



Submission to Yoorrook Justice Commission's inquiry into systemic injustice in the Victorian criminal justice

December 2022



**Jesuit
Social Services**
Building a Just Society



Jesuit Social Services: Who we are and what we do

Jesuit Social Services has been working for 45 years delivering support and advocating for improved policies, legislation and resources to achieve strong, cohesive and vibrant communities where every individual can play their role and flourish.

We are a social change organisation working with some of the most marginalised individuals, families and communities, often experiencing multiple and complex challenges. Jesuit Social Services works where the need is greatest and where we have the capacity, experience and skills to make the most difference. Our services span Victoria, New South Wales and the Northern Territory.

Our services and advocacy focuses on these areas:

- **Place-based approaches and ecological justice** – advocacy and research around the systemic change needed to achieve a ‘just transition’ towards a sustainable future, and supporting community members to lead more sustainable lives through place-based approaches to social and ecological problems.
- **Justice and crime prevention** – people involved with the justice system.
- **Education, training and employment** – people with barriers to education and sustainable employment.
- **Mental health and wellbeing** – people with multiple and complex needs including mental illness, trauma, homelessness and bereavement.
- **Gender Justice** – leadership on the reduction of violence and other harmful behaviours prevalent among boys and men, and new approaches to improve their wellbeing and keep families and communities safe.
- **Settlement and community building** – recently arrived immigrants and refugees, and disadvantaged communities.

Research, advocacy and policy are coordinated across all program and major interest areas of Jesuit Social Services. Our advocacy is grounded in the knowledge, expertise and experiences of program staff and participants, and academic research and evidence. We seek to influence policies, practices, legislation and budget investment to positively influence people’s lives and improve approaches to address long-term social challenges.

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Jesuit Social Services acknowledges the Traditional Custodians of all the lands on which Jesuit Social Services operates and pay respect to their Elders past and present. We express our gratitude for First Nations people’s love and care of people, community, land and all life.



Introduction

“Truth is difficult for many of us to confront, particularly the truths about the foundations of this nation and the ongoing impact of inequality on our people. I believe that between denial and truth is immense fear about what we will unearth. A fear that what we will see will be so uncomfortable that we can no longer continue business as usual, and that transformation will be the only way forward. Change is possible when you tell the truth, or when you listen deeply and enable truth to be brought to the surface.

The more truth is told, the more support for truth grows in this nation. Truth-telling can shift expectations and perspectives. Truth-telling is hard work. But the power of truth-telling is in its process, where grief makes way for healing, and healing unites people who once were divided. It is my experience that behaviours and actions change when people come to know another reality. Truth-telling will help us develop a national narrative of equality. It will free us from the shackles of denial, to uncover the common humanity that reaches across this nation and back into the depths of time.”¹

- June Oscar AO, proud Bunuba woman and Australia’s Aboriginal and Torres Strait Islander Social Justice Commissioner

Jesuit Social Services welcomes the opportunity to respond to the consultation on systemic injustice experienced by First Peoples in the criminal justice system in Victoria. We are eager to contribute to the work of the Yoorrook Justice Commission (Yoorrook), noting the importance of this landmark First Peoples-led inquiry. We also acknowledge the work that has been done so far by the First People’s Assembly and broader Aboriginal² community-controlled (ACCO) sector on the path to truth-telling.

While Jesuit Social Services works alongside Aboriginal people involved in the justice system, Jesuit Social Services acknowledges that we are a mainstream organisation. We therefore respectfully contribute to this inquiry, aiming to echo existing calls made by the Aboriginal community when responding to:

- **why First Peoples are overrepresented in the criminal justice system** and;
- **how effectively the criminal justice system operates.**

In doing so, to address systemic injustice in the criminal justice system, we also offer our perspective on:

- **broad reforms;**
- **good practices that we believe should be adopted, and:**
- **ideas that have already been put forward.**

Our submission calls on the Victorian Government to:

- Meaningfully implement all recommendations of the *Royal Commission into Aboriginal Deaths in Custody, Our Youth, Our Way Inquiry* and recommendations related to Aboriginal overrepresentation in the justice system (Recs. 14-16) of the *Inquiry into Victoria’s criminal justice system*.

¹ Oscar, J. (2020). June Oscar’s 2020s vision: Reaching our potential as a nation begins with truth-telling. *The Guardian Australia* ([Weblink](#))

² Note on Language: The use of the term ‘Aboriginal’ in this submission refers to both Aboriginal and Torres Strait Islander people, children and young people. The term ‘First Nations’ and ‘First People’ are also used in particular contexts to reflect the language being used by Aboriginal organisations.



- Repeal regressive legislative changes that disproportionately affects Aboriginal people;
- Amend section 344 of the Children, Youth and Families Act 2005 to raise the age of criminal responsibility to at least 14 years old;
- Increase access to culturally appropriate diversion;
- Legislate for a presumption against the use of isolation and establish oversight mechanisms to oversee conditions of detention and treatment of Aboriginal people in detention;
- Resource ACCOs to design, lead and deliver services and programs;
- Invest in culturally appropriate programs that aim to maintain engagement in education;
- Authorise Aboriginal communities to design, administer and deliver restorative justice programs;
- Invest in the expansion of Koori courts;
- Fund culturally appropriate support for Aboriginal people in custody;
- Invest in Aboriginal community-led early intervention programs; and
- Invest in an Aboriginal community-led and designed dedicated transitional, supported housing model for Aboriginal people exiting the justice system.

