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Legal and Social Issues Committee

Inquiry into Victoria's criminal justice system

Summary booklet

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Legislative Council Legal and Social Issues Committee

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About the Committee

Functions

The functions of the Legal and Social Issues Committee are to inquire into and report on any proposal, matter or thing concerned with community services, education, gaming, health, and law and justice.

The Legal and Social Issues Committee may inquire into, hold public hearings, consider and report on any matter, including on any Bills or draft Bills, annual reports, estimates of expenditure or other documents laid before the Legislative Council in accordance with an Act, provided these are relevant to its functions.

Government Departments allocated for oversight:

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Terms of reference

Inquiry into Victoria's criminal justice system

On 3 June 2020 the Legislative Council agreed to the following motion:

That this House requires the Legal and Social Issues Committee to inquire into, consider and report, by no later than 28 February 2022, on various issues associated with the operation of Victoria's justice system, including, but not limited to –

- (1) an analysis of factors influencing Victoria's growing remand and prison populations;
- (2) strategies to reduce rates of criminal recidivism;
- (3) an examination of how to ensure that judges and magistrates have appropriate knowledge and expertise when sentencing and dealing with offenders, including an understanding of recidivism and the causes of crime; and
- (4) the consideration of judicial appointment processes in other jurisdictions, specifically noting the particular skillset necessary for judges and magistrates overseeing specialist courts.

Chair's foreword

As a Member of Parliament, I have had the opportunity to investigate subjects of immense importance to our state and its future. It has been both a privilege and a challenge.

The operation of the criminal justice system is an area of policy and practice that I have long been involved in. I have advocated for those who have been the victims of crime, supported those working in the criminal justice system, consulted with Victoria Police about their practices, and sought to understand and assist those who are serving their time in prison. Leading this Inquiry has consolidated my view that we need urgent work to improve the way we deliver justice in Victoria, to ensure our community safety, and to find modern solutions to reduce offending and reoffending.

This report is a major piece of work. It stretches to two volumes and includes 100 recommendations for change. The Committee held 50 public hearings involving more than 90 representatives. We received evidence from experts in many different fields that work in or intersect with the criminal justice system. We made it a priority to involve as many individuals with lived experience of the justice system as possible. During this Inquiry, we heard some of the most heart wrenching, tragic, evidence from victims of crime who have survived unimaginable loss and grief. I thank them for their bravery and generosity and assure them that their contribution was influential on the Committee's recommendations.

I want Victorians to be safe, always, and we must make inroads into achieving that goal. But I do not believe that building more prisons is the way to achieve that.

The Government's priorities should be focussed on supporting victims of crime, rehabilitation of offenders, circumventing recidivism, ending overrepresentation of Aboriginal people in our jails, and ensuring early intervention for those who are disadvantaged.

The statistics paint a very stark picture in relation to what is happening in the justice system in Victoria.

There are decreases in overall sentencing outcomes in higher courts, but there is a significant increase in the percentage of cases sentenced to imprisonment. The use of time served prison sentences increased 643% from 2011–2012 and 2017–2018, and now accounts for 20% of all prison sentences imposed. Unserved prisoners now comprise 87% of prison receptions (up from 60% in 2010).

Between 30 June 2010 and 30 June 2020 Victoria's prison population increased by 57.6%. This has disproportionately affected Aboriginal Victorians, young people, and women. Aboriginal women made up 14% of the total female prison population in 2020 despite Aboriginal and Torres Strait Islander people making up less than 0.8% of the Victorian population.

Chair's foreword

There has been an increase in recidivism over the last 10 years although 6% of offenders are responsible for 44% of crimes reported to Victoria Police.

We have some data that is stark and disturbing, but there is also plenty of data missing. That is why we have called on the authorities to collect and transparently provide data about what is happening in prisons and in the justice system more broadly.

Damaging practices like solitary confinement and intrusive strip searches still take place regularly in our prison system. Strip searching is conducted to try and prevent contraband—such as drugs—from entering the prison system. The *Corrections Act 1986* (Vic) dictates these practices can occur 'where necessary'. The Victorian Aboriginal Legal Service told us that the bar is too low in Victoria compared to other states and should only occur as a last resort. What we need is good data about why it is necessary to use these methods, to inform our decision making on such practices.

One of the saddest facts to me is that socioeconomic disadvantage is so closely linked to an increased risk of engagement with the criminal justice system. While the vast majority of people who experience disadvantage do not offend, different forms of social disadvantage compound to increase the risk of criminalisation and victimisation. For example, children in out of home care are disproportionately likely to intersect with the criminal justice system both as victims and offenders.

Therefore the Committee has made a number of recommendations for a strong focus on early intervention. We must identify individuals at risk and provide social supports to divert them away from the system.

In Victoria it does seem that governments have prioritised investment in correctional facilities over early intervention measures. Some witnesses told us that they are cautiously optimistic about the Government's new *Crime Prevention Strategy* which aims to provide integrated solutions to address disadvantage—for example, housing support, addiction support and financial assistance. This should be implemented urgently and regularly reviewed.

I believe that we need to address changing the minimum age of criminal responsibility. Raising the legal minimum age of criminal responsibility is consistent with evidence about child development, international norms, and human rights standards, and would divert children into social services rather than trapping them in the criminal justice system from an early age.

We heard from the Chief Commissioner that Victoria Police are actively engaging with minority communities and that they would like to return to a community-based approach to policing to continue this work of fostering relationships and contributing to crime prevention. I would welcome that.

Cautions and court-based diversions are key mechanisms to divert people away from the criminal justice system. Currently their application is inconsistent and often at the discretion of the attending officer.

Chair's foreword

The Victorian Government is currently developing a new victims of crime financial assistance scheme. They should review the thoughtful and considered suggestions from victims of crime that are captured in this report and our recommendations. They have told us we need to embed trauma-informed practices into the design of the justice system. It needs to be more accessible and a less adversarial process for victims of crime.

I strongly believe that we need to take a close look at Victoria's bail system to understand the impact of the reforms introduced in 2013 and 2017–18. These reforms have resulted in a significant increase to the remand population in Victorian prisons. The purpose of bail is to keep the community safe from high-risk offenders. But denying bail to so many has had negative effects on persons charged with an offence and has disproportionately impacted women, Aboriginal Victorians, children and young people, and people living with disability.

We need more transparency in relation to what is happening in prisons, and we need to ensure we are comprehensively providing support, safety, and routine. This would improve health outcomes and reduce the risk of reoffending and recidivism. Education, training, and work experience during incarceration can assist people reintegrating into the community and can connect people to employment opportunities and housing.

Recent reforms have made it more difficult for parole to be granted. The number of serious offences committed by people while on parole has decreased in recent years, however, the risk-averse approach to granting parole is resulting in more people being released back into the community without the additional supports and supervisions that parole offers.

I am pleased to present this report on the criminal justice system in Victoria. I hope that it influences the Government to work towards a more modern, rehabilitation-focused justice system in Victoria. This is what all stakeholders want.

I am satisfied that the changes we have proposed, if implemented, would have a significant positive influence on the lives of individuals and the safety of the community.

Finally, I would like to thank the secretariat staff who worked on the Inquiry and helped prepare this substantial and considered report. I would like to thank the Inquiry Officer Alice Petrie, the Research Assistants Caitlin Connally, Samantha Leahy, Jessica Wescott and Meagan Murphy, and Administrative Officers Cat Smith and Sylvette Bassy, under the management of Matt Newington and Lilian Topic. I would also like to thank my colleagues on the Committee for their work.

I commend the report to the House.



Ms Fiona Patten MLC
Chair

Executive summary

Chapter 1: Introduction

The criminal justice system in Victoria plays a key role in enforcing and upholding the rule of law in the state. It is a multifaceted system that requires a number of institutions to work both independently and collaboratively to protect the community and uphold the rule of law. However, questions have been raised about whether these elements of the criminal justice system are working together effectively, or whether government agencies and bodies are operating unilaterally. When the operation of the criminal justice system is not consistent or cohesive, it is detrimental to those interacting with the system, including agencies, participants, and the Victorian public more broadly. This Inquiry investigates the current state of the criminal justice system in Victoria, and makes recommendations to support a better functioning justice system.

Chapter 1 provides an overview of the criminal justice system in Victoria and provides an insight into potential pathways through the system. Further, the Chapter explains that the Committee has elected not to examine youth justice in Victoria due to the number of recent reviews and inquiries undertaken.

The legislative and regulatory frameworks guiding the Victorian criminal justice system are set by both state and federal parliaments. While Australian states and territories have primary responsibility for law and order within their jurisdictions, the Commonwealth Parliament has law-making powers which may interact with state legislation. However, most criminal law is primarily legislated at the state level. Legislation in Victoria for offence-based crimes includes the *Crimes Act 1958* (Vic), *Summary Offences Act 1966* (Vic), and the *Road Traffic Act 1986* (Vic).

The implementation and enforcement of the law falls within several ministerial portfolios, including police, crime prevention, corrections, youth justice and victim support. A number of government agencies and special bodies play key roles in the Victorian criminal justice system, including the Department of Justice and Community Safety, which provides administrative support to the following statutory offices, authorities and judicial bodies:

- in the portfolio of the Attorney-General: Victims of Crime Commissioner, Victorian Legal Services Commissioner, Victoria Legal Aid, state courts
- in the Corrections portfolio: Adult Parole Board, Post Sentence Authority, Women's Correctional Services Advisory Committee
- in the Police portfolio: Firearms Appeals Committee, Road Safety Camera Commissioner, Victoria Police
- in the Youth Justice portfolio: Youth Parole Board.

Executive summary

Chapter 1 also outlines the courts and tribunals operating in Victoria. At present, there are nine courts and two tribunals operating in Victoria: four Federal courts, two state tribunals and five specialist state courts.

To inform the Inquiry and ensure that the Committee understands the impact of exposure to the criminal justice system, the Committee called on the knowledge and expertise of community members who have lived experiences navigating the Victorian criminal justice system. Much of the evidence provided stark insight into the trauma, harm and long-lasting impacts of contact with the system. The Committee recognises the toll of revisiting such traumatic experiences during a parliamentary committee hearing, and expresses its sincere appreciation for those who shared their stories to inform the findings and recommendations of this report.

Chapter 2: Statistical and demographic snapshot

As part of the Terms of Reference for this Inquiry, the Committee was required to analyse factors influencing Victoria's growing remand and prison populations, and strategies to reduce rates of criminal recidivism. To understand the extent of these issues within the Victorian criminal justice system, Chapter 2 provides a statistical overview which covers sentencing trends, remand rates, overrepresentation of certain cohorts and rates of recidivism.

Key statistics confirmed that in the period from 2012-2021, rates of recorded crime in Victoria have increased by 21% overall. Certain crime types have increased, including crimes against the person (assault, sexual offences, and stalking, harassment and threatening behaviour), justice procedures offences, drug offences, and other offences (including regulatory driving and miscellaneous offending). However, the Committee notes that based on reported rates of victimisation, under-reporting of crimes against the person continues at pervasive rates.

While the Committee recognises decreases in overall sentencing outcomes in higher courts, it observed a significant increase in the percentage of cases sentenced to imprisonment. The use of time served prison sentences increased 643% from 2011-2012 and 2017-2018, and now accounts for 20% of all prison sentences imposed. Further, an increase of unsentenced prisoners in remand is contributing to growth in Victoria's overall prison population. The profile of prisoners being received has also changed significantly over a 10-year period, with unsentenced prisoners now comprising 87% of prison receptions (up from 60% in 2010).

Victoria's prison population has increased by 57.6% in the 10-year reporting period between 30 June 2010 and 30 June 2020. This has disproportionately affected Aboriginal Victorians, young people and women. Aboriginal women made up 14% of the total female prison population in 2020 despite Aboriginal and Torres Strait Islander people making up less than 0.8% of the Victorian population.

The Committee received evidence demonstrating an increase in recidivism over the last 10 years. The true rates of recidivism are hard to determine given that many organisations measure recidivism differently (i.e. by rearrest, reconviction, being

incarcerated multiple times). However, overall it was reported that 19% of prison receptions in 2020 were received into the system more than once in the calendar year. The Committee received evidence that recidivism rates were typically driven by a small proportion of people responsible for high-frequency offending: around 6% of offenders are responsible for 44% of crimes reported to Victoria Police.

