

**Submission to the Cultural Review of the Adult Custodial
Corrections System**

December 2021





Acknowledgement of country

This submission was written on the land of the Wurundjeri and Boon Wurrung people of the Kulin Nation. We acknowledge and pay our respects to Aboriginal and Torres Strait Islander peoples and Traditional Custodians throughout Victoria, including Elders past and present.

We acknowledge the strength and resilience of all First Nations people who today continue to be arrested and imprisoned at rates far higher than other Australians, and who die in custody in shocking numbers.

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Five recommendations for a safe corrections system in Victoria

Informed by our work across Victoria, we put forward five key priorities for ensuring the system is safe for all people in custody, prevents racism, discrimination and other unfair treatment, ensures cultural safety for Aboriginal people and helps them stay connected to culture and family, and ultimately promotes rehabilitation and reintegration back into the community.

Recommendation 1. Strengthen the right to self-determination and improve specialist supports for First Nations people in custody

VLA supports the primacy of the views of Aboriginal Community Controlled organisations. We offer our recommendations in that spirit and based on our understanding of the experience of our Aboriginal clients. VLA recommends:

- a) Explicitly recognise the overrepresentation of Aboriginal and Torres Strait Islander people and the role of systemic racism and the right to self-determination in the Corrections legislative framework
- b) Strengthen self-determination, including consulting with the Aboriginal Justice Caucus about establishing an Aboriginal Social Justice Commissioner and / or specialist Aboriginal Corrections Commissioners (one male and one female)¹
- c) Improve cultural safety and access to culturally appropriate supports in custody.

Recommendation 2. Reduce the harms of imprisonment

Eliminating unnecessary harms from the Corrections custody environment would reduce the criminogenic impact of going into custody. VLA recommends:

- a) Limit the use of harmful restrictive management practices such as solitary confinement and strip searching
- b) Ensure all people in custody have access to appropriate health care and disability supports
- c) Strengthen disability support systems for people with complex needs in custody, including NDIS supports²
- d) Ensure all corrections custody staff have ongoing specialised training which reflect the needs of vulnerable Victorians in custodial settings state-wide.

Recommendation 3. Expand supports and services all people in custody, ensuring they are trauma informed and culturally safe

Reorienting the corrections system to focus on rehabilitation and increasing the support available to people in custody would improve rehabilitation and reintegration, reduce the

¹ Men's business and Women's business is central to Aboriginal people's rights to self-determination. VLA also supports appointing an Aboriginal Justice Commissioner: VLA, [Submission to the Inquiry into Victoria's Criminal Justice System](#) (September 2021).

² VLA supports the Victorian Ombudsman's recommendations in her investigation into the treatment of people within the Corrections system with mental health issues and found unfit to stand trial: Victorian Ombudsman, [Investigation into the imprisonment of a woman found unfit to stand trial](#), (Report, October 2018).

overreliance on post sentence supervision and onerous parole conditions to manage people leaving prison, and reduce recidivism.³ VLA recommends:

- a) Individual case management for people in custody to ensure that they have access to appropriate rehabilitation and support⁴
- b) Increased availability of health and support services for all people in custody
- c) Improved and state-wide access to legal assistance for people in custody.⁵

Recommendation 4. Ensure early, individualised and meaningful transition planning

Meaningful transition planning and support for release is critical to averting relapses, by supporting their participation in employment, community life and more substantial health and welfare needs once they have transitioned back into the community.⁶ VLA recommends:

- a) Early planning for all people which starts when they enter custody, even if on short sentences
- b) A case management approach that provides individualised, coordinated and continuity of care and support post-release
- c) Specialist transition support for people with disability and/or experiencing mental health issues who cannot get out of custody due to lack of services in the community.⁷

Recommendation 5. Create a clear, transparent and supported oversight framework

For a clear, transparent and accessible oversight framework, VLA recommends:

- a) Dedicated legal assistance for people in custody, available statewide, including better access to Prisoner Legal Help and a funded service that can provide assistance on custody matters as well as legal issues that impact on reintegration.
- b) Improved access to information about available complaints processes, and support for people in custody to navigate and effectively participate in the complaints system.⁸
- c) Implement OPCAT, including the National Preventative Mechanisms, in a timely and culturally safe way, to assist in creating a clear, independent, and transparent complaints processes for all people in Correctional custodial facilities.
- d) Implement the Victorian Ombudsman's recommendations from the inquiry into prison and disciplinary processes.⁹

³ Recent investigations highlight substantial gaps in access to appropriate supports and rehabilitation; eg, Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (September 2015) 6 (**Ombudsman's Prison Report**); Victorian Ombudsman, *Investigation into deaths and harm in custody* (2014) 111.

