



## **Victorian Aboriginal Community Services Association Limited**

**Submission to the Inquiry into Victoria's Criminal Justice System**

Prepared by India Grevis-James

On behalf of Linda Bamblett



### **Note on language**

We use the term 'Aboriginal' to describe people who identify as Aboriginal or Torres Strait Islander.

### **About VACSAL**

The Victorian Aboriginal Community Service Association Ltd (VACSAL) is a registered state-wide Aboriginal Community Controlled Organisation (ACCO). As an ACCO, VACSAL operates with an approach underpinned by principles of self-determination and cultural integrity. Founded in 1984, VACSAL has over 30 years' experience in leading and delivering services that meet the needs of Aboriginal children, families and communities, with early intervention and prevention at the heart of our services. VACSAL's key areas of work are service delivery, advocacy and education spanning youth justice, early years, homeless services, family violence services and community sport. Since inception, VACSAL has been instrumental in assisting the Victorian and Commonwealth Government develop policies and programs in major areas relating to the advancement of Aboriginal people. As an Aboriginal community service organisation, we are committed to:

- Self-determination and self-management for Aboriginal communities
- Advocating for the needs of individuals, families and communities
- A respect for and acknowledgement of Aboriginal history and kinship networks
- The delivery of high-quality services
- Creating an organisation that is open, welcoming and one which encourages participation by the Aboriginal community
- Redressing inequality and disadvantage

VACSAL is an established provider of Aboriginal-specific justice and community safety programs and a recognised expert in this space. VACSAL's service delivery includes a Local Justice program, which focuses on supporting Aboriginal clients through their interactions with the justice system and working with justice related agencies to enhance services received by Aboriginal clients in the local area. VACSAL runs the Bert William's Aboriginal Youth Service, which delivers proactive and preventative services for Aboriginal youth, focusing on reducing over-representation in the youth justice and homeless system. Intertwined are several short-term programs which centre on early intervention and prevention for Aboriginal young people and supporting those involved in the justice system, via cultural connection, connection with community and linking with local support services.

### **Introduction**

VACSAL welcomes the opportunity to provide input into the Inquiry into Victoria's Criminal Justice System. This submission will address the following Terms of Reference:

- (1) An analysis of factors influencing Victoria's growing remand and prison populations;
- (2) Strategies to reduce rates of criminal recidivism;

Due to the extensive research and recommendations already in place on these topics, this submission will remain brief in its analysis and will provide high-level and evidence-based recommendations. This submission will centre upon Aboriginal individuals and communities. In 1991, the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) found that the Aboriginal population was grossly over-



represented in custody. It noted that ‘Aboriginal people are in gross disproportionate numbers, compared with non-Aboriginal people, in both police and prison custody and it is this fact that provides the immediate explanation for the disturbing number of Aboriginal deaths in custody’.<sup>1</sup> Despite RCIADIC making a number of policy and legislative reform recommendations, Aboriginal people are still increasingly overrepresented in Victorian prisons and the criminal justice system more broadly. Between 2010 and 2021, the Aboriginal imprisonment rate almost doubled from 971.8 to 1848.0 per 100,000 adults.<sup>2</sup> Closing the Gap Target 10: By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent, is currently not on track to be met.<sup>3</sup>

VACSAL is extremely concerned about this over-representation and its impact on the entire Aboriginal community, it is evident that intensive reform needs to take place to drive down incarceration and recidivism rates in Victoria. This submission intends to outline high-level recommendations for such reforms by drawing on VACSAL’s extensive experience delivering justice programs and working in the community.

## Section One

### An analysis of factors influencing Victoria’s growing remand and prison populations

#### *Entrenched Disadvantage*

Due to the ongoing effects of colonisation, Aboriginal people experience adverse outcomes across almost every social determinant, including lower levels of employment, reduced access to healthcare and housing, financial disadvantage, increased rates of family violence and adverse health outcomes. This economic and social disadvantage directly contributes to the overrepresentation of Aboriginal people in Victoria’s criminal justice system. The *Victorian Aboriginal Affairs Framework* (VAAF) explicitly recognises that the contemporary social and economic circumstances of Aboriginal people are inextricably linked to ongoing and previous generations’ experiences of European colonisation.<sup>4</sup> This recognition equally applies to Aboriginal over-representation in the criminal justice system.<sup>5</sup>