We further acknowledge that while our reflections and recommendations aim to contribute to the evidence presented to Yoorrook, the Aboriginal community and ACCO sector are best placed to offer feedback about their community's experiences and needs.

Why are First Peoples overrepresented at all stages of the criminal justice system?

Jesuit Social Services believes that the overrepresentation of Aboriginal people in all stages of the youth and adult justice systems in Victoria and nationally is a disgrace. We seek to highlight the legacy of structural racism and racist practices as root causes of overrepresentation today. As we explore Aboriginal overrepresentation in the justice system, we seek to not only focus on deficits in the system, but rather acknowledge the resilience of Aboriginal people, communities and Aboriginal culture, as well as the strength and knowledge of the ACCO sector.

Aboriginal people have been the subject of adverse government interventions since early colonisation and continue to experience the ongoing impacts of dispossession, structural racism, intergenerational trauma and disadvantage.³ Whilst this has been widely accepted in the literature and acknowledged as the root cause of overrepresentation in Victorian frameworks⁴, disproportionate overincarceration, a culture of over-policing and structural racism remain a daily reality for Aboriginal communities.

Intergenerational trauma associated with ongoing colonisation, culturally unresponsive institutional structures, complex disadvantage and systemic racism place Aboriginal people at greater risk of being victimised or criminalised than other populations in Victoria.⁵

In 1991, The *Royal Commission into Aboriginal Deaths in Custody* found that Aboriginal people were grossly overrepresented in custody.⁶ The Royal Commission made a number of recommendations for

³ Dudgeon, P., Milroy, H., & Walker, R. (2014). *Working together: Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice*. Telethon Kids Institute, Kulunga Aboriginal Research Development Unit, Department of the Prime Minister and Cabinet (Australia).

⁴ Such as *Wirkara Kulpa Aboriginal Youth Justice Strategy, Burra Lotjpa Dunguludja: Aboriginal Justice Agreement 4 and Youth Justice Strategic Plan 2020–30*.

⁵ Parliament of Victoria. (2022). Inquiry into Victoria's criminal justice system. Legal and Social Issues Committee. ([Weblink](#))

⁶ Royal Commission into Aboriginal Deaths in Custody (1991). *Royal Commission into Aboriginal Deaths in Custody: National Report, Volume 2*. Canberra.



policy and legislative reform, many of which have failed to be implemented, resulting in Aboriginal people remaining overrepresented in Victorian prison populations and the criminal justice system more broadly.

More recently, the *Inquiry into Victoria's criminal justice system* found that while most Aboriginal people do not encounter the criminal justice system, intergenerational trauma associated with ongoing colonisation, culturally unresponsive institutional structures, complex disadvantage and systemic racism place Aboriginal people at greater risk of being victimised or criminalised than other populations in Victoria.⁷ This is evident in Aboriginal overrepresentation in Victorian prisons, where at September 2022, Aboriginal adults were 12.8 times (per 100,000) more likely to be imprisoned than adults in the general population.⁸

Jesuit Social Services is also concerned about the number of Aboriginal women in Victorian prisons. In the last 10 years, this number has increased significantly and peaked in 2019, when Aboriginal women accounted for 14 per cent of the female prisoner population.⁹ The Human Rights Law Centre and Change the Record's report into the over-imprisonment of Aboriginal women highlights the harm caused to communities and families when women are incarcerated¹⁰. Aboriginal women have central roles in raising children, earning income, role modelling and leadership. Incarcerating them can therefore have significant flow on effects to the whole community.¹¹ It is important to note that Aboriginal children are already significantly overrepresented in the child protection system and the incarceration of Aboriginal mothers is only likely to exacerbate this.¹²

Aboriginal children and young people also experience persistent overrepresentation in the Victorian youth justice system. On an average day in 2019-20, 15 per cent of the children under youth justice supervision in Victoria were Aboriginal despite only making up 1.5 per cent of all children in Victoria.¹³ Aboriginal children were also nine times more likely to be in custody than their non-Aboriginal counterparts.¹⁴

The landmark *Our Youth, Our Way* Inquiry highlighted the systemic causes of challenges faced by Aboriginal children and young people, which influence their involvement with the justice system.¹⁵ Some of these included interrupted engagement with education, mental health and substance misuse concerns, entrenched family disadvantage, involvement with the child protection system and disproportionate youth justice involvement at an earlier age.¹⁶ Aboriginal children and young people are also overrepresented at the intersection of both the child protection and youth justice systems.¹⁷ The Sentencing Advisory Council's report into 'crossover kids' found that sentenced and diverted children

⁷ Parliament of Victoria. (2022). *Inquiry into Victoria's criminal justice system*. Legal and Social Issues Committee. ([Weblink](#))

⁸ Australian Bureau of Statistics (Australian Government) (2021). *Corrective Services March 2021*. ([Weblink](#))

⁹ Corrections Victoria (2022). *Infographic – Profile of women in prison*. Annual Prisoner Statistical Profile 2009-10 to 2019-20. ([Weblink](#))

¹⁰ Walters, A., & Longhurst, S. (2017). *Over-represented and overlooked: The crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment*. Change the Record Coalition and Human Rights Law Centre ([Weblink](#))

¹¹ Australian Law Reform Commission. (2017). *Incarceration Rates Of Aboriginal And Torres Strait Islander Peoples (DP 84)*. Australian Government.; Walters, A., & Longhurst, S. (2017); VACSAL (2021).; VALS (2021).