⁴ The Victorian Ombudsman has highlighted the tensions and challenges for the current case management response that relies on location-based case management as an additional duty for prison officers rather than a system-wide response: **Ombudsman's Prison Report**, 5.

⁵ VLA's Prisoner Legal Help (PLH) service provides effective legal advice for people in custody, however it is currently only available in five prisons and calls to the service are limited to 12 minutes each.

⁶ Transition support reduces the risk of a person returning to prison: **Ombudsman's Prison Report**, 153.

⁷ VLA submissions to the Royal Commission into Victoria's mental health system and to the National Disability Insurance Quality and Safety Commission highlight the experience of people with a disability or experiencing mental health issues who have difficulty transitioning out of custody due to lack of services.

⁸ While PLH assists people in custody with their legal matters, such as identifying who their lawyer is, infringement matters and parole, it is not currently set up as a complaints mechanism.

⁹ Victorian Ombudsman (2021) [Investigation into good practice when conducting prison disciplinary hearings](#), 7 July 2021.

About Victoria legal Aid and our clients

Victoria Legal Aid's (VLA) vision is a fair and just society where rights and responsibilities are upheld. We are a statutory authority established under the *Legal Aid Act 1978* (Vic).

In 2020–21, VLA provided assistance to over 71,670 unique clients from our 15 offices across Victoria. This was a 16 per cent reduction in the number of people we usually help each year due to the COVID-19 restrictions and courts adjourning matters.

Our clients are diverse and experience high levels of disadvantage. These circumstances increase the likelihood and severity of legal problems and make it more difficult for people to navigate the system without help.

Legal assistance ensures fairness and helps ordinary people understand and participate in the legal system. It also helps to address the reasons people are in the justice system, and works to address underlying causes.

VLA helps people in all courts and tribunals in Victoria. We work in criminal law, family law and family violence, child protection, mental health, disability support, discrimination, migration and tenancy law. We help children and adults, and prioritise people who need our help most.

VLA's state-wide criminal practice provides legal advice and representation to children and adults, including duty lawyer services for people at Magistrates' Courts across Victoria, during the weekend and evenings for 365 days per year. VLA's Prisoner Legal Help telephone service provides legal advice to five Victorian prisons.¹⁰ People can make free 12-minute calls to the service Monday to Friday.

The extent and breadth of our work with people in custody gives VLA a unique understanding of the criminal justice system and the impact of the Corrections system.

¹⁰ It opened in February 2017 and is currently available in: Metropolitan Remand Centre; Port Phillip Prison; Dame Phyllis Frost Centre; Loddon and Middleton Prisons; Ravenhall Correctional Centre.

Responses to Corrections Review Consultation Paper questions

Question 1. In order to embed a safe and positive culture within the adult custodial corrections environment:

1.1 What, if any, amendments should be made to the *Corrections Act 1986* to improve culture, safety, integrity and inclusion in the adult custodial corrections system?

1.2 What, if any, changes should be made to subordinate instruments (Corrections regulations, Commissioner's requirements, location-based policies and procedures?)

Below we make suggestions to improve the legislative framework in relation to matters not otherwise covered under other questions.

The purposes of the Corrections Act

An explicit statement of Corrections Victoria's objectives of rehabilitation and reducing recidivism in legislation would elevate these goals and assist in setting the direction of not just the Act but all other regulatory instruments. The current purposes outlined in the *Corrections Act 1986* are brief and operations focused. The guiding principles and overarching objectives could include the purposes of rehabilitation and reducing reoffending.

Explicit recognition of First Nations right to self-determination in the Corrections Act

Explicit recognition of Aboriginal people's rights to self-determination in the Act would give a clear legislative indication of how all Corrections policy and procedures should be interpreted when applying to Aboriginal people. A recognition statement for the Act could be co-designed by Aboriginal controlled community representatives.

We further support explicit inclusion of the rights to self-determination, cultural rights and culturally responsive and safe policies and practice with the list of prisoners rights in *section 47 Prisoners' rights*, to strengthen the centrality of these rights as well as practical implementation of the principles.

Thresholds and limits for the use of restrictive practices in primary legislation

To improve culture, safety and transparency, regulation of the use of restrictive practices in custodial settings would be more appropriately located in the primary legislation rather than provided for by regulation, policy/ procedures.

For the **use of force**, we suggest that the Act could be amended in the following ways:

- outline a clear threshold test of when use of force is permitted,
- define use of force as a method of last resort,
- require more than one person (including being authorised by senior management) to approve the use of force,
- limit the use of force to a period no longer than is necessary in the circumstances,
- require specific training for staff who are authorised to use force, to include a focus on trauma informed care, anti-racism, and the specific needs of vulnerable groups including Aboriginal people, people experiencing mental health issues, people with cognitive disability and women.