In 1991, RCIADIC concluded that the most significant contributing factor bringing Aboriginal people into conflict with the criminal justice system was their ‘disadvantaged and unequal position in wider society’.<sup>6</sup> As evidenced by data, these findings from 1991 are still equally as relevant today. Data indicated that in an average day in 2019-2020, Aboriginal children and young people aged 10 – 17 years accounted for 15 per cent of Youth Justice supervision orders, despite making up 1.5 per cent of the population, they were ten times more likely than non-Aboriginal children and young people to be subject to community-based supervision and were nine times more likely to be in youth justice custody.<sup>7</sup>

<sup>1</sup> Hansard, 9th May 1991, *Royal Commission into Aboriginal Deaths in Custody*

<sup>2</sup> Sentencing Advisory Council Victoria, *Victoria’s Indigenous Imprisonment Rates*, available at: <https://www.sentencingcouncil.vic.gov.au/sentencing-statistics/victorias-indigenous-imprisonment-rates>

<sup>3</sup> [Closing the Gap Annual Data Compilation Report July 2021 \(pc.gov.au\)](https://www.pc.gov.au/research/indigenous/closing-the-gap-annual-data-2021)

<sup>4</sup> The Aboriginal Justice Agreement, *Underlying causes of Aboriginal Over-representation*, available at: <https://www.aboriginaljustice.vic.gov.au/the-agreement/aboriginal-over-representation-in-the-justice-system/underlying-causes-of-aboriginal>

<sup>5</sup> Ibid

<sup>6</sup> Hansard, 9th May 1991, *Royal Commission into Aboriginal Deaths in Custody*

<sup>7</sup> Commission for Children and Young People, *Our youth, our way: inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2021



A report commissioned by the Aboriginal Executive Council (AEC), highlighted that rising prison populations are driven by socio-economic disadvantage and intergenerational poverty, stemming from colonisation and the paternalistic policies put in place.<sup>8</sup> The report highlighted that system failures in areas such as education, employment and mental health are driving contact with the justice system. For example, in 2018, over half of Aboriginal young people in custody had been expelled or suspended from school, half of all first time offenders were unemployed at the time of their arrest, and 72 per cent of Aboriginal men and 92 per cent of Aboriginal women in prison had received a lifetime diagnosis of mental illness.<sup>9</sup> Despite these challenges, the Aboriginal community has remained strong and thriving, and it is estimated the Aboriginal population in Victoria will grow by at least thirty thousand people in the next ten years.<sup>10</sup>

These cumulative adversities weigh on Aboriginal children, who are disproportionately targeted by police, overrepresented every stage of the Youth Justice system and in need of culturally appropriate and supportive services. Due to a lack of early intervention and prevention responses, structural and institutional racism and poor socio-economic outcomes, the number of Aboriginal children in out-of-home care (OOHC) has increased by an average of 12.8 per cent since 2013.<sup>11</sup> A complex relationship exists between child removal, criminal offending and ongoing engagement with the justice system, with 38 per cent of Aboriginal children sentenced or diverted in 2016 and 2017 also being the subject of a Child Protection report.<sup>12</sup> However, funding for family services has not increased nearly at the same rate as OOHC.<sup>13</sup> At current rates, in line with population growth, the number of unique offender incidents in Victoria will double in 10 years.<sup>14</sup> By 2028, around 3,000 Aboriginal young people between the ages of 15 – 20 are projected to be disengaged from work or study, with 1,000 young people involved in the justice system.<sup>15</sup> Despite these stark statistics and the 30 years that have passed since RCIADIC, recommendations from the commission have only been partially implemented.

Several policy frameworks exist to address this entrenched disadvantage and strive for better outcomes for Aboriginal people across every area of life. These include *Korin Korin Balit Djak*, *Wungurilwil Gapgapduir*, *Balit Marrup*, *Burra Lotjpa Dunguludja*, *Marrung*, *Dhelk Dja*, *The Victorian Aboriginal Affairs Framework* and *Burra Lotjpa Dunguludja*. Victoria's *Closing the Gap Implementation plan* has also recently been finalised, with extensive input from the ACCO sector. It is urgent that these frameworks are progressed, adequately funded and resourced to meet the needs of the Aboriginal community and subsequently drive down contact with the criminal justice system.