Though the available data provided an overview of the current state of Victoria's criminal justice system, the Committee found that there was a lack of data collection in key areas throughout this Inquiry. The Committee believes that broader data collection is required to provide insight into how the criminal justice system is functioning, and inform ongoing and future reform. This Chapter recommends measures to collect and report on additional data throughout the criminal justice system.

Chapter 3: Crime prevention and early intervention

There is significant evidence that associates different forms of socioeconomic disadvantage with increased risk of engagement with the criminal justice system. While most people who do experience social disadvantage do not offend, different forms of social disadvantage can compound to increase the risk of criminalisation or victimisation. Early intervention is the practice of identifying individuals at risk of coming into contact with the criminal justice system and providing social supports to divert their trajectory away from the system. This Chapter outlines the current infrastructure for early intervention—including available legal assistance for those experiencing disadvantage—and examines how targeted early intervention can positively impact vulnerable cohorts.

Successful intervention is possible at any point prior to or after an individual's first contact with the criminal justice system. However, earlier intervention is more effective at reducing crime and is more likely to prevent engagement with the criminal justice system in the longer-term when compared to interventions targeted at incarcerated individuals. Inquiry stakeholders suggest that to date, the Victorian Government has prioritised investment in correctional facilities over early intervention structures. However, stakeholders are cautiously optimistic about the forward steps taken in the Victorian Government's new *Crime Prevention Strategy*. The Victorian Government is also pursuing reform to enhance service delivery by departments and organisations to those experiencing social disadvantage by moving to a collaborative person-centred, 'common clients' approach. A successful reform program will allow stakeholders to work together to provide integrated solutions to address disadvantage—for example, providing housing support, addiction support and financial assistance through the same service stream.

This Chapter acknowledges that adverse childhood experiences—such as exposure to all kinds of abuse or the incarceration of a family member—have a significant impact on risk-taking behaviours which may manifest in criminal behaviours. It finds that to reduce the likelihood of offending and increase protective factors, support for children and young people should focus on education, employment opportunities, culturally appropriate services and community led, place-based support.

Executive summary

For children and young people, living in out of home care can also exacerbate the likelihood of exposure to the criminal justice system. This Chapter touches on the criminogenic nature of out of home care. It also addresses the need to increase the minimum age of criminal responsibility. Raising the legal minimum age of criminal responsibility is consistent with evidence about child development, international norms and human rights standards, and will help divert children into social services rather than trapping them in the criminal justice system from an early age.

Chapter 4: Addressing overrepresentation in the criminal justice system

This Chapter emphasises the need to improve and increase early intervention directed at groups overrepresented in the criminal justice system, including women, Aboriginal Victorians and culturally and linguistically diverse communities. The absence of culturally appropriate services for Aboriginal Victorians and culturally and linguistically diverse people was consistently observed in all facets of the Victorian criminal justice system and is discussed in this Chapter and throughout the entirety of the report.

In recent years, the female prison population has been the fastest growing cohort in Australian prisons. The number of women in Victorian prisons has more than doubled over the past decade, with the incarceration rate of Aboriginal women more than tripling in the same period. Unlike males, females who commit criminal offences are typically victims of abuse (sexual, physical, emotional, or a combination of all three) and will typically enter the criminal justice system as a victim or a perpetrator of a non-violent crime—often related to poverty or drug dependence.

Appropriate early intervention opportunities for women who are at risk of interacting with the criminal justice system should be gender specific and trauma-informed. Well-designed therapeutic intervention for women experiencing abuse can prevent offending and reduce the risk of criminalisation. Long-term economic support and housing security is also imperative to provide safety to women who have experienced, or who are experiencing, abuse. A review of welfare services available at a federal level tailored to women should be encouraged to ensure that financial and housing support is commensurate to the current cost of living.

Culturally appropriate early intervention for Aboriginal Victorians also needs to be strengthened through collaboration between the Victorian Government, Aboriginal representative bodies, Aboriginal Community Controlled Organisations, Traditional Owners and the Aboriginal community more broadly. This collaboration should work to develop appropriate social supports, identify decision-making opportunities for Aboriginal people within these processes, and diversify the culturally appropriate social, health, educational and legal services available to Aboriginal Victorians and Aboriginal communities. Dedicated and sustained funding channels are required to support these programs. The Committee also supports the exploration of how Aboriginality is confirmed throughout the criminal justice system.

Finally, this Chapter outlines unique challenges for early intervention with culturally and linguistically diverse people who may have a greater risk of interacting with the criminal justice system due to a lack of social support avenues. Pre- and post-migration experiences may also contribute to victimisation or criminalisation. The Committee recommends that the Victorian Government should work with community representatives, service providers and Victoria Police to develop a Multicultural Youth Justice Strategy to support eradication of racial discrimination in the criminal justice system, improve monitoring and reporting on outcomes of interactions with culturally and linguistically diverse young people, and promote investment in evidence-based community-informed early intervention.

Chapter 5: Policing

The role of Victoria Police in the criminal justice system is significant. For many people, the first contact that they have with the criminal justice system is through Victoria Police. While increased funding and a number of policy and legislative reforms have facilitated the expansion and modernisation of Victoria Police, the Committee has observed areas of concern in Victoria Police's approaches to policing.

Some police responses to complex situations—such as assisting people experiencing mental health crises, homelessness and cognitive disability—have resulted in people being propelled into the criminal justice system instead of being redirected to appropriate social supports. This can have a compounding effect as interaction with the criminal justice system can preclude vulnerable people from appropriate social supports, such as housing or funding.

The actual or perceived overpolicing of Aboriginal, culturally and linguistically diverse and LGBTIQ+ communities is continuing to foster mistrust in law enforcement. The Committee heard that the continued prevalence of racial profiling and stereotyping is traumatising for those who experience it. In addition, evidence indicates that young Aboriginal Victorians and culturally and linguistically diverse people who offend are more likely to be charged with a criminal offence instead of receiving cautions or diversions. However, the Committee acknowledges that Victoria Police are actively engaging with minority communities to improve relationships with diverse community groups.

This Chapter also notes that the use of cautions and court-based diversions are key mechanisms to divert people away from the criminal justice system, but their application is inconsistent and often at the discretion of the attending officer.

The Committee also examined the regular misidentification of female victim-survivors as the primary aggressor in family violence proceedings. The repercussions of misidentification are significant and have lasting impacts on the victim-survivors. For example: temporary, long-term and sometimes permanent separation from dependent children; withdrawal of social supports; loss of housing; and exposure to further violence.

Executive summary

The Committee believes that Victorian police officers would benefit from additional training and education. Ongoing community collaboration is also required to begin addressing the key issues identified by stakeholders. However, significant review and reform may be required to ensure the consistent and appropriate application of cautions and court-based diversions.

This Chapter concludes by identifying shortcomings in the oversight and review processes for Victoria Police, a responsibility which typically lies with the Independent Broad-based Anti-corruption Commission. Due to under-resourcing, the Commission only investigates 2% of the complaints it receives and refers the rest of the complaints back to Victoria Police for internal investigation. The Committee acknowledges concerns regarding the effectiveness and impartiality of the complaints and review process and supports additional resourcing to ensure a dedicated team within the Commission can address complaints against Victoria Police.

Chapter 6: Victims of crime and the criminal justice system

Victoria has significant infrastructure in place to support victims of crime in the criminal justice system. The cultural and behavioural obligations of justice system agencies are guided by the *Victims' Charter Act 2006* (Vic). The Charter is the legislation which codifies the 'inherent interests' of victims of crime and their right to participate in criminal justice processes. To strengthen the application of these rights, the Committee would like the Victorian Government to look at options to improve the practical application and impact of the Victims' Charter.

The Committee has explored existing mechanisms in place to support victims of crime, including the Intermediaries Program and Independent Third Persons Programs. The work of these programs is welcome but expanding the remit and resourcing of these programs would help to ensure that more victims of crime receive appropriate support while navigating the criminal justice system.

As the Victorian Government works to develop a new victims of crime financial assistance scheme, there is an opportunity to address shortcomings in the current model. By embedding trauma-informed practices into the service design of the victims of crime financial assistance scheme, the new scheme can be a more accessible and less adversarial process for victims of crime. Further, the Committee believes that bringing the scheme into the jurisdiction of the Victims of Crime Commissioner would provide appropriate accountability and oversight.

The Victims Assistance Program, a support service which assists victims of violent crime against a person to manage and recover from the effects of crime, is a positive trauma-informed support which plays an important role for victims of violent crime navigating the justice system. However, a lack of appropriate resourcing means that too often, the available services are not commensurate with the demand. Further, wider referrals could be included to ensure a holistic triaging service is available to victims of violent crime.

Chapter 7: Experiences of victims of crime

This Chapter focuses on the experiences of victims of crime navigating the criminal justice system. These experiences can have a significant impact on the recovery of victims of crime and can contribute to healing, or conversely, can exacerbate the trauma experienced. In hearing from victims of crime, a key theme communicated was the need to feel recognised and validated by the justice system.

Current supports and justice processes can be traumatising and are not suitable or accessible for many victims of crime. Changes are needed in victim services and justice processes to build in appropriate supports, culturally appropriate services and trauma-informed practices. In particular, the Committee notes that too often the onus is on the victim to connect with services which may be difficult to access or not commonly known. This Chapter canvasses the impacts of inadequate support services and makes recommendations to improve service delivery and accessibility for victims of crime.

This Chapter presents the experiences of specific victims of crime cohorts, namely victim-witnesses, Aboriginal Victorians, culturally and linguistically diverse communities, people with disability, and LGBTIQ+ people. The Committee recognises that trauma for marginalised communities is not binary and that due to the intersectional nature of identity, trauma experienced by people identifying with multiple marginalised communities is often compounded. Further, due to historical and ongoing discrimination and persecution, mistrust of the police and justice processes is contributing to the under-reporting of crimes and inhibiting access to support services.

This Chapter also addresses the high rates of overlap between people who are victims of crime and who commit offences. The Committee found that experiencing crime can be a key risk factor for offending behaviour. The Victorian Government acknowledged that a dual experience of victimisation and offending behaviour disproportionately affects vulnerable communities. Stakeholders indicated that those most at risk were Aboriginal Victorians, culturally and linguistically diverse people, people with a disability and members of the LGBTIQ+ community—particularly transgender and gender diverse people.

The Committee heard harrowing accounts of victims of crime being retraumatised and revictimised while participating in justice processes, and has recommended measures to ensure that trauma-informed practices are embedded into the justice system.

Chapter 8: Supporting victims of crime

The Committee recognises that the need for support after experiencing crime is substantive. Ongoing support and active participation are required to ensure the interests of victims of crime are protected. Chapter 8 examines the supports currently available to victims of crime and recommends improvements to promote and expand participation for victims of crime in the criminal justice system.

Executive summary

This Chapter considers the infrastructure for victims of crime to participate in the criminal justice system, including:

- opportunities for engagement with victims of crime and advocates in community safety and rehabilitation
- the use of victim impact statements
- the need for enhanced or dedicated legal services
- any possible strategies to build knowledge and understanding of the criminal justice system for victims of crime
- the purposes and impact of restorative justice processes.

Key areas of recommended reform include the:

- expansion of the Victims' Legal Service to provide procedural advice
- development of a trauma-informed communications strategy for support agencies working with victims of crime
- development of a strategy for culturally and linguistically diverse victims of crime to ensure culturally safe practices are available in support services.

The Chapter also discusses ways to improve support for victims of crime beyond the criminal justice system—for example, examining ways to improve existing victims services sectors. A redesign of the victims of crime services model should be considered to ensure trauma- and culturally-informed practices are embedded in the victims services design. Further triage and referral services should also be considered to connect victims of crime with additional support services to heal trauma and prevent long-term psycho-social harm.

Chapter 9: Charges, bail and remand

This Chapter canvasses issues relating to charges, bail and remand. It outlines the importance of legal services to support individuals once they come into contact with the criminal justice system, and the need for these to be accessible, culturally safe and responsive.