Introducing a legislated threshold test for use of **solitary confinement** and reasons provided when notifying the Secretary, Ombudsman, and in the case of an Aboriginal person, the Aboriginal Justice Commissioner, would assist in promoting safety and transparency for those in custody.

Our lawyers note that the threshold for entering solitary confinement is low. The practice has been used to respond to minor incidents, as a response to assaults for both victims and perpetrators. It has operated to restrict face to face visits with family and lawyers. Our lawyers have also seen the use of solitary confinement on their clients for extended periods of time without proper explanation or scrutiny of the decision through a Governor's Hearing.

While there may be an operational need for **strip searches**, they should be used as an option of last resort.¹¹

While restrictive practices are connected to the lack of appropriate mental health support within the custodial environment, as well as issues associated with staffing numbers, training and capability to manage the complex needs and behaviours of people in custody,¹² locating thresholds and limits on their use in primary legislation would assist to improve culture, safety and transparency.

Notification of conditions of care while in custody

Conditions in custody are relevant to bail and sentencing decisions. In our practice experience, Corrections do not routinely advise courts of the conditions to which the prisoner has been subject in custody. As a result, the court lacks relevant information when deciding the outcomes of both bail and sentencing hearings. A prisoner movements record indicates where the prisoner has been located whilst in custody, however it does not state whether the prisoner has been subject to further restrictions or what level of care they have received in that unit.

A legislated requirement that Corrections provide courts with an overview of the conditions that the prisoner has been subject to while in custody at significant hearings (such as bail and sentence) will have several benefits:

- It will assist the court when considering bail or what sentence is appropriate
- It is also relevant to the calculation of emergency management days
- It may assist with informal monitoring and in improving the safety of people in custody.

Question 2. In order to support staff working within the adult custodial corrections environment:

2.1 What essential skills and training should be required for staff working within the adult custodial corrections system?

We acknowledge that Corrections staff routinely undertake significant training. We further recommend that the training should be specialised, trauma informed, and includes coverage of:

- young people (including that on occasion there are children detained in adult facilities),
- trauma informed understanding of family violence (in relation to dealing with offenders and victims – people in custody are often both),
- CALD/refugee experiences of racism (including structural) and discrimination, and

¹¹ Though not a legislative reform, we support roll out of specialised scanners to all custodial corrections facilities to minimise the need for invasive strip searching.

¹² VLA submission to the Royal Commission into Victoria's Mental Health System, [Roads to Recovery: Building a Better System for People Experiencing Mental Health Issues in Victoria](#) (2019) 43.

- LGBTIQ discrimination.

In relation to Aboriginal people, a review of the current Corrections policy around cultural awareness programs may assist in ensuring that these programs are culturally safe. Development of an agreed set of standards for the delivery of cultural awareness programs tied to individual learning outcomes for Corrections staff would demonstrate competency which can be monitored, evaluated, and confirms that the individual learning and behaviours meet that competency set for each staff member.

2.2 What are the essential values for staff working within the adult custodial corrections system?

While value setting processes should be undertaken by Corrections, the Act's purpose should articulate the values that Correctional services should be provided in a way that is consistent with human rights; that Corrections staff treat people in custody with dignity when they interact with them.

Question 5. In order to understand the specific experience of Aboriginal people in custody:

5.1 What are the experiences of Aboriginal people in the adult custodial correctional system including the nature, extent and impact of racism and racial discrimination?

We commend the Review for speaking directly to Aboriginal people about their experiences of custody and how racism and racial discrimination affected them.

Our Aboriginal clients tell us that they do experience racism and racial discrimination while in custody. This discrimination (individual and systemic) is perpetrated by other people in custody, staff and prison system itself. This discrimination does not start and end with their time in prison – it starts long before and continues long afterwards, with the experience of custody another link in a long chain of discriminatory and damaging experiences.

5.2 What support is provided to Aboriginal people to improve their wellbeing and cultural safety while in custody? How effective are these supports?

We have not conducted a full review of the available services to Aboriginal people, but note that many services which are available to people in custody (Aboriginal or not) are only available to sentenced people in custody.

A new approach for Aboriginal people on remand which incorporates contracted services from a Victorian Aboriginal Controlled Organisation (adhering to the principles of self-determination for and by Aboriginal people) is needed. This service could perform a welfare check, a mental/cultural wellbeing check and check what services or programs have been offered to the prisoner while on remand.

Further, consideration of how the Independent Aboriginal Visitor scheme interacts with OPCAT (once it is implemented) may assist in assessing the wellbeing and cultural safety of Aboriginal people whilst in custody. In its current form, the scheme is limited and therefore the access for Aboriginal people across the state is piecemeal.