**Recommendation:** *Implement all the remaining recommendations from the Royal Commission into Aboriginal Deaths in Custody;*

<sup>8</sup> SVA Consulting, *Demand for services for Aboriginal and Torres Strait Islander people in Victoria* (Report prepared for the Aboriginal Executive Council), 2019, <https://aal.org.au/wp-content/uploads/AEC-SVA-Service-Demand-forecasting-report-FINAL.pdf>

<sup>9</sup> Ibid, p.52

<sup>10</sup> Ibid, p.63

<sup>11</sup> Ibid, p.33

<sup>12</sup> Ibid, p.69

<sup>13</sup> Ibid, p.33

<sup>14</sup> Ibid, p.56

<sup>15</sup> Ibid



**Recommendation:** *Commit to and adequately resource existing policy and legislative frameworks put forward by the ACCO sector, including:*

- *Korin Korin Balit Djak*
- *Wungurilwil Gaggapduir*
- *Balit Marrup*
- *Burra Lotjpa Dunguludja*
- *Marrung*
- *Dhelk Dja*

### ***Bail Laws & Prison Expansion***

Policy and legislative changes designed to enhance community safety have led to an increase in the number of Aboriginal Victorian's in the criminal justice system.<sup>16</sup> These include changes to Victorian bail laws introduced in 2018 under the 2016 Bail Act. These laws are disproportionately affecting Aboriginal women, who are often on remand for low level offences, unable to access bail and incarcerated for extended periods while they await sentencing. At present, 53 per cent of women in prison in Victoria have not been found guilty of what they have been arrested for.<sup>17</sup> Alarming, the Aboriginal women's prison population has grown by 240 per cent in the past five years, with studies reporting that 92% of Aboriginal women in prison have received a lifetime diagnosis of mental illness.<sup>18</sup> Incarcerating Aboriginal women is extremely harmful. When Aboriginal women are taken to prison, they are separated from their children and family, and often their mental health deteriorates rapidly. Whilst awaiting sentencing for these long periods women are at risk of losing their housing, employment, or having children become involved with Child Protection, all factors making recidivism extremely likely upon their release.

VACSAL welcomes the Andrew's Labor Governments 2021 commitment of \$2.8 million to invest in programs to divert women on short sentences and remand at the Dane Phyllis Frost Centre into housing and support programs.<sup>19</sup> However, the 2021 State Budget announcement of \$188.9 million to expand Dame Phyllis Frost prison to accommodate 106 more beds is contradictory to this program and the wider need to reduce women incarcerated.<sup>20</sup> The Expansion of Dame Phyllis Frost is also prefaced to include infrastructure for education, rehabilitation and expanded legal and telecourt facilities.<sup>21</sup> VACSAL strongly recommends that rehabilitation and education for Aboriginal women take place outside prison. Prison is not sensitive to the cultural needs of Aboriginal women and has harmful implications for themselves, their family and the wider community. Prison is also a very expensive policy response to crime, particularly considering it does not address or adequately respond to the root causes of crime.

<sup>16</sup> Ibid, SVA consulting, p.52

<sup>17</sup> Corrections, Prisons and Parole, *Monthly time series prisoner and offender data*, available at: <https://www.corrections.vic.gov.au/monthly-time-series-prisoner-and-offender-data>

<sup>18</sup> Ibid

<sup>19</sup> Premier of Victoria, the Hon Daniel Andrews, Media release: *More Housing and Job Support for Women Leaving Prison*, available at: <https://www.premier.vic.gov.au/more-housing-and-job-support-women-leaving-prison>

<sup>20</sup> Premier of Victoria, the Hon Daniel Andrews, Media release: *Constriction set to start on Women's Prison Upgrade*, available at: <https://www.premier.vic.gov.au/constriction-set-start-womens-prison-upgrade>

<sup>21</sup> Ibid



**Recommendation:** *Reform the 2016 Victorian Bail Act to make bail more easily accessible. The justice system should not be keeping Aboriginal people incarcerated on remand for long periods of time for low-level offences;*

**Recommendation:** *Consider increasing funding toward early intervention, prevention and rehabilitation programs for women outside prison, managed by ACCOs. This includes funding for mental health, family violence, housing, AOD and education services.*

### ***Aboriginal Social Justice Commissioner***

Due to the disproportionately high rates of Aboriginal people in contact with the criminal justice system and the lack of commitment to the RCIADIC recommendations, it is urgent to appoint a Victorian Aboriginal Social Justice Commissioner to ensure the remaining recommendations are implemented. This has long been called for by the Aboriginal Justice Caucus (AJC), who have highlighted the importance of installing a commissioner to insure the continuation of robust oversight and monitoring, accountability and access to a culturally safe justice system. The Aboriginal Social Justice Commissioner will be able to undertake an independent review into the RCIADIC recommendations and operate in a similar manner to the federal Aboriginal Social Justice Commissioner.