¹² 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*. ([Weblink](#))

¹³ Australian Bureau of Statistics (Australian Government) (2021). *Corrective Services March 2021*

¹⁴ 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*. ([Weblink](#))

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Sentencing Advisory Council (2019). *Crossover Kids': Vulnerable Children in the Youth Justice System Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children's Court*. ([Weblink](#))



who were the subject of a child protection report were 8 times more likely than the general population to be Aboriginal children.¹⁸

Recommendations:

The Victorian Government to:

- Meaningfully implement all recommendations of the *Royal Commission into Aboriginal Deaths in Custody*.
- Fully implement all recommendations of *Our Youth, Our Way* Inquiry.
- Implement recommendation 14-16 of the *Inquiry into Victoria's criminal justice system* related to Aboriginal overrepresentation in the justice system.
- Raise the age of criminal responsibility to at least 14 years old.

How effectively do key agencies of the criminal justice system including police, courts and prisons operate?

The Victorian criminal justice system has experienced periods marked by a 'tough on crime' approach, often in response to heightened media moments related to critical (tragic) events. This has led to a trend of changes to restrict judicial discretion and increase punitive approaches to offending. The approach to building more youth justice facilities and prisons in response to a series of high-profile incidents has seen unintended consequences, including an increase in prison numbers and recidivism for those in the justice system.

Aboriginal people have been disproportionately affected by this approach due their existing overrepresentation as well as structural and systemic racism. As found by PwC's 2017 report *Indigenous incarceration: Unlock the facts*, systemic racism spans across the justice system from policing, legal assistance and courts.¹⁹ This has also been raised by the Victorian Aboriginal Legal Service (VALS) in its submission to the *Inquiry into Victoria's Criminal Justice System*, where they note that in their experience, systemic racism is endemic across the criminal justice system as well as service providers and institutions.²⁰

The Need for Legislative reform

Years of regressive legislative changes in Victoria have made it harder to get bail, limited access to parole, introduced functions that erode the dual track system and removed a series of non-custodial options following a series of high-profile incidents.

In particular, the *Bail Amendment (Stage One) Act 2017* and *Bail Amendment (Stage Two) Act 2018* following the Coghlan Bail Review has resulted in unprecedented numbers of people on remand. Several ACCOs have raised concerns about the disproportionate impact of the changes to bail legislation on Aboriginal people, especially women.²¹ This has also been echoed by the *Inquiry into Victoria's Justice System* which found that Aboriginal women are often remanded in custody for low level offences rather than having access to bail. Reform is necessary to repeal the introduced changes which disproportionately impact Aboriginal people to accessing bail.

Raising the age of criminal responsibility

¹⁸ Ibid.

¹⁹ PwC's Indigenous Consulting. (2017). *Indigenous incarceration: Unlock the facts*. ([Weblink](#))

²⁰ VALS (2021). Victorian Aboriginal Legal Service. Submission to the Inquiry into Victoria's Criminal Justice System. ([Weblink](#))

²¹ See for example VALS (2021). Victorian Aboriginal Legal Service. Submission to the Inquiry into Victoria's Criminal Justice System. ([Weblink](#)); VACSAL (2021). Submission to the Inquiry into Victoria's Criminal Justice System. ([Weblink](#))



As found by *Our Youth, Our Way*, Victoria's low minimum age of criminal responsibility disproportionately harms Aboriginal children.²² The United Nations Convention on the Right of the Child (UNCRC) has been clear in its recommendation to Australian States and Territories to raise the age of criminal responsibility to 14 years in line with this evidence.²³ Jesuit Social Services strongly supports the local and international expert evidence that shows children under the age of 14 years are still going through significant stages of childhood development. They are unable to comprehend the consequences of their actions, are more likely to act impulsively and engage in risk taking behaviours without reasoning.

Raising the age of criminal responsibility to 14 years has been a key policy focus for Jesuit Social Services for almost a decade. In our paper, [Raising the Age of Criminal Responsibility: There is a Better Way](#), we set out the most effective approach to prevent these children's trajectories into the justice system, which is to intervene early and support families at the first signs of struggle.²⁴

Recommendations:

That the Victorian Government:

- Repeal changes introduced under the *Bail Amendment (Stage one) Act 2017* and the *Bail Amendment (Stage two) Act 2018*.
- Reintroduce home detention and suspended sentences.
- Repeal the presumption against dual track and extend the age of dual track to 25.
- Amend section 344 of the *Children, Youth and Families Act 2005* to raise the age of criminal responsibility to at least 14 years old.