We acknowledge that the consultation paper specifically excludes COVID-19 custodial arrangements from the scope of this review, however, this is an emerging issue which is being reported by our lawyers with increased urgency. Since the onset of COVID into the prison system, there have been flow on restrictions on people's access to court, lawyers, family and services, particularly at MAP. There has also been an increase in isolation being used a preventative measure to stop the spread

of COVID in custody. These restrictions are particularly damaging for people from the vulnerable cohorts including Aboriginal people.

5.3 Are existing counselling, support and programs culturally safe for Aboriginal people in custody, and how important are these to promote rehabilitation outcomes?

Cultural safety should be a consideration when a program (whether externally or internally provided), is first engaged and continue to be an ongoing obligation on the service. There should also be participant feedback about how it is being experienced by those who are using it.

The current approach to counselling, support and programs is built on a methodology which may not be consistent to Aboriginal cultural health principles, practices, wellbeing and cultural safety. They therefore risk creating more trauma if the person has to mandatorily participate in it as a condition pre-release or to access programs.

5.4 What changes are required to increase cultural safety for Aboriginal people in custody consistent with Aboriginal peoples' right to self-determination?

The detrimental effect that confinement and separation from family can have on Aboriginal and Torres Strait Islander people is significant. We consider that increased efforts to develop and implement culturally safe and appropriate practices are crucial to improving the custodial experience of Aboriginal people. However, the reality for many Aboriginal people within the criminal justice system is that custody is inherently culturally unsafe, with violence, trauma, and death possible outcomes.

In addition to a statement recognising self-determination, and review of the internal disciplinary processes below, further recommendations are:

- Practice standards in relation to Aboriginal cultural competencies that are communicated to staff as well as to people in custody, so that people in custody are aware of what the obligations are (and what to do when they are not being met)
- Strengthening of Aboriginal people in custody's cultural obligation and right to practice 'Sorry Business', including removing the number limits for attendance to family funerals, and First Nations community representative involvement in reviewing decisions to refuse attendance¹³
- Improved recruitment methodology for custody staff working with Aboriginal people
- Policies for Corrections evaluating, recording, and monitoring staff competencies (training, skills, knowledge and abilities) to provide culturally safe services to Aboriginal people
- Transparent reporting mechanisms for Corrections Victoria to the Aboriginal Justice Forum and the Attorney General.

Question 6. In order to understand the particular experience of people in custody with specific needs:

6.1 How do issues with culture, safety and integrity affect the experience and outcomes for people in custody?

A person's experience of prison where their culture, safety and integrity are not respected and protected can lead to further traumatisation and negative rehabilitate outcomes on release. People

¹³ During COVID applications to attend funerals have been refused across the board; this has a significant detrimental impact on Aboriginal people in custody in particular.

come into custody with a range of experiences and attributes which can negatively affect their classification for placement whilst in custody and ultimately their experience of it.

Our practice experience is that across the system there are not enough beds in specialised units for people with specific vulnerabilities (young people, people experiencing mental health issues or with cognitive disability and others). These people in custody are often placed in protection, with harsher conditions than the general population. The existence of their vulnerability therefore contributes to their more negative experience of custody.

Prisoner placement mechanisms in their current form, do not allow for the prisoner to contest their classification (or for another to advocate on their behalf). A prisoner's classification (and therefore the significant factor for determining their placement in custody) is only reviewed annually. Courts can indicate that Corrections should take notice of specific vulnerabilities during the court process, by making a note of their 'custody management issues' but has no decision making powers on where an offender is placed within the prison system. Our experience is that this can lead to inappropriate classifications being made, resulting in poor conditions for vulnerable clients. There are further complications where there is an intersection of vulnerabilities (for example a young person with an intellectual disability).

Clarification of how people in custody in specialised units are treated differently to mainstream people in custody (for example, different services or supports, and whether the guards are provided with extra training) would assist with assessing whether the classification is appropriate in the circumstances.

6.2 What are the particular needs, experiences and safety concerns for the following people within the custodial environment:

There are intrinsic barriers to people who have any of the above identified characteristics or any other vulnerability present during their incarceration.

Women

There is a growing female remand population in Victoria which is compounding existing issues of access to health and other supports for women. This is particularly concerning given the high rates of victimisation, addiction issues, family violence and caring responsibilities within this cohort. Given these characteristics and the prevalence of family violence for women in custody,¹⁴ trauma informed specialised training for Corrections staff is strongly recommended.