**Recommendation:** *Immediately establish a Victorian Aboriginal Social Justice Commissioner*

## **Section Two**

### **Strategies to reduce rates of criminal recidivism**

#### ***Early Intervention and Prevention Programs***

At present, there is an exasperating lack of early intervention and prevention programs for Aboriginal children and young people, and ones that do exist operate on short-term funding agreements with little financial support. Programs run through Aboriginal Community Controlled Organisations (ACCOs) rely on competitive tenders and temporary investment to run their programs. Aboriginal staff who work in these programs possess a huge amount of cultural knowledge and expertise, and in ACCOs they must work on short-term contracts governed by funding agreements, with lower salary commitments than their mainstream counterparts. Staff are often lost to mainstream organisations and government due to the need for higher earning potential and certainty in their contracts, jeopardising the programs run by ACCOs. Aboriginal families often do not access mainstream services due to apprehension that these services are not culturally safe. Mainstream programs often operate with an individualistic focus, not taking into account the importance of wrap-around whole of family support often required for Aboriginal youth and families. Pride in, and connection to culture are protective factors, and programs and strategies to strengthen identity and a sense of connection and belonging for Aboriginal peoples



and families are crucial to minimise contact with the criminal justice system. The purpose of early intervention programs is to stop initial contact with the justice system, and support adults and young people who may be facing a difficult time in their life.<sup>22</sup> *The 2015 Royal Commission into Family Violence* highlighted the severe scarcity of appropriate early intervention and prevention services to strengthen families and reduce the number of Aboriginal children entering the child protection system.<sup>23</sup> The Commission included specific recommendations for increased investment into ACCOs for targeted prevention and early intervention services.<sup>24</sup> In addition, the Dhelk Dja Koori Caucus have highlighted the lack of investment in prevention activity and the need for strengths-based funding, particularly for children and young people.

Early intervention and prevention as a principle response has been recommended and supported by several commissions and reports, including RCIADIC and Our Youth Our Way (OYOW). The 2021 OYOW report found a severe lack of early intervention and prevention services across Victoria. The report highlighted that in most cases early intervention services could have addressed factors driving offending behaviour and prevented young people's entry into the youth justice system.<sup>25</sup> In many cases, there were simply no early intervention supports available for young people due to age requirements or lack of funding, and in other cases they were unavailable due to being at capacity or unreachable from the person's location.<sup>26</sup> A lack of programs and services means appropriate and timely interventions for young people are scarce, and they subsequently enter the justice system into a cycle of reoffending. ACCOs have the cultural expertise, commitment and desire to run these programs, but suffer under the competitive tenders, short-term funding and in many cases no funding opportunities to get them off the ground and keep them running.

VACSAL runs several programs to assist children and young people to build on their social and emotional wellbeing and support them to avoid entry into the justice system. VACSAL's Bert Williams Aboriginal Youth Service (BWAYS) has been in operation since 1984, delivering proactive early-intervention services to Koori youth in the North and West Metropolitan region who are at risk of homelessness and subsequently entering the youth justice system. BWAYS provides short term crisis accommodation, intensive case work, Aboriginal cultural support plans, community supports and linkages and early intervention and prevention programs.