This Chapter discusses the operation of Victoria's bail system and investigates the impact of reforms introduced in 2013 and 2017-18. These reforms, including the introduction of reverse onus which positions denial of bail as the default option for more serious offences, have resulted in a significant increase to the Victorian prison population (and the remand population more specifically). Further, the current bail system has a host of negative effects on persons charged with an offence and has disproportionately impacted women, Aboriginal Victorians, children and young people and people living with a disability. Specific areas of improvement in bail processes are addressed in this Chapter.

The growing remand population is a matter of concern to the Committee. Stakeholders flagged issues with police powers to remand alleged offenders in custody, specifically the broad discretion in police decisions to grant or deny bail, and the lack of transparency and independent oversight in these decisions.

Another key barrier for granting bail is a lack of secure housing, an issue which was canvassed in the Committee's Inquiry into homelessness in Victoria. The Committee reiterates the significance of supported accommodation for those seeking bail. It also notes that no response to the recommendations in the Inquiry into homelessness in Victoria has been received by the Victorian Government to date.

This Chapter also recommends further review of indictable offences which are inherently linked to disadvantage. The review should consider reclassifying certain offences as summary offences and, where appropriate, decriminalising punitive offences which target disadvantage such as homelessness, disability or mental health issues.

Chapter 10: Courts and sentencing

This Chapter discusses Victoria's court system, court processes and sentencing matters. Victorian courts are currently facing significant caseload pressure exacerbated by the impact of the COVID-19 pandemic. However, there is an opportunity to consider innovative procedural changes to help alleviate the pressure.

There is a need to expand existing court services, such as the Court Integrated Services Program and court-based diversion programs, to ensure greater accessibility and meet demand. The Committee received particularly concerning evidence that Aboriginal Victorians are less likely to receive a court-based diversion instead of sentencing—this is compounded by the reduced likelihood of receiving a caution or pre-court diversion from Victoria Police (discussed in Chapter 5). While the Committee reached out to Victorian courts for a contribution, each court declined to respond to the Inquiry and therefore a full picture of diversionary options available to judicial officers is not clear.

Restorative justice processes and non-adversarial options for sentencing processes can help promote healing and reduce recidivism. Victoria's specialist courts—including the Koori Courts, Assessment and Referral Court and Drug Courts—are providing a therapeutic alternative to traditional sentencing processes. These courts support people charged with an offence to address the reasons for offending, and have been demonstrated to reduce recidivism. However, access to specialist courts is limited and the operation and jurisdiction of the specialist courts should be widened.

There are two acts which dictate sentencing law in Victoria—the *Sentencing Act 1991* (Vic) and the *Children, Youth and Families Act 2005* (Vic). These are supported by the Victorian Sentencing Manual, written by the Judicial College of Victoria. The Manual includes methods, principles and purposes that the judiciary should employ when sentencing. This Chapter outlines sentencing schemes (including minimum sentences and presumptive sentencing), minimum terms of imprisonment and non-parole periods.

Executive summary

Evidence indicates that these methods are consistently failing to meet their objectives and are contributing to over-incarceration of vulnerable populations. Review and reform are needed to ensure appropriate sentencing schemes are available, including provisions built into the Sentencing Act to allow consideration of unique systemic factors impacting Aboriginal Victorians.

Many stakeholders advocated for reform to the ways that imprisonment is used as a sentence in Victoria. For example, the increased remand population has resulted in greater prevalence of time served sentences. These measures are often punitive, and result in increased rates of courts imposing time-served prison sentences to reflect the remand period. The use of incarceration as a response to social and economic disadvantage is perpetuating disadvantage, and alternative sentencing options are required to move towards a rehabilitative justice model.

Where appropriate, community corrections orders and home detention orders should be promoted as non-custodial options. The introduction of provisions for home detention in the Sentencing Act would promote community safety and allow people charged with an offence access to local rehabilitative support services. Further, it would reduce pressure on the prison system and allow resources to be redistributed.

Chapter 11: Victoria's prison system and conditions

Victoria's prison system consists of both public and privately-owned prisons. The management of both public and privately-owned prisons is the responsibility of Corrections Victoria, a business unit within the Department of Justice and Community Safety. This Chapter explores the conditions in Victorian prisons and highlights areas for reform, improvement or review.

Myriad socioeconomic factors typically impact individuals entering the prison system. The rapid expansion of the prison population in recent years and the additional complications from the COVID-19 pandemic have exacerbated challenging prison conditions and led to more limited support for complex health and wellbeing needs. Further, the Committee notes that prison conditions are also detrimental to the mental health of incarcerated people.

A concern consistently expressed by stakeholders included a lack of transparency about incarcerated people's access to healthcare commensurate to that of the wider community. While Justice Health contended that people in prison have access to the public health system, the Committee was disturbed to receive evidence of prisons denying, or interfering with, medical care. The Department of Justice and Community Safety should disclose key metrics of engagement with available health services in its annual report to ensure accountability and transparency. Further, engagement between the Victorian and Commonwealth Governments should explore options to extend Medicare and the Pharmaceutical Benefits Scheme to incarcerated Victorians.

This Chapter also explores the experience of people living with a disability in Victorian prisons. People living with disability—physical, cognitive and/or intellectual—make up a significant proportion of the prison population. However, the needs for many people living with a disability are not being met. Better systems are required to ensure that the needs of people with disability are appropriately identified and met, and to ensure that all staff are appropriately trained to identify and manage behaviours associated with cognitive and intellectual disability.

Victorian prisons are also failing to provide safe living conditions or adequate supports for Aboriginal Victorians. An overhaul of approaches to incarceration of Aboriginal Victorians is required to consider the unique impact that custody can have. The Committee recognises the need for an Aboriginal Social Justice Commissioner or other oversight mechanism to ensure the criminal justice system works appropriately with Aboriginal Victorians. Additional resources are immediately needed to fund enough Aboriginal Welfare Officer positions across the prison network.

Behaviour control techniques including solitary confinement, strip searches and the use of physical restraints can traumatise prisoners and impede rehabilitation. The use of these measures should be examined with a view to prohibiting use outside of extremely limited and specific circumstances.

Chapter 12: Prison supports and rehabilitation

Prison can be criminogenic; however a rehabilitative approach can address offending behaviours and reduce recidivism. Current rates of recidivism in Victoria indicate that punitive measures are perpetuating a cycle of crime by normalising violence and exacerbating socioeconomic disadvantage. Targeted programs which address underlying behaviours—particularly for those with disability, mental health challenges and trauma—can reduce reoffending and promote community safety.

This Chapter explores prison supports and rehabilitation measures throughout Victoria. It outlines key outcomes in Corrections Victoria's strategic plan, and notes that the plan has not been updated in five years and may no longer align with best practice approaches. A revised strategic plan and an accompanying Offender Management Framework should consider principles of effective rehabilitation and be based around best practice models.

This Chapter outlines several targeted therapeutic programs operating in Victoria and recognises that the access to rehabilitative programs is often restricted based on sentencing stage, inadequate resources and the impacts of COVID-19 restrictions. In particular, people incarcerated on remand are restricted from accessing rehabilitative supports until sentencing. This precludes a large portion of the prison population from accessing appropriate programs. More resourcing is required to ensure that all incarcerated people can access rehabilitative services when they choose.

Executive summary

Access to rehabilitative programs can also be restricted due to lack of technological access. Greater access to technology, including supervised or monitored internet access, can expand the delivery of rehabilitative and educational programs in prisons. Computer literacy has an additional benefit of assisting incarcerated people with life skills as they transition back into the community.

The period immediately following release from prison can be challenging and overwhelming for many formerly incarcerated people, particularly those without stable housing or with dependency or addiction issues. Resourcing should be increased to allow a throughcare model—which refers to supports which carry from incarceration to post-release—to be adopted as a model of care for prison leavers. This can apply to housing initiatives, mental health services, drug and alcohol services, and other social supports.

More comprehensive initiatives are required to support incarcerated people post-release. Providing support, safety and routine can improve health outcomes and reduce the risk of reoffending and recidivism. For example, education, training and work experience during incarceration can assist people reintegrating into the community and can connect people to employment opportunities. Housing support can also ensure that a person has safe accommodation following their release into the community, and support reunification with family members.

Chapter 13: Parole and the post sentence scheme

In Victoria, incarcerated people can apply to serve the final part of their custodial sentence in the community. This is done through parole, which is supervised by Community Correctional Services within Corrections Victoria. Parole is primarily intended to increase community safety as it provides enhanced supports to incarcerated people reintegrating into the community.

Parole is granted or denied by the Adult Parole Board, which undertakes an assessment to consider the risk to community safety and the supports and supervision in place to reduce any risk.

Similar to the reforms to bail practices, recent reforms have made it more difficult for parole to be granted. The number of serious offences committed by people while on parole has decreased in recent years. However, the risk-averse approach to granting parole is resulting in more people being released back into the community without the additional supports and supervisions that parole offers. As such, further evaluation is necessary to understand the community safety impact of people exiting prison without bail.

Throughout their time in custody, an incarcerated person may undertake courses or programs which may support their application for parole. However, these courses and programs are limited and may not be accessible or available for everyone wanting to participate. This extends to mandatory programs (for example, the violent offender program) without which a person may not be eligible for parole. The Adult Parole

Board should have provisions to exercise discretion when a person cannot complete pre-release programs due to limited availability of the programs. In addition, greater engagement between incarcerated people and the Adult Parole Board should be introduced to foster a more personal environment.

This Chapter examines evidence which indicated that the recent reforms to the parole system have disproportionately impacted certain cohorts—particularly women and Aboriginal and Torres Strait Islander women. The lack of culturally appropriate pre-release programs for Aboriginal Victorians is also a barrier to accessing parole and should be commensurate with demand. The Committee also recommends legislating a requirement for Aboriginal and Torres Strait Islander representation on the Adult Parole Board.

The Chapter also outlines the post sentence scheme, which is established by the *Serious Offenders Act 2018* (Vic). The scheme provides for alternatives to parole if a person is considered to pose an unacceptable risk to the community. They may be placed on supervision or detention orders under the post sentencing scheme to enable their ongoing incarceration, supervision and rehabilitation. The Post Sentencing Authority is responsible for monitoring the individuals subject to these orders, which can only be made to improve community safety or enable rehabilitation and treatment.

The introduction of the post sentencing scheme has increased community safety by providing greater supervision and management of people who have committed serious sex and/or violent offences.

Chapter 14: Judicial appointments

Judicial officers play a significant role in the Victorian criminal justice system. A judicial officer is appointed by the Governor in Council on a recommendation of the Attorney-General, and must meet qualifications set out in Victorian legislation (including the *Constitution Act 1975* (Vic)). Elements of the process for appointment are outlined in legislation, however there is limited publicly available information detailing how the Victorian Government identifies and recommends judicial officers.

A transparent recruitment process should be established, which includes clear selection criteria for each judicial position and standard practices to publicly advertise judicial vacancies. The criteria should be informed by the Judicial College of Victoria's *Framework of Judicial Abilities and Qualities for Victorian Judicial Officers*. The criteria should also recognise the importance of diverse representation in the judiciary. Further consideration should be given to engage specific underrepresented cohorts, including where appropriate, Aboriginal Victorians and culturally and linguistically diverse people.

Additional resourcing is required to allow rural and regional communities sufficient access to courts. These shortages are further exacerbated when considering specialist courts. More judicial officers will increase capacity to meet demand in these areas. Where appropriate, recruitment for additional specialist judiciary positions (including within the Koori Courts) should be done in consultation with the community.

Executive summary

Most members of the judiciary have a secure ongoing tenure until reaching the mandatory retirement age. There are very limited circumstances in which a judge or magistrate can be removed from their position. Given this, the Committee reiterates the significance of appropriate recruitment and appointment processes.

This Chapter also explores mechanisms to manage conflicts of interest and bias. Some of these mechanisms occur during the recruitment and appointment stage, such as declarations of private interest and probity checks.