There is a prevalence of women serving short sentences and being released abruptly as 'time served'. These abrupt exits from custody make it difficult to put appropriate community supports in place. Provision of wrap-around, culturally-appropriate services to women on first remand would assist when they are released. We note that other jurisdictions are moving towards abolishing short periods of imprisonment for women in favour of community-based sentencing options, given the evidence of harmful and long-term impacts on women, their families and the community.

VLA recommends that Corrections make publicly available the data in relation to the 'Living with Mum' program, including applications and outcomes. There are significant delays in processing applications for the 'Living with Mums' program which is a particular issue for women who serve short sentences (and therefore cannot have their children with them in custody).

¹⁴ Between 2012 and 2018, the proportion of women on remand who had been a victim of crime in the 24 months prior to entering prison increased from 48 per cent to 51 per cent, with a greater increase in the proportion recorded by police to be the victim of family violence (up from 38 per cent to 43 per cent). Walker, S., Sutherland, P. & Millstead, M. (2019), *Characteristics and offending of women in prison in Victoria 2012-2018* (Crime Statistics Agency, Melbourne), 15.

VLA continues to be concerned about the lack of appropriate facilities for women with complex needs and the continued reliance on solitary confinement to manage complex mental health conditions and disabilities. Many of these issues have also been raised in previous reports by the Victorian Ombudsman. This includes:

- Lack of secure residential options (equivalent to the Disability Forensic Assessment and Treatment Service for men) and appropriate community-based supports, results in women with disability being held for extended periods in custody and being disproportionately subject to restrictive practices.¹⁵
- Women with disability or mental health issues being tipped into more restrictive settings or being subject to highly restrictive management conditions due to their needs and behaviour. This includes extended solitary confinement, 23-hour lockdown, restraint and deprivation of movement and strip searches.
- Criminalisation of behaviours linked to their mental health and/or disability. This might include being charged with property damage for damage to cells, possession of unauthorised property, and assault when acting out against restraints.

People who identify as LGBTIQ+

There should be explicit consideration of the experience of transgender and intersex people in custody to highlight the heightened risk to these people and limit the damaging nature of imprisonment. This includes practical considerations in terms of the sexual classification of people in custody, the use of toilets and other public places within prisons.

People from a culturally and linguistically diverse background

There are some practical observations that we make in relation to this cohort:

- Programs, supports and services primarily being offered in English only,
- The free phone service which is offered in prisons is advertised by a poster in English, if a person uses the phone to call through to Prisoner Legal Help (VLA), or other services or complaints lines, these calls are timebound and answered in English (the use of the posters also require people in custody to be literate), and
- Programs, supports and services should be designed with dual foci; culturally safe and trauma informed with the option of being delivered in multiple languages.

People with a disability (including people with a mental health condition and people with a cognitive impairment)

There continue to be harmful consequences caused by lack of access to appropriate levels of support for people living with mental health conditions and disability in custody.

Access to Improved secure forensic hospital facilities

Secure forensic treatment facilities provide for the humane compulsory treatment of people in secure custody. Thomas Embling Hospital is Victoria's only secure forensic mental health facility and there continues to be a significant gap between the number of beds and the growth in the prison

¹⁵ The Ombudsman's [Investigation into the imprisonment of a woman found unfit to stand trial](#) in October 2018 highlighted that there are no facilities for women with cognitive disability or complex needs, and that custody officers are caring for these inmates without any training.

population.¹⁶ The Victorian Government has committed to implementing the recommendations of the *Royal Commission into Victoria's Mental Health System*, including increasing the number of acute psychiatric beds.¹⁷ However until these further beds become available, the issues discussed below continue to be the experience of mentally unwell people in custody.

Service shortages impact across the criminal justice and forensic mental health systems, whether a person is on remand, sentenced, or found not guilty by reason of mental impairment. As the demand exceeds the number of available beds, people in custody are waiting to get in to secure forensic beds for compulsory treatment, which has a detrimental impact on their mental health, making it harder to transition out of custody, and can also result in the prolonged detention in prison of people who have been found unfit to be tried.

Access to assessment, voluntary treatment and therapeutic supports in custody

The growing offender and prison population in Victoria has also added to the challenges of health care and support for people experiencing mental health issues in the criminal justice system. Impacts range from delays in assessments for sentencing decisions (delaying finalisation of proceedings), to delays in custodial intake assessment and screening for mental health issues.¹⁸ When a person is not able to access support at the level and intensity they require, there is an impact on their stabilisation, recovery and wellbeing.¹⁹

The flow on impact of insufficient forensic mental health beds is that more people in custody with mental health issues are incarcerated in mainstream prison facilities. Forensicare has highlighted that inadequate treatment of a prisoner's mental health issues during imprisonment in general corrections facilities can 'have adverse effects on their health and wellbeing and in turn, their rehabilitation and ability to effectively reintegrate into the community.'²⁰

Overcrowding and custodial management practices, such as lockdowns and rotations, the use of solitary confinement and irregular access to programs and support can have a direct and harmful impact on people with mental health conditions. These practices can both cause and exacerbate mental health issues.²¹

To address this, the Victoria Government has committed to implementing the *Royal Commission into the Mental Health System* by resourcing more specialist beds for voluntary mental health treatment while in custody. In the interim, Corrections Victoria should improve access to voluntary assessment, treatment and therapeutic supports in custody.