Use of caution and diversion

Early engagement with the criminal justice system can establish a trajectory towards further justice involvement into adulthood. Concerningly, Aboriginal young people are much less likely to receive a police caution compared to non-Aboriginal young people.²⁵ The *Indigenous incarceration: Unlock the facts* report also highlighted studies of sentencing outcomes in Magistrates' courts, which showed that imprisonment is a more likely outcome for Aboriginal people who have offended than for non-Aboriginal people.²⁶ The *Inquiry into Victoria's Criminal Justice System* reflects these findings, noting that Aboriginal young are less likely to receive a caution—as opposed to a charge—than other Victorians.²⁷

Pre-court and court-ordered diversion are crucial measures to prevent ongoing contact with the justice system. Culturally appropriate diversion is key to connecting Aboriginal people who have come into contact with the justice system to the types of supports they needed to address factors contributing to their offending.²⁸ Jesuit Social Services supports VALS's recommendations to increase access to culturally appropriate diversion in Victoria, in particular to expand Koori Courts so they have jurisdiction to divert people to culturally appropriate diversion programs.²⁹

Treatment in detention

²² 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*. ([Weblink](#))

²³ United Nations Human Rights Council (2021). Universal Periodic Review. Video recording. ([Weblink](#))

²⁴ Jesuit Social Services (2019). *Raising the Age of Criminal Responsibility: There is a better way*. October 2019. ([Weblink](#))

²⁵ PwC's Indigenous Consulting. (2017). *Indigenous incarceration: Unlock the facts*. ([Weblink](#))

²⁶ Ibid.

²⁷ Parliament of Victoria. (2022). *Inquiry into Victoria's criminal justice system*. Legal and Social Issues Committee. ([Weblink](#))

²⁸ VALS (2021). *Victorian Aboriginal Legal Service. Submission to the Inquiry into Victoria's Criminal Justice System*. ([Weblink](#))

²⁹ Ibid.



Many Aboriginal people in prison have multiple and complex needs, including cognitive disability, mental illness, socioeconomic disadvantage and histories of trauma.³⁰ It is essential, therefore, that prison staff have commensurate training, including education about the impact of intergenerational trauma and how to respond in a trauma informed way. Currently in Victoria, custodial officers are required to complete approximately eight weeks of training.³¹ It is worth comparing this to other jurisdictions with successful rehabilitation outcomes. In Norway, for example, all prison staff complete a two-year qualification on full pay at a dedicated Staff Academy, and are taught various subjects including psychology, criminology, law, human rights and ethics. Similarly, prison officers in Finland complete a 16-month course with units on basic officer duties (security; counselling; care and support), psychology and ethics, minority cultures, law and human rights, among others. The Finnish corrections service is also considering introducing a joint tertiary qualification for prison and probation staff.³²

It appears that training of Victorian officers is at the lower end of arrangements when compared with other jurisdictions. England and Wales increased basic training from six weeks to 12 weeks in 2016, with ten weeks at a learning centre and two weeks in a prison.³³ Canada's initial course comprises three stages, including eight weeks online learning followed by 10-11 weeks classroom training.³⁴ In Hong Kong, recruits attend a 26-week residential training course.³⁵

We call on the Victorian Government to introduce a minimum workforce qualification for all custodial prison staff that addresses the impact appropriate staffing can have on rehabilitation and community safety. This training must be delivered by experienced and qualified instructors through an accredited provider; be part of a program of ongoing professional development; be complemented by senior practitioners; and supported by regular reflective practice. This must encompass training to meet the specific needs of Aboriginal people in prison including the impact of intergenerational trauma and how to respond in a trauma informed way.

Use of isolation

The use of isolation and restraint in Victorian prisons and youth detention facilities is of significant concern to Jesuit Social Services. Our report – [All alone: Young adults in the Victorian justice system](#) – raises a number of concerns regarding the welfare and treatment of young adults in Victorian prisons, including the use of isolation and restraint.³⁶ This has a considerable impact on physical and mental health and future outcomes for people in prison and the community.

The *Royal Commission into Aboriginal Deaths in Custody* found the use of isolation has a particularly devastating impact on Aboriginal people, stating that “it is undesirable in the highest degree that an

³⁰ Australian Institute of Health and Welfare (2019). The health of Australia's prisoners 2018. Cat. no. PHE 246. Canberra: AIHW. ([Weblink](#))

³¹ See: ([Weblink](#))

³² Kiehelä, H., Oresmaa, M., & Vesterbacka, E. (2010). Challenging of change: Prison Officers' training in the Finland and how to create safe, decent and rehabilitative prison environment with the staff. The Training Institute of Prison and Probation Services (Finland). ([Weblink](#))

³³ House of Lords Written Answer by Lord Faulks 22 June 2015, cited in Allen, R. (2016). Global Prison Trends, Penal Reform International. ([Weblink](#))

³⁴ Correctional Service Canada. (n.d.). Training and Appointment. ([Weblink](#)) [Accessed 8 December 2021]

³⁵ Hong Kong Correctional Services Department. (2015). Correctional Services Department launches Officer recruitment exercise, cited in Allen R. (2016). Global Prison Trends, Penal Reform International. ([Weblink](#))

³⁶ Jesuit Social Services. (2018). All alone: Young adults in the Victorian justice system. ([Weblink](#))



Aboriginal prisoner should be placed in segregation or isolated detention.”³⁷ A lack of culturally responsive services can hinder the prospects of rehabilitation for Aboriginal people, and, when combined with periods of isolation, is likely to amplify and worsen the multiple disadvantages and vulnerabilities that Aboriginal people already face, both within prison and upon their release.³⁸

CASE STUDY: James’s* story

James is an Aboriginal man who was transferred to an adult prison in Victoria from a youth justice centre at the age of 16. James was released from an intermediate regime placement (22 hours in cell, two hours out of cell with a small group of people) at the age of 19. Following this transfer, he struggled to manage his transition back into the community. While James secured a transitional property, he found this too challenging to live in, and made his bathroom into a cell. He slept in the bath and prepared his food in the bathroom. James brought a number of items, including a radio, a kettle and a toaster, into his bathroom to replicate the cell he had in prison. James returned to custody shortly following his release and his struggles in the community were the source of much concern to his family, who were not immediately aware of his transfer to an adult prison at the age of 16.

