

Department of Justice and Community Safety

Agency response to the Yoorrook Justice Commission
15 March 2023



Justice
and Community
Safety



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List of acronyms

Acronym	Definition or use in this Agency Response
AACM	Aboriginal Advanced Case Managers
ACCHO	Aboriginal Community Controlled Health Organisation
ACCO	Aboriginal Community Controlled Organisation
ACJP	Aboriginal Community Justice Panel
ACM	Aboriginal Case Manager
AHV	Aboriginal Housing Victoria
AISP	Aboriginal Intensive Support Program
AJA	Aboriginal Justice Agreement
AJA4	<i>Burra Lotjpa Dunguludja</i> Aboriginal Justice Agreement Phase 4
AJC	Aboriginal Justice Caucus
AJF	Aboriginal Justice Forum
ALO	Aboriginal Liaison Officer
AOD	Alcohol and Other Drugs
AWO	Aboriginal Wellbeing Officer
CCO	Community Correction Order
CCS	Community Correctional Services
CCYD	Children's Court Youth Diversion
CCYP	Commission for Children and Young People
CVRP	Corrections Victoria Reintegration Pathway
DFFH	Department of Families, Fairness and Housing
DH	Department of Health
DJCS	Department of Justice and Community Safety
DPFC	Dame Phyllis Frost Centre
ERG	Expert Reference Group
FFT	Functional Family Therapy
IBAC	Independent Broad-based Anti-corruption Commission
IPV	Independent Prison Visitor
JARO	Justice Assurance and Review Office
KWDP	Koori Women's Diversion program
LAJAC	Local Aboriginal Justice Advisory Committee
MAP	Multi Agency Panel

MST	Multi Systemic Therapy
NDIS	National Disability Insurance Scheme
NPM	National Preventative Mechanism
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OYOW	Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system
PBS	Pharmaceutical Benefits Scheme
RAJAC	Regional Aboriginal Justice Advisory Committees
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
SCAG	Standing Council of Attorneys-General
THM	Transitional Housing Management
VAAF	Victorian Aboriginal Affairs Framework
VACCA	Victorian Aboriginal Child Care Agency
VACCHO	Victorian Aboriginal Community Controlled Health Organisation
VACSAL	Victorian Aboriginal Community Services Associated Limited
VALS	Victorian Aboriginal Legal Service
VHREOC	Victorian Equal Opportunity and Human Rights Commission
VO	Victorian Ombudsman
YJCSS	Youth Justice Community Support Service
YJGC	Youth Justice Group Conferencing
YJHA	Youth Justice Homelessness Assistance
YSS	Youth Support Service
YTC	Youth Through Care



Acknowledgement

The Department of Justice and Community Safety (DJCS) acknowledges Aboriginal and Torres Strait Islander people as the First Peoples and Traditional Owners and custodians of the land and waterways upon which our lives depend.

We acknowledge and pay our respects to ancestors of this country, Elders, knowledge holders and leaders—past and present. We extend that respect to all Aboriginal and Torres Strait Islander peoples. We recognise that Aboriginal and Torres Strait Islander communities are steeped in culture and lore having existed within Australia continuously for over 65,000 years. Victorian Aboriginal communities and peoples are culturally diverse, with rich and varied heritages and histories both pre- and post-colonisation. These rich and varied histories need to be understood and acknowledged by all Victorians, to truly understand the resilience and strength of previous generations, as well as the history of the fight for survival, justice and Country that has taken place across Victoria and around Australia.

We recognise the ongoing leadership of Aboriginal communities across Victoria in striving to build on these strengths to address inequalities and improve Aboriginal justice outcomes. We particularly recognise the immense contribution, dedication, and leadership of the Aboriginal Justice Caucus (AJC) to improving Aboriginal justice outcomes. DJCS and AJC have worked together for 23 years in a formal partnership, the *Victorian Aboriginal Justice Agreement (AJA)*, to reduce Aboriginal over-representation in the Victorian justice system. We understand that this is the longest running Aboriginal justice partnership in Australia, and possibly the most enduring formal partnership between Aboriginal communities and a State/Territory Government across any sector. DJCS recognises that reform to policies impacting Aboriginal people in the criminal justice system must be done in collaboration with or led by Aboriginal people, and we are grateful for the long-standing, invaluable contribution of the AJC.

A note about data in this agency response

This DJCS agency response includes information, statistics and examples that were collected by DJCS and are often not fully informed by Aboriginal people's voices and experiences. DJCS acknowledges that research and data can be influenced by the systemic racism and bias that the Yoorrook Justice Commission (**Commission**) was established to address. Further, DJCS recognises that as long as Aboriginal communities in Victoria are unable 'to control and govern the creation, collection, interpretation and analysis'¹ of their data, that their right to Indigenous Data Sovereignty is impacted.

Warning: Aboriginal people are advised that this paper contains references to Aboriginal people who have passed away.

Terminology: the term Aboriginal is used in this document to respectfully refer to Aboriginal and Torres Strait Islander people. This is in accordance with the preference of the AJC, a key Aboriginal community partner of DJCS. Other terminology, such as Koori and First Peoples, is used where it is in the name of a program, initiative or organisation.

¹ Australian Institute of Aboriginal and Torres Strait Islander Studies. 2 July 2019, Delivering Indigenous Data Sovereignty. Available at: [Delivering Indigenous Data Sovereignty | AIATSIS](#)



Introduction

1. DJCS has produced this agency response to support evidence of listed DJCS witnesses likely to give evidence before the Commission in Hearing Block 5:
 - a. Secretary, DJCS
 - b. Deputy Secretary, Courts, Civil and Criminal Law, DJCS
 - c. Deputy Secretary, Aboriginal Justice, DJCS
 - d. Deputy Secretary, Corrections and Justice Services, DJCS
 - e. Deputy Secretary, Youth Justice, DJCS (to be confirmed with the Commission)
 - f. Commissioner, Corrections Victoria, DJCS.

An overview of the background and experiences of these witnesses is included at Appendix A.

2. On 11 February 2023, the Commission, issued DJCS with a list of 71 justice system-related questions ‘to be addressed in the written outlines of evidence, to accompany State witnesses’ oral evidence.’ DJCS is committed to truth-telling and providing the Commission with fulsome and transparent evidence.
3. This agency response contains an overview of DJCS’s responses to the questions from the Commission that are relevant to DJCS. Information is summarised by theme and is intended to provide factual content. Justice Ministers as well as DJCS witnesses can provide further information in response to these specific questions through oral evidence to the Commission.

A note about the evidence of DJCS

4. As a Victorian Public Service department, the role of DJCS is to serve, and act as an instrument of, the government of the day. The department does this by implementing the policies of the government of the day, administering programs and services, and providing frank, impartial and apolitical advice to ministers and the government. The department is accountable to its ministers. Ministers are responsible to Parliament, and through Parliament to the people, for their decisions and actions, as well as those of their departments.
5. DJCS is staffed by public service employees. The obligations of public service employees are set out in the *Public Administration Act 2004* (Vic) and the Code of Conduct for Victorian Public Sector Employees.² These obligations are fundamental to allowing the public service to remain a trusted and apolitical institution. The Code of Conduct for Victorian public sector employees, establishes that public servants are not expected to answer questions seeking their personal views on government policy, seeking details of matters considered in relation to a ministerial or government decision or possible decision, or that would require a personal judgement on the policies or policy options of the Victorian or other governments.
6. DJCS witnesses can answer questions of fact relating to policy. Questions that require a position or opinion, a request for information on future planned policy directions and commitments, or Cabinet-in-Confidence information, should be addressed to Ministers. As such, this agency response is intended to supplement, and be read with, the statements / outlines of evidence as provided by the relevant Ministers.

² The Code of Conduct has legal effect under the *Public Administration Act 2004* (Vic). Obligations are not abrogated by the *Inquiries Act 2014* (Vic).

7. This agency response refers to police matters that are the responsibility of DJCS only. DJCS notes the Commission is, appropriately, engaging directly with Victoria Police on police matters that fall within its responsibilities.
8. In relation to police matters, the role of DJCS is to support the Minister for Police in relation to police policy and legislation assigned to the Minister for Police under the General Order, notably the *Victoria Police Act 2013* (Vic) which establishes the governance arrangements for and regulation of Victoria Police. This includes developing policy and legislative reform in relation to police powers and disciplinary processes, and advising and briefing the Minister in relation to police capacity and capability, equipment, infrastructure, workforce planning, service delivery and financial performance. DJCS also supports the Attorney-General in her portfolio responsibility for independent oversight of Victoria Police. DJCS works closely with Victoria Police and other government departments to understand and advise on the impacts that policy and legislative proposals may have for community safety and Victoria Police resourcing and processes.
9. DJCS does not have responsibility for operational matters relating to Victoria Police, including its organisational structure, organisational culture, deployment of resources, enforcement of the law or the investigation or prosecution of any offences.



Section 1: Over-representation of Aboriginal people in the criminal justice system and its drivers

10. In the Commission's questions to DJCS, it has asked government to identify key factors attributable to the significant growth in the rate of Aboriginal people in custody in recent years. In response, this section outlines the current state of over-representation and its key underlying drivers.
11. At the outset, it is important to acknowledge most Aboriginal people never have and never will become involved in the criminal justice system. Nevertheless, the exercise of power and control by European settlers resulted in ongoing dispossession of land, disruption of culture and kinship systems, removal of children, racism, social exclusion, institutionalisation and entrenched poverty for Aboriginal people. The systems established during colonisation often had the specific intent of excluding Aboriginal people and their laws, customs and traditions, resulting in entrenched systemic, structural racism and disadvantage.³
12. The survival and success of Aboriginal peoples, in the face of the forces of colonisation, is a testament to Aboriginal peoples' strength and resilience of culture and community. Despite the resilience and strength of Aboriginal people, many Aboriginal Victorians 'live a reality of socio-economic inequality and circumscribed life options and life experiences.'⁴ As acknowledged by the Victorian Government, systemic racism is a primary driver of the over-representation of Aboriginal people in the criminal justice system⁵. Other key drivers include inequality in educational opportunities, economic exclusion, lack of access to housing, child protection involvement, intergenerational trauma, mental health and substance misuse issues.⁶
13. The recent growth in Aboriginal peoples' contact with the criminal justice system is inextricably linked to those intergenerational and compounding effects of colonisation.⁷ Over-representation in the criminal justice system perpetuates social and economic exclusion, intergenerational trauma, and intensifies the effects of disconnection to Country and culture.

³ Department of Premier and Cabinet. 2021, *Victorian Government Aboriginal Affairs Report*, Victorian Government, p. 11.

⁴ Commission for Children and Young People (CCYP). 2020, *Our youth our way: inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, Commission for Children and Young People, p. 82. Available at: [CCYP | Our youth, our way](https://www.ccyp.vic.gov.au/our-youth-our-way)

⁵ Victorian Government. 2023. *Victorian Government Submission to the Yoorrook Justice Commission: Response to Critical Issues Paper on the Criminal Justice System*, p.11.

⁶ Victorian Government. 2021, *Whole of Victorian Government Submission to the Legal and Social Issues Committee Inquiry into Victoria's Criminal Justice System*, Victorian Government, p. 69. Available at: [https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry into Victorias Justice System /Submissions/093. Victorian Government Redacted.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry%20into%20Victorias%20Justice%20System/Submissions/093_Victorian_Government_Redacted.pdf).

⁷ See Department of Premier and Cabinet, 2018, *The Victorian Aboriginal Affairs Framework 2018–2023*, <https://www.firstpeoplesrelations.vic.gov.au/sites/default/files/2019-09/VAAF%20FINAL.pdf>, the Victorian Aboriginal Affairs Framework 2018–2023 explicitly recognises that the contemporary social and economic circumstances of Aboriginal people are inextricably linked to ongoing and previous generations' experiences of European colonisation.

14. DJCS recognises that the complex suite of laws, policies, and the services it oversees can have a disproportionate impact on criminal justice outcomes for Aboriginal people. DJCS also accepts that it has an important role to play in addressing systemic racism and unconscious bias. The Victorian Government has acknowledged that threads of colonial racism – although reprehensible – persists to this day, existing consciously and unconsciously in individuals, services, laws and policies. This is apparent primarily through First Peoples' accounts of ongoing experiences of direct, indirect and systemic racism, and secondary to that, through data that continues to show profound inequality in outcomes⁸. The data demonstrates that bail and sentencing specifically have had a disproportionate impact on Aboriginal people. These issues are discussed in detail in Section 7.
15. DJCS also acknowledges the breadth of harms that the criminal justice system can inflict on Aboriginal people, not only adversely affecting individuals, but significantly impacting their families and the communities to which they belong.

