



VACCHO Submission to the Yoorrook Justice Commission addressing the historical and ongoing systemic injustice experienced by Aboriginal people in the child protection and criminal justice systems in Victoria.

Introduction

The Victorian Aboriginal Community Controlled Health Organisation (VACCHO) welcomes the opportunity to provide feedback to the Yoorrook Justice Commission on addressing the historical and ongoing systemic injustice experienced by Aboriginal people in the child protection and criminal justice systems in Victoria.

Across a wide range of intersecting factors, Aboriginal Victorians are at a greater risk of coming into contact with the child protection and criminal justice systems, experiencing harms that removal from family and criminalisation have on their health and wellbeing.

About VACCHO

VACCHO is the peak body for Aboriginal health and wellbeing in Victoria – the only organisation of its kind - with 32 Aboriginal Community Controlled Organisations (ACCOs) as Members. VACCHO Members support over 25,000 Aboriginal people in Victoria and combined, are the largest employers of Aboriginal people in the state. The role of VACCHO is to build the capacity of its members and to advocate on issues on their behalf. As well as this, VACCHO is the leading voice on issues affecting Aboriginal Health and wellness in Victoria. We build capacity among Members by strengthening support networks, increasing workforce development opportunities and through leadership on particular health issues. We advocate for our Members and Aboriginal Community at the at the state and national levels on all issues related to Aboriginal health and wellbeing.

Language

The term 'Aboriginal' in VACCHO documents is inclusive of Torres Strait Islander peoples and 'Aboriginal Victorian' includes all Aboriginal people living in Victoria. The terms 'Community' or 'Communities' in this document refers to all Aboriginal and/or Torres Strait Islander communities across Australia, representing a wide diversity of cultures, traditions, and experiences.

Community is always capitalised unless it has the word Aboriginal in front of it or its referencing a non-Aboriginal community.

Submission outline

VACCHO strongly advocates for systemic reform of the child protection and criminal justice systems in Victoria. Not only are the current systems not working, but they are also creating harm for Aboriginal children, families, and Communities.

In preparing this submission, VACCHO has addressed the systemic injustices of the child protection and criminal justice systems by breaking down each paper into sections that best capture the key points of contact an Aboriginal person may have throughout their life.



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- **Precontact** This section addresses the experiences and factors that occur before an Aboriginal child or person first encounters the child protection or criminal justice systems. In doing so, it attempts to highlight the important role of early intervention and preventative health care.
- **Contact** This section addresses the many barriers and setbacks that Aboriginal people face once they have received either a child protection order or criminal charges.
- **Post-contact/release** This section addresses the current experiences and failures of the child protection and criminal justice systems to provide Aboriginal Victorians with adequate support once a child protection order closes, or they are released from prison.

Child protection and criminal justice systems, by nature, should provide victims and offenders with access to support and services, ensuring that all Victorians are able to lead a happy, healthy, and safe life. In their current structure, the punitive dominant and siloed child protection and criminal justice systems do more harm than good. Victorian Aboriginal people are continually being over-represented and over-policed by these systems and are not accessing the support services they are entitled to.

Summary of recommendations

- The Victorian Government should increase the proportion of funding given to ACCOs who provide child and family support services, as a mechanism of early intervention and prevention of Aboriginal people coming into contact with the child protection and criminal justice systems.
- The Victorian Government should increase resourcing into preventative measures, such as residential alcohol and other drug and detox services for Aboriginal people, placing a greater focus on health prevention and remediation, with a view that the removal of children from families and incarceration are the absolute last resort of the child protection and criminal justice systems.
- The Victorian Government should mandate cultural safety training for all publicly funded mainstream services within the child protection and criminal justice systems, and that this training is provided by an external Aboriginal organisation.
- The Victorian Government should ensure that ACCOs are involved throughout all stages within the child protection and criminal justice systems, ensuring Aboriginal people have access to culturally safe, holistic services that maintain a strong connection to their culture, kinship, and Community.
- The Victorian Government should commission ACCOs to design and deliver culturally appropriate continuity of care models for Aboriginal people exiting the child protection and criminal justice systems.
- The Victorian Government should create a Social and Affordable Housing Contribution and/or amend the Planning and Environment Act to give councils greater autonomy to implement local versions of such a scheme.

Background

Since early colonisation, Aboriginal people have, and continue to experience complex and intergenerational trauma through a history of racist and discriminatory government policies such as

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the forced removal of children and disconnection from country, Community, and culture.¹The ongoing effects of colonisation have led to significant inequalities and poorer health outcomes for Aboriginal people across Australia.

In the case of Victoria's child protection system, the effects of colonisation and discriminatory policies are still very much alive and present today. Aboriginal children are over-represented at every point: from notifications, investigations, and substantiations of child harm to removal into Out of Home Care (OoHC), permanent removal and adoption. This over-representation has increased consistently over the last 10 years.²

The story in the criminal justice systems is the same. Despite making up 0.6% of the Victorian adult population, Aboriginal Victorians made up 8.5% of the adult prisoner population.³ Aboriginal people enter the criminal justice system at a far younger age and result in vastly disproportionate rates of incarceration to non-Indigenous Australians.⁴ In 2016-17, Aboriginal children and young people were 13 times more likely to come under justice supervision than their non-Indigenous peers.⁵

Social determinants of health are the biggest contributor (34%) to the health gap experienced between Aboriginal and non-Indigenous Australians.⁶ A report by Markham & Biddle estimated that 31% of Aboriginal people live below the poverty line (measured as 50% of median income after accounting for housing costs), and in very remote Communities, over half of Aboriginal people live in poverty (54%).⁷ Without access to appropriate housing, a stable income, education, or employment opportunities, people can become trapped in a vicious, ongoing cycle of poverty.