VACSAL hosts a number of short term programs, dependant on funding, to support diversion from the criminal justice system. For example, resilience camps which support young people to reconnect with their culture and learn about services available to them. At previous camps speakers have been present to educate young people about mental health, cyber safety and support services available to them. Camps have also consisted of cultural activities such as yarning circles and arts and crafts. Participants report feeling an increased sense of connection to culture and community, and a wider knowledge of services and support available to them. The demand for these types of holistic services is extremely high, to the point these can no longer be advertised and participants must be selected. Programs like

<sup>22</sup> Higgins, D., & Davis, K. (2014). Law and justice: prevention and early intervention programs for Indigenous youth (Resource sheet no. 34 produced by the Closing the Gap Clearinghouse). Canberra: AIHW & AIFS

<sup>23</sup> Commission for Children and Young People, *Always was, always will be Koori children: Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria* (Melbourne: Commission for Children and Young People, 2016), available at: [always-was-always-will-be-koori-children-inquiry-report-oct16.pdf \(ccyp.vic.gov.au\)](https://www.cccyp.vic.gov.au/always-was-always-will-be-koori-children-inquiry-report-oct16.pdf)

<sup>24</sup> Ibid, Commission for Children and Young People, *Always was, always will be Koori children*

<sup>25</sup> Ibid, Commission for Children and Young People, *Our youth, our way: inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system*

<sup>26</sup> *ibid*



these are highly effective in diverting young people from the criminal justice system and connecting them with services.

Since 2008, VACSAL has been a major provider of community sports, running a number of large and small state-wide sporting events for Aboriginal communities across Victoria. These include the VACSAL Basketball Tournament, the BWAYS NAIDOC 3on3 Basketball Tournament, the VACSAL Junior Football and Netball Carnival and the Vic Eagles Program. VACSAL understands the significant positive impact of sports on the Aboriginal community. Participating in sports contributes to overall cultural, social and emotional wellbeing and provides opportunities for community development. For Aboriginal young people, partaking in sports provides a sense of purpose, connection to community and culture, an avenue to increase physical and mental wellbeing and an opportunity to meet positive role models. All these benefits subsequently reduce a young person's likelihood of having contact with the criminal justice system. For the whole community VACSAL sporting events offer an opportunity to strengthen cultural identity and create a strong, healthy and vibrant Aboriginal community. It is imperative that these types of early intervention and prevention methods are recognised for significant role they play in diverting people from the criminal justice system and are adequately resourced to continue their growth and impact.

**Recommendation:** *Invest in place-based early intervention and prevention approaches to address disadvantage within communities where there is the highest level of Aboriginal population growth and demand for services;*

**Recommendation:** *Invest in and increase access to sport and recreation activities for Aboriginal young people;*

**Recommendation:** *Commit to long-term funding agreements that align financially with the mainstream community service sector to ensure ACCOs can attract and retain skilled Aboriginal staff.*

### **Prevent and Respond to Family Violence**

Criminal law relies extremely heavily on the justice system and incarceration as a blunt tool to address violence and anti-social behaviour. Family violence is not acceptable, and has never been a part of Aboriginal culture, which is based on strong families, culture and kinship. However, there are a number of vulnerabilities that increase the likelihood of people being victims or users of family violence and these factors are more pronounced for Aboriginal people. Aboriginal people's experience of family violence is deeply rooted in the impacts of invasion and violent dispossession of land, culture and the separation of children, with trauma accumulating across generations.<sup>27</sup> Family violence is having a severe impact on Aboriginal families and communities, and is directly contributing to rising prison populations for Aboriginal people. 88 per cent of Aboriginal children in OOHIC have experienced of family violence, which is a direct driver of contact with the criminal justice system.<sup>28</sup> In addition, the

<sup>27</sup> State of Victoria, Department of Health and Human Services, Dhelk Dja: Safe Our Way – Strong Culture, Strong Peoples, Strong Families, 2018, Available at: [Dhelk Dja: Safe Our Way | Victorian Government \(www.vic.gov.au\)](https://www.vic.gov.au/dhelk-dja-safe-our-way-victorian-government)

<sup>28</sup> Ibid, SVA consulting, p.41



prevalence of family violence and its damaging effect has been recognised as a key driver of Aboriginal women incarcerated. A study of Victorian female prisoners found 87 per cent were victims of sexual, physical or emotional abuse, with most having suffered abuse in multiple forms.<sup>29</sup> By 2028, an estimated 6,300 Aboriginal people (mainly women) will be reported as affected by family violence.<sup>30</sup> We also know that many Aboriginal women in the north-metropolitan region suffer family violence at the hands of their non-Aboriginal partners (85 – 90 per cent of Aboriginal women presenting with family violence are in a relationship with a non-Aboriginal men).<sup>31</sup>

