appointing an independent **Aboriginal Social Justice Commissioner** to provide **accountability and monitoring of the impacts of the criminal justice system on First Nations people**.³ This role should monitor the implementation of recommendations of Royal Commissions and other key inquiries such as Coronial Inquests into deaths in custody in Victoria,⁴ ensuring that recommendations get the oversight and funding that

² VLA acknowledges the critical role that Djirra and VALS play in providing culturally safe and trauma informed legal services to Aboriginal and Torres Strait Islander Victorians.

³ VLA supports VALS’ and the Aboriginal Justice Caucus’ recommendations for an independent and resourced Aboriginal Social Justice Commissioner.

⁴ Including RCIDIAC, Burra Lotjpa Dunguludja (the Victorian Aboriginal Justice Agreement), and Wirkara Kulpa (Victorian Aboriginal Youth Justice Strategy).

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they require to achieve systemic change. The Criminal Justice System Inquiry recommends appointing “an Aboriginal Social Justice Commissioner—or other oversight mechanism—to monitor the implementation of recommendations made by the RCIADIC and to ensure the criminal justice system responds appropriately to Aboriginal Victorians,” (Rec 79).

2. Identify and address systemic racism and bias in the criminal justice system

The disproportionate over-criminalisation of First Nations people and deaths in custody are directly linked to the ongoing impact of colonisation and systemic racism in the legal system. Systemic racism involves laws, policies, practices, and unconscious bias in individual decision-making and produces discriminatory outcomes for First Nations people across all levels of the justice system.

The Commissioner for Aboriginal Children and Young People in *Our Youth, Our Way* stated: “Over-representation does not reflect the criminality of Aboriginal children and young people in the youth justice system. Rather, it is the result of structural racism produced by the structures, policies and practices that underpin our social institutions and determine how they operate. This applies not only to the youth justice system, but also to its interrelationship with other systems, including the child protection, health, housing and education systems.”⁵

The *Our Youth, Our Way* Report further states: “‘Structural racism’ describes the ways in which history, public policies, institutional practices, and culture interact to maintain a racial hierarchy that allows privileges and disadvantages to endure and adapt over time. This definition conceptualises ‘institutional racism’ as an aspect of structural racism ... A structural racism lens helps us to identify and examine the racial legacy of Australia’s past, how racism persists in our state institutions, and how individuals internalise and respond to racialised structures.”⁶

VLA made detailed recommendations about systemic racism and bias in the criminal justice system which in our submission to the *Inquiry into the Victorian Criminal Justice System* and our submission to the *Cultural Review of the Adult Corrections system*.

Systemic change requires building cultural awareness and competency across the system and the individuals that work in the system. This includes:

- **Lawyers:** cultural awareness education must be embedded in all stages of a legal education and career, from university, to admission to the legal profession, and annual continuing professional development that is required for maintaining a practising certificate. Training should equip lawyers with the knowledge, skills and behaviours they need to have to be culturally aware when assisting First Nations people.
- **Police, judicial officers, parole decision-makers, corrections and court staff:** must receive knowledge, tools and skills in understanding why First Nations people continue to be before the system in disproportionate numbers.
- **Criminal justice system laws:** all legislation should explicitly recognise the primacy of self-determination, the continuing harm of colonisation and the laws, policies and practices that continue to contribute to First Nations over-criminalisation and overrepresentation.

⁵ Commission for Children and Young People, *Our Youth, Our Way*, 39: <https://ccyp.vic.gov.au/assets/Publications-inquiries/CCYP-OYOW-Final-090621.pdf>.

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- **Court services** must be culturally safe: non-legal support services should be available across all courts, including Koori-liaison officers and Aboriginal Community Engagement Officers, funding statewide access to a Koori Court Division for adults and children,⁷ and expanding the Koori Court's jurisdiction to the pre-resolution stage.⁸
- **Culturally appropriate judicial decision-making** should be supported, including through: individualised and informed sentencing options, restorative justice processes, and use of Aboriginal Community Justice Reports.⁹
- **Corrections and transition services** must be culturally safe: we made recommendations for culturally appropriate supports in custody in our submission to the Cultural Review of Corrections Victoria.