For Aboriginal people, poverty is and was a result of dislocation from their country, forced removal from their families, and the ongoing racism and discrimination. The reporting or suspected belief of child abuse and/or neglect that result in a child protection notification are symptoms of the social disadvantage, racism, parental substance abuse, family violence and ill health experienced by Aboriginal people.⁸ These behaviours are symptoms of the systemic failings of the child protection system that does not effectively respond to the underlying causes of why a child protection order was issued, but instead continues to respond punitively to the behaviours, often removing Aboriginal children from their families and culture.

¹ Commission for Children and Young People. 2021. *Our youth, our way: inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*. Melbourne: Commission for Children and Young People.

² Family Matters, SNAICC, University of Melbourne. 2021. *Family Matters Report 2021*.

³ The Victorian Government, 2018, *The Victorian Aboriginal Justice Agreement Phase 4: Burra Lotjpa Dunguludja*

⁴ Commission for Children and Young People. 2021. Op cit.

⁵ Ibid

⁶ Australian Institute of Health and Welfare, *Determinants of health for Indigenous Australians*, 2022, viewed November 2022 <https://www.aihw.gov.au/reports/australias-health/social-determinants-and-indigenous-health>

⁷ Davidson, P., Bradbury, B., and Wong, M. 2020, *Poverty in Australia 2020: Part 2, Who is affected?* ACOSS/UNSW Poverty and Inequality Partnership Report No. 4, Sydney: ACOSS.

⁸ McArthur, M., Suomi, A., & Kendall, B. 2021. *Review of the service system and implementation requirements for raising the minimum age of criminal responsibility in the Australian Capital Territory*. Canberra: Australian National University

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Removal from kinship and culture is an ongoing and significant trauma for Aboriginal children and can have long lasting impacts on their overall health and wellbeing. For Aboriginal people, health is more than just the physical health of an individual; rather an encompassing of the social, emotional, and cultural well-being of the entire Community.⁹ In the *Family Matters Report 2021*, SNAICC powerfully articulate the importance of connection, stating that for Aboriginal children, ‘stability is grounded in the permanence of their identity in connection with family, kin, culture, and country’.¹⁰

Without providing adequate support systems and failing to address the underlying causes of social disadvantage and racism, these children their families are placed at a greater risk of coming into contact with the criminal justice system.

Acknowledging and empowering Aboriginal ways of knowing, being and doing within the child protection and criminal justice systems is vital to ensuring the health and wellbeing of Aboriginal people living in Victoria. Rather than removing them from their families and cultures, or criminalising and imprisoning these people, a therapeutic and culturally safe support system needs to be established to ensure all Aboriginal Victorians are provided the opportunity to thrive.¹¹ These support systems need to be made available at all stages of life, they must be affordable and geographically accessible for all Aboriginal people within Victoria.¹²

⁹ Commonwealth of Australia as represented by the Department of Health. 2021. *National Aboriginal and Torres Strait Islander Health Plan 2021–2031*

¹⁰ Family Matters, SNAICC, University of Melbourne, 2021, *Family Matters Report 2021*.

¹¹ Victorian Aboriginal Legal Service. 2020. *Submission to Council of Attorney Generals (COAG) Age of Criminal Responsibility Working Group*. Melbourne.

¹² Commission for Children and Young People, 2021, *op. cit.*

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Preface

For our mob, the criminal justice system is anything but just. Systemic injustices have wrought harm that has transcended generations. The ongoing impacts of colonisation and various discriminatory and assimilationist policies enacted by governments over the past 234 years, continue to plague our mob across these lands. For 234 years, our mob has been unjustly targeted, thought of as less than, and confined to the margins, to the Boundary Roads, missions, and reserves.

For us here in Victoria, colonial violence in its many forms has been especially brutal. The impacts of the Frontier Wars, of the dispossession of land and Country, of the collection of policies that led to the Stolen Generations, the continuous torment through racism and discrimination, continues to bedevil us as a people.

These are collective traumas that are expressly felt by us all. These traumas dampen our spirit. They negatively impact our social and emotional wellbeing (SEWB), our mental health, and our sense of self-worth. These traumas and feelings manifest themselves in all sorts of ways, ways which unfortunately lead to contact with a systemically unjust justice system at obscene rates. "Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people".¹ How can this be?

These traumas do not simply disappear as the sun sets on those directly brutalised over the last two centuries. They stay with us. They are passed down as if they were precious family heirlooms. And in a way, they are. The trauma and injustices spur us to seek justice for those wrongs committed against us and our Ancestors, and to create a fairer, more equitable future for those to come behind us.

Written by VACCHO AOD Workforce Project Officer who has requested anonymity

Issues Paper one: injustice in the Criminal Justice System

Precontact with the criminal justice system

The gaps, vulnerabilities, intersections and complexity between health and justice

Surrounding Aboriginal children in vibrant, healthy, self-determining Aboriginal communities is essential when it comes to ensuring healthy physical, mental, and behavioural development.¹³ Delays in early childhood development can present in many ways and often have long lasting effects on a child's overall health and wellbeing. If delays in development or health concerns are not identified and treated early, they can start to impact on a child's physical, developmental, and social and emotional wellbeing and lead to educational, social, and financial disadvantage later on in life.¹⁴ These

¹³ Commonwealth of Australia as represented by the Department of Health. 2021. Op. cit.

¹⁴ Campbell, L., Reath, J., Hu, W.C., Gunasekera, H., Askew, D.A., Watego, et al. , 2022, The socioemotional challenges and consequences for caregivers of Aboriginal and Torres Strait Islander children with otitis media: A qualitative study, Health Expectations: An International Journal of Public Participation in Health Care and Health Policy, 25, 1374 - 1383.