** Name has been changed to protect privacy*

Implementing independent oversight mechanisms is particularly important to promote the safety and wellbeing of Aboriginal people while in custody. Ratified by the Australian Government in December 2017, implementation of Optional Protocol to the Convention against Torture (OPCAT) requires the Commonwealth and each state and territory government to designate and establish National Preventative Mechanisms (NPM) to undertake monitoring and allowing for inspections by a UN committee. The NPMs must ensure a focus is maintained on the needs of certain cohorts made particularly vulnerable in prison. Jesuit Social Services urges the Victorian Government to urgently designate and/or establish National Preventive Mechanisms, with particular attention to oversee conditions of detention and treatment of Aboriginal people in detention.

Recommendations:

That the Victorian Government:

- Increase access to culturally appropriate diversion in Victoria, in particular to expand Koori Courts so they have jurisdiction to divert people to culturally appropriate diversion programs.
- Ensure through legislation that no child can ever be held in isolation.
- Legislate for a presumption against the use of isolation, with isolation only permissible in rare cases where immediate safety is a concern, and then only for the briefest possible period.
- Introduce a minimum workforce qualification for all custodial prison staff, including education on the impact of generational trauma and how to respond in a trauma informed way.
- Urgently designate and/or establish National Preventive Mechanisms, with particular attention to oversee conditions of detention and treatment of Aboriginal people in detention.

³⁷ Royal Commission into Aboriginal Deaths in Custody (1991). Royal Commission into Aboriginal Deaths in Custody: National Report, Volume 2. Canberra.

³⁸ Shepherd, S.M., Oglloff, J., & Thomas, S. (2016). Are Australian Prisons Meeting the Needs of Indigenous Offenders?, Health & Justice. 4:13.



Good practice that should be adopted or expanded upon

Self-determination

Jesuit Social Services supports the right of Aboriginal people to self-determination, and notes that in accordance with the *United Nations Declaration on the Rights of Indigenous People*, by virtue of that right they freely determine their economic, social and cultural development.³⁹ As noted in the Preamble of the *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic), “human rights have a special importance for the Aboriginal people of Victoria, as descendants of Australia’s First People, with their diverse spiritual, social, cultural and economic relationship with their traditional lands and waters.”⁴⁰ Culture plays a central role in the lives of Aboriginal people, particularly for children. It can support healing, protect health and wellbeing, and build identity, resilience and connection to community and Country. As stated in *Our Youth, Our Way*:

*“Connection to culture can be transformative and instrumental in supporting Aboriginal children and young people to avoid contact with the youth justice system.”*⁴¹

We acknowledge the important work to date of the Victorian Government towards enabling greater Aboriginal self-determination, especially in relation to the Aboriginal-led co-design of [Wirkara Kulpa Aboriginal Youth Justice Strategy](#), which aims to reduce the overrepresentation of Aboriginal children under youth justice supervision by 2031. However, more efforts are urgently needed. Responding to the long-standing over incarceration of Aboriginal people in the justice system requires a long-term, whole-of-government commitment to self-determination built on strong and trusting relationships with Aboriginal organisations.

Strengthening self-determination for Aboriginal communities is key to addressing overrepresentation and supporting Aboriginal people to thrive in all aspects of life. Djirra has previously recommended for investment in self-determined ACCO solutions because community-led solutions are proven to be much more effective at reducing crime and addressing underlying drivers; including family violence, homelessness and housing instability, emotional and social wellbeing issues and alcohol and substance issues.⁴²

Likewise, a key finding of *Our Youth, Our Way* was that services designed, controlled, and delivered by the Aboriginal community resulted in the best outcomes for Aboriginal children involved with youth justice with positive flow on effects for the wider Aboriginal community. As such, Aboriginal communities are best placed to design and lead services and programs that address key risk factors to justice involvement in a culturally appropriate manner.

We therefore advocate for the Victorian Government to adequately resource ACCOs to work with Aboriginal communities to prevent justice involvement in the first place, and to also divert those involved in the criminal justice system from further involvement. This should involve a range of

³⁹ UN General Assembly. (2007). *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, 2 October 2007.* ([Weblink](#))

⁴⁰ *Charter of Human Rights and Responsibilities Act 2006* (Vic)., pg. 1 ([Weblink](#))

⁴¹ 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.* ([Weblink](#))

⁴² Djirra, (2021). *Submission to the Parliamentary Inquiry into Victoria’s Criminal Justice System.* 138, p. 15. ([Weblink](#))



initiatives, from building protective factors such as connection to community, culture and Country, to also providing a continuum of supports at the pre-release to post release level. These supports must be built on trusted, consistent, culturally safe approaches and incorporate therapeutic, whole-of-family ways of working.