3. Address failures in intersecting systems that create and perpetuate disadvantage

We see how First Nations people end up in the criminal justice system due to failures in intersecting systems. First Nations people experience both specific and systemic disadvantage at a rate far higher than other Australians. This experience of disadvantage is directly linked to the experience of colonisation and the intergenerational trauma and dislocation associated with laws, policies and systems that have both caused and perpetuated racial inequality. Overrepresentation within the justice system is both a product of and a contributor to a uniquely First Nations experience of entrenched and continuing disadvantage.¹⁰

VLA made detailed recommendations on intersecting systems in our submission to your *Investigation on Systemic Injustice in the Child Protection System*; our submissions to the *Parliamentary Inquiry into the Victorian Criminal Justice System*, *Parliamentary Inquiry into use of Cannabis*, *Parliamentary Inquiry into Homelessness*; the National Legal Aid Submission to *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*.

Disadvantage: Addressing the economic and social factors and systems failures that underpin entry into the criminal justice system is critical to reducing overrepresentation, including access to support with health, mental health, disability, education, child protection, family violence, housing, and employment.¹¹ Access to disability and mental health support in the community and in corrections is critical, as cognitive impairment is a key indicator for recidivism¹² and First Nations people in custody have higher rates of disability, cognitive impairment and mental health issues.

⁷ Despite the community and cultural benefits of the Koori Court, it is not available state-wide; it is available in 12 Children's Court locations, 11 Magistrates' Court locations, and 4 County Court locations. Furthermore, in some regional locations it sits as infrequently as every six weeks, so in our experience a young person may go to the mainstream court instead of waiting for a Koori Court date.

⁸ The Koori Courts are limited to being a plea and diversion court.

⁹ We support expansion of the pilot led by VALS.

¹⁰ The specific factors that have contributed to socioeconomic disadvantage and the over-incarceration of Aboriginal people are recorded in detail by the ALRC: *Pathways to Justice – An Inquiry into the Incarceration rate of Aboriginal and Torres Strait Islander Peoples*, ALRC Report 133, December 2017, [2.27]. See also Productivity Commission, *Overcoming Indigenous Disadvantage 2020* (Commonwealth of Australia, Canberra, November 2020).

¹¹ As identified as far back as the RCIDIC and more recently in the 2002 National Aboriginal and Torres Strait Islander Social Survey.

¹² The Australian Institute of Criminology found that almost three quarters of cognitively impaired First Nations participants reoffended during the two-year follow-up period, and were 2.8 times more likely to reoffend than non-cognitively impaired First Nations participants: see AIC, *Aboriginal Prisoners with Cognitive Impairment* (Report, 2017) 7. A Victorian study found that people with intellectual disability return to prison at more than twice the rate of people without such disability: Corrections Victoria, *Intellectual Disability in the Victorian Prison System: Characteristics of Prisoners with Intellectual Disability Released from Prison in 2003-2006* (Report, 2007).

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Victims support: Improving support for victims and their experience of the criminal justice system is also necessary for reducing involvement with the criminal justice system.¹³ VLA recommends improving the experience of victims in the criminal justice system to help them recover and avoid escalation of their legal need, through: ensuring complainants and witnesses are supported through the criminal justice process; front-ending police work and charging appropriately to enable meaningful participation for victims; funding a dedicated specialised legal service for victims of crime.

Civil legal need: Research has found a strong relationship between civil legal need and criminal offending.¹⁴ Legal assistance plays a significant role in early intervention and in the prevention of the escalation of legal issues. Properly funded legal services to assist with civil legal need would play a substantial role in reducing entry to the criminal justice system. This includes through providing legal assistance with civil needs such as housing, income, mental and physical health, visa status, and the ability to live and work free from discrimination.