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compounding experiences can then increase the risk of coming into contact with the criminal justice system over the course of a lifetime.¹⁵

Hopkins, Clegg and Stackhouse's *Examining the association between the language, expository discourse and offending behaviour: An investigation of direction, strength and independence* found a link between youth offending and Developmental Language Disorder (DLD), found that a high prevalence of DLD was found in youth offenders, compared to non-offenders.¹⁶ Moreover, it was also found that increases in language performance also increased the likelihood of not offending, where youth were one to five times more likely to be non-offenders for every unit increase in language they scored.¹⁷ As only 35% of Aboriginal children are 'developmentally on track on all 5 domains', the likelihood of our children developing DLD or other speech related delay, is higher than for non-Aboriginal youth, thereby giving our children and youth an extremely unfair disadvantage of youth justice contact.¹⁸

Professor Kelvin Kong is a proud Worimi man from NSW, and is the first Aboriginal surgeon in Australia, specialising in ear-nose-throat treatment.¹⁹ Dr Kong highlights the injustice that can ensue if someone is experiencing hearing difficulties, such as contact with the criminal justice system and incarceration, learning difficulties, social isolation, and disadvantage. Dr Kong advocates for a redesign of the health and education systems into one that works effectively together and isn't broken up into siloed systems.²⁰

As noted in *Wirkara Kulpa Aboriginal Youth Justice Strategy 2022-2032*, the social and cultural determinants of health required for strong and resilient development are missing for many Aboriginal children and young people.²¹ The report demonstrates that 81% of Aboriginal young people involved in youth justice were victims of abuse, trauma, or neglect; 78% had experienced family violence; and 94% had a history of alcohol and/or drug misuse.²² Such experiences should not elicit a criminal justice response that persecutes those who are victims. Instead, they should prompt a health and healing response that will assist Aboriginal youth by strengthening their social and emotional wellbeing and connection to culture, which will ensure our children grow into being strong and resilient adults.

There is an immediate need for investment in services that prevent young Aboriginal people ending up in contact with the criminal justice system. Healing programs, detoxification (detox) and residential rehabilitation (rehab) centres, safe spaces, and culturally informed programs are what is required for young people. Services such as Bunjilwarra in Hastings, who provide culturally appropriate and safe

¹⁵ Ibid

¹⁶ Hopkins, T., Clegg, J., & Stackhouse, J. 2018, *Examining the association between language, expository discourse and offending behavior: An investigation of direction, strength and independence*, *International Journal of Language & Communication Disorders*, 53(1), 113–129.

¹⁷ Ibid

¹⁸ Productivity Commission, 2022, *Closing the Gap Annual Data Compilation Report*, July 2022.

¹⁹ Kong, K. 2020. *Indigenous people and ear disease*. *Deafness & Education International*, 22(4), 251–254.

²⁰ Ibid

²¹ State Government of Victoria, Department of Justice, and Community Safety, 2022, *Wirkara Kulpa Aboriginal Youth Justice Strategy 2022-2032*.

²² Ibid

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residential rehab services for Aboriginal youth, demonstrate what a strong service model built on the SEWB wheel which centres on culture, kin, and Community can achieve.²³

In 2016, Victorian Legal Aid (VLA) reported that 70% of youth (aged 10-17) seeking advice on a criminal matter were under 14 years of age.²⁴ Moreover, the most common offenses these children seeking advice were on matters relating to property damage and/or theft.

Aboriginal children who come into contact with the youth justice system (both as victims and offenders) have a range of complex traumas, health issues, mental ill-health, and cognitive disabilities that are both the cause of, and exacerbated by, their interactions with the criminal justice system. In their report titled *Healing the Past by Nurturing the Future—co-designing perinatal strategies for Aboriginal and Torres Strait Islander parents experiencing complex trauma: framework and protocol for a community-based participatory action research study* Chamberlain et al. found that traumatic events in early childhood can have serious, long-term physical, social and emotional effects on individuals.²⁵ Aboriginal people are particularly affected by complex and intergenerational trauma due to a significant history of trauma including state-sanctioned systematic removal of Aboriginal children from their families and ongoing discrimination.²⁶ Additionally, Aboriginal perspectives of social and emotional wellbeing incorporate connection to land, culture, spirituality, family, and community. All these areas are impacted by complex trauma and can be referred to as ‘relational trauma’.²⁷ We need to focus on treating the trauma rather than adding to it by imprisoning children.

Between the ages of 10-14, brain development is still immature in children, and there is a range of neurobiological evidence that brains are not fully mature until people reach their early twenties.²⁸ This immaturity impacts on cognitive function, logical reasoning, consequential thinking, impulsivity, and emotional regulation.²⁹ It is VACCHO’s position that it is unjust and illogical to hold a 10-year-old to the same set of standards as a 30-year-old. Research has found that young people who experience emotional and behavioural difficulties have often had prior difficult primary school experiences, including limited extracurricular engagement, putting them at a greater risk of experiencing a challenging time transitioning into high school.³⁰ Transitioning to high school can often be a key time

²³ Victorian Aboriginal Health Service & Youth Support and Advocacy Service, 2014, Fact Sheet: *Bunjilwarra Service Model*, May 2014.

²⁴ Victorian Legal Aid, 2016, *Care not custody. A new approach to keep kids in residential care out of the criminal justice system*.

²⁵ Chamberlain, C., Gee, G., Brown, S., Atkinson, J., Herrman, H., Gartland, et al., 2019. *Healing the Past by Nurturing the Future—co-designing perinatal strategies for Aboriginal and Torres Strait Islander parents experiencing complex trauma: framework and protocol for a community-based participatory action research study*. BMJ Open.

²⁶ Victorian State Government & The Department of Justice and Community Safety. 2022, *Wirkara Kulpa, Aboriginal Youth Justice Strategy 2022-2032*, Victoria.

²⁷ Chamberlain, C., Gee, G., Brown, S., Atkinson, J., Herrman, H., Gartland, et al., 2019, op. cit.

²⁸ Cunneen, C. 2017, *Arguments for Raising the Minimum Age of Criminal Responsibility, Research Report*, Comparative Youth Penalty Project, University of New South Wales, Sydney.

²⁹ Ibid

³⁰ McArthur, Suomi, & Kendall, 2021, op. cit.

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where issues escalate in seriousness, such as skipping a few classes turns into missing days and weeks at a time.