Chapter 15: Judicial training and education

This Chapter addresses judicial education and training in Victoria and is informed by the Judicial College of Victoria's correspondence to the Inquiry. Under the *Judicial College of Victoria Act 2001* (Vic), the Judicial College is required to comply with requests for information from parliamentary committees that relate to the performance of its functions, the exercise of its powers or its expenditure or proposed expenditure. Given this, the Committee is disappointed to note that responses were not provided to much of the requested information and has suggested strengthening provisions in the Act to ensure that parliamentary committees are better articulated in the legislation.

The Judicial College was established to assist in the professional development of judicial officers, including continuing education and training. The Judicial College may also provide professional development or training for non-judicial officers on a fee for service basis. It is required to have regard to the differing needs of newly appointed judicial officers, and for different classes of judicial positions.

The Judicial College plays a key role for new appointees. By way of support, the Judicial College may design and implement induction programs for new judicial officers, provide a suite of programs which support the transition to judicial life, and facilitate sessions for new appointees to practice new skills under the guidance of experienced judicial officers.

The development of judicial officers focuses on six key educational areas: law, skills, judicial life, social context, First Nations and non-legal knowledge. Family violence, restorative justice and vulnerable witnesses are incorporated into social context training. There is also additional internal court training available, however there is limited publicly available information about the content or uptake of this training.

Despite the training mechanisms in place, stakeholders expressed concerns that judicial officers were not sufficiently trained in key areas, including trauma-informed practices, cultural competency, disability awareness, and awareness of issues relevant to the LGBTIQ+ community. Stakeholders provided evidence of both intentional and unintentionally discrimination in court processes. The Committee invites the Judicial College to consider increased and improved education and training targeting trauma-informed practices, cultural competency, disability awareness, and issues relevant to the LGBTIQ+ community.

Findings and recommendations

2 Statistical and demographic snapshot

RECOMMENDATION 1: That the Victorian Government work with key stakeholders across the criminal justice system to improve data collection, accessibility and transparency throughout the system. This should encompass:

- providing relevant support to Victoria Police to collect and report on data which is accessible by the Crime Statistics Agency under s 7 of the *Crime Statistics Act 2014* (Vic), relating to:
 - the use of stop and search powers and relevant information about that practice
 - the use and number of diversions, cautions or fines individually issued on contact with law enforcement
 - the demographics of those who interact with the criminal justice system
- requiring the Department of Justice and Community Safety, to provide annual updates on:
 - the number of healthcare services offered in publicly- and privately-operated Victorian prisons for the reporting period
 - document the number of incarcerated persons (deidentified) who interact with healthcare services and the period they are engaged
 - COVID-19 impacts, including applying control measures and emergency management days, with a view to identifying the impact of these on:
 1. Prison conditions, the wellbeing of incarcerated people and their families
 2. Incarcerated people's access to rehabilitative programs, health and legal services and the courts.
 - ongoing analysis to inform the ongoing management of the COVID-19 pandemic, including how to minimise disruption caused by control measures. This includes examining other institutions and how they manage vulnerable people.
- continued improvement on the collection and reporting of data on other matters of criminal justice, including:
 - recidivism rates across the criminal justice process, including for incarcerated people released into the community without supervision, those released on community correction orders, parolees, those who re-offend while bailed for trial and for those who re-offend while bailed for sentence.

35

3 Crime prevention and early intervention

FINDING 1: Different forms of socioeconomic disadvantage—such as poverty, housing instability, trauma and discrimination—increase a person’s risk of encountering the criminal justice system through offending or victimisation. Particularly where multiple factors are at play through compounding intergenerational and intersectional disadvantage.

77

FINDING 2: The nexus between disadvantage, victimisation and criminalisation is not causal. Disadvantage typically culminates in engagement with the criminal justice system in instances where society has repeatedly failed to provide the social, mental health, economic or legal supports a person needs to live productively in the community.

77

FINDING 3: Access to timely legal education and assistance can prevent issues related to housing, alcohol and other drugs, civil law matters, mental illness, or debt from escalating into criminal matters. Particularly where legal advice is provided in conjunction with health and social support through a health justice partnership.

90

RECOMMENDATION 2: That the Victorian Government consult Victoria Legal Aid, community legal centres and providers involved in health justice partnerships to design and implement long-term funding mechanisms capable of supporting service provision commensurate to evolving demand.

91

RECOMMENDATION 3: That the Victorian Government provide seed funding and other resources to assist community legal centres, health and social support providers to investigate and facilitate the establishment of additional health justice partnerships in communities experiencing socioeconomic disadvantage around Victoria.

91

FINDING 4: Integrated social support services which holistically address compounding or intersectional disadvantage can increase the efficacy of early intervention aimed at preventing contact with the criminal justice system.

95

RECOMMENDATION 4: That the Victorian Government develop a Victorian Childhood Strategy to complement the objectives of the Victorian Youth Strategy currently being drafted and facilitate cross-portfolio collaboration in relation to policies and programs aimed at supporting children and their families.

111

Findings and recommendations

FINDING 5: Education reduces young people’s risk of engaging with the criminal justice system by enhancing their wellbeing and self-esteem and expanding their opportunities and choices in life. 111

RECOMMENDATION 5: That the Victorian Government fund the expansion of relevant programs and the provision of youth workers and youth mentors to young people in primary and secondary schools in disadvantaged communities across Victoria. 112

FINDING 6: Stable employment which aligns with a young person’s aspirations reduces their risk of engaging with the criminal justice system by providing a meaningful focus for their life, promoting a positive self-image and providing regular income. 112

RECOMMENDATION 6: That the Victorian Government review its policy and programs assisting young people from disadvantaged backgrounds to gain meaningful and stable employment in light of the finalised Victorian Youth Strategy. This review should assess whether these programs reflect best practice and achieve results with a view to informing improvements. 112

FINDING 7: Place-based early intervention initiatives which are community designed and led, and which facilitate collaboration between schools, social support and legal services, can effectively address socioeconomic disadvantage compounded within a geographical area, with flow on benefits for young people. 113

RECOMMENDATION 7: That the Victorian Government extend the Youth Crime Prevention Grants to enable community led place-based early intervention initiatives which are achieving demonstrable benefits to continue, and to expand access to the Grants Program to additional communities. 113

FINDING 8: Out of home care is criminogenic. Services are responding to children and young people experiencing complex disadvantage who exhibit difficult antisocial behaviours with punitive measures instead of providing the therapeutic and/or culturally appropriate support they require to overcome these challenges. 122

Findings and recommendations

RECOMMENDATION 8: That the Victorian Government provide a public update on the implementation of the *Framework to reduce criminalisation of young people in residential care* to date and outline the next steps for improving outcomes for children in out of home care. The ongoing implementation of the framework should be supported by increased investment to:

- provide training to out of home care staff and police regarding the appropriate management of challenging antisocial behaviour through therapeutic and restorative justice responses
- improve out of home care services' links with, and access to, community-based social support, legal and culturally appropriate services.

123

RECOMMENDATION 9: That the Victorian Government, in collaboration with the Aboriginal community, evaluate the operation of its Aboriginal Children in Aboriginal Care Program with a view to identifying:

- how it can be improved to support better outcomes for Aboriginal children and young people in out of home care
- how best to overcome barriers to, and resource, Aboriginal Community Controlled Organisations taking on responsibility for all Aboriginal children and young people in out of home care.

123

RECOMMENDATION 10: That the Victorian Government raise the minimum age of criminal responsibility, noting that this is being considered by several jurisdictions via the Meeting of Attorneys-General.

134

RECOMMENDATION 11: That the Victorian Government invest in community-based social, health, legal and forensic services which address the factors underpinning the criminal behaviours of children and young people. This investment must include greater resourcing of services which are culturally specific to Aboriginal children.

135

4 Addressing overrepresentation in the criminal justice system

FINDING 9: Women, particularly Aboriginal and culturally and linguistically diverse women, are overrepresented in the criminal justice system. Their criminalisation is often underpinned by unresolved trauma connected to sexual abuse, emotional abuse, and family and other forms of violence. Their offending is typically non-violent and of a less serious nature, such as low-level drug offending.

149

RECOMMENDATION 12: That the Victorian Government encourage the Australian Government to review welfare available to women and families experiencing disadvantage to ensure it is commensurate to the current cost of living.

150

RECOMMENDATION 13: That the Victorian Government increase funding and support to social support providers offering therapeutic interventions for alcohol and other drug use, sexual abuse, violence and trauma to:

- expand their services to women voluntarily seeking help and reduce wait times to access services
- develop gender-specific, trauma-informed and culturally safe therapeutic services
- enhance connectivity, collaboration and referrals between social support providers to ensure women are provided with long-term holistic support
- enhance screening programs to ensure complex and multifaceted support needs are identified and addressed.

150

FINDING 10: Most Aboriginal Victorians do not encounter the criminal justice system. However, 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.

165

FINDING 11: Greater self-determination is the only approach which can overcome the entrenched disadvantage experienced by some Aboriginal Victorians and sustainably reduce their overrepresentation in the criminal justice system.

165

Findings and recommendations

RECOMMENDATION 14: That the Victorian Government partner with Aboriginal Community Controlled Organisations to:

- develop long-term funding arrangements which support the expansion of these organisations' leadership and service provision with the justice and social services sectors
- identify opportunities for expanding these organisations' decision-making authority and responsibilities in relation to Aboriginal people at risk of, or already engaged with the criminal justice system
- diversify and expand the social, health, forensic and legal services provided by these organisations to the Aboriginal community.

165

FINDING 12: Holistic early intervention to address the overrepresentation of Aboriginal Victorians within the criminal justice system must encompass systemic reform to improve the cultural safety of justice institutions and social support more broadly.

169

RECOMMENDATION 15: That the Victorian Government ensure the comprehensive implementation and continued support for the reforms and initiatives outlined in the:

- *National Agreement on Closing the Gap*
- *Victorian Aboriginal Affairs Framework 2018–2023*
- *Burra Lotjpa Dungaludja 'Senior Leaders Talking Strong'*
- *Korin Korin Balit-Djak: Aboriginal health, wellbeing and safety strategic plan 2017–2027*
- *Wungurilwil Gaggapduir: Aboriginal Children and Families Agreement and Strategic Action Plan*
- *Balit Murrup: Aboriginal social and emotional wellbeing framework*
- *Marrung Aboriginal Education Plan 2016–2026*
- *Dhelk Dja: Safe Our Way – Strong Culture, Strong Peoples, Strong Families.*

169

RECOMMENDATION 16: That the Victorian Government expand the Youth Crime Prevention Grants to include a dedicated stream of funding to support Aboriginal community led, placed-based early intervention initiatives specifically targeted at addressing the factors informing the overrepresentation of Aboriginal people within the criminal justice system. The Victorian Government should also ensure it supports these initiatives by:

- facilitating access to localised data related to criminal justice and other relevant government service provision, and associated costs
- supporting local justice reinvestment initiatives
- facilitating participation by, and coordination between, relevant government departments and agencies.

169

FINDING 13: The Committee believes that how Aboriginality is established in justice contexts, merits investigation by the Victorian Government, in partnership with Aboriginal representative bodies, Aboriginal Community Controlled Organisations, Traditional Owners and the Aboriginal community more broadly.

171

RECOMMENDATION 17: That the Victorian Government work with culturally and linguistically diverse community representatives, community service providers and Victoria Police to develop a Multicultural Youth Justice Strategy to:

- drive committed action to eradicating all forms of racial discrimination within the criminal justice system
- improve accountability and transparency through monitoring and reporting on outcomes for culturally and linguistically diverse people who encounter the criminal justice system
- promote research into underlying drivers of culturally and linguistically diverse youth offending and effective interventions targeting at risk youths, those already engaged in the criminal justice system, and those being released from incarceration
- promote investment in evidence-based, community-informed early intervention which addresses the drivers of criminal behaviours in culturally and linguistically diverse youths and their overrepresentation in the criminal justice system
- strengthen diversion pathways for culturally and linguistically diverse people who offend, including by investigating the adaptation of Victoria's Koori Court model to suit multicultural communities
- improve service coordination for young culturally and linguistically diverse people, their families and communities.