4. Keep First Nations people out of the criminal justice system

Entry into the criminal justice system is criminogenic for children and adults and perpetuates the cycle of disadvantage and dispossession of First Nations people. Better targeted responses at every stage of the criminal justice system will mean that criminal justice responses are used where they are really needed, and the criminal justice system can be an opportunity for intervention which can assist with rehabilitation rather than further entrench people in the cycle of offending.

VLA made detailed recommendations in our submission to the *Inquiry into the Victorian Criminal Justice System*, and *National Legal Aid Submission on the Minimum Age of Criminal Responsibility*.

Minimum age for entry to the criminal justice system: the Criminal Justice System Inquiry recommended “the Victorian Government raise the minimum age of criminal responsibility” (Rec 10); and the ACT Government has committed to raising the age. VLA supports raising the age of criminal responsibility from 10 to at least 14 years. The younger a child is at their first sentence, the more likely they are to reoffend generally, reoffend more frequently, reoffend violently, continue offending and be sentenced to an adult sentence of imprisonment. There is a strong link between the disproportionate rates of child detention and the disproportionate rates of adult imprisonment.

Bail reform: Data demonstrates that successive bail reforms over the past 10 years have had dramatic impacts on the rates of remand of First Nations Victorians,¹⁵ with a five-fold increase in

¹³ Being a victim of crime increases the likelihood of going on to offend, and First Nations people are more likely to be victims of crime. Fitzgerald and Weatherburn, 2001, pp. 1–3.

¹⁴ An Australia-wide survey found that 84.2 per cent of respondents who had been alleged to have committed a crime in that year also had civil legal problems, and that almost all people alleged to have committed more than two offences reported having civil legal problems (97.6 per cent); Law and Justice Foundation of New South Wales, *Crime in Context: Criminal victimisation, offending, multiple disadvantage and the experience of civil legal problems*, 2013, 3–4.

¹⁵ Victoria’s Aboriginal and Torres Strait Islander imprisonment rate almost doubled between 2008 and 2018, from 1,012.9 to 2015.1 per 100,000 adults: Sentencing Advisory Council, www.sentencingcouncil.vic.gov.au/statistics/sentencing-trends/victoria-indigenous-imprisonment-rate. BOSCAR research found that indigenous people are less likely to be granted bail than non-Indigenous people: Weatherburn and Snowball (2012). The number of children in custody who have not been sentenced has almost doubled, from an average of 37 children per day in the period from 2010–11 to 2013–14 to an average of 69 children per day in the period from 2014–15 to 2017–18, Sentencing Advisory Council, www.sentencingcouncil.vic.gov.au/projects/remand-and-sentencing. VLA has seen that over 85 per cent of the matters which resolved with a plea of guilty in the bail and remand court (BARC) in 2018/19, did not result in a sentence of imprisonment; VLA internal data.

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the number of Aboriginal women on remand over the past 10 years.¹⁶ The Criminal Justice System Inquiry recommends reviewing the operation of the Bail Act “with a view to amendments to simplify the bail tests, make presumptions against bail more targeted to serious offending and serious risk, and ensure that bail decision makers have discretion to consider a person’s circumstances” (Rec 52). VLA supports immediate bail reform, including removing the reverse onus categories and removing disincentives to applying for bail at a first remand.

Minor offences: We see how First Nations people are charged more often for minor offences associated with disadvantage and are routinely being held on remand where they are unlikely to receive a sentence of imprisonment. The Criminal Justice System Inquiry recommends a review of the Summary Offences Act (Rec 60). VLA recommends prioritising repealing or amending offences such as begging and low quantity cannabis possession, and reclassifying common minor offences as summary only, including low value theft and property damage.

Public intoxication: There has been comprehensive consideration of the need to replace the law enforcement response to public intoxication with a public health response by a wide-ranging Expert Reference Group, and an extensive consultation process with Aboriginal communities, Victoria Police, health services and alcohol and other drugs experts. VLA supports prioritising the implementation of a health-based response with no protective custody, emphasising that Aboriginal self-determination must be at the centre of the health response’s design.