Therefore, a period of transition, for instance from primary school to high school, can be pivotal in dictating the trajectory of a child's life. Raising the age of criminal responsibility from 10 to 14, instead of to 12, is vitally important to protect vulnerable children from further disadvantage and poorer lifelong outcomes.

Recommendations

- The Victorian Government should invest in increasing access to ear-eye-throat screenings for Aboriginal children in Victoria, particularly those in remote areas. This could be achieved by providing ACCO's with funding for such specialists.
- The Victorian Government should direct resources into preventative measures, such as residential alcohol and other drug and detox services for Aboriginal young people, as a mechanism of rehabilitation and diversion of Aboriginal people coming into contact with the criminal justice system.
- The Victorian Government should raise the age of criminal responsibility to at least 14 years of age.

Contact with the criminal justice system

A focus on restorative justice, rehabilitation, and the use of First Peoples' lore and other cultural interventions and supports

Once Aboriginal people encounter the criminal justice system, the likelihood of them staying within the system remains high. VACCHO has always advocated for funding and resourcing of early intervention models (pre-justice contact) and the use of diversion programs, but ACCOs, who deliver an array of youth programs and family centred supports, are often under-resourced. Half of all VACCHO's Members deliver child and family support services, following a holistic family-centred model of care people that function as a mechanism for prevention in themselves, as well as delivering a range of better outcomes and culturally safe care for Aboriginal communities across Victoria.

According to the Victorian Aboriginal Legal Service (VALS), many Aboriginal offenders have often experienced family violence, assault, and ongoing trauma themselves.³¹ For Aboriginal women, many offences are born from necessity or via force from a family member or partner.³² While Family Violence is not a direct cause of incarceration for Aboriginal women, it is said to be a precursor to a range of conditions that can lead to imprisonment.³³ Moreover, women are likely to be caregivers for their children, which may then result in children being placed in the child protection system and disconnected from family, kin, and culture. Instead of criminalising victims, the criminal justice system

³¹ Victorian Aboriginal Legal Service, 2021, *Victorian Aboriginal Legal Service Submission to the Inquiry into Victoria's Criminal Justice System.*, viewed November 2022, <https://www.vals.org.au/wpcontent/uploads/2022/02/139._VALS_Eastern_Australian_Aboriginal_Justice_Services_Ltd_Redacted.pdf>.

³² Ibid

³³ National Family Violence Prevention Legal Services, 2017, *Submission to the ALRC Inquiry into Incarceration Rates of Aboriginal and Torres Strait Islander People*

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needs to recognise the impact that socioeconomic disadvantage has on those who are currently incarcerated and seek to rehabilitate people, not remand them.

The requirement to plead guilty if attending the Koori court significantly limits the ability of the court to apply diversion or rehabilitation to offenders, and means people have a conviction against their name, likely for life. A criminal record significantly impacts a person's ability to find work and access community freely once they have been sentenced. VACCHO has heard countless stories from the ACCO workforce on the barriers people experience if they have a criminal record. They struggle to find employment, housing, and maintain connection to their culture and Community. A basic requirement for almost every job is to obtain a Working With Children's Check (WWCC). Upon release, many people with a criminal record would not be able to obtain a WWCC, thereby eliminating their ability to find employment.

During 2018-2020 almost half of Aboriginal people in custody had not been sentenced, compared to 26% of the general unsentenced prison population.³⁴ More alarmingly, in Victoria, the Aboriginal prison population has increased by 148% in the last decade.³⁵ As a result of amendments made to the Bail Act in 2017 and 2018, the adult prison population has exploded, and the government continues to invest money into building new prisons that deliver draconian style punishment that does not rehabilitate offenders.³⁶ In addition to this, the strain of these matters has resulted in the court system experiencing a backlog of astronomical proportions. For years, the Magistrates' court has opened its doors for matters to be heard at night and on the weekends to assist with this backlog, but with no prevail. This backlog puts a further burden on community services and their staff to assist clients that require the much-needed help and advice.³⁷

This year, 70% of Aboriginal people who have been in contact with the criminal justice system have been charged with a nonviolent crime (i.e., drug offences, property offences), many of which will not be granted bail.³⁸ As the likelihood of reoffending increases substantially once a person is incarcerated, it creates an unfair and unjust cycle of systemic injustice, police brutality and stigmatisation.³⁹

For Aboriginal people who end up in prison, it is essential that they have access to culturally appropriate and responsive services and receive a higher standard of care and support than what the current system provides. As noted through the Coroner's report of recent deaths in custody, many of

³⁴ State Government of Victoria, Department of Justice and Community Safety, Corrections Victoria, 2022, *Profile of Aboriginal people in prison*, viewed November 2022,

<<https://www.corrections.vic.gov.au/annual-prisoner-statistical-profile-2009-10-to-2019-20>>.

³⁵ Ibid

³⁶ Investigation into the rehabilitation and reintegration of prisoners in Victoria, 2015, Victorian Ombudsman, viewed November 2022, < <https://assets.ombudsman.vic.gov.au/assets/Reports/Parliamentary-Reports/1-PDF-Report-Files/Investigation-into-the-rehabilitation-and-reintegration-of-prisoners-in-Victoria.pdf>>.

³⁷ Financial Review, 2017, *Magistrates to be called in after hours in Victorian bail law reform*

³⁸ Crime Statistics Agency, 2022, *Alleged Offender Incidents by Aboriginal and Torres Strait Islander status*.

³⁹ McMahon, M., 2021, *Criminal Recidivism*. Salem Press Encyclopedia.