Recommendation:

The Victorian Government to resource ACCOs to design, lead and deliver services and programs to address the overrepresentation of Aboriginal people in contact with the justice system.

Justice Solutions Tours

In 2019, senior leaders from Jesuit Social Services embarked on a [study trip to New Zealand](#) to learn more about innovative approaches to supporting people who have contact with the criminal justice system.⁴³ This Justice Solutions tour followed a [similar tour in 2017](#) to Norway, Germany, Spain, the US and the UK.⁴⁴ On our Justice Solutions tours, we saw that justice system reform is underpinned by a clear, well-articulated vision, centred on addressing the needs of people and their families. Importantly, a clear vision and framework of principles enables decisions around justice policy not to be driven by politics, but by evidence and best practice.

Drawing on our Justice Solutions tours, Jesuit Social Services believes that the primary goal of any effective and humane criminal justice system is to ensure policy, legislation and budgetary decisions are all centred on prevention, early intervention and rehabilitation. Imprisonment must only be used as a last resort and, where it is used, a principle governing prisons must be that of 'normalcy': that life inside prison resembles life outside. To articulate this vision, we have developed principles for effective and humane justice systems. One of our key principles is recognising the importance of culture and country for Aboriginal people. We have also recently outlined our vision for an effective and humane criminal justice system and made recommendations to achieve it in our submission to the [Inquiry into Victoria's Justice System](#) and to the [Cultural Review of the Adult Custodial Corrections System](#).

Maintaining engagement with culturally appropriate education

Jesuit Social Services has previously set out what we believe are the most effective approaches to prevent children's trajectories into the justice system; to intervene early, connect children and young people with education and support families at the first signs of struggle.⁴⁵ Maintaining engagement and re-engaging Aboriginal children with culturally appropriate education is a key protective factor against justice involvement.⁴⁶

In partnership with the Victorian Aboriginal Child Care Agency (VACCA), Jesuit Social Services delivers case management and intensive outreach to disengaged young learners aged 12 to 17 as part of the [Navigator initiative](#). The program's work includes the development of individualised re-engagement learning plan and cultural plans that express individual goals, address specific barriers, responds to issues underlying non-attendance and works restoratively with children's support networks. Reengaging children in education, learning and employment pathways gives them the foundational skills and opportunities they need to thrive.

⁴³ Jesuit Social Services (2019). #Justice Solutions New Zealand Tour ([Weblink](#))

⁴⁴ Jesuit Social Services (2017). #Justice Solutions Tour Expanding the Conversation ([Weblink](#))

⁴⁵ Jesuit Social Services (2019). Raising the Age of Criminal Responsibility: There is a better way. October 2019. ([Weblink](#))

⁴⁶ 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. ([Weblink](#))



CASE STUDY: Steven's* story

When Steven, a young Aboriginal boy, engaged with Jesuit Social Services' Navigator program he was experiencing significant challenges. In the year before he engaged with Navigator, Steven only attended three days of school. He has a diagnosed learning disability and was not receiving any extra assistance in the classroom. Although his mother tried several times to seek extra support for him in the classroom, he was never provided with an Individual Learning Plan. He was also struggling with family conflict, low confidence, and those around him not understanding his complex needs. Steven's Navigator caseworker was able to gain a deep understanding of his personal challenges, build a sense of trust, and link him in to culturally safe services. Steven was also supported to enrol in a flexible learning centre where his individual needs were better supported, and where he could benefit from an Individual Learning Plan. Two years later, Steven was attending approximately 80 per cent of his school timetable. His confidence had grown to the point that he had applied for casual work and he was engaged with work experience through his school. Steven's story demonstrates the importance of long-term case management with a focus on health and wellbeing, and the need for culturally sensitive and respectful work.

** Name has been changed to protect privacy*

Maintaining engagement and re-engaging Aboriginal young people in educational, learning and employment pathways gives them the foundational skills and opportunities they need to flourish. Jesuit Social Services welcomes funding from this year's budget for a pilot to extend the Navigator program to children aged 10 and 11. We echo *Our Youth Our Way's* recommendation for the Victorian Government to permanently extend access to Navigator to primary school aged children to enable earlier intervention to support Aboriginal children and young people's engagement in education.

Recommendation:

Permanently extend access to Navigator to primary school aged children to enable the program to intervene earlier and provide critical culturally appropriate support to Aboriginal children and families.

Working restoratively

The 2017 Armytage Ogloff Youth Justice Review recommended that the Victorian Government work with Elders and community groups to identify areas where restorative justice could be used to divert Aboriginal children and young people away from the justice system and to restore family relationships.⁴⁷

As an organisation, Jesuit Social Services has long advocated for restorative justice approaches to be expanded across the youth and adult system⁴⁸. Our advocacy is rooted in our experience delivering restorative justice approaches in Victoria and Northern Territory, and is also guided by the principles and practices of restorative justice internationally through our Justice Solutions Tours in [New Zealand](#) and the [United States](#).⁴⁹ Specifically, we highlighted the importance of Aboriginal-led and culturally appropriate restorative justice approaches to diverting Aboriginal people away the criminal justice system, echoing VALS' call for this.⁵⁰ Drawing on our work in the Northern Territory, we also

⁴⁷ Armytage P. & Ogloff, J. (2017). Youth justice review and strategy: meeting needs and reducing offending, Victorian Government, Part 2, Recommendation 6.33, p. 109.