Police discretion for low level offending: low-level, low-harm offending should be diverted away from the criminal justice system. A shift in law enforcement practices would play a significant role in reducing the over-policing and over-criminalisation of First Nations people, including increasing the use of formal warnings, cautions and diversion, and using summons rather than arrest when charges are laid. A legislated cautioning system and removing the requirement for police to consent to diversion would bring closer court oversight and improve consistency.¹⁷

5. Make imprisonment a sanction of last resort for First Nations people and reduce the harms of imprisonment

The reality for many First Nations people is that custody is inherently culturally unsafe, with violence, trauma, and death as possible outcomes. In addition, confinement and separation from family is particularly detrimental for First Nations people.

These reforms have already been the subject of recommendations of other inquiries and reviews, and a strong consensus exists about the need for these changes.¹⁸ Further detail on VLA recommendations to keep people out of custody and reduce the harms of imprisonment can be found in our submissions: *Inquiry into the Victorian Criminal Justice System, Cultural Review*

¹⁶ The data relating to women is particularly significant, in the last five years there has been a 320% increase in Aboriginal women being remanded to custody, furthermore 60% of women on remand there for less than four weeks: See Department of Justice and Community Safety – Corrections Victoria, ‘*Women in the Victorian Prison System*’ (January 2019)

<<https://www.corrections.vic.gov.au/publications-manuals-and-statistics/women-in-the-victorian-prison-system>>.

¹⁷ Victorian Crime Statistics Agency analysis revealed that children are more likely to be charged than cautioned if they are Aboriginal, had a history of family violence (either as a victim or a perpetrator) and lived in more socio-economically disadvantaged postcodes: Crime Statistics Agency, *The Cautious Approach: Police cautions and the impact on youth reoffending* (Report, September 2017). Similarly, NSW Research found that Aboriginal people in NSW are less likely to receive a caution for cannabis possession, are more likely to be brought to court for that offence, and once in court receive more punitive sentences than non-Aboriginal people: Michael McGowan and Christopher Knaus, ‘NSW police pursue 80% of Indigenous people caught with cannabis through courts’ *The Guardian*, 10 Jun 2020, <https://www.theguardian.com/australia-news/2020/jun/10/nsw-police-pursue-80-of-indigenous-people-caught-with-cannabis-through-courts>.

¹⁸ Including, Commission for Children and Young People Victoria, *Our Youth Our Way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, Report (2019). Australian Law Reform Commission, *Pathways to Justice: An Inquiry into the Incarceration rate of Aboriginal and Torres Strait Islander Peoples*, ALRC Report 133 (December 2017).

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of the Adult Corrections system; Our Youth Our Way; Statutory Review of Youth Justice; Royal Commission into Victoria's Mental Health System; Productivity Commission Mental Health Review, and the National Legal Aid Submission to Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

Replace short sentences of imprisonment with culturally appropriate community sentencing options: there has been a significant increase in the number and proportion of prisoners who spend a short time in custody.¹⁹ The Criminal Justice System Inquiry recommends that the Government investigate the introduction of a presumption against short terms of imprisonment in favour of community-based sentences or other therapeutic alternatives (Rec 68). Short sentences are particularly detrimental and entrench criminogenic patterns.²⁰ VLA recommends a presumption against short sentences, noting that community based sentencing options must be culturally appropriate and resourced.²¹

Sentencing reform: VLA recommends sentencing reform to enable the consideration of cultural context for Aboriginal people. VLA supports VALS' pilot scheme for Aboriginal Community Justice Reports and recommends embedding these reports within sentencing legislation for First Nations adults and children.²² We also recommend youth justice system reforms including removing uplift provisions and mandatory penalties, and differentiated and age-appropriate responses and outcomes for First Nations children and young people. We recommend repealing mandatory sentencing, which is inconsistent with principles of tailored and individualised sentencing and judicial discretion.