Over-representation for Aboriginal adults and its impacts

16. Despite significant efforts, the evidence presented in this agency response makes it clear that Victoria's criminal justice system as it currently operates does not adequately address these complex and enduring issues that contribute to over-representation. While this section uses statistics to outline the serious issue of over-representation, DJCS recognises that these numbers cannot speak to the diverse lived experiences of how Aboriginal people in the criminal justice system are impacted.
17. In Victoria, the rate of imprisonment is such that Aboriginal men are 15 times more likely than non-Aboriginal men to be in prison and Aboriginal women 22 times more likely to be in prison than non-Aboriginal women.⁹

Figure 1: Number and proportion of adult Aboriginal prisoners, 30 June 2013 to 30 June 2022

⁸ Victorian Government. 2023. *Victorian Government Submission to the Yoorrook Justice Commission: Response to Critical Issues Paper on the Criminal Justice System*, p.12.

⁹ Department of Premier and Cabinet. 2021, 'Table 15.2.2b.' and 'Table 15.3.2b.' in 2021 *VGAAR Data Tables, Domain 5, Justice and Safety*, Victorian Government. Available at: https://www.firstpeoplesrelations.vic.gov.au/sites/default/files/2022-09/2021-VGAAR-Data-Tables-Domain-5-Justice-%26-Safety_0.xlsx.

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18. Between 30 June 2013 and 30 June 2019, the number of Aboriginal people in prison increased by 98 per cent compared with a 45 per cent increase in the non-Aboriginal prisoner population over the same period. While the total number of Aboriginal people in prison decreased during the COVID-19 pandemic (from 843 in 2019 to 695 in 2022), the numbers of Aboriginal people in prison decreased to a lesser extent than non-Aboriginal prisoners. As at 28 February 2023, 825 Aboriginal people were in prison representing 12.5 per cent of the adult prison population. The number of Aboriginal people in prison reached a record high of 904 on 14 March 2020.

Over-representation of Aboriginal adults on remand

19. The proportion of unsentenced Aboriginal people in prison has also increased significantly over the past ten years, from 21 per cent to 49 per cent between 30 June 2013–30 June 2022. Again, this trend has also been evident in the non-Aboriginal prison population, but to a lesser extent (increasing from 18 per cent to 41 per cent over the same period). As noted below under Section 7, the number of Aboriginal people entering prison unsentenced has increased significantly over the past decade.

20. High numbers of people on short stay remand increases the turnover of people in and out of the system:

- a. In the year ending June 2022, 1,247 people were received into prison under sentence compared to 9,136 (88 per cent) received unsentenced (ie, on remand). In the same year, 5,586 people were discharged from prison having spent no time under sentence, representing 51 per cent of discharges.
- b. In the year ending June 2022, 150 Aboriginal people were received into prison under sentence compared with 1,190 (89 per cent) received unsentenced (ie, on remand). In the same year, 735 Aboriginal people were discharged from prison having spent no time under sentence, representing 52 per cent of all discharges of Aboriginal people.

21. DJCS acknowledges that periods of remand can have significant adverse impacts on the lives of Aboriginal people including family, financial and housing instability, and disconnection to Country, community and culture.



22. Further, high turnover can create instability within custodial environments. People on remand can tend to exhibit more volatile behaviour than people serving longer sentences, as they adjust to the prison environment and the outcome of their charges may be unknown for some time. They have less incentive to engage with rehabilitation efforts, including programs and support services. These factors can impede the rehabilitation of people serving longer sentences.
23. As people on remand have not been convicted of an offence, they cannot access many of the rehabilitation programs and services (offence specific programs require an acceptance of responsibility for offending). Most programs do not require an admission of guilt, however, the short period of time spent in custody—and the uncertain duration of the imprisonment episode—can act as a barrier to participation (as it is not possible to complete relevant assessments and registrations in such a short space of time).

Over-representation of Aboriginal adults reoffending

24. The vast majority of Aboriginal people in Victorian prisons are people who have spent time in prison previously. Over the past five years, there have been year-on-year increases in the number of Aboriginal people in prison who have previously spent time in prison (from 78 per cent on 30 June 2018 to 82 per cent on 30 June 2022).¹⁰
25. Early contact with the justice system, particularly among children and young people in out-of-home care, is also a predictor of more frequent contact and entrenchment in the justice system over a person's life.¹¹
26. Reoffending contributes significantly to the rates of Aboriginal over-representation. The recidivism rate for Aboriginal people is significantly higher than for non-Aboriginal people. The 2021–2022 Report on Government Services data shows that, of those who left prison after serving a sentence in 2019–20, 35.7% of non-Aboriginal people had returned to prison with a new sentence within two years—for Aboriginal people this rate was 45.5%. Further, on 30 June 2022, 72 per cent of Aboriginal people in prison had been in prison before, compared to 53 per cent for the overall prison population. DJCS is conscious that Aboriginal people need adequate and culturally safe support while in prison, and upon release, to mitigate their risk of reoffending, and that this support is not always provided to the degree it is needed.

Over-representation of Aboriginal adults under supervision in the community

27. Aboriginal people are over-represented among adults under the supervision of Community Correctional Services (CCS), otherwise known as community supervision.¹² On 28 February

¹⁰ Evidence and Insights business unit. 2023, *Corrections Victoria prisons data* [unpublished data set], Victorian Department of Justice and Community Safety.

¹¹ In 2021, 22 per cent of males in prison had previously been in youth justice custody, as had 16 per cent of women in prison: Evidence and Insights business unit. 2023, *Corrections Victoria prisons data* [unpublished data set], Victorian Department of Justice and Community Safety. Only includes individuals born in 1990 or later for whom a full Youth Justice historical data set is available. Statistic includes everyone who was in prison between 1 Jan–31 Dec, 2021.

¹² Community supervision involves the management and supervision of people in the community who have committed offences. People under community supervision are serving court-imposed orders either as an alternative to imprisonment or as a condition of their release on parole from prison. This means they report regularly to their community corrections officer and may have to participate in unpaid community work and rehabilitation programs.

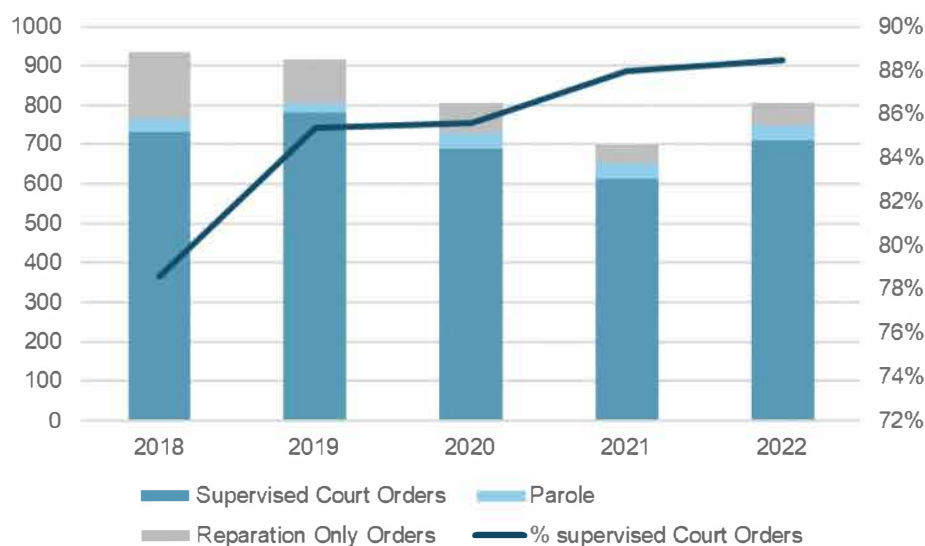
2023¹³ there were 849 Aboriginal people under CCS supervision, representing a 10 per cent increase (or 77 more people) since the same time last year. This included:

- a. 34 Aboriginal people on parole
- b. 736 Aboriginal people on supervised court orders (including a Community Correction Order (CCO))
- c. 79 Aboriginal people on reparation only orders (including CCOs with community work as the only condition, and fine orders).

28. Aboriginal people comprised 8.0 per cent of people managed under CSS supervision on this date, compared with 6.8 per cent of non-Aboriginal people at 30 June 2018.

29. The number of Aboriginal people under CCS supervision decreased from 933 in June 2018 to 697 in June 2021, due largely to disruptions attributable to the COVID-19 pandemic. However, numbers have recently begun to increase in line with the overall population.

Figure 2: Aboriginal people managed by Community Correctional Services, June 2018 to June 2022



30. The rate at which Aboriginal people successfully complete their supervised court order has remained consistently lower than the successful completion rate for non-Aboriginal people. Many factors influence a person's success on a CCO. In addition to systemic racism acknowledged in Section 1, the common underlying causes of offending behaviour, such as socio-economic disadvantage, alcohol and drug use and mental health issues, disproportionately affect Aboriginal people in our community.¹⁴ This is further complicated by a lack of connection to culture and community for some Aboriginal people which may reduce their exposure to

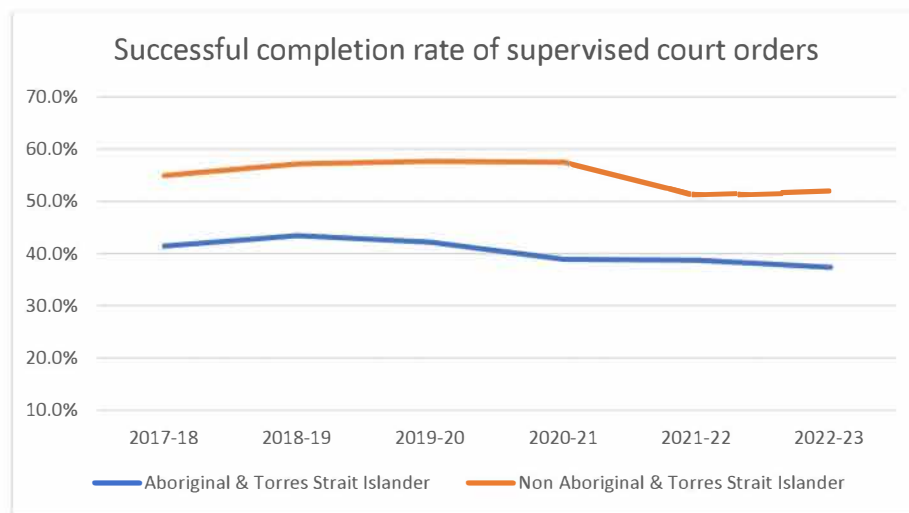
¹³ Data for 30 June 2022 was unavailable.

¹⁴ Australian Government. 2020, *National Agreement on Closing the Gap*. Available at: <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap>; and Australian Institute of Health and Welfare. 2022. *Determinants of health for Indigenous Australians*. Available at: <https://www.aihw.gov.au/reports/australias-health/social-determinants-and-indigenous-health>.

positive connections and behaviours. These combined factors may lead to increased rates of recidivism and decreased rates of successful sentence completions.

31. Statistically, people who have previously been subject to an order or a period of custody are less successful than people completing their first order. As at 30 June 2022, 55 per cent of Aboriginal people under CCS supervision have had at least one prior supervised order, compared with 42 per cent of people under CCS supervision overall. Also, 71 per cent of Aboriginal people under CCS supervision had been in prison before (sentenced or remand) compared with 60 per cent under CCS supervision overall.
32. The below graph shows the percentage of Aboriginal people that successfully completed their supervised court order in comparison to the percentage of non-Aboriginal people.

Figure 3: Comparison of the successful order completion rate for Aboriginal people vs non-Aboriginal people



33. In 2021–2022, the overall rate of successful order completion (inclusive of all three community order types, as outlined above) was 40 per cent for Aboriginal people, compared to 54 per cent for non-Aboriginal people, including:
- 38 per cent of supervised court orders are successfully completed by Aboriginal people, compared to 51 per cent for non-Aboriginal people
 - 75 per cent of parole orders are successfully completed for Aboriginal people, compared to 82 per cent for non-Aboriginal people
 - 35 per cent of reparation (community work only) orders are successfully completed for Aboriginal people, compared to 51 per cent for non-Aboriginal people.
34. The persistence of these lower order completion rates suggests that community-based supports for Aboriginal people are too often ineffective at supporting them to find a path away from further contact with the justice system.