The way Aboriginal users of violence are approached by the criminal justice system is a weak deterrent, which does not work to rehabilitate, heal or restore families. Prison is not culturally appropriate, does not help users of violence take accountability for their actions and is not trauma informed. The *Dhelk Dja 10-year Family Violence Action Plan* outlines the need for self-determined solutions to family violence, whereby the entire family is connected to make choices that promote their safety, wellbeing and healing.<sup>32</sup>

At VACSAL, we focus on men's behaviour change through holistic and cultural programs. The Aboriginal Centre for Males aims to culturally strengthen the family, bring awareness and responsibility to the male for their actions and their role as a father, husband and partner, and to keep the family together. Intertwined is many short term programs, such as the 'Dad's and kids' program, a 12-week program which aimed to provide cultural strengthening and awareness of family violence, with a central message that family violence is not part of Aboriginal culture. In addition, VACSAL runs programs for women where they have the opportunity to be empowered to reject and respond to violence. These programs provide these women with an opportunity to share cultural, political and spiritual experiences with one another, learn about the early warning signs of family violence, support their emotional and social wellbeing and offer and support them to reconnect with community and culture. Programs such as these offer deterrence from or pathways out of the justice system, and are culturally appropriate and trauma informed.

Aboriginal workers within these services and the family violence sector as a whole possess a huge amount of cultural knowledge and a unique understanding of the challenges facing Aboriginal individuals and families. Stemming from the *2015 Royal Commission into Family Violence* has been the introduction of 'Recommendation 209', a mandatory requirement of a Bachelor of Social Work for working in family violence. This policy severely undermines the work of ACCOs. Most Aboriginal family violence staff seek qualifications at culturally-safe settings such as the VACSAL Registered Training Organisation, and will not be funded to cover the fees of a three-year Bachelor of Social Work. A *Diploma of Community Services* and a *Certificate in Identifying and responding to Family Violence Risk* is an appropriate level of qualification for specialist Aboriginal family violence workers in the ACCO sector. It is vital that Recommendation 209 is repealed for Aboriginal family violence workers,

<sup>29</sup> Australian Government Law Reform, *Drivers of incarceration for Aboriginal and Torres Strait Islander Women*, 2018, available at: <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/11-aboriginal-and-torres-strait-islander-women/drivers-of-incarceration-for-aboriginal-and-torres-strait-islander-women/>

<sup>30</sup> Ibid, SVA Consulting, p.7

<sup>31</sup> Rapid Impact, *North-Metro Aboriginal Strategic Governance Report, Korin Korin Bait Djak*, 2017, available at: <https://www.dhhs.vic.gov.au/publications/korin-korin-bait-djak>

<sup>32</sup> Ibid, Dhelk Dja: Safe Our Way – Strong Culture, Strong Peoples, Strong Families



to ensure the sector is supported to continue this work and divert families and young people from contact with the justice system.

**Recommendation:** *Address family violence through community-based strategies and the development of programs that are locally owned, culturally sensitive/respectful and adequately resourced;*

**Recommendation:** *Repeal Recommendation 209 for the ACCO sector and Aboriginal specialist family violence sector.*

### **Raise the Age of Criminal Responsibility**

Extensive research has been undertaken on the harming effects of the low age of criminal responsibility in Victoria and Australia as a whole, currently sitting at 10 years old, with the exception of the ACT. This age is unacceptably low and is not in line with international standards.<sup>33</sup> The United Nations Committee on the Rights of a Child recommends all countries with a minimum age of criminal responsibility under 14 years increase the age to 14 years as soon as possible.<sup>34</sup> Incarceration causes extreme harm to children, and influences their future offending trajectories.<sup>35</sup> Evidence has consistently demonstrated that harsher punishments for children are linked to higher levels of reoffending, and even short periods of incarceration can lead to subsequent reoffending, meaning young people criminalised from childhood are likely to end up in a life-long cycle of incarceration.<sup>36</sup>

For Aboriginal children, experiencing incarceration disconnects them from family, community, cultural support and networks, which causes incredible damage to their lives.<sup>37</sup> Research has shown that between the ages of 10–14 years, children are experiencing substantial physical, mental and emotional development.<sup>38</sup> Due to this lack of development, children under the age of 14 do not have the capacity to understand the ramifications of their actions or why the actions are a criminal offence.<sup>39</sup> Most offences by children are property or deception offences, minor criminal charges.<sup>40</sup> Criminalizing young people for these offences does not recognise the drivers of these offences, such as trauma, poor mental health, family violence or homelessness. Aboriginal children are disproportionately harmed by the low age of criminal responsibility and are over-represented in every category of Youth Justice court order,