⁴⁸ [Please see](#): Jesuit Social Services. (2021) Submission to the Inquiry into Victoria's Justice System. ([Weblink](#)); Jesuit Social Services (2019). Raising the Age of Criminal Responsibility: There is a better way. October 2019. ([Weblink](#)); Jesuit Social Services. (2022). State of Opportunity: Jesuit Social Services' Victoria Election Platform ([Weblink](#))

⁴⁹ Jesuit Social Services (2019). #Justice Solutions New Zealand Tour ([Weblink](#)); Jesuit Social Services (2017).; #Justice Solutions Tour Expanding the Conversation. ([Weblink](#))

⁵⁰ VALS (2022). A Plan for Aboriginal Justice in Victoria: Empowerment, Identity, Culture. ([Weblink](#))



acknowledge the peacemaking practices embedded in Aboriginal law and culture, the existing skill and expertise in intercultural approaches to justice in communities, and that significant and ongoing work is needed to decolonise restorative justice as a discipline across Australia.⁵¹

Youth justice group conferencing

Jesuit Social Services' Youth Justice Group Conferencing programs are grounded in the principles of restorative justice, which emphasise reparation and restoration.⁵² We deliver Youth Justice Group Conferencing throughout Melbourne, Victoria, and have delivered the program in Darwin, Palmerston and Katherine in the Northern Territory since early 2017.

Learnings from Jesuit Social Services' Group Conferencing in the Northern Territory

Our Youth Justice Group Conferencing program in the Northern Territory provides the Children's Court with an alternative pre-sentencing option that aims to divert young people from further or more serious offending. Our Convenor provides a safe environment for everyone who has been affected by the offence to come together.

In our time working in the Northern Territory, *Jesuit Social Services has made strong connections with the community and engaged local Elders to participate in and co-convene Group Conferences*. This ensures that the cultural identity of all participants in the conference can be maintained and supported. Jesuit Social Services works closely with Serena Dalton who is a prominent Elder in Palmerston and Founder of Grassroots Youth Engagement Palmerston.

Since 2017, Jesuit Social Services has delivered **121 conferences** in the Northern Territory. Our 2018 internal evaluation found a number of promising outcomes, including:

- Young people made significant improvements across a range of domains in their life, including view of self, connections to family/significant others and their engagement with school.
- Almost 90 per cent of young people who participated in a Group Conference successfully completed their outcome plan (which may consist of writing an apology letter or reconnecting with community services).
- Around three quarters of young people (74 per cent) showed improved connections to family and significant others after taking part in a conference – meaning they're less likely to re-offend.
- Participating in a Group Conference helped young people to better understand the impact of their behaviour on others, and to have a better view of their future.
- Group conferencing at the pre-sentence stage has provided a much-needed court referred diversion option that can help young people avoid detention.
- More than four of every five victims of crime who've taken part in a conference said they'd recommend the process to others.

In Victoria, the Youth Justice Group Conferencing program has been associated with substantive reductions in the likelihood of ongoing recidivism (between 24 and 40 per cent reduced likelihood).⁵³

⁵¹ For example, that of the Tiwi Ponki mediators, that developed through the Mawul Rom program, and previously funded projects in the communities of Gunbalanya/Oenpelli and Lajamanu.

⁵² 1 Australian Association for Restorative Justice. (n.d.). What is Restorative Justice and what are Restorative Practices? Retrieved February 21, 2022, ([Weblink](#))

⁵³ Bonett, R.J.W., Lloyd, C.D., & Ogloff, J.R.P. (2022). Group Conferencing Effects on Youth Recidivism and Elements of Effective Conferences. Centre for Forensic Behavioural Science, Swinburne University of Technology, Melbourne Australia.



Offending trajectories of young people who participated in the program are also much less likely to continue, even after the first recidivism event.⁵⁴

Jesuit Social Services advocates for the expansion of Group Conferencing across the criminal justice system, noting the importance of Aboriginal-led and delivered programs tailored to the needs of each community. As such, we support *Our Youth, Our Way's* recommendation for the new Youth Justice Act to enable the Secretary of The Department of Justice and Community Safety to authorise Aboriginal communities to design, administer and delivering family group conferencing and restorative justice group conferencing.

Court process premised on restorative justice and cultural safety

On our [Justice Solutions tours](#), we witnessed the way in which a clear vision centred on restorative justice and cultural safety cascades through to court processes, and the mindset and skillset of judges.⁵⁵ Key to the strengths of the restorative justice approach adopted by courts and judges in New Zealand has been the importance of Māori voice and alignment with Māori concepts of “land, ancestors, community, morality and justice”. Roughly 10 per cent of New Zealand’s judges are Māori and, in 2019, the first Māori judge was elected to the Supreme Court.⁵⁶ The use of Māori language and the inclusion of Māori culture in justice processes is an important component of promoting cultural safety and addressing Māori overrepresentation in New Zealand’s criminal justice system. We know that connection to culture, language and community are critical for promoting cultural safety within the justice system and Aboriginal people have long advocated for this.⁵⁷

Evaluations of Koori courts in Australia have been criticised for taking a limited scope.⁵⁸ Some have argued that focusing on blunt measures of recidivism fails to take into account the multitude of other goals that sit at the heart of Koori sentencing courts, and that Aboriginal voices and knowledge are often sidelined in evaluation methodology.⁵⁹ For this reason, it would be inappropriate to directly compare the effectiveness of the two models in terms of traditional measures such as reoffending.