Over-representation in the youth justice system and its impacts

35. In the youth justice system, Aboriginal children and young people remain disproportionately over-represented, compared to their non-Aboriginal peers. In 2021–2022, Aboriginal children



- and young people aged under 17 were eight times more likely to be in youth justice custody than their non-Aboriginal peers.¹⁵
36. Detention disrupts prosocial connections with culture, family, school and community. DJCS recognises sustaining strong connections to family, community, culture and Country, and traditional knowledge systems, are the foundations needed for Aboriginal children and young people to thrive. Children who commit offences should be treated in a way that upholds these rights.¹⁶
37. In 2020–2021, almost 70 per cent of Aboriginal children and young people in detention were on remand.¹⁷ Time on remand is often not productive because children and young people on remand cannot access many of the rehabilitation programs and services designed for people under sentence, as most programs require an acceptance of responsibility for offending. However, even for programs that do not require an admission of guilt, it is not always possible to complete the relevant assessments and registrations in the short period of time spent in custody on remand, and the uncertain duration of imprisonment can act as a barrier to participation. Further, time on remand disrupts supports and services, including education, that a child or young person was accessing in the community.
38. The ongoing over-representation of Aboriginal children and young people, like for Aboriginal adults, is a product of serious systemic injustice. Addressing this issue is a critical focus for Youth Justice, and system data shows that there has been some progress made in recent years. In Victoria, the average daily number of Aboriginal people aged 10–17 under Youth Justice supervision (both in custody and the community) reduced from 132 in 2016–2017¹⁸ to 59 in the second half of 2021.¹⁹ This reduction can in part be attributed to the implementation of early intervention and diversion strategies delivered in partnership with Aboriginal organisations and community.²⁰

¹⁵ Productivity Commission. 2023, '17. Youth Justice Services Tables' in *Report on Government Services*, Australian Government. Available at: <https://www.pc.gov.au/ongoing/report-on-government-services/2023/community-services/youth-justice/rogs-2023-partf-section17-youth-justice-data-tables.xlsx>.

¹⁶ Department of Justice and Community Safety. 2020, *Youth Justice Strategic Plan 2020-2030*, Victorian Government, p. 22. Available at: <https://www.justice.vic.gov.au/youth-justice-strategy>.

¹⁷ Department of Premier and Cabinet. 2021, 'Measure 15.1.4' in *Victorian Government Aboriginal Affairs Report*, 2021. Available at: <https://www.firstpeoplesrelations.vic.gov.au/victorian-government-aboriginal-affairs-report-2021/justice-and-safety>.

¹⁸ Aboriginal Justice. 2018, 'How we will know if we are on track', in *Burra Lotjpa Dunguludja – The Aboriginal Justice Agreement Phase 4*, Victorian Government. Available at: <https://www.aboriginaljustice.vic.gov.au/the-agreement/burra-lotjpa-dunguludja-the-aboriginal-justice-agreement-phase-4/how-we-will-know-if>. 'There were 132 Aboriginal children under Youth Justice supervision (in detention and on community based orders) on an average day in 2016-17 (a rate of 14.8 per 1,000 Aboriginal children).'

¹⁹ Department of Premier and Cabinet. 2021, 'Goal 15 Reporting' in *Victorian Government Aboriginal Affairs Report*, 2021, Victorian Government. Available at: <https://www.firstpeoplesrelations.vic.gov.au/victorian-government-aboriginal-affairs-report-2021/justice-and-safety>.

²⁰ Ibid. 'After the successful trial of the Aboriginal Youth Caution Program, and continued advocacy from the Aboriginal Justice Caucus, the Chief Commissioner announced in August 2021 changes to Victoria Police cautioning policy that gives police greater opportunity to issue cautions to young people wherever appropriate.'



39. This reduction means that Youth Justice has achieved the *Burra Lotjpa Dunguludja* AJA Phase 4 (AJA4)²¹ milestone to reduce the number of Aboriginal young people under Youth Justice supervision on an average day from 132 in 2016–2017 to 89 by 2023. Victoria is also on track to meet Closing the Gap Target 11, which aims to: ‘By 2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10–17) in detention by at least 30%.’

²¹ *Burra Lotjpa Dunguludja* means ‘Senior Leaders Talking Strong’ in Yorta Yorta language. Aboriginal Justice. 2018, *Burra Lotjpa Dunguludja: Victorian Aboriginal Justice Agreement Phase 4*, Victorian Government. Available at: [The Aboriginal Justice Agreement Phase 4 | Aboriginal Justice](#)



Section 2: DJCS strategies to address over-representation

40. The 1991 Royal Commission into Aboriginal Deaths in Custody (**RCIADIC**) was a watershed moment in Australia's reckoning with Aboriginal people's over-representation in the criminal justice system. It found that the fundamental causes of over-representation of Aboriginal people in custody were not located within the criminal justice system. Instead, RCIADIC found 'the most significant contributing factor is the disadvantaged and unequal position in which Aboriginal people find themselves in society—socially, economically and culturally'.²²
41. RCIADIC simultaneously acknowledged the criminal justice system itself as a cause of over-representation and noted that the issues within the criminal justice system are "in some ways the most immediate and in many ways the least difficult" to address.²³
42. DJCS recognises it has a crucial role to play in improving Aboriginal justice outcomes. The strategies detailed in this section—which cover both the adult and youth justice systems—outline DJCS's current approach to addressing over-representation and seeking improved justice outcomes for Aboriginal Victorians.
43. DJCS acknowledges that Aboriginal peoples' self-determination is the key guiding principle in developing solutions. This approach has matured through longstanding partnerships with Aboriginal stakeholders, however DJCS recognises greater change is needed to achieve self-determination that meets the expectations of Aboriginal Victorians, break the cycle of offending, and enable stronger connections to culture, Country and community. DJCS will continue to refine and improve the approach in partnership with Aboriginal communities and through the Government's response to the recommendations of the Commission.
44. DJCS also recognises that actions taken within the criminal justice system to improve outcomes typically involve tertiary-level prevention measures and occur after offending or alleged offending has occurred. Whole-of-government and community-led responses are necessary to address the underlying drivers of over-representation, and to intervene prior to entry into the criminal justice system.
45. The Victorian Aboriginal Affairs Framework (**VAAF**) 2018–2023 is a whole-of-government and community-led framework that seeks to address broader issues and inequities experienced by Aboriginal people. The VAAF is underpinned by a number of strategies developed in partnership with the Aboriginal community to improve outcomes across child protection, education, health, and economic development. Goal 15 of the VAAF is to eliminate Aboriginal over-representation in the justice system, giving rise to objectives and measures that directly contribute to implementation of the RCIADIC recommendations.

²² Royal Commission into Aboriginal Deaths in Custody (RCIADIC). 1991, '1.7 Reducing the number of Aboriginal people in custody the fundamental question – Empowerment and Self-Determination', *National Report Volume 1*, Austlii Indigenous Law Resources. Available at: <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/other/cth/AURoyalC/1991/1.html>.

²³ Royal Commission into Aboriginal Deaths in Custody (RCIADIC). 1991, '1.6.1 The Criminal Justice System', *National Report Volume 1*, Austlii Indigenous Law Resources, <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/other/cth/AURoyalC/1991/1.html>.



Aboriginal Justice Agreement

46. The AJA, which was developed in direct response to the RCIADIC, is Victoria's key mechanism for reducing Aboriginal over-representation and improving Aboriginal justice outcomes. The AJA is a long-term (23 years and ongoing) formal partnership between the Aboriginal community and the Victorian Government. The signatories of the Agreement are committed to working together 'to improve Aboriginal justice outcomes, family and community safety, and reduce over-representation in the Victorian criminal justice system'. The signatories to the agreement include members of the AJC, the Attorney-General, Minister for Police, Minister for Corrections, Minister for Families and Children, and Minister for Aboriginal Affairs.²⁴ The evaluation of AJA3 in 2018 found the partnership has reached a level of maturation not replicated elsewhere.²⁵
47. Each subsequent phase of the AJA has built upon its predecessors (AJA1 2000–2005, AJA2 2006–2012, and AJA3 2013–2018) in continuing efforts to improve justice programs and services for Aboriginal people.²⁶
48. The *Burra Lotjpa Dunguludja* AJA4 (2018–present) vision is that: 'Aboriginal people have access to an equitable justice system that is shaped by self-determination, and protects and upholds their human, civil, legal and cultural rights.'²⁷ This vision is accompanied by a set of long-term Aboriginal aspirations for:
- a. culturally strong and safe families and communities
 - b. fewer Aboriginal people in the criminal justice system
 - c. an Aboriginal community controlled justice sector
 - d. self-determination in the justice sector.
49. The four domains above set the foundation for goals, outcomes and actions under AJA4, all included in the AJA4 Outcomes Framework. AJA4 recognises that too often, government focuses on outputs, being the number of activities, products or services being provided. Monitoring and reporting on outputs or activity alone does not track effectiveness and whether necessary changes occur as intended. As such, monitoring and evaluation under AJA4 is outcomes focussed.
50. The Aboriginal Justice Forum (**AJF**) is the state-wide partnership forum that oversees the development, implementation, monitoring and direction of the AJA. Established in 2000, the AJF regularly brings together leaders in the Aboriginal community with senior representatives of government departments—and, in recent years, has often been attended by Ministers with portfolio responsibilities relevant to the AJF agenda. The AJF provides strategic oversight of AJA, drives implementation, collaborative action and galvanises a high-level commitment to achieving the reduction of Aboriginal over-representation in the Justice system.²⁸

²⁴ Titles are listed as of the date of signature of the agreement, note that some ministerial portfolios have changed title since that time.

²⁵ Clear Horizon Consulting, 2018, *Evaluation of the partnership arrangements of the Aboriginal Justice Agreement Phase 3* prepared for Department of Justice and Regulation, Victorian State Government.

²⁶ Aboriginal Justice. 2018, *Burra Lotjpa Dunguludja: Victorian Aboriginal Justice Agreement Phase 4*, Victorian Government. Available at: [The Aboriginal Justice Agreement Phase 4 | Aboriginal Justice](#)

²⁷ Ibid, p.3.

²⁸ Terms of Reference, Aboriginal Justice Forum.



51. The development of AJA4 (and preceding AJAs) was conducted with the partnership approach that is the central premise of all AJAs and underpins all AJA activities. This included the development of AJA4 being guided by AJF, supported by a Steering Committee with senior membership from AJC and government, and informed by extensive consultations with Aboriginal community and government representatives—drawing on evidence and insights held by both partners, and including valuing Aboriginal lived experience as a robust and important input.
52. The AJA4 also evolved the AJA partnership architecture and governance mechanisms that are designed to ensure active Aboriginal involvement in the design, delivery, and monitoring of all AJA activities. These governance mechanisms include:
 - a. the AJF
 - b. six Collaborative Working Groups that focus on key AJA initiatives and other priority matters emerging from AJF's (including rehabilitation and reintegration, youth diversion, policy and legislative change, places, and women, families and victims)
 - c. nine Regional Aboriginal Justice Advisory Committees (**RAJACs**) that operationalise the partnership at a regional level (including through regionalised implementation plans)
 - d. twelve Local Aboriginal Justice Advisory Committees (**LAJACs**) that operationalise the partnership at a local level (including identifying and resolving issues at a local level).
53. The AJA governance mechanisms seek to reach consensus on the provision of advice across several dimensions including, policy, funding, oversight, service delivery and evaluation. The span of structures also provides channels for escalation of issues, including if Aboriginal community partners feel the advice they have provided has not been sufficiently considered or acted on. These partnership governance mechanisms are utilised beyond AJA initiatives and provide avenues for partnership on key matters that impact Aboriginal people across the DJCS portfolio. The AJF, and suite of other partnership structures, provide important accountability mechanisms and points of transparency for progress on delivering the outcomes in AJA4.
54. AJA4 is discussed in detail as part of Section 6 and, given its importance across the justice system, is referenced in several other sections of this response.