Restorative justice for adults and children: There is evidence that participation in restorative justice processes can improve victims' experience of the criminal justice system and reduce the rate of reoffending.²³ VLA recommends that a legislated restorative justice process should be established, available for all suitable offenders where both parties agree, and at a range of times during a matters progress through the system. We also recommend expanding the availability of children's group conferencing, subject to certain safeguards being in place.²⁴

Reduce the harms of custody: VLA recommends increasing cultural safety and self-determination for First Nations people in custody through: facilitating First Nations people's cultural obligation and right to practice 'Sorry Business' while in custody; improved recruitment methodology for custody staff working with First Nations people; policies for Corrections

¹⁹ For example, time served sentences have nearly tripled in proportion from 11 per cent to 29 per cent of all imprisonment sentences imposed on people who had spent time on remand: Sentencing Advisory Council, *Time Served Prison Sentences*, (Report, January 2020).

²⁰ ALRC, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* (Discussion Paper, 19 July 2017) 87. The ALRC discusses short sentences in *Pathways to Justice*, concluding that short sentences have a multitude of detrimental impacts and are highly problematic. The ALRC recommended that short sentences should not be abolished *until appropriate community-based sentencing options are created and resourced*, out of concern for people living in remote NSW where community-based sentences "are often not available." The ALRC explicitly noted that "there are no remote communities in Victoria" and praised Victoria's CCO regime.

²¹ The Productivity Commission showed that the percentage of released prisoners who returned to either prison or community corrections was 54.9 per cent; in contrast only 23.9 per cent of offenders who served community corrections orders returned to either prison or community corrections within two years: Productivity Commission, *Report on Government Services 2020 Part C: Justice* (Report, January 2020).

²² VALS, Aboriginal Community Justice Reports Project, <https://www.vals.org.au/aboriginal-community-justice-reports/>; VALS, submission to the Inquiry into Victoria's Criminal Justice System and Submission to the Statutory Review of Youth Justice Reform.

²³ Research indicates that participation in a well prepared and facilitated restorative justice process can result in lessening the level of trauma experienced by victim in comparison to those who only experience the formal criminal justice system; in addition victims who participated in its pilot program reported feeling a greater level of satisfaction with their experience of the criminal justice system, even in cases where people are charged with more serious offences: Centre for Innovative Justice, *Its Healing to hear another person's story and also tell your own story*: Report on the CIJ's Restorative Justice Conferencing Pilot Program (Report, October 2019) 18.

²⁴ Safeguards include the provision of legal advice to a child prior to agreement to participate in restorative justice, ensuring that a failure to attend a conference is not able to be relied on in relation to sentencing, ensuring police have no veto power in relation to a decision to refer a child to a conference, ensuring that the program is facilitated by an appropriately qualified and independent expert.

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evaluating, recording, and monitoring staff competencies (training, skills, knowledge and abilities) to provide culturally safe services to First Nations people; transparent reporting mechanisms for Corrections Victoria; limiting the use of harmful restrictive management practices such as solitary confinement and strip searching; and improved and state-wide access to legal assistance for people in custody.

Health care in custody: we support VALS' recommendations in its submission to this investigation, that people must be provided health care and mental health care in custody, that is equivalent to that provided in the community. This includes access to primary healthcare by Aboriginal Community Controlled Health Organisations (ACCHOs) and access to Medicare, the PBS, and NDIS funding while in custody.

Early, individualised and meaningful transition planning: Meaningful transition planning and support for release is critical to averting relapses, by supporting participation in employment, community life and more substantial health and welfare needs once they have transitioned back into the community. The Criminal Justice System Inquiry made several recommendations for increased access to programs and support in custody for people on remand as well as sentenced.²⁵ VLA recommends early planning which starts when people enter custody, even if on short sentences; increased availability of health and support services; individual and culturally appropriate case management to ensure that people in custody have access to appropriate rehabilitation and support; coordinated and continuity of care and support post-release.