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these deaths were preventable and lives needn't be lost.⁴⁰ In Victoria, more Aboriginal people have died in custody in the last five years than the previous 25.⁴¹

Victoria is the only jurisdiction in Australia that contracts private companies to be responsible for the health care of people in prison, and our Aboriginal health services are excluded from providing care to our people in custody. In New South Wales, the public Justice Health and the Forensic Mental Health Network have an Aboriginal Chronic Care Program Deliver culturally responsible care to improve the health status of Aboriginal patients and are working in partnership with Aboriginal Community Controlled Health Services. They are also targeting the expansion of our clinical and non-clinical Aboriginal workforce and have announced a grant of \$1.18m to improve mental health intervention for Aboriginal prisoners.⁴²

The South Australian Prison Health Service and Department of Correctional Services have a strategy to ensure services respond to the unique cultural and gendered needs of Aboriginal offenders, including developing a culturally competent and responsive workforce. They also have a visiting Elders program, a Respect Sista Girls 2 program, and will expand its program to prepare people before release (Our Way My Choice), to include a family component and by developing a version for Aboriginal women.⁴³

Case Study: Winnunga Nimmityjah Aboriginal Health and Community Services, ACT.

Since 2018, Winnunga Nimmityjah Aboriginal Health and Community Services (Winnunga) has been funded by the ACT government to provide standalone health and wellbeing services to Aboriginal detainees in the Alexander Maconochie Centre (AMC)¹. The first and only state or territory in Australia that has contracted an ACCO to provide healthcare in prisons.¹ During their initial intake assessment, once an individual identifies as Aboriginal, a Winnunga doctor will conduct an initial health check (which includes a chronic health and mental health care plans) and determines the medication and treatment plan for the patient. The service is run seven days a week, with Winnunga nurses on site, and other medical staff including doctors and psychologists holding regular clinics. Winnunga have recently been funded \$9.5m over four years to continue providing services because of its success - there has not been a single death in custody since Winnunga began providing services.

Ref: Tongs, J., Chatfield, H. & Arabena, K. 2007, *'The Winnunga Nimmityjah Aboriginal Health Service Holistic Health Care for Prison Model'*, Aboriginal & Islander Health Worker Journal, vol. 31(6).

⁴⁰ In the matter of the Inquest into the Death of Tanya Day, 2017, Coroner's Court of Victoria, viewed November 2022,

<<https://www.coronerscourt.vic.gov.au/sites/default/files/2020-04/Finding%20-%20Tanya%20Day-%20COR%202017%206424%20-%20AMENDED%2017042020.pdf>>.

⁴¹ Doherty, L, 2021, *Deaths in custody in Australia 2020–21*. Australian Institute of Criminology

⁴² Baiocchi, L. (2022). Program enhancing mental healthcare for Aboriginal prisoners receives \$1.18m grant. University of New South Wales. <https://newsroom.unsw.edu.au/news/health/program-enhancing-mental-healthcare-aboriginal-prisoners-receives-118m-grant>. Accessed on 25/11/2022

⁴³ Department for Correctional Services (2020), Aboriginal Strategic Framework 2020-2025. The Government of South Australia

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Recommendations

- The Victorian Government should increase the proportion of funding given to ACCOs who currently provide child and family support services, as a mechanism of early intervention and prevention of Aboriginal people coming into contact with the criminal justice system.
- The Victorian Government should fund ACCOs directly to provide health services to Aboriginal people in custody, supporting the health of people during imprisonment to prevent emergencies and deaths.
- The Victorian Government should remove the amendments made to the Bail Act in 2017 and 2018 which expands those required to prove “reverse-onus test” for those charged with an indictable offence.
- The Victorian Government should improve the cultural responsiveness of the criminal justice system. This can be done by increasing access to culturally safe programs that provide support to prisoners and prevent recidivism by addressing the social determinants of health.
- The Victorian Government should invest in the residential support and services for women on bail, ensuring that these services are culturally safe and that women remain connected with their children and Kin.
- The Victorian Government should ensure that the Koori Court allows Aboriginal people to plead not guilty when having their case heard.

Release from the criminal justice system

Release and supported transition to community and reasons why previous reforms have not been accepted or implemented

Often, re-offending is due to a complex array of intersecting factors such as trauma, abuse experienced within the criminal justice system, a sense of being disconnected from family, culture, and country for so long, as well as relating poverty and homelessness. In turn, these factors have well established links with alcohol and substance misuse, mental health issues, and a general deterioration of social and emotional wellbeing. It is not uncommon for people to be discharged from prison on the side of the road, late at night, without a phone, money, or a place to stay. Protective factors that prevent recidivism include access to education, employment, healthy social and Community networks, and access to services.^{44,45}

⁴⁴ McMahan, M., 2021, op cit.

⁴⁵ Victorian Aboriginal Legal Service, 2021, Op cit.

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Connecting people with culturally appropriate services and support once they are in the criminal justice system or prior to being released from prison is essential to healing and reducing the rate of reoffending.⁴⁶

Case Study: Indigenous Arts in Prisons and Community Program

Established in 2011, The Torch has been delivering the Indigenous Arts in Prisons and Community (IAPC) program that provides cultural support to Aboriginal offenders and ex-offenders in Victoria.¹ The IAPC project aims to reduce reoffending by connecting people with identity and culture through art programs. The IAPC program has three main components, that offer Aboriginal offenders support in-prison and post-release, as well as providing economic development through the promotion and sale of artworks, with all proceeds going directly to the artists.

Reference: The Torch., 2018, Summary of Evaluation of The Torch's Indigenous Arts in Prison & Community Program.

Recommendations

- The Victorian Government should commission ACCOs to design and deliver a culturally appropriate continuity of care model for Aboriginal people exiting the criminal justice system.

⁴⁶ The Torch., 2018, Summary of Evaluation of The Torch's Indigenous Arts in Prison & Community Program.

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Issues Paper two: Systemic injustice in the Child Protection System

Pre-contact with the child protection system:

Healthcare as a preventative and protective factor for Aboriginal children and families

Ensuring a child has a happy and healthy start to life is inherently linked to the health and wellbeing of the mother – and commences before a child is born. There are many different factors that influence the outcomes of pregnancy such as socio-economic status, underlying health conditions, familial circumstances, and access to services. Aboriginal people experience poorer outcomes during pregnancy and birth, with 9.2% of Aboriginal babies born with a low birth rate, compared to 4.9% of non-Indigenous babies in 2019.⁴⁷

Early and regular access to antenatal and Maternal and Child Health (MCH) services have positive effects on the health and wellbeing outcomes of both the mother and child, but Aboriginal women are less likely to access these services and experience poorer birthing outcomes when compared to non-Indigenous mothers.⁴⁸ Aboriginal women are more likely to experience complex social and health issues during their pregnancy, which can lead to a lack of engagement with the health system, and have detrimental effects for the newborn child, often acting as a precursor for ongoing engagement with child protection services.