Wirkara Kulpa (Aboriginal Youth Justice Strategy 2022-2032)

55. Under the AJA, the AJC led the development of the first Aboriginal Youth Justice Strategy in Victoria, *Wirkara Kulpa*.²⁹ Wirkara Kulpa aims to address over-representation by diverting children and young people away from the youth justice system.
56. Aboriginal leadership and engagement is the foundational principle that shaped the development of Wirkara Kulpa. It has been developed with the wellbeing of Aboriginal children and young people at its heart, capturing the aspirations of the AJC and Aboriginal children and young people. Wirkara Kulpa's vision is that no Aboriginal child or young person is in the youth justice system, because they are strong in their culture, connected to families and communities, and living healthy, safe, resilient, thriving and culturally rich lives.³⁰
57. Wirkara Kulpa has five key domains, which include:

²⁹ *Wirkara Kulpa* means 'Alongside, next to talking/speaking' in Barkindji/Paakantyi language. Strategy is available at [Wirkara Kulpa AYJS.pdf \(aboriginaljustice.vic.gov.au\)](#).

³⁰ *Wirkara Kulpa* (Aboriginal Youth Justice Strategy 2022-2032), p. 26. Available at [Wirkara Kulpa AYJS.pdf \(aboriginaljustice.vic.gov.au\)](#).



- a. empowering Aboriginal young people and families to uphold change
 - b. protecting cultural rights and increasing connection to family, community and culture
 - c. diverting young people and addressing over-representation
 - d. working towards Aboriginal-led justice responses
 - e. a fair and equitable system for Aboriginal children and young people.
58. Those domains have goals, outcomes and associated actions that reflect the Aboriginal community's vision for how to achieve greater self-determination and improved outcomes for Aboriginal children in the youth justice system.
59. Wirrara Kulpa was developed concurrently with the Koori Youth Justice Taskforce, and the Commission for Children and Young People's (CCYP) subsequent systemic inquiry. Upon completion of its inquiry on 9 June 2021, CCYP tabled in Parliament the *Our youth, our way* report (OYOW) into the experiences of Aboriginal children and young people in Victoria's youth justice system. Wirrara Kulpa is the primary vehicle for responding to OYOW's recommendations.

Justice Policy Partnership

60. The Justice Policy Partnership, established in 2021, is a national partnership between all levels of government, the Coalition of Peaks from ACCOs from across Australia³¹ and Aboriginal people. The partnership aims to provide a joint approach to addressing over-representation of Aboriginal people in custody and the continuing deaths of Aboriginal people in custody. The partnership works collaboratively to develop justice policy actions to achieve Outcomes 10 and 11 of the National Agreement on Closing the Gap.³² The Partnership is co-chaired by the National Aboriginal and Torres Strait Islander Legal Services and the Commonwealth Attorney General's Department. The Victorian Government is a party to the partnership and as part of the Victorian Closing the Gap Implementation Plan has committed to fast-tracking work on the Justice Policy Partnership.³³

Crime Prevention Strategy

61. The Victorian Government launched the Crime Prevention Strategy in June 2021. Under this strategy, the government committed to working across businesses, organisations and the community³⁴ to ensure fewer Victorians come into contact with the criminal justice system.³⁵ The strategy prioritises community-led solutions that leverage local expertise to address

³¹ For a full membership of the Coalition of Peaks see: <https://coalitionofpeaks.org.au/our-members/>

³² Australian Government. 2020, 'Outcome 10' and 'Outcome 11' in *National Closing the Gap Agreement*, Australian Government. Available at: <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap>.

³³ Department of Premier and Cabinet. 2021, *Victorian Closing the Gap Implementation Plan 2020-2023*, Victorian Government. Available at: [The Victorian Closing the Gap Implementation Plan | First Peoples - State Relations \(firstpeoplesrelations.vic.gov.au\)](https://www.vic.gov.au/the-victorian-closing-the-gap-implementation-plan-first-peoples-state-relations)

³⁴ Key partners in the delivery of the strategy include: community and multicultural organisations: Crime Stoppers Victoria, local councils, Universities, Neighbourhood Watch Victoria, sporting organisations, Victoria Police and government departments: Community Crime Prevention Program. 2021, *Crime Prevention Strategy*, Department of Justice and Community Safety, p. 7. Available at: <https://www.crimeprevention.vic.gov.au/the-strategy/crime-prevention-strategy-pdf>.

³⁵ Community Crime Prevention Program. 2021, *Crime Prevention Strategy*, Department of Justice and Community Safety. Available at: [Crime Prevention Strategy \(pdf\) | Community Crime Prevention Victoria](https://www.vic.gov.au/crime-prevention-strategy)

underlying causes of crime.³⁶ Key partners under the strategy are community and multicultural organisations, Crime Stoppers Victoria, local councils, universities, Neighbourhood Watch Victoria, sporting organisations, Victoria Police and government departments. Under the strategy, partners will work together with the Victorian Government to develop and deliver targeted, local, early intervention solutions which address the underlying causes of offending.³⁷

The Youth Justice Strategic Plan 2020-2030

62. The *Youth Justice Strategic Plan 2020-2030* (YJ Strategic Plan) priorities include reducing Aboriginal over-representation in the youth justice system, introducing age-appropriate responses for 10 to 14 years olds to prevent entry, or further progression into, the youth justice system, and supporting implementation of *Wirkara Kulpa*.³⁸ Key objectives of the YJ Strategic Plan include:

- a. improving diversion and early intervention strategies for Aboriginal young people
- b. strengthening partnerships with children and young people, families and all services and professionals who support their rehabilitation and positive development
- c. reducing reoffending and promoting community safety by supporting children and young people to turn their lives around
- d. investing in a skilled, safe and stable youth justice system
- e. supporting effective whole-of-government and community efforts to intervene early with young people who experience disadvantage and are at risk of offending, and to minimise their contact with the justice system.³⁹

³⁶ Ibid.

³⁷ Community Crime Prevention Program. 2021, *Crime Prevention Strategy*, Department of Justice and Community Safety. Available at: [Crime Prevention Strategy \(pdf\)](#) | [Community Crime Prevention Victoria](#)

³⁸ Department of Justice and Community Safety. 2020, *Youth Justice Strategic Plan 2020-2030*, Victorian Government, p. 24. Available at: <https://www.justice.vic.gov.au/youth-justice-strategy>.

³⁹ Victorian Government. 2022, *Government response to the 'Our Youth, Our Way' inquiry*, Victorian Government. Available at: [CCYP](#) | [Our youth, our way](#)

Section 3: Initiatives in the adult system to reduce over-representation

63. While DJCS has taken action to seek to address Aboriginal over-representation, including the establishment of cultural programs and supports, there is much more to be done to:
- strengthen and promote cultural rights throughout the justice system
 - improve and expand the delivery of culturally responsive services
 - ensure that custodial environments are less harmful and culturally safer for Aboriginal people.
64. DJCS funds and oversees a number of programs and initiatives to achieve these aims and reduce Aboriginal people's over-representation in the adult and youth justice systems. These supports span from community-based diversionary programs (which work with Aboriginal children and adults at risk of first contact with the system) to supports at key points of engagement with the justice system.
65. There is a large body of evidence to demonstrate that cautioning and diversion leads to better outcomes than laying criminal charges.⁴⁰ Police cautioning rates for Aboriginal people have historically been less than those for non-Aboriginal people. The gap between Aboriginal and non-Aboriginal cautioning rates appeared to lessen in the 12 months ending September 2022, as shown in the figure.

Figure 4: Proportion of Victoria Police recorded Aboriginal and non-Aboriginal alleged offender incidents that received a caution/warning, October 2012 to September 2022⁴¹



⁴⁰ See for example, Shirley, K. 2017, 'The Cautious Approach: police cautions and the impact on youth reoffending', in *Brief 9*, Crime Statistics Agency. Available at: <https://www.crimestatistics.vic.gov.au/research-and-evaluation/publications/youth-crime/the-cautious-approach-police-cautions-and-the>.

⁴¹ Crime Statistics Agency data release, year ending September 2022.



66. The following two sections outline the programs and initiatives, overseen or delivered by DJCS, to reduce Aboriginal people's over-representation in the adult (Section 3) and youth justice system (Section 4). DJCS expresses its thanks to the AJC, Aboriginal Community Controlled Organisations (ACCOs) and other Aboriginal stakeholders who have been involved in, and have often played the leading role in, the design, implementation, delivery and/or improvement of the Aboriginal-specific initiatives listed in this section.
67. DJCS notes the critical role played by Victoria Police in diverting Aboriginal children and adults away from the justice system (through decision-making related to the issuing of cautions and consenting to court-ordered diversion). As these are operational policing matters, DJCS respectfully leaves these matters for Victoria Police to address with the Commission.

Diversion initiatives delivered in the community

68. In partnership with Aboriginal community organisations, DJCS oversees a variety of community-based programs intended to divert Aboriginal people away from the justice system and reduce over-representation (described in the table below).

Initiative	Description
Koori Women's Diversion program (KWDP)	<p>The KWDP aims to divert Aboriginal women from initial and deepening contact with the criminal justice system through an intensive and holistic case management approach. The program facilitates referral pathways to address the drivers of offending behaviour and support women to navigate the justice and broader service systems, including access to housing, material aid, mental health services, drug and alcohol support services, education, and employment, providing a 'wrap around' service.</p> <p>The KWDP commenced in 2013 as a residential program at Odyssey House Victoria. It has since expanded to include non-residential intensive case management support for Aboriginal women by Mallee District Aboriginal Services in Mildura and the Victorian Aboriginal Child Care Agency (VACCA) in Morwell, as well as a site in the Northern Metropolitan region delivered by VACCA.</p> <p>An independent evaluation of the Local Justice Worker program and KWDP is underway to identify how to enhance these programs and determine their effectiveness in improving long-term justice outcomes for clients. The final report is due to be finalised in the coming months and will be tested with the AJC before further circulation. DJCS will work with funded organisations to implement the recommendations in 2023–24.</p>
Koori Court and Koori Court expansion	<p>Koori Court, an AJA initiative, is accessible to Aboriginal offenders who plead guilty. While a Magistrate or Judge presides over cases, Aboriginal Elders or Respected Persons are present to advise on cultural issues relating to the accused person and to provide background information for possible reasons for their offending. Elders or Respected Persons have an active role in the sentencing conversation, and while the Judge or Magistrate is the ultimate decision-maker, Elders or Respected Persons address the accused person about the ramifications of their behaviour.</p> <p>The first Koori Court was opened in the Shepparton's Magistrates' Court in 2002 in response to the findings and recommendations of the RCIADIC. The success of the Koori Court in Shepparton has seen it expanded to 15 locations across Victoria.</p> <p>In 2005, the Children's Koori Court was established to reduce the number of Aboriginal children and young people being sentenced to a period of detention. The Children's Koori Court currently operates in 12 locations. In 2008, the Victorian Government expanded the Koori Court model to establish the County</p>

	<p>Koori Court following the success of the Koori Court model in Magistrates' and Children's Courts. County Koori Courts now operate in six locations across Victoria.</p> <p>An independent evaluation of the Magistrates' Koori Court in 2005 found that offenders had an emotional response to Elders and that 'shaming' often acted as a deterrent to reoffending. Similarly, a 2011 evaluation of the County Koori Court found that it had resulted in reduced rates of reoffending and improved awareness of justice processes within Aboriginal communities.</p>
Dardi Munwurro's Ngarra Jarranounith program	<p>Dardi Munwurro is a specialist Aboriginal healing and family violence prevention service delivering programs across Victoria. Reflective of AJA4 Goal 3.2: 'A strong and effective Aboriginal community-controlled justice sector,' Dardi Munwurro is funded to deliver programs in a culturally safe setting.⁴² These programs adopt a holistic, culture-centred approach to healing and aim to support Aboriginal boys and men to reduce contact with the criminal justice system, and thereby reduce over-representation.</p> <p>The Ngarra Jarranounith program provides a 16-week intensive residential program to support at-risk men to adopt positive behaviours and strengthen culture. The program is available to men on Family Violence Intervention Orders, men charged with family violence offences in the previous 12 months, court-ordered referrals and self-referrals from Dardi Munwurro's prison program.⁴³</p> <p>In 2021, Deloitte recently undertook a cost-benefit analysis of Dardi Munwurro's men's healing program and found that its programs help to address the drivers of contact with the criminal justice system including poor mental health and trauma.⁴⁴</p>
Aboriginal Community Justice Panels (ACJP)	<p>ACJP volunteers check on Aboriginal people in police custody to assess their wellbeing, identify their immediate needs and report any acute health and wellbeing needs to the custody officers. ACJPs also play a critical early intervention role when a person is released from custody into their care. Volunteers also undertake community call-outs as a preventative measure to reduce risk of contact with the justice system. As a place-based program, the ACJP is also a critical safety-net to the mandated Custodial Notification Scheme operated by the Victorian Aboriginal Legal Service (VALS), which provides 24/7 legal advice and assistance to Aboriginal people in custody.</p> <p>The Victorian Government has budgeted \$2.4 million over four years (2020–21 to 2023–24) to:</p> <ul style="list-style-type: none"> • support operational costs across 14 locations • implement additional sites to deliver welfare in custody services across 18 volunteer locations by 2023–2024. <p>ACJP has also been allocated \$2.6 million by the Department of Health (DH) to deliver services at the four Public Intoxication Reform trial sites in City of Yarra, Dandenong, Castlemaine, and Shepparton while the commissioning for the state-wide health-based service response for public intoxication is underway as led by DH. This is discussed further in Section 6.</p>

⁴² Deloitte. 2021, *Strengthening Spirit and Culture: A cost-benefit analysis of Dardi Munwurro's men's healing programs*, Healing Foundation, p. 1. Available at: <https://www.dardimunwurro.com.au/wp-content/uploads/2021/11/HF-Strengthening-Spirit-and-Culture-Dardi-Munwurro-Report-Oct2021-V5.pdf>.