6. Strengthen justice system oversight and accountability

VALS and the Commission for Children and Young People have recently highlighted that a lack of cultural safety and independence in the current police oversight system creates barriers to reporting for Aboriginal communities, including children and young people.²⁶ Improving the accessibility of the police oversight system to each member of the community is therefore integral to addressing these issues.

The design and operation of the police oversight system must ensure that concerns can be effectively raised, enabling misconduct to be addressed at the earliest possible opportunity. VLA supports these calls for the independent oversight of police. We have previously recommended stronger external, independent oversight and monitoring of Victoria Police's use and management of human source information to improve transparency and accountability.²⁷

In addition to an independent police oversight agency, VLA supports strengthening First Nations-led oversight and accountability across the justice system, including in respect of corrections services, the courts, prosecution agencies, legal aid and the legal profession.

²⁵ Recommendations 84-92.

²⁶ Victorian Aboriginal Legal Service, *Reforming Police Oversight in Victoria* (Policy Brief, 2022) 3 and Victorian Aboriginal Legal Service, Submission to the Independent Broad-based Anti-corruption Commission Committee *Inquiry into External Oversight of Police*, 14. The Commission for Children and Young People also recently highlighted concerns regarding the experiences of children and young people with police systems, practice, and culture. See Commission for Children and Young People, *Our Youth, Our Way* (2021) 436.

²⁷ VLA Submission to the *Royal Commission into Management of Police Informants: Terms of Reference 2 – Oversight and disclosure*, 2019.

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APPENDIX B

VLA public submissions

Key submissions:

Victoria Legal Aid, [*Towards a fairer and more effective criminal justice system for Victoria: Submission to the Victorian Parliamentary Inquiry into Victoria's Criminal Justice System*](#), Parliament of Victoria (Legislative Council Legal and Social Issues Committee), Submission (January 2021).

Victoria Legal Aid, [*Submission to Cultural Review Adult Custodial Corrections System*](#), Department of Justice and Community Safety Victoria, Submission (December 2021).

National Legal Aid, [*Submission to Council of Attorneys-General - Age of Criminal Responsibility Working Group review*](#), Submission (February 2020).

Victoria Legal Aid, Submission to [*Our Youth, Our Way: Inquiry into the over-representation Aboriginal children and young people in the youth justice system*](#), Submission (November 2019).

Other relevant submissions:

Victoria Legal Aid, [*Submission to the Statutory review of the Children and Justice Legislation Amendment \(Youth Justice Reform\) Act 2017*](#), Submission (2022).

National Legal Aid, [*Submission to Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*](#), Submission (2022).

Victoria Legal Aid, [*Submission to Inquiry into the use of cannabis in Victoria*](#), Parliament of Victoria, Submission (2021).

Victoria Legal Aid, [*Intersections between mental health and the legal system and the impacts for people and communities: Submission to the Productivity Commission's Inquiry into the Economic Impact of Mental Ill-Health*](#), Submission (2019).

Victoria Legal Aid, [*Protecting people with disability in the forensic and criminal justice systems: Submission to the Inquiry into the National Disability Insurance Scheme Quality and Safeguards Commission*](#), Submission (2021).

Victoria Legal Aid, [*Paving the roads to recovery: Building a better system for people experiencing mental health issues in Victoria. Submission to the Royal Commission into Victoria's Mental Health System*](#), Submission (2020).

Victoria Legal Aid, [*Roads to recovery: Building a better system for people experiencing mental health issues in Victoria: Submission to the Royal Commission into Victoria's Mental Health System*](#), Submission (2019).

Victoria Legal Aid, [*Submission to Victoria's Royal Commission into the Management of Police Informants: Terms of Reference 4 – Access to a lawyer from police custody*](#), Submission (2019).

Victoria Legal Aid, [*Submission to the Royal Commission into the Management of Police Informants: Terms of Reference 2 – Oversight and disclosure*](#), Submission (2019).

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Relevant public Reports

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