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Findings and recommendations

5 Policing

FINDING 14: That Victoria Police is proactively engaging with Aboriginal, culturally and linguistically diverse, and LGBTIQ+ communities to increase trust in law enforcement and collaborate to proactively prevent crime. 187

RECOMMENDATION 18: That Victoria Police ensure that all Protective Service Officers have completed training in relation to responsibly executing their new powers and responsibilities under the *Justice Legislation Amendment (Protective Services Officers and Other Matters) Act 2019* (Vic) and the *Police and Emergency Legislation Amendment Act 2020* (Vic). 188

RECOMMENDATION 19: That the Victorian Government support a community responsive approach to policing and crime prevention by Victoria Police. This should encompass proactive engagement with young people, Aboriginal Victorians, culturally and linguistically diverse communities and LGBTIQ+ people to build trust in law enforcement. 188

FINDING 15: Overpolicing of Aboriginal and culturally and linguistically diverse communities by Victoria Police remains an issue, despite its ongoing commitment to address these matters. 197

RECOMMENDATION 20: That Victoria Police collaborate with the Aboriginal Justice Caucus, Aboriginal community controlled legal services, representatives of culturally and linguistically diverse communities and the Police Stop Data Working Group to design and implement a three-year trial of a racial profiling monitoring scheme. The trial should encompass the routine collection and public release of de-identified data on who Victoria Police stop and search, and for what reasons. Data collection should be comprehensive and be undertaken with a view to:

- quantifying the prevalence of overpolicing and racial profiling, based on police officers' perceptions of ethnicity
- identifying policies, practices and cultural factors within the police force which are informing these issues
- formulating solutions to address these issues
- establishing a data collection and release scheme. 197

Findings and recommendations

FINDING 16: Police are not trained or equipped to independently render appropriate assistance to people experiencing serious and complex mental health issues and who may be in crisis. 201

FINDING 17: Rendering assistance to people experiencing mental health crises occupies substantial Victoria Police resources and time. 201

RECOMMENDATION 21: That Victoria Police review its disability policies, training programs and specialist roles to ensure they:

- equip police officers with the knowledge, skills and support they need to distinguish between criminal and disability behaviours
- identify where an alleged offender, victim or witness would benefit from the provision of reasonable adjustments and/or access to specialist advice or support such as the Independent Third Person Program. 209

RECOMMENDATION 22: That the Victorian Government work to embed the Independent Third Person Program into Victoria Police’s practices, including a requirement for Victoria Police to seek the attendance of an Independent Third Person when interviewing a person with a cognitive impairment or mental illness. The Government should also provide funding to expand the program to ensure it is able to meet increasing demand. 209

FINDING 18: Police cautions and court-based diversion programs are important mechanisms for diverting people away from the criminal justice system and connecting them with the social supports necessary to address the factors underpinning their offending. 211

FINDING 19: Victoria Police’s use of cautions for both children and adults has declined over the past decade and remains inconsistent across the community. Young Aboriginal people and young people in lower socio-economic communities are less likely to receive a caution—as opposed to a charge—than other Victorians. Adults accused of drug offences in relation to methamphetamine, as opposed to cannabis, are also less likely to receive a caution—as opposed to a charge. 217

Findings and recommendations

RECOMMENDATION 23: That the Department of Justice and Community Safety review the use of verbal and recorded cautions by Victoria Police to inform reform aimed at expanding the use of, and improving the consistency of, cautions across the community. Specifically, the review should consider:

- factors underpinning the declining and inconsistent use of cautions across the community and how these can best be addressed
- the advantages and disadvantages of introducing a presumption in favour of cautioning—as opposed to a charge—in relation to appropriate minor offences
- how the issuance of a caution can better connect individuals with social support to address their criminal behaviours.

218

FINDING 20: Victoria Police's provision of prosecutorial consent for a court-based diversion varies between offences and across courts. This is because its policies and decision-making tools poorly reflect the legislative basis for diversion programs and offer vague guidance, leaving it to the discretion of individual officers to grant or reject access to a diversion program.

227

RECOMMENDATION 24: That the Victorian Government review the requirement for prosecutorial consent for a court-based diversion from s 59(2)(c) of the *Criminal Procedure Act 2009* (Vic) and s 356F of the *Children, Youth and Families Act 2005* (Vic) to consider whether these sections should be replaced with a requirement for the magistrate to consider the recommendation of the prosecutor and/or informant in relation to access to a court-based diversion (as opposed to seeking consent), and the provision of a right to reply for the accused person.

227

RECOMMENDATION 25: That Victoria Police update its policies, decision-making tools, practices and training in relation to court-based diversion to reflect the outcome of the review of prosecutorial consent, and to:

- ensure that they closely reflect the parameters of court-based diversion as established by the *Criminal Procedure Act 2009* (Vic) and the *Children, Youth and Families Act 2005* (Vic)
- provide detailed guidance as to the factors which should inform any decision to consent to/recommend or withhold a recommendation/consent for diversion which are focused on the individual circumstances of the accused, the nature of the alleged offending and prospects for rehabilitation
- provide a clear process for an accused or their legal representation to seek consent to/a recommendation for diversion.

228

FINDING 21: Female victim-survivors of family violence are regularly misidentified by Victoria Police as the primary aggressor/respondent in family violence proceedings. Misidentification has serious repercussions which may include:

- criminal charges
- long term separation from dependent children
- exposure to further violence
- the withdrawal of social, legal and financial supports
- visa cancellation and deportation for migrants.

243

RECOMMENDATION 26: That Victoria Police ensure all front-line police officers undertake regular training in relation to responding to family violence incidents, and that training continues to be provided. This training should include:

- the appropriate application of the *Code of practice for the investigation of family violence*
- the gendered nature of family violence
- the factors informing the misidentification of aggressors (including cultural and language barriers)
- the repercussions of misidentification
- social support available to families to address family violence.

244

RECOMMENDATION 27: That Victoria Police, in collaboration with legal and community stakeholders, implement a review mechanism for family violence matters capable of identifying instances where a victim-survivor may have been misidentified as the primary aggressor in an incident and provide information about a process for the withdrawal of criminal charges.

245

FINDING 22: Criminal justice stakeholders, in particular Aboriginal organisations, have long held concerns regarding the impartiality and effectiveness of the existing police complaint-handling and oversight systems in Victoria.

256

Findings and recommendations

RECOMMENDATION 28: That the Department of Justice and Community Safety consider, as part of its systemic review into police oversight, the evidence outlined in this report regarding:

- the inadequate impartiality and effectiveness of the existing police complaint-handling and oversight systems in Victoria, as well as investigations into deaths in police custody
- options for strengthening Independent Broad-based Anti-corruption Commission's oversight powers, improving its practices, properly resourcing its operations, and ensuring Victoria Police is held accountable for instances of serious officer misconduct
- the consideration of a possible establishment of a new independent body to investigate allegations of police misconduct and increase the accountability of Victoria Police.

256

6 Victims of crime and the criminal justice system

FINDING 23: Despite the intentions of the *Victims' Charter Act 2006* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic), the inherent interests and rights of victims of crime could be better upheld throughout the criminal justice system.

275

RECOMMENDATION 29: That the Victorian Government investigate options to strengthen the practical application and use of the *Victims' Charter Act 2006* (Vic) to protect the rights of a victim of crime to participate in justice processes. For example, amendments to s 22 of the Charter should be considered.

275

RECOMMENDATION 30: That the Victorian Government amend the *Victims' Charter Act 2006* (Vic):

- to remove s 9B(3)(b) which exempts the Director of Public Prosecutions from seeking the views of victims of crime if it is not practical because of the speed and nature of proceedings
- to amend s 9B(1) to affirm that the Director of Public Prosecutions' requirement to seek the views of victims of crime should not unnecessarily cause delays which would impact a person's right to a fair trial
- so that all victims of crime have the same entitlements to information and consultation from investigatory and prosecuting agencies, regardless of whether it is related to a summary or indictable offence.

281

RECOMMENDATION 31: In relation to the Intermediary Program, that the Victorian Government:

- expand the Program to include any witnesses eligible under the existing criteria regardless of the criminal offence before Victoria Police or the courts
- consider expanding the program to accused persons with a cognitive impairment or who are under 18
- investigate ways the role of intermediaries could be expanded to include assessment and referral functions for witnesses with unmet needs. Any expansion of the role allowing an intermediary to refer a witness to services should not undermine the intermediary's role as an impartial court officer.

286

FINDING 24: Ground rules hearings support vulnerable witnesses, including victims of crime, by:

- supporting them to give their best evidence through ensuring the process for questioning suits their communication needs
- reducing the stress of giving evidence in court by protecting them against improper questioning.

287

RECOMMENDATION 32: As interim measures, before the new victims of crime financial assistance scheme is in place, the Victorian Government should amend the *Victims of Crime Assistance Act 1996* (Vic), as a matter of urgency, to:

- remove alleged perpetrator notification and appearance provisions provided under ss 34(2) and 35(1)
- limit consideration of an applicant's character or behaviour under s 54, so that only criminal behaviour connected to the criminal act subject to the application is relevant
- prescribe time limits for the Victims of Crime Assistance Tribunal to provide awards to applicants or notify them if an application has been rejected.

302

RECOMMENDATION 33: That the Victorian Government review the funding provided to the Victims of Crime Assistance Tribunal as part of the 2021–22 State Budget to determine if it is sufficient in reducing the backlog of pending applications before the Tribunal.

302

Findings and recommendations

FINDING 25: In developing the new victims of crime financial assistance scheme, the Victorian Government should seek to remedy issues identified with the operation of the Victims of Crime Assistance Tribunal. The Government should have regard to the views expressed by stakeholders such as the Victorian Law Reform Commission, the Victims of Crime Commissioner and people who have experienced violent crimes. In particular, the Government should address the following issues that were identified:

- lack of trauma-informed practices in hearing from and assessing applicants
- overly legalistic language used to communicate with applicants.

302

RECOMMENDATION 34: That the Victorian Government make the new victims of crime financial assistance scheme a prescribed agency under the *Victims of Crime Commissioner Regulations 2020* (Vic), to ensure that the scheme falls within the oversight and compliance functions of the Victims of Crime Commissioner.

303

RECOMMENDATION 35: That the Victorian Government open redress schemes to all eligible people, regardless of their criminal history. This should include advocating to the Commonwealth Government for the National Redress Scheme to be opened to anyone who was a victim of institutional child sexual abuse.

307

RECOMMENDATION 36: In relation to the Victims Assistance Program, that the Victorian Government:

- provide further funding to ensure that participating agencies and services under the program can meet demand
- provide training and guidance to key referral agencies on referring victims of crime to the program sooner so that they can access the full range of support services
- expand the number of participating agencies to improve co-location with other services, particularly in regional and rural Victoria.

311

RECOMMENDATION 37: That the Victorian Government ensure that the Victims Assistance Program can provide culturally safe services and support to Aboriginal Victorians by:

- funding more Aboriginal Community Controlled Organisations to become participating agencies
- provide support, including funding if necessary, to Victims Assistance Program agencies for more Koori Engagement Workers so that the number of positions is commensurate to Aboriginal victims of crime in need of support.

314

7 Experiences of victims of crime in navigating the criminal justice system

RECOMMENDATION 38: That the Victorian Government amend the *Criminal Procedure Act 2009* (Vic) so that a ‘protected witness’ is eligible to use any alternative arrangements for giving evidence which are prescribed under s 360 of the Act. **333**

RECOMMENDATION 39: That the Victorian Government provides funding, where necessary, to Victorian courts to update their facilities to improve standards in victim safety and wellbeing. Facility updates could include:

- dedicated entrances and exits for victims of crime
- dedicated waiting spaces and interview rooms for victims of crime, as well as specific spaces such as:
 - child-friendly spaces
 - culturally safe spaces
 - quiet or sensory rooms
- increased number of remote witness facilities. **333**

FINDING 26: A significant proportion of crimes committed against Aboriginal Victorians go unreported. Despite this, Aboriginal Victorians are still overrepresented in victims of crime statistics. **339**

FINDING 27: A lack of culturally safe support for Aboriginal Victorians is a key barrier to victims of crime from these communities accessing services. **339**

FINDING 28: Victims of crime from culturally and linguistically diverse communities face several barriers to reporting crimes committed against them. As a consequence, the rates of victimisation among culturally and linguistically diverse communities are not well known. Particular barriers to reporting include:

- language barriers
- limited awareness of:
 - available support services
 - rights and legal protections afforded to victims of crime
- mistrust of the criminal justice system and other support sectors
- social stigma and shame associated with certain offences. **343**

Findings and recommendations

FINDING 29: Victims of crime from culturally and linguistically diverse backgrounds may experience unique forms of disadvantage which adversely shape how they interact with victim services, such as:

- a lack of culturally appropriate or safe services
- facing familial or community pressure to not report crimes
- citizenship or visa status which may determine what services are or are not available to a victim of crime.