⁴³ Ibid.

⁴⁴ Ibid, p. 16.



Bail-related initiatives

69. Changes to bail laws have had a disproportionate impact on Aboriginal people. As evidenced in Section 1, while the proportion of unsentenced people has increased for the non-Aboriginal prison population over the last 10 years, it has increased more significantly for the Aboriginal prison population. The impact of previous bail reform, and its impact on rising remand numbers is discussed in Section 7.
70. DJCS is responsible for cultural awareness training for bail justices, who make decisions about bail.⁴⁵ All bail justices undertook mandatory Koori Cultural Awareness Training between May and September 2018 following recommendations made by Justice Coghlan in his 2017 advice to government. From 2022–2023, additional mandatory Aboriginal Cultural Awareness Training is being provided to all bail justices.
71. The 2022–2023 Aboriginal Cultural Awareness Training program seeks to reflect the importance of Aboriginal people’s cultural considerations in bail/remand and Interim Accommodation Order hearings. The program includes consideration of cultural bias, reflects on Aboriginal history, and provides an overview of legislative principles and scenarios to guide decision-making processes.
72. As of 23 February 2023, 62 bail justices (out of a total of 75) have completed the Aboriginal Cultural Awareness training, with further training to be provided to the remaining bail justices by the end of the financial year. Funding received in the 2021–2022 State Budget is supporting a comprehensive review of current training materials and the development of new training.
73. DJCS is working, in partnership with the Aboriginal community through the AJA, to deliver culturally appropriate programs and initiatives to support Aboriginal people on bail to reduce the likelihood of re-offending or breaching their bail conditions, by addressing their immediate and longer-term needs.
74. Targeted initiatives not already discussed above include:

Initiative	Description
Koori Women’s Place	Delivered by Djirra, Koori Women’s Place provides culturally appropriate legal and holistic support, early intervention programs and other post-release services to Aboriginal women on bail.
Family Centred Approaches	Family Centred Approaches focus on holistic case management to work with Aboriginal families with complex needs who are in contact with multiple service systems, including criminal justice.
Baggarrook residential facility	Delivered by VALS, the Baggarrook program provides culturally appropriate wrap-around support for Aboriginal women released from prison, on bail or parole.
Local Justice Worker program	The Local Justice Worker Program supports Aboriginal people to meet the conditions of their orders, by sourcing supervised community work opportunities and linking participants into relevant programs and services available in the community. This often includes establishing community worksites at Aboriginal Community Organisations or at culturally significant places.

⁴⁵ The *Bail Act 1977* (Vic) defines ‘bail decision maker’ to include a court, a bail justice, a police officer, and the sheriff. DJCS is not responsible for training in relation to other bail decision makers.



Aboriginal adults under statutory supervision in the community – Community Correctional Services

75. CCS is a division of Justice Services which oversees the delivery of community corrections in Victoria. CCS manages and supervises people on parole, supervised court orders (such as CCOs) and reparation orders (such as non-payment of fines).
76. An effective and accessible community corrections system is critical to reducing risk of future contact with the justice system. This includes ensuring that Aboriginal people under the supervision of CCS feel culturally safe and supported, and have access to culturally appropriate supports.
77. As noted in Section 1, Aboriginal people are over-represented in community corrections and have consistently lower order completion rates than non-Aboriginal people. This is likely attributable to a range of factors which span the services system. This includes the higher prevalence of barriers affecting Aboriginal people, which have an impact on order completion. For example: unstable housing, unemployment, substance use, and limited programs and supports tailored to Aboriginal people.
78. DJCS has sought to address some of these barriers through the establishment of the Wulgunggo Ngalu Learning Place.⁴⁶ A key AJA initiative, the Wulgunggo Ngalu Learning Place is a state-wide, culturally appropriate residential diversion program that supports Aboriginal adult men who are undertaking a CCO. It was officially opened in September 2008 and can house up to 18 participants at a time. Wulgunggo Ngalu Learning Place provides opportunities for participants to learn new skills, reconnect with or strengthen their culture, and participate in programs and activities to help reduce the risk of further contact with the justice system. Participation in the program is voluntary and involves living at Wulgunggo Ngalu in Gippsland for three to six months.
79. In partnership with DH, DJCS is also working to commission an ACCO to design and deliver a modified version of the KickStart program tailored for Aboriginal men on CCOs. KickStart is an Alcohol and Other Drugs (AOD) treatment program that is specifically designed for people with a history of offending behaviour.
80. Effective case management is a core enabler for successful order completion. DJCS has also sought to improve the cultural safety of CCS supervision and case management through the creation of two new roles: Aboriginal Advanced Case Managers (AACM) and Aboriginal Case Managers (ACM). Employed by CCS, AACMs and ACMs provide culturally appropriate case management of Aboriginal people subject to community-based orders, ensuring effective assessment, planning, intervention and review. There are currently 25 AACMs and ACMs with 10 of these staff identifying as Aboriginal. In addition, all CCS practitioners must undertake mandatory learning and development modules, including Aboriginal Cultural Awareness Training.⁴⁷

⁴⁶ 'Wulgunggo' means 'which way' and 'Ngalu' means 'together' in Gunai/Kurnai language.

⁴⁷ Modules include 'Aboriginal Cultural Awareness Training' (1-day program coordinated by Justice Learning) and 'Diversity for Community Operations Practitioners' (half-day session facilitated by Community Operations Learning & Development team). Within six months of Community Operations case management practitioners commencing in the role have access to the offender management learning module, which includes a half-day session on Working with Aboriginal offenders.

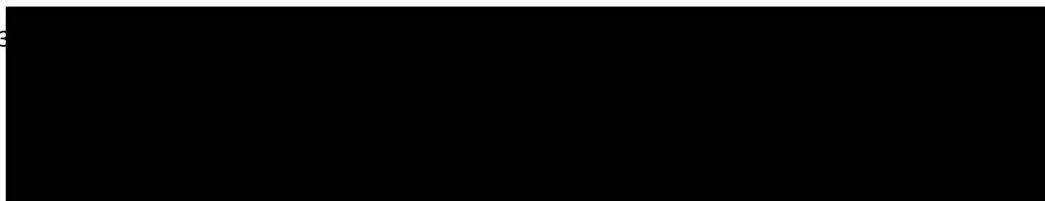


81. When making a CCO, courts often impose an unpaid community work condition, which requires people to complete a certain number of hours of unpaid work. CCS provides unpaid community work programs in partnership with local ACCOs. These partnerships are developed in conjunction with RAJACs, Local Justice Workers and other ACCOs (such as VACCA) to establish culturally beneficial community work programs. Regional community work provides Aboriginal participants with community focused and person-centred work options in their local community. These programs work toward reconnecting Aboriginal participants with their local community, including building work skills and where applicable and employment pathways.

Programs delivered in the adult corrections system

82. The department recognises the over-representation of Aboriginal people in Victoria's prisons represents a grave injustice to Aboriginal people. DJCS also acknowledges that Aboriginal people's experiences in custody often further perpetuate the social and economic exclusion already experienced by Aboriginal people, and compound the loss of culture, family and purpose which began with colonisation.

83



84. Corrections Victoria is responsible for the delivery of rehabilitation and reintegration programs and services in prisons. Rehabilitation services in the prison system include drug and alcohol programs; specialised mental health services; family violence and offending behaviour change programs; cultural programs, family engagement and parenting programs; pre- and post-release transition services and case management to connect people in prison with activities to reduce reoffending.

85. Corrections Victoria also delivers a range of culturally specific programs and services across the prison system. It also seeks to ensure that mainstream rehabilitation and transitional programs are culturally appropriate and responsive to cultural needs. Access to programs can be dependent on time in custody, placement considerations and program availability (noting that some programs and services are not available at all prisons). Aboriginal people are not restricted from accessing 'mainstream programs,' the eligibility criteria are the same for Aboriginal and non-Aboriginal people—however DJCS recognises that Aboriginal people may be reluctant to access 'mainstream' programs, and this has been a key driver of efforts to improve the cultural responsiveness of these programs.

86. The growth in remand and short sentences—and consequent increase in turnover within the prison system—has also had a detrimental impact on access to programs and services and transition planning. The table below shows the median length of prison stay by Aboriginal status, gender and sentenced/unsentenced status for 2021–22. This table below shows that a higher proportion of Aboriginal prisoners are unsentenced and serving short terms in custody, meaning they often cannot access rehabilitation and reintegration programs.

Aboriginal status	Gender	Sentenced/Unsentenced	Length of stay (days)
Aboriginal	Female	Sentenced	66
		Unsentenced	33
	Female total		36
	Male	Sentenced	155
		Unsentenced	51
	Male total		90
Aboriginal total			80
Non-Aboriginal	Female	Sentenced	103
		Unsentenced	29
	Female total		42
	Male	Sentenced	162
		Unsentenced	49
	Male total		93
Non-Aboriginal total			86
Grand total			82

Aboriginal Wellbeing Officers (AWO)

87. AWOs are a crucial part of making prisons more culturally safe for Aboriginal people. They provide the foundation for the delivery of all other cultural programs that support rehabilitation and reintegration. They also directly support Aboriginal people in custody by providing cultural advice, connecting people with community, arranging cultural activities in prisons and building relationships with local community organisations. AWOs work towards improving custodial conditions and outcomes by providing advice, support and guidance to the prison workforce about working with Aboriginal prisoners.

88. The AWO role was established under the first AJA in 2000, as a response to the findings of the RCIADIC. As of February 2023, there are 27 AWO positions across the prison system: 14 are filled by an Aboriginal person, seven are filled on an interim basis by Aboriginal Liaison Officers (non-Aboriginal people) and six positions are vacant, with active recruitment underway.

89. DJCS funded additional AWO roles in response to growing numbers of Aboriginal people in prison and a 2017 review conducted by Corrections Victoria's Naalamba Ganbu and Nerrlinggu Yilam Unit in consultation with the Koori Reference Group.⁴⁸ The review identified excessive workload issues and the cultural burden associated with the role and made recommendations relating to the re-configuration of the AWO role, resourcing for additional positions across the state, a strategy to increase retention and the development of career progression opportunities for the position, as well as a range of procedural improvements.

90. This review also led to increased supports for AWOs, including: an Aboriginal Workplace Cultural Wellbeing Program, which provides access to cultural de-briefing services; and establishment of four Aboriginal Engagement Advisor positions, which have responsibility for supporting AWOs and strengthening links between prisons and post-release support agencies including ACCOs. Nevertheless, recruitment and retention of Aboriginal staff in the prison system remains an ongoing challenge.

⁴⁸ The Koori Reference Group a former sub-committee of the AJF that had delegated planning and monitoring responsibilities for Aboriginal Justice Agreement Phase 3 (AJA3) related activities being undertaken by Corrections Victoria and Justice Health: Naalamba Ganbu and Nerrlinggu Yilam means Cultural Integrity and Resilience in Taungurung language.