We also note the following issues:

- There is no single point of contact for people in custody with disability and mental health issues (or their advocates) to build pathways out of custody and to escalate interventions to prevent prolonged detention. This has resulted in responsibility shifting (and avoidance)

¹⁶ Forensicare, *Submission to the Royal Commission into Victoria's Mental Health System* (Submission July 2019) (**Forensicare Submission**) 2; Royal Commission Interim Report (n 6) 165.

¹⁷ Premier of Victoria, media release, [Design underway for Thomas Embling Hospital Upgrade](#), 5 August 2021.

¹⁸ Victorian Auditor-General's Office, [Managing Rehabilitation Services in Youth Detention](#) (Parliamentary Report, August 2018) 10.

¹⁹ See e.g.: Victorian Ombudsman, [Investigation into the imprisonment of a woman found unfit to stand trial](#) (Report, October 2018). We emphasise that any consideration of additional forensic beds should always be carefully balanced with the need for less restrictive alternatives and access to adequate services in the community.

²⁰ Forensicare Submission (n**Error! Bookmark not defined.**) 5.

²¹ See e.g.: Victorian Ombudsman, *Investigation into the reintegration and rehabilitation of prisoners in Victoria* (Report, September 2015), 67 (recommendation 6).

between Commonwealth and State agencies with damaging consequences for the people most in need of support.

- People in custody with complex needs are not centrally case managed on reception to prison and are often moved around the prison system without a continuity of care.
- There are delays in people being assessed to access specialist supports on reception into prison, contributing to issues associated with behaviour.
- The lack of NDIS support both while in custody and in relation to proactive discharge and pre-release planning. Without this support, release can be delayed, resulting in people with disability being left in prisons as a direct result of delays in accessing their NDIS plans.²²
- Insufficient transition planning out of custody and continuity of care with post-release supports. The transition out of custody into supports is a crucial step for successful reintegration.

Implementation of the Ombudsman's recommendations for Corrections

There has been an extensive investigation into the treatment of people with mental health issues and those found unfit to stand trial in custodial settings. For example, The Victorian Ombudsman's *Investigation into the imprisonment of a woman found unfit to stand trial* described the imprisonment of a VLA client, a 39-year-old woman with a significant developmental disorder, as 'the saddest case I have investigated in my time as Ombudsman'.²³

The Ombudsman made a number of recommendations aimed at making prisons safer and better equipped at dealing with people in custody with complex needs, including mental health support and treatment. VLA supports the Ombudsman's recommendations which relate to Corrections in custodial settings. In particular, recommendations two to five which highlight:

- the need for specialist units and services for women with an intellectual disability or cognitive impairment in Victorian prisons,
- that advice should be sought from relevant disability experts when determining placements within the prison system in complex cases of people in custody with mental impairment,
- that there should be a review of the policies and practices in relation to the use of behavioural management plans (and separation) to address behaviours of concern, strip searching, use of restraint and personal care support by Victorian Equal Opportunity and Human Rights Commission. This was initially recommended in relation to people in custody with mental impairment at the Dame Phyllis Frost Centre but once the review's findings and recommendations are determined, should be rolled out to other prisons,
- the Department of Justice and Community Safety should provide oversight where people in custody who are mentally impaired are subject to separation outside management units, and oversee Intensive Case Management Plans that require separation or modified regimes for these people in custody. The Assistant Director responsible for the Sentence Management Division should endorse changes to the Plans, and DHHS should provide relevant health service advice.

²² VLA, Submission to the Inquiry into the National Disability Insurance Scheme Quality and Safeguards Commission (June 2021) ([Title](https://www.vla.vic.gov.au)) ([vla.vic.gov.au](https://www.vla.vic.gov.au))

²³ Victorian Ombudsman, [Investigation into the imprisonment of a woman found unfit to stand trial](#) (Report, October 2018).

Older people in custody

VLA recommends:

- Ensuring the availability of appropriate and equivalent medical and dental treatment²⁴ in a timely way is crucial to their safety and experience of custody;
- Placing these people in custody together can also assist to limit their risk of exploitation within the general population;
- Age-appropriate approaches to rehabilitation and reintegration programs; and
- Increased access to, and frequency of, parole hearings.