343

RECOMMENDATION 40: That the Victorian Government increase the number of multicultural community organisations contracted as participating agencies under the Victims Assistance Program.

343

RECOMMENDATION 41: That the Victorian Government finalise and make public the *State Disability Plan 2021–2025* as a matter of urgency.

351

RECOMMENDATION 42: That the Victorian Government commit to improving the delivery of victim support services for people with disability. This commitment should involve:

- prioritising trauma recovery for victims of crime with disability
- improving the delivery of support services for victims of crime with disability, including addressing barriers experienced by victims, such as:
 - physical access and communication barriers
 - negative or biased attitudes expressed by authorities or agencies operating within the criminal justice system, including victim support agencies
 - the accessibility of adjustments or supports for people with disability participating in criminal justice proceedings
- undertaking research into whether a Disability Justice Strategy is necessary. If a dedicated strategy is deemed unnecessary, the Government should provide a report to the Parliament outlining the reasons for its decision.

351

FINDING 30: LGBTIQ+ Victorians experience high rates of victimisation, including discrimination, physical violence and sexual violence. However, many LGBTIQ+ victims of crime do not report to police or seek out support from the criminal justice system. Barriers that are deterring LGBTIQ+ victims of crime from engaging the criminal justice system include:

- feelings of mistrust towards law enforcement and the broader criminal justice system, which has been compounded by the historical criminalisation of the LGBTIQ+ community
- lived experience of discrimination or stereotyping from police or other practitioners in the criminal justice system
- lack of LGBTIQ+-inclusive services and programs.

357

FINDING 31: Evidence suggests that being a victim of crime can be a risk factor for future criminal behaviour. Many people in contact with the criminal justice system who have committed an offence have previously been a victim of crime.

361

RECOMMENDATION 43: That the Victorian Government undertake a trial in the Magistrates' Court of Victoria on the use of Victim Peer Support Workers to assist victims of crime attending court proceedings, whether as a witness or otherwise. Following the conclusion of the trial, the Government should table a report in Parliament on the trial's outcomes, as well as its position on the continuation and/or expansion of the program.

372

8 Supporting victims of crime

FINDING 32: Victim impact statements give victims of crime a direct voice in criminal proceedings and ensure that the trauma and harm they have experienced as a result of a person's offending is heard by the courts.

386

RECOMMENDATION 44: That the Victorian Government expand the Victims' Legal Service to include legal support for victims of crime on procedural matters. Example matters which should be included in the remit of the Victims' Legal Service are advice on:

- the role of victims in criminal proceedings, including giving evidence and any entitlements for alternative arrangements or special protections
- making victim impact statements
- a victim of crime's right to be consulted during criminal proceedings.

390

Findings and recommendations

RECOMMENDATION 45: That the Victorian Government:

- introduce a right to review scheme under the *Victims' Charter Act 2006* (Vic) which allows victims of sexual offences to request an internal review of decisions made by police or a prosecuting agency to not file charges or discontinue prosecution
- direct the Victorian Auditor-General's Office to evaluate existing internal review schemes open to victims of crime to determine if an external right to review scheme should be open to all victims of crime
 - the evaluation should assess the frequency of decisions being altered or revoked based on an internal review, including whether this impacts the number of cases going to or progressing through to a criminal trial.

396

RECOMMENDATION 46: That the Victorian Government provide funding to Victoria Legal Aid to conduct a pilot program which provides independent legal representation for victims of sexual offences up until the point of trial. The pilot should evaluate:

- demand for independent legal representation
- the impact independent legal representation has on a victim of a sexual offence's satisfaction with justice outcomes
- the impact of requisite changes to criminal procedure to accommodate independent legal representation for the victim.

396

RECOMMENDATION 47: That the Victorian Government develop a strategy to support agencies involved in the criminal justice system to implement effective methods for communicating with victims of crime. The strategy should be trauma-informed and provide guidance on how agencies can ensure victims of crime are aware of their entitlements consistent with obligations under the *Victims' Charter Act 2006* (Vic). The Government should conduct a review of the strategy 12–24 months after its implementation to ensure it is achieving its outcomes.

398

FINDING 33: Restorative justice processes give a greater voice to victims of crime in criminal justice proceedings compared to traditional processes, such as court proceedings. This increased participation can lessen the trauma and dissatisfaction many victims of crime experience navigating the mainstream criminal justice system.

402

FINDING 34: Victims services in Victoria are based on a ‘one-size-fits-all’ approach, which is incapable of meeting the diverse and complex needs of every victim of crime. The current model for supporting victims of crime has several limitations, including:

- inadequate referral pathways for victims of crime into services
 - lack of alternative referral pathways for victims of crime from communities with high rates of underreporting
- overreliance on victims of crime to identify and self-manage their support needs, including self-referring into victims services
- victims of crime receiving disjointed or disconnected support due to an absence of a single source of information approach to case managing through an entire support period
- service periods are generally broken up into before, during and after a victim of crime is involved directly in the criminal justice system, requiring victims to retell their stories when presenting at new services, which may dissuade them from seeking further support
- lack of culturally safe support options available to victims of crime who are Aboriginal Victorians or from culturally and linguistically diverse communities.

414

RECOMMENDATION 48: That the Victorian Government redesign Victoria’s existing victim of crime services model in line with the model proposed in the Government-commissioned *Strengthening Victoria’s Victim Support System: Victim Services Review*. This should be done in conjunction with the Committee’s additional recommendations around legal support and entitlements for victims of crime (Recommendation 44, Recommendation 45 and Recommendation 46).

414

RECOMMENDATION 49: That the Victorian Government establish a victims of crime strategy for culturally and linguistically diverse people to improve the delivery of culturally safe practices and support. The strategy should be informed by consultation undertaken with community leaders and organisations, as well as victims of crime who are from culturally and linguistically diverse communities.

419

Findings and recommendations

RECOMMENDATION 50: That the Victorian Government make cultural safety a foundational requirement of the criminal justice system, including victims services. In doing so, the Government should:

- improve referral pathways for Aboriginal Victorians and culturally and linguistically diverse people who are victims of crime
- expand and diversify the network of services offering victim support services across Victoria, with an emphasis on recruiting more community-led organisations
- identify opportunities to support criminal justice practitioners and victim support services to undertake cultural safety awareness and training, including education on the impact intersecting disadvantages can have on victims of crime.

420

FINDING 35: Experiencing major or critical incidents can cause significant and long-term trauma for people, whether they are victims, secondary victims (such as families) or witnesses. It is important that all people are immediately linked into support services to help them deal with trauma and prevent long-term psychosocial harm.

428

RECOMMENDATION 51: That the Victorian Government evaluate the surge capacity of Victim Services, Support and Reform services to attend critical incidents to provide on-the-ground support. This evaluation should assess:

- whether victim services deployed during critical incidents are meeting the critical enablers for surge capacity identified in the *Critical Incident Response: Framework for Victim Support*
- what impact deploying services to critical incident has on the broader capacity of victims services, considering the short-, medium- and long-term demand of services regarding business-as-usual activities and needs arising specifically from critical incidents
- whether services which are deployed to critical incidents are suitably skilled and supported, and align with the aims of the *Critical Incident Response: Framework for Victim Support*
 - including whether there is a strong mix of multi-disciplinary agencies available for deployment, from sectors such as allied health, community services and specialist victim services
- ways victim services could be deployed to critical incidents where it has not resulted from criminal offending, such as natural disasters, accidental road trauma, or other incidents where acute trauma may be present.

429

9 Charges, bail and remand

FINDING 36: Accessible, culturally safe and responsive legal services provide critical advocacy, referral and representation services for individuals in contact with the criminal justice system. **438**

FINDING 37: Women, particularly Aboriginal women and women experiencing poverty, are disproportionately remanded under current bail legislation. **449**

FINDING 38: Section 3a of the *Bail Act 1977 (Vic)* requires decision makers to take into account any issues arising from an accused person's Aboriginality when determining whether to grant or deny bail. However, this section of the Act is poorly understood and underutilised. **450**

FINDING 39: Victoria's bail system must balance the maintenance of community safety with the presumption of innocence for people accused of an offence. Victoria's criminal justice system does not currently appropriately or fairly balance these objectives. **459**

RECOMMENDATION 52: That the Victorian Government review the operation of the *Bail Act 1977 (Vic)*, drawing on previous reviews by the Victorian Law Reform Commission and former Supreme Court judge Paul Coghlan, with a view to amendments to simplify the bail tests, make presumptions against bail more targeted to serious offending and serious risk, and ensure that bail decision makers have discretion to consider a person's circumstances when deciding whether to grant bail. This review should ensure that the views of victims and law enforcement are taken into account. **460**

FINDING 40: The Bail and Remand Court, operating within the Magistrates' Court of Victoria, provides an important bail and remand hearing process for accused persons. An extension of court hours would enable it to provide timely support to individuals charged with an offence, and in particular, for children and other vulnerable cohorts. **462**

RECOMMENDATION 53: That the Magistrates' Court of Victoria consider further extension of court hours to enable it to conduct timely and responsive bail hearings, and in particular, for children and other vulnerable cohorts. **462**

FINDING 41: Victoria Police can exercise discretion in deciding whether to grant bail, and there are limited mechanisms for oversight of these decisions. Stakeholders believed increased oversight over police decisions to grant or deny bail would ensure there is effective transparency and accountability. **464**

Findings and recommendations

RECOMMENDATION 54: That the Victorian Government investigate potential mechanisms for independent oversight of police decision-making with regard to bail. 464

RECOMMENDATION 55: That Victoria Police consider implementing measures to improve transparency and accountability with regard to bail decision-making. This should include consideration of the introduction of a requirement to record reasons for any refusal of bail, and for this to be provided to an accused person. 465

RECOMMENDATION 56: That the Victorian Government ensure that, in relation to bail hearings before a bail justice:

- bail hearings be undertaken in person, with remote hearings only to take place in circumstances where a bail justice cannot attend within a reasonable period of time
- additional funding is provided to recruit further bail justices and reduce current resourcing pressures. 469

RECOMMENDATION 57: That the Victorian Government consider amending the *Residential Tenancies Act 1997* (Vic) to explicitly provide that a person cannot be evicted from a rental property for ‘illegal purposes’ if that person has not yet been convicted or sentenced. 470

RECOMMENDATION 58: That the Victorian Government identify and remove barriers to culturally appropriate bail processes for Aboriginal and Torres Strait Islander peoples, and in particular:

- support the Victorian Aboriginal Legal Service to continue to facilitate the Custody Notification Service in conjunction with increases in demand, as required by ss 464AAB and 464FA of the *Crimes Act 1958* (Vic)
- amend s 464FA of the *Crimes Act 1958* (Vic) to provide that an investigating official must contact the Victorian Aboriginal Legal Service in all circumstances where a person taken into custody self-identifies as an Aboriginal person
- support the development of guidelines on the application of s 3A of the *Bail Act 1977* (Vic) in partnership with Aboriginal organisations and peak legal bodies, to ensure appropriate consideration of a person’s Aboriginality during bail processes, in accordance with the recommendation of the Australian Law Reform Commission in its report, *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*. 473

FINDING 42: Children and young people who are remanded in custody experience significant and varied negative impacts, including in terms of stigmatisation, increased risks of physical and psychological harm, and disruptions to family life, development, education and employment. 478

RECOMMENDATION 59: That the Victorian Government investigate the establishment of a state-wide, 24-hour bail system specifically for children, with accompanying support services including in relation to accommodation and the provision of independent support during any time in police custody. **478**