Under the Child, Youth and Families Act 2005, health care workers are mandated to report instances of child abuse to child protection authorities, and these can be made for unborn infants.⁴⁹ Aboriginal women are more likely to experience family violence and poor mental health, which can lead to an increased risk of pre-birth child protection notifications, and subsequent removal of children from their families within the first year of birth.⁵⁰

A culturally responsive and therapeutic approach that looks at the underlying causes behind poor birthing outcomes and lack of engagement with antenatal and MCH services is a critical step towards reducing the over representation of Aboriginal children in the child protection system. Pregnancy is a significant event in a women's life and is often linked with an increase in health seeking behaviour, and can, therefore, act as an opportunity for greater engagement with wider health and social support services. If an expectant mother establishes a positive connection with MCH services, these act as a gateway and link mothers and families to other support services, such as housing and family violence support. Ensuring that women and families are aware of and able to access MCH services is a protective factor and reduces the likelihood of a child and/or family contact with the child protection system.

For Aboriginal women and families, birthing on country is an important cultural practice that ensures the health and wellbeing of a newborn child and mother. With the closure of many regional and

⁴⁷ Australian Institute Health and Welfare, Aboriginal and Torres Strait Islander Health Performance Framework, Health, and status outcomes 1.01 Birthweight, 2022, viewed November 2022

<https://www.indigenoushpf.gov.au/measures/1-01-birthweight>

⁴⁸ *ibid*

⁴⁹ Victorian Department of Human Services, 2006, *Children, Youth and Families Act 2005*. Authorised Version No. 132. Incorporating amendments as at 2 September 2022.

⁵⁰ Family Matters, SNAICC, University of Melbourne, 2021, *Family Matters Report 2021*.

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remote MCH, many Aboriginal women must travel to mainstream, tertiary hospitals. These mainstream services rarely accommodate for traditional midwives and cultural birthing practices, which can result in many Aboriginal women experiencing culturally unsafe care.⁵¹

Koori Maternity Services (KMS) provide Aboriginal women and their families with holistic, culturally safe maternity care. Established in 2000, there are now 14 KMS sites across Victoria, with 11 in ACCOs and three located in public hospitals.⁵² Whilst these services are available, many Aboriginal mothers and children are not able to access the culturally safe, wrap around services that they need

Investment into Community-led programs should begin with antenatal and MCH services and continue through all life stages. The Victorian Aboriginal Affairs Framework (VAAF) recognises that the first five years of a child's life are 'fundamental' in shaping their future, by promoting and supporting community-led maternal and early childhood services, many of the barriers Aboriginal people experience with mainstream services could be removed.⁵³

Case Study: Birthing on Country (in Our Community)

In response to the rising pre-term births and poorer health outcomes for Aboriginal mothers and children, the Mater Health Service, the Institute for Urban Indigenous Health (IUIH) and the Aboriginal and Torres Strait Islander Community Health Service Brisbane (ATSICHSB), partnered up to develop a best-practice Birthing in Our Community program (BiOC).

Birthing on country services provide Aboriginal women and their children with holistic, culturally safe maternity care. Developed at the Molly Wardaguga Research Centre for the Best Start to Life, The RISE Framework is working model for implementing birthing on country services across Australia. The framework is made up of four 'key pillars' that are required to successfully develop and maintain birthing on country services; **Redesign** the health service, **Invest** in the workforce, **Strengthen** families, **Embed** Aboriginal community governance and control.

Ref: Kildea, S., Gao, Y., Hickey, S., Nelson, C., Kruske, S., Carson, A. et al. 2021. Effect of a Birthing on Country service redesign on maternal and neonatal health outcomes for First Nations Australians: a prospective, non-randomised, interventional trial, *The Lancet*, Volume 9.

Recommendations:

- The Victorian Government should invest in Aboriginal led health KMS and MCH services, to ensure that Aboriginal people have access to the culturally safe, holistic care that they need.

⁵¹ Kildea, S., Hickey, S., Barclay, L., Kruske, S., Nelson, C., Sherwood, J., et al. 2019. *Implementing Birthing on Country services for Aboriginal and Torres Strait Islander families: RISE Framework*, Women and Birth, Volume 32, Issue 5.

⁵² VACCHO, 2022, Maternity Services and Early Years, Viewed November 2022

< <https://www.vaccho.org.au/member-services/workforce-development-2/maternity-and-early-years/> >

⁵³ Victorian State Government & the Department of Premier and Cabinet, 2018, *Victorian Aboriginal Affairs Framework 2018-2023*.

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The importance of secure housing for healthy families and child development

The Australian Housing and Urban Research Institute has found that secure housing gives people a sense of certainty and control that leads to lower levels of stress and improves the mental health of parents and family stability. These factors resulted in children attending fewer schools and having better educational performance and rates of school completion.⁵⁴ Home ownership has also been associated with children performing better at school in terms of maths and reading and having lower dropout rates, and better health and behavioural outcomes.⁵⁵ Unfortunately, fewer than half of Aboriginal households own their home – rate far less than the non-Aboriginal population.⁵⁶

Aboriginal Victorians presented to specialist homelessness services at a rate of 17% per annum in 2019-20, which is ten times the rate of other Victorians. Nearly half of those presenting for help at specialist homelessness services were already homeless.⁵⁷ The lack of emergency housing stock means that 22% of Aboriginal Victorians requiring short-term or emergency housing do not receive it.⁵⁸ This problem of homeless in Victoria is far worse than elsewhere - Aboriginal people in Victoria are twice as likely as other Aboriginal people to seek homelessness assistance.⁵⁹