Children in adult facilities

Young people are not specifically identified in this question. However, we note that there are, on occasion, children imprisoned in adult facilities. The safety and experience of children who are in adult facilities should be an identified group in this review.

6.3 What changes are required to improve access to programs and support to assist people in custody work towards rehabilitation and better transition to the community.

Meaningful transition planning and support for release is critical to reducing recidivism, by supporting participation in employment, community life and more substantial health and welfare needs once a person has transitioned back into the community.²⁵

The criminal justice system has seen a significant rise in the remand of members of marginalised communities due in large part to the operation of the Bail laws and restriction of sentencing options. Many people are being remanded and released on 'time served' sentences, never becoming sentenced people in custody and therefore eligible to access appropriate services. This means that they are released into the community from custodial settings without supports which are crucial to real and sustained rehabilitation. Access to culturally safe and tailored programs should commence as soon as a person *enters custody*, whether sentenced or on remand, to reduce recidivism upon release.

VLA makes the following suggestions to improve access to programs:

- Access to programs should commence as soon as someone enters custody to reduce recidivism upon release (not limited to those who are sentenced).
- Delays in accessing appropriate care and treatment for any underlying mental health concerns should be reduced, this can in turn affect a person's ability to become eligible for parole.
- Corrections could ensure there is appropriate coordination role of the supports and services which are offered by external organisations to those in custody. Currently there is a patchwork of external service and support providers across the State;²⁶ equal access to appropriate services across the state is important to the success of a person's rehabilitative journey both in and on release from custody.

VLA makes the following suggestions regarding to assist people transitioning to the community:

²⁴ Access to Medicare and the Pharmaceutical Benefits Scheme would assist with achieving equivalent medical and dental care although we note that these services are within the Commonwealth government's purview.

²⁵ Transition support reduces the risk of a person returning to prison: **Ombudsman's Prison Report**, 153.

²⁶ These organisations are often limited in their intake criteria by age, gender, geography, and funding.

- Early planning for all people which starts when they enter custody, even if on short sentences. Transition planning should start as soon as a person enters custody, no matter how short the time they are likely to be there.
- A case management approach to transition planning should provide individualised, coordinated and continuity of care and support post-release
- Specialist transition support is needed for people with disability and/or experiencing mental health issues who cannot get out of custody due to lack of services in the community.
- The expansion of NDIS support and community based mental health treatment options for proactive discharge and pre-release planning, are crucial to rehabilitation and transitioning back into the community.

Question 7. To ensure there are appropriate processes for the early identification and response to issues of culture, safety and integrity in the adult custodial corrections system:

7.1 Can the integrity and oversight arrangements be enhanced to support improvements to culture, safety and integrity in the custodial environment?

VLA supports the implementation of OPCAT and the establishment of National Preventative Mechanisms to prevent human rights abuses in places of detention. OPCAT's implementation, done in a culturally safe way, would significantly help to improve the culture, safety and integrity for Aboriginal people in custody.

VLA supports obligation to record and notify all uses of restrictive practices and force, to improve transparency and accountability. An obligation to notify the Ombudsman in addition to the Secretary, where there has been an incident involving use of force or solitary confinement, would improve culture, safety and integrity.

We have made specific recommendations for improving oversight of Aboriginal people in custody under question 5. In addition, an obligation to notify an Aboriginal Justice Commissioner, of incidents involving the use of force or solitary confinement against an Aboriginal person, would ensure that a specialist office has oversight of the use of restrictive practices against individuals and can monitor trends.

Oversight would be enhanced through improvements to complaints and reporting outlined below.

7.2 Are there any ways to improve the accessibility and safety of complaint processes and pathways to encourage the reporting of corruption and misconduct in the adult custodial corrections system?

There are multiple challenges for people in custody to make a complaint or report misconduct, compounded by the high numbers of people in custody with cognitive impairments or other barriers to understanding processes or feeling safe enough to participate.

People in custody need improved access to information about available complaints processes, as well as support to navigate and effectively participate in the complaints system. There also needs to be clearer pathways for complaints to be made by people in custody, as well as the capacity for complaints to be made on their behalf (by families, friends, or advocates).

Legal assistance ensures fairness and helps people understand and participate in the system. VLA's Prisoner Legal Help telephone service is an effective and efficient service but is limited in capacity.²⁷ Our contact with callers is fleeting (limited to maximum of 12 minutes) and not available at all custodial facilities across the state (only available in five prisons). The primary focus of the service is to provide legal advice, rather than assisting with complaints. We refer those people who seek to make a complaint about their treatment or report misconduct to other services.