RECOMMENDATION 60: That the Victorian Government undertake a review of relevant legislation, including the *Summary Offences Act 1966* (Vic), in relation to offences often linked to underlying forms of disadvantage. Such a review should assess which indictable offences could appropriately be reclassified as summary offences, and whether any summary offences are appropriate for decriminalisation. **480**

10 Courts and sentencing

FINDING 43: The COVID-19 pandemic has exacerbated existing caseload pressures on Victorian courts. However, there are opportunities to explore innovative ways of managing these caseload pressures following from the pandemic response. **491**

FINDING 44: Additional research is required to determine whether judge-alone trials should be permanently introduced in Victoria's justice system, and if so, what measures should be incorporated to ensure the right to a fair trial. **491**

RECOMMENDATION 61: That the Victorian Government continue to support the expansion of the Court Integrated Services Program to additional court locations including in rural and regional Victoria and increase funding to enable the program to meet increases in demand. **495**

RECOMMENDATION 62: That the Victorian Government investigate opportunities for improving access to court-based diversion programs, including:

- expanding eligibility to diversionary programs, including where the relevant charges may not be an individual's first offence
- clarifying the scope of the acknowledgment of responsibility requirement under s 59(2)(a) of the *Criminal Procedure Act 2009* (Vic)
- ensuring access to diversionary programs for different cohorts, including through the recruitment of Koori Diversion Coordinators for the Children's Court of Victoria's Youth Diversion Service. **502**

Findings and recommendations

RECOMMENDATION 63: That in the development and implementation of the Victim-Centred Restorative Justice Program, the Victorian Government should:

- ensure the program is based on best practice, and incorporates the experiences of Australian and international jurisdictions
- prioritise the views of victims of crime
- undertake consultation with Aboriginal Victorians and culturally and linguistically diverse communities, in order to ensure the model is culturally safe and appropriate
- ensure that it operates flexibly at different stages of the criminal justice process. **510**

FINDING 45: Victoria's specialist courts provide an important therapeutic alternative to traditional sentencing processes. They have been demonstrated to support individuals who are charged with an offence to address the underlying causes of their offending, reducing the risk of recidivism and improving community safety. **515**

FINDING 46: The Assessment and Referral Court list provides a therapeutic response to persons accused of an offence who have a mental illness and/or cognitive impairment, and has demonstrated success in supporting them to address the underlying causes of their offending. **518**

RECOMMENDATION 64: That the Victorian Government:

- provide an update on its progress to expand the Assessment and Referral Court list to each of the 12 Magistrates' Court locations by 2026, in accordance with the recommendation of the Royal Commission into Victoria's Mental Health System
- consider additional methods to improve access to Assessment and Referral Court services, including a review of the current eligibility criteria. **519**

FINDING 47: Since their establishment, Victoria's Koori Courts have provided culturally safe and accessible criminal justice processes for Aboriginal Victorians. However, geographic and jurisdictional limitations restrict them from further supporting Aboriginal self-determination within the Victorian criminal justice system. **523**

Findings and recommendations

RECOMMENDATION 65: That the Victorian Government continue to support Koori Courts to provide culturally safe and appropriate criminal justice processes for Aboriginal Victorians, including through:

- expanding court locations to additional areas across Victoria, including in regional and rural areas
- considering the extension of the Courts' jurisdiction to hear additional types of criminal matters.

524

FINDING 48: Evidence demonstrates that Drug Courts can successfully support individuals to address issues related to drug and/or alcohol dependency, reduce the number of days spent in prison and reduce rates of reoffending.

529

RECOMMENDATION 66: That the Victorian Government continue to support the ongoing expansion of the Drug Courts in Victoria, including through:

- funding the allocation of additional residential detox and rehabilitation beds that are prioritised for use by Drug Courts
- investigating the potential for a pilot program of a Youth Drug Court within the Children's Court of Victoria.

529

FINDING 49: The Neighbourhood Justice Centre—a model of community justice—has been demonstrated to improve criminal justice outcomes through reducing rates of crime and recidivism and improving rates of compliance and participation in community work.

532

RECOMMENDATION 67: That the Victorian Government, in reviewing the *Sentencing Act 1991* (Vic), investigate the operation, effectiveness and impacts of the Act's minimum sentencing provisions (mandatory sentencing).

543

FINDING 50: Short custodial sentences are associated with higher rates of recidivism than longer custodial sentences and custodial sentences combined with parole.

551

RECOMMENDATION 68: That the Victorian Government investigate the introduction of a presumption against short terms of imprisonment in favour of community-based sentences or other therapeutic alternatives. Such legislative reform should be informed by the experiences of other Australian and international jurisdictions and ensure that appropriate safeguards are incorporated to protect against persons being sentenced to longer terms of imprisonment.

551

Findings and recommendations

RECOMMENDATION 69: That the Victorian Government, in relation to community correction orders:

- provide additional resourcing to Corrections Victoria to ensure that its management of individuals on community correction orders is as effective as possible, including through achieving high rates of order completion and allowing for appropriate and timely responses to cases of non-compliance
- collaborate with successful models of therapeutic justice, including the Neighbourhood Justice Centre, to continue developing ways in which community corrections can support individuals to address the causes of their offending and comply with the conditions of an order
- amend the *Sentencing Act 1991* (Vic) to provide that people with an acquired brain injury and/or intellectual disability, not diagnosed prior to the age of 18, are eligible for a justice plan.

560

RECOMMENDATION 70: That the Victorian Government consider amending the *Sentencing Act 1991* (Vic) to provide for courts to impose a sentence of a home detention order.

563

RECOMMENDATION 71: That the Victorian Government amend the *Sentencing Act 1991* (Vic) to require, for the purposes of sentencing, courts to take into consideration the unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples.

565

FINDING 51: A sentencing guidelines council, with functions to develop sentencing guidelines for Victorian courts, may address some public concerns regarding whether sentencing practices adequately reflect community expectations.

568

FINDING 52: In establishing a sentencing guidelines council, the voices of victims of crime should be prominent in the council's composition.

569

RECOMMENDATION 72: That the Victorian Government introduce legislation to establish a sentencing guidelines council. The legislation should consider appropriate features outlined in the Sentencing Advisory Council's *A Sentencing Guidelines Council for Victoria: Report*.

569

11 Victoria's prison system and conditions

FINDING 53: Multifaceted socioeconomic factors impact individuals entering the criminal justice system. As a result, Victoria's prison system is responsible for the wellbeing and rehabilitation of some of the State's most vulnerable citizens who have complex needs which are challenging to meet. **584**

FINDING 54: Expanding prison populations and larger numbers of people being incarcerated on remand are creating a more tense and volatile environment in Victorian prisons and increasing pressure on correctional staff. **587**

RECOMMENDATION 73: That the Department of Justice and Community Safety include in its annual reports information outlining all healthcare services offered in all Victorian prisons during the reporting period, and de-identified statistics relating to incarcerated peoples' access to and take up of these services. **593**

RECOMMENDATION 74: That the Victorian Government engage with the Commonwealth Government to explore the benefits, challenges, and feasibility of extending access to Medicare and the Pharmaceutical Benefits Scheme to incarcerated Victorians. **593**

FINDING 55: Victorian prisons are harming vulnerable people by exacerbating existing mental health conditions and causing new experiences of poor mental health. **594**

Findings and recommendations

RECOMMENDATION 75: That the Victorian Government conduct a trial screening program assessing all people entering incarceration—on remand or a custodial sentence—for physical, cognitive and intellectual disability, to inform the provision of reasonable adjustments and support in prison and following release. The trial should:

- involve a sample prison population which is representative of the demographics of people incarcerated in Victoria
- connect people identified with disability during screening to appropriate social supports and inform the implementation of reasonable adjustments within the prison to aid that person to better engage with rehabilitative programs
- connect people identified with disability during screening to appropriate social supports including the National Disability Insurance Scheme prior to release back into the community with follow up after release
- assess how identifying disability upon entry to prison benefits the incarcerated individual, the operation of the prison and society more broadly, including any impacts on recidivism
- determine the costs and resources involved in routinely screening people entering incarceration for a disability
- publish the findings of the trial on the Department of Justice and Community Safety website.

598

RECOMMENDATION 76: That the Victorian Government ensure that all staff working in privately- and publicly-operated prisons undertake training to:

- identify behaviours associated with physical and cognitive disabilities
- manage these behaviours through the provision of appropriate supports, rather than the utilisation of punitive measures.

599

RECOMMENDATION 77: That the Victorian Government establish a mechanism enabling prison staff to refer incarcerated people who exhibit behaviours possibly related to undiagnosed disabilities for professional independent assessment. The outcome of this assessment should inform the implementation of appropriate adjustments or the provision of support for the relevant individual to ensure prison conditions are conducive to rehabilitation.

599

FINDING 56: Ensuring people in incarceration with disabilities have access to a Corrections Independent Support Officer leading up to, and during, a disciplinary hearing is critical to preventing unfair outcomes by making sure they understand their rights and obligations, as well as hearing processes.

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RECOMMENDATION 78: That the Victorian Government continues work to expand and promote the Corrections Independent Support Officer program to all people in incarceration with diagnosed or suspected disabilities.

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RECOMMENDATION 79: That the Victorian Government appoint an Aboriginal Social Justice Commissioner—or other oversight mechanism—to monitor the implementation of recommendations made by the Royal Commission into Aboriginal Deaths in Custody and to ensure the criminal justice system responds appropriately to Aboriginal Victorians. This role should include:

- monitoring progress towards the outcomes of Phase 4 of the Victorian Aboriginal Justice Agreement, *Burra Lotjpa Dunguludja*
- identifying and promoting strategies, initiatives and programs aimed at reducing Aboriginal incarceration and deaths in custody, including the possible development of minimum standards for cultural safety across the criminal justice system
- assessing how existing and new justice legislation may impact Aboriginal Victorians and making recommendations to the Victorian Government to improve this legislation
- reviewing the criminal justice system and making recommendations to the Victorian Government to ensure it supports equality, is free from systemic racism and discrimination, and promotes respect for Aboriginal Victorians throughout the community.

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RECOMMENDATION 80: That the Victorian Government ensure that funding for Aboriginal Wellbeing Officers remains commensurate to the number of Aboriginal Victorians incarcerated on remand or on custodial sentences. This necessitates an immediate increase in these positions to meet the demands of the rapidly increasing prison population.

605

Findings and recommendations

RECOMMENDATION 81: That the Department of Justice and Community Safety review and publicly report on the management of COVID-19 in publicly- and privately-operated Victorian prisons with a view to identifying the impact of control measures on:

- prison conditions, the wellbeing of people in incarceration and their families
- people in incarceration's access to rehabilitative programs, health and legal services, and the court system
- application of emergency management days
- staff wellbeing, access to resources and safety.

The review should inform the ongoing management of the COVID-19 pandemic, if required, by identifying how to minimise disruption caused by control measures through:

- examining how other institutions which manage vulnerable people, such as prisons in other jurisdictions, hospitals and nursing homes, manage the risks related to COVID-19 for residents and staff
- identifying how best to ensure that control measures remain proportionate to relevant levels of risk at any time posed by COVID-19 and are balanced with ensuring that prison facilitates the rehabilitation of people in incarceration and reduces recidivism.

610

FINDING 57: The conditions in Victorian prisons can retraumatise incarcerated women by echoing the power dynamics of abusive relationships and separating mothers from dependent children.

618

FINDING 58: Practices such as solitary confinement, strip searching and the use of physical restraints can be highly traumatic and can impede the rehabilitation of people in incarceration.

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RECOMMENDATION 82: That the Victorian Government review the use of solitary confinement, physical restraints and strip searching in Victorian prisons with a view to introducing policy to regulate the use of these practices:

- in situations where such practices are necessary to maintain the safety of staff or people in incarceration
- as a last resort, where alternative, less restrictive measures have failed
- for strip searching, only where specific intelligence indicates that an individual is trafficking contraband.
- Policy should require that such instances are reported to the Secretary of the Department of Justice and Community Safety as soon as practicable.

624

FINDING 59: The implementation of the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* will foster better prison conditions by providing ongoing independent oversight of Victorian detention facilities.