91

Aboriginal-specific programs

92. DJCS supports the delivery of a range of culturally tailored and Aboriginal-led programs – intended to provide opportunities for connection to culture, healing and to address the underlying causes of offending.
93. Reviews and evaluations have been undertaken of the efficacy of some programs delivered in prisons. The Torch and the Wadamba Prison to Work Program have both been recently evaluated with positive findings. Djirra's Prison to Work Program and Baggarook (discussed below) both have evaluations planned for 2023.
94. Aboriginal specific programs delivered in custody include:

Program	Description
Kaka Wangity Wangin-Mirrie Aboriginal cultural programs	These are a suite of programs focusing on cultural strengthening and healing, and women's programs. Current grant recipients include: Djirra (who deliver Sister's Day in and Dilly Bag), VACCA (who deliver the women's and men's beyond survival cultural program) and Connecting Home (who deliver the Marumali Program).
Statewide Indigenous Arts in Prison and Community program (delivered by The Torch Aboriginal Arts Program)	The Torch promotes Indigenous arts in prison and in the community. The Torch assists artists to reconnect with culture, earn an income from art sales, foster new networks and to pursue educational and creative industry avenues upon release. Proceeds from sales go to the artist.
The Yawal Mugadjina Program (delivered by Corrections Victoria with Aboriginal Elders and Respected persons)	Culturally tailored mentoring to support Aboriginal people in custody, and their transition and reintegration back into their communities. Supports include the development of cultural plans, an Elders and respected persons program and cultural post release support packages.
Wadamba prison to work program (delivered by Wan Yaari)	This program supports people in custody and on remand to gain employment post-release. ⁴⁹
Dardi Munwurro Pre- and Post-Release Case Management Program	Dardi Munwurro work with GEO to provide an intensive pre- and post-release case management program for Aboriginal men exiting prison from Ravenhall Correctional Centre.
Wayapa Wuurk Yarning Circles	This is a holistic cultural yarning circles program that builds on the cultural strength of participants and helps to maintain cultural connections and identity to reduce reoffending.
Djirra prison support program	Djirra provide Aboriginal women at DPFC and Tarrengower with access to legal support, case management support, post-release support and culturally appropriate services that address complex individual needs. An AJA initiative, the Prison Support Program, delivered by Djirra, also provides legal and non-legal support for Aboriginal women in prison who have experienced or are at risk of experiencing family violence.

⁴⁹ All of these programs are AJA initiatives. However, Prison to Work is Commonwealth-funded.



95. Re-engagement in education can also reduce the risk of further involvement in the justice system. TAFEs in custody also deliver certificates in Aboriginal and Torres Strait Islander Cultural Arts at all prisons (excluding Melbourne Assessment Prison and Metropolitan Remand Centre) specifically for Aboriginal people. The course helps build the basic creative and technical skills that underpin visual arts and craft practice in an Aboriginal cultural arts context. TAFEs also deliver certificates in *Mumgu-dhal tyama-tiyt*⁵⁰ at all locations, which enables learners to explore their identity and community and develop or strengthen personal connections to culture. These courses also enable learners to develop language, literacy and numeracy skills, and personal confidence. The Koori Tuition Support Service is also available for Aboriginal people in custody to support education and training.

Custodial staff and cultural safety

96. DJCS recognises that maintaining cultural safety in prisons is critical to engaging with and supporting Aboriginal people in prison. As part of pre-service training, all new prison officers undertake cultural awareness training. This initiative began under an earlier phase of the AJA and continues as a mandatory requirement. Themes covered include Aboriginal cultural needs, family connectedness and the impact of intergenerational trauma. Cultural Awareness Training is also periodically delivered to non-custodial staff working in prisons and custodial staff can attend to refresh their knowledge, however, release to attend training for operational roles can be hampered by the need to backfill operational staff.

97. Aboriginal staff also have access to the Aboriginal Cultural Wellbeing Program, a cultural debriefing service to assist them to overcome workplace issues such as burnout, vicarious trauma and cultural load that DJCS understands is often experienced by Aboriginal staff.

Programs delivered in custody to assist the rehabilitation of Aboriginal women

98. Women involved in the criminal justice system often experience complex and inter-related challenges, including: parenting and family responsibilities, homelessness and housing instability, substance use, trauma and victimisation, mental health concerns, and economic disadvantage. For Aboriginal women, these challenges are often compounded by significant histories of intergenerational trauma, loss of culture and land and ongoing experiences of racism and social dislocation. These unique needs require tailored and gender-responsive support services.

99. The challenges noted above are directly related to women's offending and rehabilitation needs. On 30 June 2022, the most serious offence or charge for 19.5 per cent of women in prison was a drug offence. This is the second most prevalent most serious offence or charge for women in prison, behind only assault (23 per cent).

100. In 2019, Corrections Victoria commenced a program of reform across the women's system to target these challenges. In addition to a suite of new programs, a cornerstone of this reform program was the introduction of a new model of trauma-informed care. This included adjustments to operating procedures to avoid practices that retraumatised women (for example introducing body scanners to minimise the use of strip searches) and the development and

⁵⁰ *Mumgu-dhal tyama-tiyt* means 'message stick of knowledge' in the Woiwurrung language. It is aimed at Aboriginal people who want to re-engage in education and potentially continue on to university.

- delivery of training for staff ('Safer Skills') to support staff to better recognise and respond to the signs of trauma, and deliver trauma-informed, gender responsive case management.
101. The government has also invested in new infrastructure at the Dame Phyllis Frost Centre (DPFC) to support trauma-informed care and replace ageing infrastructure no longer fit for purpose. One-hundred and six new beds have been built, as well as supporting facilities, a new reception building, and new units to provide close support (replacing separation regimes) and are due to open in the first half of 2023. All new infrastructure has been designed based on trauma-informed design principles and Victorian Ombudsman (VO) recommendations to increase access and engagement with rehabilitation and minimise harm to women in custody.
 102. Recognising the unique needs of Aboriginal women, Corrections Victoria also has some tailored supports for Aboriginal women. This includes the new Aboriginal Healing Unit due to open at DPFC in the first half of 2023. The aim of the Aboriginal Healing Unit is to reduce recidivism by addressing the underlying factors of offending through a culturally safe and holistic approach, using cultural strengthening as a protective factor.
 103. Building upon successful models overseas and the expertise of the Victorian Aboriginal community, cultural immersion will be the key focus of the Aboriginal Healing Unit, providing unique case management and support, specifically developed for Aboriginal people. The unit will operate as a therapeutic community with DPFC preparing women for transition back into the community. An Aboriginal led consultancy will also provide Cultural Safety Training to all staff at DPFC to support operations of the unit.
 104. Many Aboriginal women in prison have experienced family violence, sexual assault, or both, and have many complex legal and non-legal needs. The Djirra Prison Support Program (outlined above) addresses this issue by providing a legal assistance service hub that provides after-hours support for Aboriginal women and focuses on prevention of family violence by addressing its root causes. Djirra plays a critical role in providing support for incarcerated Aboriginal women transitioning from prison and ensures access to culturally appropriate legal assistance for Aboriginal women.
 105. Aboriginal women are far more likely than non-Aboriginal women to access homelessness services after exiting custody, which suggests they are more likely to experience homelessness. To address this, the Baggarrook Aboriginal Women's Transitional Housing Program, delivered in partnership with VALS, Aboriginal Housing Victoria (AHV), Corrections Victoria and Department of Families, Fairness and Housing (DFFH), provides a specialist, culturally responsive wrap-around service for Aboriginal women who are at risk of homelessness when exiting prison. VALS also deliver on-site post release support to women residing at a purpose-built facility. The program has recently been refreshed and will be evaluated in 2022–23.

Supports to transition from prison back to the community

106. DJCS recognises that the immediate transition from prison back into the community is a time of the highest risk of re-offending (most offending occurs within the first year after release). Consequently, supports for Aboriginal people to make a successful transition from custody are critical to reducing over-representation. In addition to the culturally specific programs outlined above, Corrections Victoria also offers a range of transition supports that are available to all prisoners including Aboriginal people.

Corrections Victoria Reintegration Pathway

107. The Corrections Victoria Reintegration Pathway (CVRP) is based on the principle that transition planning should commence upon arrival into custody and continues through someone's time in prison, intensifying as they approach release and continuing post release. The CVRP is evidence based and has a hybrid service delivery model, including both prison-based staff and contracted community organisations. People in prison have their reintegration needs assessed—these areas are: housing, employment, education and training, independent living skills, mental health, AOD, family and community connectedness. These are the key barriers that must be addressed to support transition. Aboriginal people are further disadvantaged across these domains, experiencing higher levels of unemployment, homelessness, financial stress, social and economic exclusion, limited access to culturally appropriate substance abuse and treatment programs, and poorer educational outcomes.
108. Access to safe and sustainable housing post-release is a critical challenge for many people leaving prison, including Aboriginal people. It is the role of the Department of Families, Fairness and Housing to support Victorians needing to gain safe housing, including crisis accommodation and supported accommodation.
109. Corrections Victoria however delivers and oversees several mainstream programs to support transition from custody and address identified critical intervention domains. These programs are not available to all Aboriginal people, because each has its own eligibility criteria and is delivered at different locations and at different times and as noted above, access to safe and sustainable housing post-release remains a challenge.
110. An overview of program types is included in the table below:

Support	Description
Offence specific and offence-related treatment	Corrections Victoria Forensic Intervention Services provide sentenced people in custody with evidence-based screening, assessment and intervention to those convicted of sexual and/or violent crimes. Intervention includes offence specific group interventions, offence related group interventions and individual interventions where required.
Family engagement and parenting programs	These programs include the Living with Mum Program, family therapy and positive parenting programs.
Family violence programs for perpetrators and victims	This program includes specialist trauma counselling in recognition of the reality people in prison are over-represented as perpetrators and victim survivors of family violence.
Education and training	This program includes the provision of the Koori Tuition Support service.
Employment	Employment programs include: <ul style="list-style-type: none"> • prison industries • pathways to outside employment through vocational education and training centres of excellence • the outside jobs program • women's employment specialists

	<ul style="list-style-type: none"> the Wadamba prison to work program.
Transitional housing support	<p>Support can be provided through the Corrections Victoria Housing Program. In total Corrections Victoria has exclusive rights to 78 properties through this program.</p> <p>DFFH have Initial Assessment and Planning workers in all Victorian prisons (except Ravenhall Correctional Centre, which has its own model for transitional housing support) to assist people to access housing services and support people on remand who require assistance to maintain current housing. IAP workers provide a critical link to the DFFH service system for transitional housing, however access and options can be limited.</p>
Transitional housing access	<p>Men exiting custody, who are at risk of homelessness, may be eligible for the Maribyrnong Community Residential facility. Aboriginal women may apply for the Baggarrook Aboriginal Women's Transitional Housing Program (outlined above).</p>
Transitional programs that support the reintegration pathway	
ReLink	<p>ReLink is a pre-release program dedicated to strengthening preparation to assist people in achieving successful reintegration and transition into the community.</p>
ReConnect	<p>ReConnect is a post-release support program for sentenced prisoners. The program includes up to nine months of targeted support in the community through assertive outreach and a referring agency to external services. ReConnect aims to build upon the transitional work completed pre-release, continuing to provide targeted post-release support in the community.⁵¹</p>
ReStart	<p>ReStart is a post-release support program for remand and short sentenced prisoners including up to three months of targeted support in the community through assertive outreach and a referring agency to external service.</p>

Parole in the adult justice system

111. Parole allows adults, and children and young people, to serve part of a custodial sentence given by a magistrate or a judge back in the community under the supervision of Youth Justice or CCS. The purpose of parole is to promote public safety by supervising and supporting the transition from prison back into the community in a way that seeks to minimise their risk of re-offending and further contact with the justice system.⁵²
112. Aboriginal people represent a higher proportion of people in prison than those supervised on parole in the community.⁵³ This is partially due to Aboriginal people comprising a higher

⁵¹ Aboriginal women who engage in ReLink and ReConnect have the choice of being supported by the primary service provider Drummond Street Services or receiving Aboriginal-led services through their subcontractor, Elizabeth Morgan House.