A good model is NSW dedicated Prisoners Legal Service (**PLS**), a statewide specialist service of Legal Aid NSW. PLS provides legal advice and minor assistance in relation to bail, appeals and parole, classification and other prison issues, family law, victims compensation and restitution, personal injury, fines and debt. PLS can also represent prisoners at hearings at the State Parole Authority, life sentence determinations, segregation appeals, visiting justice hearings. PLS visits most NSW gaols; if the gaol is not visited by PLS, prisoners can contact PLS for telephone advice or request an audio visual conference (an AVL). Friends and family of prisoners can also contact the PLS. If funded such a service could be delivered by VLA or a Community Legal Centre, and complement increased access to VLA's Prisoner Legal Help service.

7.3 Are there opportunities to enhance the informal monitoring of the adult custodial environment?

The custodial environment would be improved through regular independent monitoring in line with the OPCAT recommendations.

A legal or non-legal service that visits prisons regularly to assist people in custody seeking to make complaints, could enhance informal monitoring. VLA's Prisoner Legal Help has a number of limitations, as described above, and VLA is not funded to provide an in person service. It is not intended or equipped to be an informal monitoring mechanism.

In relation to question 1 we recommended that a requirement for Corrections to provide courts with an overview of the conditions that the prisoner has been subject to while in custody at significant hearings (such as bail and sentence) may assist with informal monitoring and transparency.

Question 8. To support the development of positive culture, improve relationships and assist with the resolution of disputes within the custodial environment:

8.1 How can complaint processes and pathways be improved to encourage people in custody to report issues relating to culture, safety and integrity within the adult custodial corrections system?

A challenge for prisoners who wish to make a complaint is the lack of a clear and easy to understand pathway for that complaint, and limited advice or assistance to make complaints. The process then must be both transparent and independent for it to build legitimacy in the prisoner population.

Independent investigation of prisoner complaints needs to be timely and comprehensive, and take into account the inherent difficulties in making a complaint while continuing to be detained.

We highlight the importance of dedicated assistance to understand and navigate the processes above.

²⁷ VLA, [Prisoner Legal Help Evaluation](#) (Report, 2018).

8.2 What changes should be made to the prison disciplinary processes to support positive culture safety and integrity within the custodial environment?

VLA supports Corrections implementing each of the Ombudsman's recommendations, as identified in the consultation paper in relation to internal prison disciplinary hearings.²⁸

Further measures to ensure that vulnerable cohorts are supported through internal prison disciplinary hearings include:

- Legislating procedural fairness into the internal prison disciplinary hearings, including an independent merits review process;
- Appointing a member of the Aboriginal Justice Forum to disciplinary hearings regarding incidents which involved Aboriginal people;
- People in custody with priority needs (intellectual and cognitive disability and mental health diagnosis) to be supported by the Office of the Public Advocate or other suitable advocates or lawyers during disciplinary hearings.

A merits review panel, with an independent person, to review prison disciplinary hearing decisions would assist to strengthen oversight. If the review involves an Aboriginal person, the merits review panel composition could include a person from the Aboriginal Justice Forum. This is discussed further below in response to question 8.2.

8.3 Is there a role for restorative justice and alternative dispute resolution to improve culture, safety and integrity within the adult custodial corrections system?

Restorative justice and alternative dispute resolution for disputes in custody may be an effective tool to improving culture, safety and integrity. It is unclear whether they are intended to be used for all disputes (between the people in custody or with staff).

VLA supports access to restorative justice processes which contain appropriate safeguards which acknowledge and address the power imbalance between parties, the nature of the environment in which it is occurring and the potential for the process to be used for exploitation.

These kinds of services should only be provided by specialised service providers who have experience in providing them in the prison setting in a culturally safe and trauma informed way.

²⁸ Victorian Ombudsman, [Investigation into good practice when conducting prison disciplinary hearings](#) (Report, 6 July 2021).

Our clients

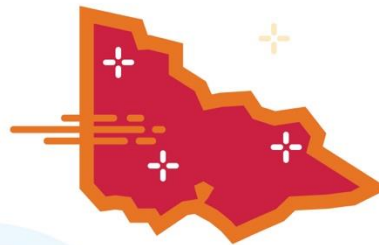
Clients at risk of homelessness

Our clients are among the most disadvantaged in Victoria
6,387 clients **↑21%**



Rural and regional Victoria

29,268 or **30%** of clients live in regional Victoria **↑8%**



Grants of legal assistance
45,180

↑5%

Unique clients
100,061

↑6%

In-house duty lawyer services
86,272

↑4%



Legal Help

Responded to **140,224** requests for help by phone, chat and in person

Aboriginal and Torres Strait Islander Clients

5,192 or **5.3%** of clients **↑10%**