<sup>33</sup> Ibid, Commission for Children and Young People, *Our youth, our way: inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system*

<sup>34</sup> Bennett, Michelle (2021), *Major UN human rights review highlights need for Australia to raise the age of criminal responsibility*. Human Rights Law Centre, available at <https://www.hrlc.org.au/news/2021/1/20/un-review-highlights-need-for-aust-to-raise-the-age-criminal-responsibility>

<sup>35</sup> Lynch, M., Buckman, J., & Krenske, L. (2003). *Youth justice: Criminal trajectories*. Trends & Issues in Crime and Criminal Justice. Canberra: Australian Institute of Criminology

<sup>36</sup> Ibid

<sup>37</sup> Ibid, Commission for Children and Young People, *Always was, always will be Koori children*

<sup>38</sup> Richards, K. (2011). *What makes juvenile offenders different from adult offenders?* Trends & Issues in Crime and Criminal Justice.

<sup>39</sup> Ibid, *what makes juvenile offenders different from adult offenders?*

<sup>40</sup> Sentencing council of Victoria, (2020) 'Crossover Kids': *Vulnerable Children in the Youth Justice System, Report 2: Children at the Intersection of Child Protection and Youth Justice across Victoria*. Available at: [https://www.sentencingcouncil.vic.gov.au/sites/default/files/2020-03/Crossover\\_Kids\\_Report\\_2.pdf](https://www.sentencingcouncil.vic.gov.au/sites/default/files/2020-03/Crossover_Kids_Report_2.pdf)



including remand, supervised bail, community-based sentences, and custodial sentences.<sup>41</sup> OYOW outlines that raising the age of criminal responsibility in Victoria to 14 years would facilitate a vital shift from criminalising young people and increasing their likelihood of long-term involvement in the system to community based responses, having a profound and enduring impact on Aboriginal communities and society as a whole.

**Recommendation:** *Increase the age of criminal responsibility from 10 to 14 years of age;*

**Recommendation:** *Increase the minimum age of incarceration from 10 to 16 years of age.*

### **Provide Safe and Affordable Housing**

Safe and affordable housing plays a key role in reducing recidivism, and is integral to breaking cycles of disadvantage and homelessness. Currently, the significant lack of social and affordable housing in Victoria coupled with intersecting barriers faced by Aboriginal people has led to a housing crisis. 44 per cent of Aboriginal people who access homeless services are already homeless, and the number of Aboriginal people accessing homelessness services has increased by 25 per cent since 2013/2014.<sup>42</sup> Intersecting barriers mean Aboriginal Victorian's experience homelessness at much higher rates than the rest of the community, with 17,000 Aboriginal people accessing homeless services per 100,000 - the highest rates nationwide.<sup>43</sup>

As outlined by Aboriginal Housing Victoria's *Housing and Homelessness Framework, Mana-na woorntyeen maar-tako*, inadequate or insecure housing can precipitate offending and recidivism.<sup>44</sup> Aboriginal people are often detained within the custodial justice system unable to access bail, parole or a corrections order due to their inability to demonstrate access to secure housing.<sup>45</sup> Moreover, under Victoria's harsh bail laws, Aboriginal people, particularly women, are often incarcerated on remand for several months for minor offences, and are at increased risk of losing their housing during this time.

At VACSAL, we have a large housing response team who work though the North West and Southern region, primarily supporting Aboriginal people experiencing homelessness. VACSAL workers find short-term emergency accommodation and long-term appropriate housing. At present, crisis accommodation is almost non-existent, instead hotels and boarding houses from private providers are being used, both of which are un-safe. Aboriginal men and women often exit prison into this type of short-term, unstable and unsafe accommodation, or no housing at all. People who are released into the community with no home, no resources and no support inevitably re-enter the cycle of offending and subsequent incarceration.