⁵² Adult Parole Board Victoria. 2021, *Annual Report 2020-2021*, p. 3. Available at: [Youth Parole Board Annual Report 2020-21 | Department of Justice and Community Safety Victoria](#)

⁵³ Ibid. As at 30 June 2021, there were 781 prisoners on parole – only 5 per cent were Aboriginal (n=37).

- proportion of the population who are in prison on remand or serving shorter sentences that are not eligible for parole.
113. Recent DJCS data shows that the number and proportion of eligible Aboriginal people applying for parole increased between 2017–18 and 2019–20. However, since 2019–20, there has been a year-on-year decline in applications received from eligible Aboriginal people in custody. The decrease has occurred in line with a decrease in the number of Aboriginal people being eligible for parole, which has been impacted by disrupted sentencing trends during the COVID-19 period. Similar trends can be seen in the overall number of parole applications over this period.
 114. In 2019–20, the number of Aboriginal people applying for parole represented 60 per cent of those with a parole eligible sentence as at 30 June 2020, which was considerably higher than for the parole eligible population overall (46 per cent).
 115. However, data over the past five years also indicates that the proportion of decisions to grant parole (of the total of all granted and denied decisions) remains consistently lower for Aboriginal people. In 2021–22, the rate was 50.5 per cent compared with 65 per cent of decisions overall. DJCS acknowledges the disparity between parole applications for Aboriginal prisoners compared to non-Aboriginal prisoners and that more could be done to support Aboriginal people to apply for parole. To support Aboriginal people on parole, the department has three Aboriginal Parole Officer positions (one is currently vacant) in the Loddon Mallee, Gippsland and North Metro regions.

Figure 5: Parole applications and decision data, 2017–18 to 2021–22⁵⁴

	2021-22	2020-21	2019-20	2018-19	2017-18
Aboriginal People eligible for parole on 30 June	283	304	327	312	275
Parole applications received from Aboriginal People	124	161	197	163	156
<i>% Aboriginal People applied of those eligible</i>	43.8%	53.0%	60.2%	52.2%	56.7%
Prisoners eligible for parole on 30 June	3,157	3,415	3,842	4,065	3,843
Parole applications received	1,220	1,349	1,780	1,746	1,680
<i>% applied of those eligible</i>	38.6%	39.5%	46.3%	43.0%	43.7%
Total decisions to grant for Aboriginal People	52	61	63	49	52
<i>% Aboriginal People granted of total grants and denied</i>	50.5%	44.9%	52.1%	43.8%	51.5%
Total decisions to grant	673	835	913	803	803
<i>% granted of total grants and denied</i>	65.0%	63.4%	65.2%	61.6%	63.4%

The percentage granted parole of total grants and denied excludes data on people who withdraw an application for parole.

⁵⁴ In interpreting this data, it should be noted that: parole eligible people at 30 June will not necessarily be eligible for parole in the same financial year; parole granted decisions may relate to applications from a previous financial year; and the percentage granted parole of total grants and denied excludes data on people who withdraw an application for parole.



Section 4: Initiatives in the youth justice system to reduce over-representation

About Youth Justice

116. Youth Justice is responsible for the statutory supervision and support of young people in the criminal justice system in Victoria. This includes children as young as 10 years old, young people aged 15 to 18, through to some young adults up to 24 years of age who may serve their sentence in Youth Justice as part of Victoria's unique 'dual track' system for young adults. Children and young people involved in Youth Justice are either supervised in the community, by community Youth Justice workers located at Justice Service Centres (across seven regions in Victoria), or within custodial services. Youth Justice funds organisations that deliver supports and interventions to children and young people in both the community and custody to assist with their rehabilitation efforts. Youth Justice also partners with the Department of Education and Training to deliver education services to support children and young people in custody to engage with education.
117. This section describes a range of DJCS programs and initiatives delivered through Youth Justice. They aim to reduce the number of Aboriginal children and young people in contact with the youth justice system and to better support those children and young people that do come under Youth Justice supervision. While these initiatives have seen some positive downward trends in terms of over-representation, more work needs to be done to deliver on Wirikara Kulpa's vision—that no Aboriginal child or young person is in the youth justice system.
118. DJCS expresses its thanks to the AJC, ACCOs and other Aboriginal stakeholders who have been involved in, and have often played the leading role in, the design, implementation, delivery and/or improvement of the Aboriginal-specific initiatives listed in this section.

Aboriginal Youth Justice Program

119. The objective of the Aboriginal Youth Justice Program is to address the over-representation of Aboriginal children and young people who come into contact with the criminal justice system by providing early intervention, engagement, and prevention opportunities.
120. The Aboriginal Youth Justice Program aims to provide a culturally safe and responsive service for Aboriginal children and young people involved with, or at risk of involvement with, the criminal justice system. This is done by ensuring that Aboriginal children and young people have strong connections to their family and communities. Aboriginal Youth Justice Programs intervene at all stages across the youth justice system from early intervention and prevention to diversion and statutory intervention. A range of initiatives sit within the Aboriginal Youth Justice Program suite that are delivered through both Aboriginal community organisations and directly through DJCS. These programs are described in further detail in the sections below.

Diversion initiatives delivered in the community

121. As noted above, there is a large body of evidence to demonstrate that cautioning and diversion leads to better outcomes than laying criminal charges.⁵⁵ The earliest contact with the criminal justice system is interaction with police, who are responsible for cautioning.
122. DJCS oversees and delivers a broad suite of programs intended to divert children and young people away from the justice system and thereby reduce over-representation (outlined below). Some of these initiatives are available to young people both pre-and post-sentence.

Initiative	Overview
Community Based Aboriginal Youth Justice Program	The Community Based Aboriginal Youth Justice Program is currently delivered through 14 funded agencies with a total of 31 FTE staff. The program was expanded in the 2020–21 State Budget to include an additional eight workers to help meet demand and provide gender specific services to young Aboriginal girls accessing the program. Thirteen of the agencies are ACCO and one is a mainstream community-based agency.
Aboriginal Early School Leavers Program	Delivered by ACCOs in Mildura and Northern Metro Melbourne, this program provides support to Aboriginal young people to re-engage with employment and education—addressing a key underlying driver of criminal justice contact.
Aboriginal Youth Support Service	Delivered by two ACCOs in Mildura and Northern Metro Melbourne, this service provides preventative, early intervention and prevention case management services for Aboriginal children and young people at risk of youth justice involvement, or subject to a Youth Justice Order. In addition, an ACCO delivers the Youth Support Service (YSS) in the Shepparton and Hume region. The YSS is offered to all young people (Aboriginal and non-Aboriginal) in contact with or at risk of contact with the justice system.
Bramung Jaarn delivered by Dardi Munwurro	This program seeks to engage and empower young Aboriginal men aged 10 to 18 years through cultural connection and positive role modelling. The program aims to support young men to heal and build resilience, with the aim of diverting them from the criminal justice system.
Dungulayin Mileka Massive Murray Paddle	Auspiced through the Victorian Aboriginal Community Services Associated Limited (VACSAL), this initiative extends on the existing event by offering Aboriginal young people the opportunity to engage in coaching, leadership, and relationship-building activities. The program facilitates engagement between young people and police and provides a safe place to discuss challenges facing the community, lifestyle choices and building resilience and understanding. The program is supported by established referral pathways from the justice and ACCO sector.

⁵⁵ See for example, Shirley, K. 2017, 'The Cautious Approach: police cautions and the impact on youth reoffending', in *Brief 9*, Crime Statistics Agency. Available at: <https://www.crimestatistics.vic.gov.au/research-and-evaluation/publications/youth-crime/the-cautious-approach-police-cautions-and-the>.

Koori Court Advice Worker	Based in Northern Metro Melbourne, the Koori Court Advice worker is a specialist role that provides court advice and support to Aboriginal children and young people through a culturally based approach with a commitment to diversion, rehabilitation and re-integration into the community.
The Children's Court Youth Diversion (CCYD) service	<p>The Children's Court Youth Diversion (CCYD) service provides an opportunity for young people appearing before the criminal division of the Children's Court to:</p> <ul style="list-style-type: none"> • accept responsibility for their actions and understand any harm caused • complete a diversion plan • have the charge or charges discharged, on successful completion of the diversion plan and restrict the release of their criminal history. <p>In 2020–21, 1,166 total diversions were overseen by CCYD coordinators. Aboriginal young people were slightly under-represented in this program; 12 per cent of diversions ordered were for children and young people who identified as Aboriginal whereas Aboriginal young people made up 14 per cent of the broader youth justice cohort during the same period.</p>
Youth Justice Group Conferencing (YJGC)	Youth Justice Group Conferencing (YJGC) is a court-ordered, pre-sentence process, based on restorative justice principles. YJGC aims to increase the young person's understanding of the impact of their offending on the victim, their family and/or significant others, and the community. In 2020–21, 123 Youth Justice Group Conferences were held.
The Youth Support Service (YSS)	The YSS provides a targeted, early intervention program for young people who are at early points of contact with police and the youth justice system. The YSS aims to divert young people from further contact with the justice system through voluntary, short-term, community-based interventions. In 2020–21, 1,216 young people were supported by the YSS.
Aboriginal Liaison Officers (ALO)	ALOs are DJCS staff located in Youth Justice facilities. They work in partnership with Community Based Aboriginal Youth Justice Program workers to ensure culturally appropriate transition support is provided to Aboriginal young people exiting custody settings back into the community. With the consent of the young person, the ALO will contact their family and maintain communication with them throughout the young person's time in custody.
Aboriginal Focus Team	Based in the East Metro region, the Aboriginal Focus team provides intensive case management for Aboriginal children and young people through culturally embedded supports and ensures young people are supported to maintain and strengthen their cultural needs.
Multi Systemic Therapy (MST) and Functional Family Therapy (FFT)	Multi Systemic Therapy (MST) and Functional Family Therapy (FFT) are intensive, evidence-based programs that work with the whole household or family unit to address a young person's behaviour and reduce offending. Both programs use an assertive outreach model, in which practitioners visit the young person and their family in their home, including after hours. This program is available to Aboriginal and non-Aboriginal children and young people. In 2020–21, 55 families received intensive family support through FFT and MST.



Regional Aboriginal Justice Advisory Committees Implementation Fund projects

123. Additionally, there are a number of RAJAC Implementation Fund projects under development. The RAJAC implementation funding stream is designed to support culturally appropriate place-based programs for Aboriginal children and young people to promote cultural strengthening, health and wellbeing and pro-social engagement to reduce the risk of contact with the justice system. Funding was distributed to each RAJAC to elect a local initiative which demonstrated impact for their local communities and integrated with the regional service system. This approach enables regions to adapt self-determined responses to address their local issues and equitably distributes funding across the State. A summary of projects is described below.⁵⁶

Project	Description
Youth Group Program and Coordinator	The program works with Elders to deliver after school and holiday youth programs to support cultural and community connection. The program is based in the West Metropolitan region, supported by Kolling Wada-Ngal and Kirrip Aboriginal Corporation (working in partnership).
Youth Pathways Program and Program Worker	The program supports young people aged 16 to 25 with educational and employment pathways. The program includes capacity building and activities which promote cultural connection. The program will be delivered in the East Metropolitan region by Mullum Mullum.
Employment of Youth Community Development Officer and Youth Trainee program	The trainee program provides vocational and other training. The program will be delivered in the South Metropolitan region by Casey Gathering Place with support from City of Casey.
Aboriginal Youth Intervention Cultural Space Project (legal and holistic support)	For young people and their families in East Gippsland, this program will be delivered by VALS.
Youth Drop-in Centre	The program provides a range of holistic supports, warm referral processes and cultural activities. The program will be delivered in Loddon Mallee by Mallee District Aboriginal Service in partnership with Sunraysia Community Health, the Salvation Army and Victoria Police.
Youth Program	The program supports youth engagement on self-determined education, justice and action committees. This program will be delivered in Barwon South West by the Koorie Youth Council in partnership with Wathaurong Aboriginal Co-Operative, Gunditjmarra Aboriginal Cooperative, and Windamara Aboriginal Cooperative.
Yalka Yakapna Woka	This program facilitates connection to Country, culture and family activities for children aged 8 to 17 and their families. It seeks to promote early identification of at-risk young people and to link them to positive programs that enhance wellness and cultural connection.
Yallum Yallum Gariwerd Council Program	This program, delivered by Goolum Goolum for the Grampians region, builds cultural connection through connecting young people with Elders. The program has established referral pathways with Victoria Police, Courts, and the regional justice and health service sector.