631

RECOMMENDATION 83: That the Victorian Government provide a comprehensive update on the implementation of obligations under the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* in its jurisdiction to date, as well as a timeframe for full implementation including the appointment of National Preventative Mechanisms. It should further seek to realise full implementation of these obligations as a matter of priority.

631

12 Prison supports and rehabilitation

FINDING 60: Prison conditions which are targeted at identifying and addressing disability, mental health, trauma and other significant challenges faced by incarcerated people can provide an important opportunity to address criminal behaviours and reduce the risk of reoffending. Prison conditions which are punitive, normalise violence and reduce the socioeconomic resources of incarcerated people can be criminogenic and increase rates of recidivism.

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FINDING 61: Recidivism rates suggest that our current punitive approach to criminal behaviour is not reducing crime or improving community safety.

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FINDING 62: The Department of Justice and Community Safety's strategic plan for the management of prisons, *Corrections Victoria Strategic Plan 2015–2018*, is more than three years out of date and its *Offender Management Framework* has not been refreshed since 2016.

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RECOMMENDATION 84: That the Department of Justice and Community Safety update and modernise its *Corrections Victoria Strategic Plan 2015–2018* and its *Offender Management Framework*. In undertaking this work, the Department should consider the principles for effective rehabilitative programs outlined in Table 12.1 of this report.

645

RECOMMENDATION 85: That the Department of Justice and Community Safety ensure that all incarcerated people—whether held on remand or serving a custodial sentence—in both publicly- and privately-operated prisons, have access to forensic rehabilitation programs and supports which are aimed at addressing the factors underpinning their criminal behaviours.

652

Findings and recommendations

RECOMMENDATION 86: That the Victorian Government provide additional funding for rehabilitative programs and supports in public and private prisons. Funding should be scaled up in line with growth in prison populations, to ensure all who wish to access these services are able to. 652

RECOMMENDATION 87: That the Victorian Government provide funding to facilitate the expansion of online rehabilitative programs and support services to increase their accessibility to a broader range of incarcerated people. 652

FINDING 63: Supporting incarcerated people to arrange continuing mental health services following their release from prison can help make reintegration into the community less stressful and reduce instances of further offending. 654

RECOMMENDATION 88: That the Victorian Government substantially increase funding to ensure that resourcing for services which treat alcohol and other drug use issues in Victorian prisons and the community is commensurate with demand for these services. Funding should also be provided to enhance connections between prison-based and community-based services to facilitate seamless throughcare for incarcerated people re-entering the community. 658

RECOMMENDATION 89: That the Department of Justice and Community Safety strengthen transitional support planning for incarcerated people in both publicly- and privately-operated prisons to ensure continuity of service with regard to mental health and alcohol and other drug treatment following release for those who require it. The Department should engage incarcerated people in transitional planning to ensure that the service meets their needs and that they are familiar with how to access it prior to their release. 658

FINDING 64: Education, training and work experience opportunities in prisons can support incarcerated people to reintegrate into the community, gain employment and refrain from reoffending following their release. 663

FINDING 65: Greater access to technology, including the internet, will expand the education and rehabilitative programs accessible to incarcerated people and support them to develop the digital literacy essential to contemporary life and successful reintegration into the community. 663

Findings and recommendations

RECOMMENDATION 90: That the Department of Justice and Community Safety conduct consultation—with public and private prison operators, incarcerated and formerly incarcerated people, education providers, rehabilitative program providers, Victorian Aboriginal organisations and victims of crime, at a minimum—with a view to developing and implementing a digital access policy for Victorian prisons. The policy should establish minimum standards for access to technology and the internet for incarcerated people, and outline security measures to ensure access is utilised ethically, responsibly, in a manner which aligns with community expectations, and which maintains community safety.

663

FINDING 66: The period immediately following an incarcerated person's release back into the community can be challenging and dangerous, particularly for people with alcohol and other drug use issues. The risk of relapse, overdose and death is heightened during this period.

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FINDING 67: Appropriate and timely transitional support for incarcerated people exiting Victorian prisons can reduce adverse health outcomes (such as death) following release, facilitate successful reintegration into the community and reduce recidivism.

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RECOMMENDATION 91: That the Victorian Government increase funding and other resources available to:

- Corrections Victoria, to support comprehensive pre-release planning for all incarcerated people prior to their reintegration back into the community
- community-based services—that provide mental health, alcohol and other drug treatment, disability support, education and training, and culturally appropriate support—to assist people exiting prison to reintegrate back into the community.

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RECOMMENDATION 92: That the Victorian Government work with the Commonwealth Government to:

- clarify and resolve definitional issues within the Applied Principles and Tables of Support which are inhibiting National Disability Insurance Scheme funding for incarcerated people with disabilities
- ensure that National Disability Insurance Scheme plans for incarcerated people with disabilities can be finalised without the need for a confirmed release date.

677

Findings and recommendations

FINDING 68: Safe, secure, long-term accommodation enables people being released from prison to seek education or employment, rebuild connections with family and community, and engage with therapeutic services addressing criminal behaviours. It is also known to reduce re-offending.

684

RECOMMENDATION 93: That the Victorian Government respond to the Legislative Council Legal and Social Issues Committee's Inquiry into homelessness in Victoria as soon as possible and explain why this response was not made within the six months provided for by the Legislative Council Standing Orders.

685

RECOMMENDATION 94: That the Victorian Government provide a detailed update on the measures it has taken towards implementing the 39 recommendations it accepted in full or in principle which were made by the Legislative Council Committee on Legal and Social Issues as part of its Inquiry into Youth Justice Centres in Victoria. This implementation update should be provided within six months of this report being tabled.

690

RECOMMENDATION 95: That the Victorian Government provide a detailed update on the measures it has taken towards implementing the recommendations it accepted in full or in principle which were made in the following reports:

- the Ogloff-Armytage *Youth Justice Review and Strategy: Meeting needs and reducing offending* (2016)
- the Victorian Auditor-General's Office's *Managing Rehabilitation Services in Youth Detention* (2018).

This implementation update should be provided within six months of this report being tabled.

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13

Parole and the post sentence scheme

FINDING 69: Between 2009–10 and 2019–20 the proportion of incarcerated people released from prison on parole has declined from 30% to 6% of all discharges from custody. This may mean that more people are being released straight from prison back into the community with limited or no support and supervision.

698

FINDING 70: Recent reforms to Victoria's parole laws made clear the need for community safety to be paramount in parole decision-making. While the number of serious offences that have been committed by people while on parole have decreased in recent years, it is not clear whether community safety outcomes have improved in respect of people exiting prison at the end of their sentence without supervision and management through the parole system.

708

RECOMMENDATION 96: That the Victorian Government:

- undertake an evaluation of the impacts of parole reforms implemented since 2013 on community safety outcomes (including recidivism), and table a report of this evaluation in the Parliament of Victoria
- amend the *Corrections Act 1986* (Vic) to include a legislative requirement to have Aboriginal and Torres Strait Islander representation on the Adult Parole Board
- ensure that the Adult Parole Board can appropriately exercise discretion with regard to applications for parole from individuals who have been unable to complete pre-release programs due to limited availability
- investigate ways to improve parole processes to ensure that individuals applying for parole have direct engagement with the decision-making process
- examine whether community safety could be improved by amending the *Corrections Act 1986* (Vic) to provide for automatic court-ordered parole for sentences under five years.

708

FINDING 71: The post sentence scheme has increased the supervision and management of individuals who have committed serious sex and/or serious violent offences and present a significant risk to community safety following the end of their prison sentence.

711

14 Judicial appointments

RECOMMENDATION 97: That the Victorian Government establish a clear recruitment process for identifying and appointing judicial officers to Victoria's courts and tribunals. This process should:

- establish clear principles which govern the process for judicial appointments in Victoria. These principles should emphasise the importance of an open and transparent process for recruiting and appointing judicial officers.
- establish clear and consistent selection criteria for each judicial position. The criteria should be informed by the qualities identified in the Judicial College of Victoria's *Framework of Judicial Abilities and Qualities for Victorian Judicial Officers*.
- facilitate the use of advisory panels to assist the Attorney-General in identifying appropriate candidates, in accordance with any statutory requirements. Panels should comprise a diverse group of stakeholders from legal and non-legal backgrounds.
- promote transparency by making the recruitment process publicly available on the Department of Justice and Community Safety's website, including advertising vacancies.

728

Findings and recommendations

RECOMMENDATION 98: In the development and implementation of a recruitment process for judicial appointments, the Victorian Government should:

- establish processes that actively promote diversity in the judiciary
- consider ways to identify and engage specific cohorts which are underrepresented in the judiciary with a view of recruiting them into positions where appropriate, including Aboriginal and Torres Strait Islander peoples and culturally and linguistically diverse communities
- collect and make public data on the diversity of applications and recommendations for judicial office.

734

RECOMMENDATION 99: In providing funding to Victorian courts to expand specialist court services into rural and regional Victoria, the Victorian Government should ensure that this includes the recruitment of additional judicial officers to support the work of mainstream and specialist courts in those areas. Where possible and appropriate, selection criteria or standards for appointments to specialist courts, such as the Koori Courts, should be made in conjunction with relevant stakeholders.

736

15 Judicial training and education

RECOMMENDATION 100: That s 19 of the *Judicial College of Victoria Act 2001* (Vic) is amended to reflect the powers, privileges and immunities of all parliamentary committees, as proposed by the Committee:

- (1) The College must comply with any information requirement lawfully made of it by—
- (a) the Legislative Council or a committee of the Legislative Council;
 - (b) the Legislative Assembly or a committee of the Legislative Assembly; or
 - (c) a joint committee of both Houses of Parliament.

Note: A committee under s 19 includes but is not limited to a committee established under the *Parliamentary Committees Act 2003*, a committee established under the Standing Orders of the Legislative Assembly or the Legislative Council, a committee established by resolution of either or both Houses of Parliament, or a committee established under the Joint Standing Orders of the Parliament of Victoria.

764

FINDING 72: Judicial officers are highly skilled professionals with significant knowledge and expertise. However, stakeholders considered that there are various issues in relation to which judicial officers would benefit from improved education and training. These issues include:

- trauma-informed practice
 - including an understanding of trauma as it is experienced by those who come before judicial officers in the criminal justice system; and
 - support for judicial officers to deal with vicarious trauma so that it does not adversely influence their decision-making or job performance
- engaging people with lived experience to develop judicial training related to specific cohorts or issues. For example, training areas which could benefit from the perspective of those with lived experience include:
 - increasing cultural competency, in particular in relation to Aboriginal Victorians and culturally and linguistically diverse communities
 - awareness of particular issues experienced by the LGBTIQ+ community
 - experiences of persons with a disability.

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FINDING 73: There is little public information on the extent to which judicial officers undertake regular and comprehensive judicial education and training in the areas outlined above, or in other related areas. While the Judicial College of Victoria provides a suite of high-level training and education programs and services, it is unclear how these are utilised and what their outcomes are. To increase public confidence that judicial officers are engaging in education and training, the College would benefit from improving transparency around training and education across all court jurisdictions.

778

What happens next?

There are several stages to a parliamentary inquiry.

The Committee conducts the Inquiry

This report on the Inquiry into Victoria's criminal justice system is the result of extensive research and stakeholder consultation by the Legislative Council Legal and Social Issues Committee at the Parliament of Victoria.

We received written submissions, spoke with people at public hearings, reviewed research evidence and deliberated over a number of meetings. Experts, organisations and other stakeholders expressed their views directly to us as Members of Parliament.

A parliamentary committee is not part of the Government. Our Committee is a group of members of different political parties. Parliament has asked us to look closely at an issue and report back. This process helps Parliament do its work by encouraging public debate and involvement on issues. We also examine government policies and the actions of the public service.

This report is presented to Parliament

This report was presented to Parliament and can be found on the Committee's website: <https://www.parliament.vic.gov.au/lc/lc/inquiries/article/4534>.

A response from the Government

The Government has 6 months to respond in writing to any recommendations we have made. The response is public and put on the inquiry page of Parliament's website when it is received: <https://www.parliament.vic.gov.au/lc/lc/inquiries/article/4535>.

In its response, the Government indicates whether it supports the Committee's recommendations. It can also outline actions it may take.