What we can learn from both Koori courts and from Rangatahi and Pasifika Courts is that culturally informed and person-centred approaches are restorative and benefit individuals, families and communities. We saw in New Zealand the immense value of embedded cultural practice for the Māori and non-Māori community alike in placing people at the centre and restoring relationships and connection with culture and community. Jesuit Social Services calls for greater resources to further strengthen Koori courts as well as to expand their operation in regional areas. This will enable greater access to a culturally safe and appropriate court process for Aboriginal people across Victoria.

⁵⁴ Ibid.

⁵⁵ Jesuit Social Services (2019). #Justice Solutions New Zealand Tour. ([Weblink](#))

⁵⁶ McLachlan, L. (2019, May 7). First Māori Supreme Court judge wants a focus on his culture. Scoop.

⁵⁷ See: VALS (2021). Victorian Aboriginal Legal Service. Submission to the Inquiry into Victoria’s Criminal Justice System.

⁵⁸ Marchetti, M. (2017). Nothing Works? A Meta-Review of Indigenous Sentencing Court Evaluations. *Current Issues in Criminal Justice*, 28(3), 257–276

⁵⁹ Ibid.



Recommendation:

That the Victorian Government:

- Authorises Aboriginal communities to design, administer and delivering family group conferencing and restorative justice group conferencing.
- Makes Youth Justice Group Conferencing the default response for Aboriginal children and young people who come into contact with the justice system in Victoria.
- Invests resources to further strengthen Koori courts as well as to expand their operation in regional areas.

Culturally appropriate support for Aboriginal people in custody

Jesuit Social Services advocates for diversion away from the justice system and for imprisonment only ever to be used as a last resort. However, if Aboriginal people are sentenced to a period of imprisonment, it is crucial for them to maintain their connection to culture and be supported through culturally appropriate programs that contribute to their healing. The Victorian Aboriginal Child Care Agency's (VACCA) Beyond Survival Program is a positive example of a culturally appropriate program delivered by an ACCO in Victorian adult prisons. The program offers:

- Yarning circles in prison to support healing and connection with community and culture;
- Regular visits to prisons from Elders and Aboriginal men and women from the community; and
- Support to re-connect with family and the Aboriginal community on release from prison.

Over 2017-18 the program worked with 173 participants. Of these participants, 90 per cent wanted to continue the program. Expectations of the program have been exceeded, with many prison staff reporting changes in the attitudes of participants.⁶⁰ We call for more funding for ACCOs to deliver services that ensure Aboriginal people in prison remain connected to community and culture, and have risk factors such as homelessness, mental health issues, substance misuse and unemployment addressed.

Transitional supports and housing for Aboriginal people leaving custody

As highlighted in the community designed and led Victorian Aboriginal Housing and Homelessness Framework: *Mana-na woorn-tyeen maar-takoort*, access to housing is critical for Aboriginal people leaving prison and a successful transition back into community.⁶¹ Transitional and housing supports upon release must be culturally safe and respond to the specific needs of particular groups of Aboriginal people. VALS co-delivers the program Baggarrook which supports Aboriginal women as they transition from prison.⁶² Central to the program design is the acknowledgement of the significant and complex needs of Aboriginal women transitioning from prison. Each program participant is provided with transitional housing, and a model of culturally appropriate holistic support that seeks a range of outcomes, including family reunification where appropriate.

While not an Aboriginal specific program, Jesuit Social Services partners with the Victorian Government to deliver the [Maribyrong Community Residential Facility](#) for men exiting prison. Residents have demonstrated that, with the right supports, they are able to settle into community life, look for work and plan for their future. Feedback from participants during the first 12 months of the program's operation has been extremely positive.

⁶⁰ VACCA (2018). Annual Report 2017-18. ([Weblink](#))

⁶¹ Aboriginal Housing Victoria (2020). *Mana-na woorn-tyeen maar-takoort*, Every Aboriginal Person Has A Home: Victorian Aboriginal Housing and Homelessness Framework. ([Weblink](#))

⁶² VALS. (2022). Baggarrook. ([Weblink](#))



We commend the Victorian Government on its commitment to ensuring this program can continue until June 2023, yet many people continue to exit prison into homelessness. We therefore call for investment in an Aboriginal community-led and designed dedicated transitional, supported housing model for Aboriginal people exiting the justice system, with specific consideration for the needs of at-risk groups such as Aboriginal women. This would involve agencies working in partnership to provide intensive 'wrap around' responses, drawing on strong working relationships with Corrections Victoria, prison staff, Community Corrections, specialist government and community sector providers, and Aboriginal-specific services across housing, education and employment, alcohol and other drugs, health and mental health services.

Recommendation:

That the Victorian Government:

- Funds ACCOs to deliver services that ensure Aboriginal people in prison remain connected to community and culture, and have risk factors such as homelessness, mental health issues, substance misuse and unemployment addressed.
- Invests in an Aboriginal community-led and designed dedicated transitional, supported housing model for Aboriginal people exiting the justice system, with specific consideration for the needs of at-risk groups such as Aboriginal women.