In addition to those Aboriginal people requiring homeless services, another 20% of Aboriginal people require social housing (only 3% of non-Aboriginal people do).⁶⁰ With the Victorian Aboriginal population expected to grow from 58,000 in 2016 to 95,000 by 2036, an extra 5,085 additional Aboriginal social housing units are needed by 2036 just to ensure that the existing scale of Aboriginal homelessness does not continue to escalate.⁶¹ This is the very minimum requirement, however, as one in five Aboriginal people living in overcrowded homes, an Australian-wide problem that will be the same in Victoria.⁶² Smaller homes with more people living in them contributes to spread of airborne diseases (tuberculosis) and respiratory infections (pneumonia). Cramped living conditions has also been found to adversely affect a child's physical and mental health, and cognitive development.⁶³

⁵⁴ Australian Housing and Urban Research Institute. (2006). *How does security of tenure impact on public housing tenants?* (Research and Policy Bulletin No. 78). Melbourne: AHURI. Retrieved from <www.ahuri.edu.au/publications/download/rap_issue_78>.

⁵⁵ Taylor, M., & Edwards, B. (2012). Housing and children's wellbeing and development: Evidence from a national longitudinal study. *Family Matters*, 91, 47-61.

⁵⁶ Smith, D. & Rimmer, B. (2021), Every Aboriginal Person Has a Home. Victorian Aboriginal Housing and Homelessness Framework Working Group

⁵⁷ Aboriginal Housing Victoria (2020), The Victorian Aboriginal Housing and Homelessness Framework Overview

⁵⁸ Smith, D. & Rimmer, B. (2021), Every Aboriginal Person Has a Home. Victorian Aboriginal Housing and Homelessness Framework Working Group

⁵⁹ Aboriginal Housing Victoria (2020), The Victorian Aboriginal Housing and Homelessness Framework Overview

⁶⁰ Smith, D. & Rimmer, B. (2021), Every Aboriginal Person Has a Home. Victorian Aboriginal Housing and Homelessness Framework Working Group

⁶¹ Aboriginal Housing Victoria (2020), The Victorian Aboriginal Housing and Homelessness Framework Overview

⁶² Australian Institute of Health and Welfare (2021), Indigenous Housing. <https://www.aihw.gov.au/reports/australias-welfare/indigenous-housing> Accessed 25/11/2022

⁶³ Park, J. M., Fertig, A., & Allison, P. (2011). Physical and mental health, cognitive development, and health care use by housing status of low-income young children in 20 American cities: A prospective cohort study. *American Journal of Public Health*

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VACCHO welcomes the Victorian Government policy of assigning 10% of new social housing investment to Aboriginal families, but for this to address the issues, the Victorian Government must dramatically increase the pool of social and affordable housing stock. In February 2022, the Government announced it would introduce a Social and Affordable Housing Contribution where newly built developments with three dwellings or more and three or more lot subdivisions would contribute 1.75% of the complete project value to a new Social Housing Growth Fund. The Government projected that over the first ten years, it would raise approximately \$800 million a year to fund the delivery of up to 1,700 new social and affordable homes each year.⁶⁴ This policy was unfortunately cancelled days after the announcement. Local councils, such as City of Melbourne and Bayside, want to amend their Planning Schemes, to enable them to create their own local versions of the Social and Affordable Housing Contribution, but are limited in doing so by Victoria's Planning and Environment Act which requires them to receive Victorian Government approval for doing so.

Finland has shown that investing in social and affordable housing can reduce housing. In the 1980s, Finland had approximately 20,000 homeless people before instituting a Housing First policy which provides secure, ongoing leased homes for people who are homeless. As part of this broader policy, national and local governments built affordable housing stock increasing the supply, which has helped to dramatically reduce the number of homeless people from 20,000 to 4000. Finland has reported that the costs of providing secure, leased accommodation are far less (AUD\$15,000 p/a) than the costs of supporting a homeless person. Finland is the only country in Europe where homelessness is decreasing.⁶⁵

During first year of the COVID pandemic, the Victorian Government was able to provide homes or hotel rooms for all homeless people, proving that we can prevent people from having to live on the streets if we want to.

Recommendations:

- The Victorian Government should create a Social and Affordable Housing Contribution and/or amend the Planning and Environment Act to give councils greater autonomy to implement local versions of such a scheme.
- The Victorian Government should continue policies established during COVID to provide accommodation for homeless people, following a Housing First model as successfully implemented in Finland.

⁶⁴ Premier of Victoria, The Hon Daniel Andrews (18 Feb 2022), Building a Secure Future for Social Housing in Victoria. <https://www.premier.vic.gov.au/building-secure-future-social-housing-victoria>. Accessed 25/11/2022

⁶⁵ Y-Saatio, Housing First in Finland. <https://ysaatio.fi/en/housing-first-finland#:~:text=The%20Housing%20First%20principle%20is,be%20the%20provision%20of%20housing>. Accessed 25/11/2022

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Contact with the child protection system

Connection to Culture and kinship must be at the heart of all child protection services

As of June 2020, 18,900 Aboriginal children were placed in OoHC in Australia, which is 11 times the rate of their non-Aboriginal peers.⁶⁶ It is well documented that placement in OoHC care can cause significant disruption to a child's life. For Aboriginal children, being placed in OoHC is not only removal from their family, but from their culture, land, language, and Community.

Experiences of family violence, parental alcohol, and substance abuse and housing insecurity are all significant contributors to the over-representation of Aboriginal children in the Victorian child protection system.⁶⁷ It is well documented that traumatic events in childhood can have serious long-term physical, social, and emotional effects on an individual's overall health and wellbeing.⁶⁸ A child's ability to overcome the effects of trauma and enjoy opportunities in their later life are significantly impacted by the care received throughout their childhood. When placed in OoHC it is essential that children are provided with a safe, stable, and supportive environment.