<sup>41</sup> Ibid, *Our Youth Our Way*

<sup>42</sup> Ibid, SVA Consulting, *Demand for services for Aboriginal and Torres Strait Islander people in Victoria*

<sup>43</sup> AIHW. (2018). *Housing assistance in Australia*. Canberra: Australian Government

<sup>44</sup> Aboriginal Housing Victoria, *Mana-na woorntyeen maar-takoort: Every Aboriginal Person Has a Home* (2020). Available at: <https://www.vahhf.org.au/cms/uploads/docs/victorian-aboriginal-housing-and-homelessness-framework-complete-26-02-20.pdf>

<sup>45</sup> Ibid



**Recommendation:** *Implement all recommendations from the Mana-na woorn-tyeen maar-takoort Aboriginal Housing Framework;*

**Recommendation:** *Increase access to self-contained crisis accommodation, particularly for Aboriginal men and women existing prison and individuals affected by family violence;*

**Recommendation:** *Increase funding for Aboriginal culturally appropriate social housing, transitional and crisis housing options, with a specific focus on one or two-bedroom dwellings.*

### **Transfer Decision-Making Powers and Progress Self-Determination**

A true commitment to self-determination and the transfer of power and resources to Aboriginal communities and ACCO's is imperative to drive down incarceration and recidivism. Self-determination is not a new concept in Victoria, and several reports and commissions have outlined that self-determination as the most important policy response to address the damage resulting from colonisation. This includes the 1997 *bringing them Home Report*, *Our Youth Our Way*, the *Royal Commission into Family Violence*, *The Royal Commission into Aboriginal Deaths in Custody* and the aforementioned frameworks put forward by ACCO's. Self-determination is outlined as a key commitment by the Victorian State Government within the *Victorian Aboriginal Affairs Framework*, which states 'the best outcomes for Aboriginal Victorians are achieved when policies and programs are led and guided by the knowledge and expertise of Aboriginal people', yet in key areas of government there is still no Aboriginal representation or voice in decision making.<sup>46</sup> *Burra Lotjpa Dunguludja, The Aboriginal Justice Agreement Phase four*, outlines the need for an Aboriginal community controlled justice sector and self-determination in the justice sector.<sup>47</sup> *Burra Lotjpa Dunguludja* and the Aboriginal Justice Caucus set out the aspiration for the Aboriginal community to eventually set the agenda in the Justice System, providing culturally responsive services that prioritise community control over design, a holistic approach to wellbeing and healing and systems and services and programs that reflect the community's values.<sup>48</sup>

ACCO's are best placed to provide services to the Aboriginal community. The 2021 OYOW report highlighted that services designed, delivered and controlled by the Aboriginal community and ACCO's have the greatest potential to produce outcomes for Aboriginal children and young people in contact with the youth justice system.<sup>49</sup> To achieve the transfer of power and resources to ACCO's and the Aboriginal community, long-term funding agreements designed by the sector should replace competitive and short-term tenders. This would include ACCO's having input into the state budget, in order to determine where funding is most critical. At present, there is welcoming progress toward Treaty in Victoria, alongside the *Yoo-rrook Justice Commission*, the nation's first truth telling process.

<sup>46</sup> The State Government of Victoria, *The Victorian Aboriginal Affairs Framework 2018-2023* (2018), Available at: <https://www.aboriginalvictoria.vic.gov.au/victorian-aboriginal-affairs-framework-2018-2023>

<sup>47</sup> The Victorian Aboriginal Justice Agreement, *Burra Lotjpa Dunguludja* (2020), Available at: <https://www.aboriginaljustice.vic.gov.au/the-agreement/self-determination-in-justice/further-embedding-self-determination-in-justice>

<sup>48</sup> Ibid

<sup>49</sup> Ibid, *Our Youth Our Way*



VACSAL welcomes these progressions and looks forward to the outcomes and commitments stemming from Treaty and truth telling. However, it is important that the government do not wait to make change until these processes are complete. With the support of member organisations including VACSAL, The Aboriginal Executive Council has been calling for self-determination to be enshrined into Victorian legislation. Enshrining self-determination into legislation would strengthen the Victorian Government's overarching approach to Aboriginal Affairs, strengthen the ACCO sector and drive the transfer of resources, authority and control to the Aboriginal community and ACCO sector.

**Recommendation:** *Enshrine self-determination into legislation, as called for by the AEC and member organisations;*

**Recommendation:** *Ensure ACCO's and the Aboriginal community, including traditional owner groups, have input into the Victorian State Budget planning.*

VACSAL looks forward to supporting this inquiry to ensure this important and necessary reform progresses.

For further information please contact India Grevis-James, Policy Officer: [REDACTED]