For Aboriginal people, culture plays a pivotal role in a child's development, identity, and self-esteem. Ensuring that an Aboriginal child maintains a connection to their culture and kinship when placed in OoHC can have significant impacts on their health and wellbeing. ACCOs have solutions for culturally therapeutic, trauma-informed programs which span across the health, wellbeing, and family services sectors, and have proven to be successful in supporting strong and healthy Communities. Early intervention programs that connect Aboriginal children and young people to culture, family, and Community allow for healing, address the impacts of trauma, and support positive social and emotional wellbeing.⁶⁹

⁶⁶ Commission for Children and Young People, 2021, op. cit.

⁶⁷ Family Matters, SNAICC, University of Melbourne, 2021, op cit.

⁶⁸ Chamberlain, C., Gee, G., Brown, S., Atkinson, J., Herrman, H., Gartland, D et al. (2019). *Healing the Past by Nurturing the Future—co-designing perinatal strategies for Aboriginal and Torres Strait Islander parents experiencing complex trauma: framework and protocol for a community-based participatory action research study*. BMJ Open.

⁶⁹ Commission for Children and Young People, 2021, op. cit.

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Case Study - Gariwerd Youth Connections

In 2021-22, VACCHO piloted the Culture + Kinship program, an initiative that puts connection to culture, Community, and country at the centre of health and wellbeing outcomes for Aboriginal people. ACCOs were provided funding to implement self-determined initiatives, to respond to their local context and Community needs. Budja Budja Aboriginal Co-Operative developed and implemented the Gariwerd Youth Connections program – a series of workshops and camps for primary and secondary school-aged Aboriginal children. The program provided space for the children and youth to reconnect with their Community and culture, through activities such as dance, art, storytelling, ceremony, and sport.

VACCHO commissioned Kowa Collaborations and Think Impact to conduct an evaluation of the pilot, which demonstrated significant health and wellbeing outcomes for the participants and wider Community.¹ More specifically, participants reported increased pride in their Aboriginal identity, improved confidence, self-esteem and mental wellbeing, and increased connection to their Community. Additionally, the ACCOs reported deeper connections with the Community, paving the way for increased access and utilisation of their services. The evaluation highlights the need for, and impact of, ACCO-led approaches that focus on connections to culture, Community and country, to support strong Aboriginal children, families, and Communities.

Ref: VACCHO, Think Impact, 2022, Healthy Communities (Culture + Kinship) Evaluation, Interim report

Recommendations

- The Victorian Government should ensure that Aboriginal children are removed from their families as an absolute last resort, investing more in culturally safe family support services as a mechanism of early intervention and prevention.
- The Victorian Government should ensure that ACCOs are involved throughout all steps within the child protection system, ensuring Aboriginal children maintain a strong connection to their culture, kinship, and Community.

Post-contact with the child protection system.

Care for children and young people should continue even after they are released from child protection orders.

When a child or young person is released from OoHC, or their case is closed, they are considered to be amongst the most vulnerable. During this period of transition, children or young people often receive inadequate support, which is then compounded by poorer education and financial stability. This can lead to vicious cycles of poverty and contact with the youth justice system. As of 31 December 2019, 72% of Aboriginal children and young people involved with Youth Justice had been subject to a child protection report.⁷⁰ For a system that is supposed to protect our children, this is an alarming statistic, that highlights that the child protection is doing anything but that.

⁷⁰ Victorian State Government & The Department of Justice and Community Safety, 2022, op. cit.

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Under the Child Wellbeing and Safety Act 2005, the Department of Families, Fairness and Housing are under legislative obligation to reunite children (who have a reunification objective in their case plan) with their families.⁷¹ Successful reunification involves a range of different support services for both the child and family, which must be made accessible from the first point of contact with child protection services and continue well after reunification occurs. Aboriginal children are less likely than non-Indigenous children to be reunified with their birth families. Nationally, only 14.8% of Aboriginal children in OoHC were reunified in 2019–20, compared to 20.6% of non-Indigenous children.⁷²

An inquiry in the child protection system, *In Our Own Words*, found that 21% of children on a family reunification order managed by child protection, had not been allocated a case worker.⁷³ Of those allocated case workers, children and families often reported minimal or no contact with their case worker. The lack of allocation of case workers, can then further contribute to the difficulties and lack of engagement of children and families with support services.

Waiting lists for support services, such as alcohol and drug, mental health and family violence services can be long, with some places reporting waiting lists of up to 18 months⁷⁴. For a family who have had their child removed under a child protection order, this is 18 months too long. For Aboriginal families, navigating access to these services can be difficult, and often stems from previous experiences of racism and distrust of mainstream services, as well as limited access or awareness of the services available to them. Without a case worker, or strong connections to their Community and culture, families and children may not access the support they need, which can lead to a vicious cycle of poverty and interactions with criminal justice systems.

Case Study – Nungurra Youth Accommodation Service

Nungurra Youth Accommodation Service is a voluntary residential facility for Aboriginal and non-Indigenous young people aged 16-21 that are experiencing, or at risk of homelessness, run by Gippsland and East Gippsland Aboriginal Co-operative (GEGAC). The service provides young people with accommodation that develops and supports their independent living skills. Residents receive an individualised holistic support package, that links them to other service systems and addresses the psychological, emotional, health and social needs. The program focuses on a strengths-based approach and has been successful in helping young people in obtaining driving licences, enrol in education, obtain employment and long-term accommodation.

Ref: Gippsland and East Gippsland Aboriginal Co-operative Ltd, 2021, Annual Report 2020-2021.

Recommendations

- The Victorian Government should ensure that children and young people who are released from OoHC or a protection order is closed are well supported, offering services that will assist in securing suitable housing, education, and employment opportunities.

⁷¹ Commission for Children and Young People, 2021, op. cit.

⁷² Family Matters, SNAICC, University of Melbourne, 2021, op. cit.

⁷³ Commission for Children and Young People, 2021, op. cit.

⁷⁴ Ibid.

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- The Victorian Government should address the significant under-resourcing and funding of support services, to ensure that all children and families have immediate access to the services they need.



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