⁵⁶ Aboriginal Justice. 2023, *Evidence based prevention programs*, Victorian Government. Available at: <https://www.aboriginaljustice.vic.gov.au/the-agreement/aboriginal-justice-outcomes-framework/goal-22-fewer-aboriginal-people-enter-the-0#:~:text=The%20following%20RAJAC%20Implementation%20Fund%20projects%20that%20seek,supported%20by%20Kolling%20Wada-Ngal%20and%20Kirrip%20in%20partnership.>

New programs being delivered through Wirkara Kulpa

124. Work is underway to develop and implement a number of new programs to deliver on Wirkara Kulpa and address the continued over-representation of Aboriginal children and young people in the youth justice system. These initiatives include:
- establishing an Aboriginal youth justice hub model to provide place-based Aboriginal-led services to children and young people (in development)
 - amplifying the voices of Aboriginal children and young people in the design and delivery of youth justice services (in development)
 - enhancing and expanding the Community Based Aboriginal Youth Justice Worker program (outlined below) to assist young people to complete diversion and community supervision orders and provide gender specific responses (underway)
 - re-establishing Balit Ngulu, a specialist youth legal service through VALS to provide a holistic legal service for Aboriginal young people (underway)
 - establishing case management review panels to support Aboriginal young people with complex needs (underway)
 - early intervention family services to keep Aboriginal children under 14 out of the criminal justice system (in development)⁵⁷
 - residential diversion for young Aboriginal males and females at Barooka Youth Healing Program (in development).

Aboriginal children and young people under statutory supervision in the community

125. DJCS recognises that appropriately supporting Aboriginal children and young people under statutory supervision in the community is critical to reducing their risk of future contact with the justice system.

Community based sentencing options for children and young people

126. Community based sentencing options for children and young people aged under 18 years include the following orders:

Order	Description
Youth control order	The most intensive, community-based sentence that the Children's Court can order.
Youth attendance order	Subject to judicial discretion, a Youth attendance order can be given to young people who have been found guilty of a serious offence or who have appeared in court on a number of occasions, for offences committed when under the age of 18. A youth attendance order is a direct alternative to being detained in custody.
Youth supervision order	Subject to judicial discretion, a Youth supervision order can be given to young people who have offended and appeared in court before, and who have been found guilty of a serious offence, or numerous offences committed when under the age of 18.
Probation order	Imposed by a Magistrate in the Children's Court. Young people who have committed offences when aged between 10 and 17 years can be placed on

⁵⁷ The department has commenced discussions with AJC on this important initiative, which will provide an alternative service and programmatic response for Aboriginal children up to and including 14 years old through localised Aboriginal-led services. This will include new approaches that will target and intervene early to respond to unmet needs and experiences of Aboriginal children and young people as well as expanding on existing services.

	probation. Probation is usually given to young people who have offended once or twice before.
Parole	Allows young people to serve part of a custodial sentence given by a magistrate or a judge back in the community under the supervision of a parole officer. ⁵⁸

The Youth Justice Case Management Framework

127. Aboriginal and non-Aboriginal children and young people on community-based orders are case managed under the Youth Justice Case Management Framework.⁵⁹ Youth Justice implemented this new case management framework in 2019 to ensure a consistent, evidence-based approach for every child and young person on community-based orders. The framework uses tailored rehabilitation efforts that address a child or young person's assessed risks and needs to reduce their risk of re-offending. Key features include evidence-based assessments, cross-sector case planning, and the engagement of a multi-disciplinary care team to provide a coordinated approach to addressing a young person's needs.
128. DJCS acknowledges that, while the framework is well considered and evidenced-based, more work needs to be done to improve its practical application. This is particularly the case for Aboriginal children and young people who require greater consistency in self-determined, culturally responsive care and case management (for example, by case managers actively engaging with young people's families and communities to strengthen protective factors and to reduce the risk of re-offending).

Supports for children and young people under Youth Justice supervision in the community

129. The Youth Justice Strategic Plan 2020–30 commits to further strengthen the focus on diversion, as well as early intervention for children and young people on Youth Justice orders.⁶⁰ In addition to the suite of programs delivered as part of the Aboriginal Youth Justice Program (outlined above) there are a number of additional supports available to Aboriginal children and young people under Youth Justice supervision in the community.⁶¹

DJCS based initiatives	Description
Aboriginal Intensive Support Program (AISP)	For Aboriginal children and young people on youth justice statutory orders, the AISP (also referred to as the Koori Intensive Support Program) provides intensive outreach support to assist Aboriginal children and young people to comply with bail conditions and community-based orders and help them reintegrate into their communities. DJCS employs five AISP staff based across the DJCS area Youth Justice teams (Dandenong, Geelong, Shepparton, Morwell and Preston).
Youth Justice Community Support Service (YJCSS)	The YJCSS provides intensive, community-based case management to complement Youth Justice's statutory role supervising young people. The YJCSS operates state-wide and includes an after-hours service in most areas to support young people at high-risk times in the evening and on weekends. The Transitional Housing Management Youth Justice Housing Pathways Initiative has been integrated into the YJCSS and provides access to transitional housing properties and housing outreach support for young people. Young people can continue to engage with the YJCSS after Youth

⁵⁸ For more information see: <https://www.justice.vic.gov.au/justice-system/youth-justice/parole-in-the-youth-justice-system>.

⁵⁹ Department of Justice and Community Safety. 2020, *Youth Justice Strategic Plan 2020-2030*, Victorian Government, p. 13. Available at: <https://www.justice.vic.gov.au/youth-justice-strategy>.

⁶⁰ Ibid.

⁶¹ Some of these supports are also available to children and young people on bail or in custody.

	Justice statutory involvement has ceased. In 2020–21, 643 young people were supported with intensive case management by the YJCSS.
Multi Agency Panels (MAPs)	MAPs have been established to identify young people under Youth Justice supervision who are at high risk of offending and causing serious harm in the community. MAPs bring together representatives from key service systems to ensure that these young people are appropriately supported by each system, that barriers to service delivery are addressed and that the response from all agencies is best meeting each young person's individual needs. For 2020–21, MAPs oversaw 156 young people on average each quarter.
Youth Offending Programs	Youth Offending Programs include health-related programs, and evidence-based psychosocial and criminogenic programs for young people under Youth Justice supervision that address their offending behaviour. The criminogenic programs target violent offending, sexual offending, family violence-related offending, substance use-related and motor-vehicle related offending. Appropriate interventions are identified using the validated risk assessment tools introduced as part of the Youth Justice case management framework.

Programs delivered in youth justice custody

130. While continuing effort to reduce over-representation remains a priority, so too does the care, treatment and rehabilitation of Aboriginal young people in custody. The operating philosophy for youth justice custody prioritises culturally strong and safe care, including:
- All Aboriginal children and young people will leave custody with a stronger understanding of, and connection to their family, community and culture, formalised in an individual Cultural Support Plan.
 - Custodial services and infrastructure will protect Aboriginal cultural rights in accordance with the Victorian Charter of Human Rights and Responsibilities, AJA4's principles of self-determination and respect for Aboriginal knowledge, history and experience.
 - Restorative justice will inform our work with Aboriginal children and young people, supporting transition from custody and community reintegration.

Case management in youth justice custody

131. DJCS's focus is to keep Aboriginal young people out of custody. However, where young people are remanded or sentenced by the courts to youth justice custody, targeted case management and support aims to fast track their release where possible if on remand, or to establish cultural supports and programs focused on cultural safety and rehabilitation if sentenced to custody. Where young people aged 14 years and under are remanded into custody, regional and bail justice staff are actively engaged to explore alternatives to remand. Aboriginal young people as young as 12 years old have been remanded to custody. This relatively young cohort are more likely to have vulnerabilities that Youth Justice must identify and support. Further, as noted above, DJCS acknowledges that time on remand is particularly harmful because it disrupts prosocial connections with family, school and community.
132. The youth justice High Risk Panel, chaired by the Youth Justice Commissioner, actively monitors and provides input and direction for the most high-risk and complex cases in youth justice custody. The panel brings together specialist service partners along with regional case managers and custodial staff including ALOs and behaviour support specialists to plan for targeted care with the aim of reducing the risk of re-offending and moving deeper into the criminal justice system.
133. As a relatively small system, the expectation in youth justice custody is that:

- a. every Aboriginal young person is known by their name
- b. their individual circumstances and needs inform a targeted case management approach led by family and community.

Aboriginal Liaison Officers (ALOs)

134. All Aboriginal children and young people are allocated an ALO upon admission into custody and receive cultural support for the duration of their time in custody and throughout their transition back to the community. The allocation of a dedicated ALO can provide a consistent point of contact to work directly with the child, family and community to develop a cultural support plan focused on cultural identity, connection and safety.
135. The role of the ALO is to:
- a. support the development of stronger and safer relationships with Elders, family, community and professionals to maximise opportunities of a successful transition into the community
 - b. advocate for and assist in the delivery of culturally appropriate support and intervention
 - c. work with the Aboriginal Youth Through Care (YTC) program to identify young people in either Parkville or Malmsbury who would like to participate in the program.⁶²
136. The current ALO team structure includes a Manager Aboriginal Operations, a Team Leader and four ALOs, noting that two ALO roles are currently vacant with recruitment underway.

Education in youth justice custody

137. As noted above, re-engagement with education is a protective factor, which can offer children and young people a pathway away from further involvement in the justice system. Aboriginal children and young people of school age in custody attend Parkville College School, a registered specialist government school with campuses on each precinct. Where young people have disengaged from school in the community, Parkville College will work through the Department of Education to identify potential barriers to re-engagement and put in place practical strategies to support young people to re-connect with school in their local area. For example, developing a reduced timetable to enable a smoother transition back to school.
138. The Koori Cultural Education Program (which includes the Maggolee Mang program) is supported by a range of respected Aboriginal Elders who guide and mentor Aboriginal young people on their journey of cultural identity and healing. The program includes celebration of NAIDOC and other significant days, as well as a focus on harmony and tolerance amongst other cultural groups in custody. Dedicated Aboriginal spaces, including cultural program rooms and garden, are used to facilitate these programs.⁶³
139. While there are a range of rehabilitation and psychosocial programs delivered in custody to address young people's offending behaviour, DJCS acknowledges that further focus is required to establish culturally-specific programs and interventions for Aboriginal young people. DJCS recognises that tailoring interventions to individual needs as well as to cultural expectations allows participants to engage appropriately with interventions for greatest effect.

⁶² The focus of the YTC program remains on cultural mentoring and to connect young people to community and extended family as part of their cultural strengthening and transition back to the community.

⁶³ Youth Parole Board Victoria. 2021, *Youth Parole Board Annual Report 2020-21*, Victorian Government, p. 33. Available at: [Youth Parole Board Annual Report 2020-21 | Department of Justice and Community Safety Victoria](#)

Elders and Respected Persons mentoring program

140. Youth Justice is developing an Elders and Respected Persons mentoring program for delivery at Parkville and Malmsbury Youth Justice Precincts. The program will include flexible delivery of mentoring sessions through a pool of Elders and Respected Persons. Currently, an Aboriginal Elder attends the Malmsbury Youth Justice Precinct once per week as a mentor for Aboriginal young people and delivers cultural teaching, history, mentoring, playing didgeridoo and storytelling. These consistent visits by an Aboriginal Elder have allowed for a strong rapport to be built with the Aboriginal young people.

Supports to transition from Youth Justice custody back to the community

141. DJCS recognises that supported transitions from custody are crucial to reducing children and young people's risk of re-offending. Reintegration of Aboriginal young people into the community is a critical component of case planning on arrival to custody. As part of their case plan, all young people must have a transition plan tailored to their specific circumstances, whether it is in relation to supervised bail, remand or a supervised custodial sentence.
142. The care team that is established for each young person includes family and local community service providers relevant to that young person's risks and needs. For example, for some young people the care team may include drug and alcohol services, and for others, local housing services.
143. Youth Justice also runs a Temporary Leave Program, which enables young people to leave custody for escorted visits to family, community, school or vocational-related services to support transition. Temporary leave can progress to overnight or unescorted day leaves, with the opportunity for entry to the Pre-release program where young people live in the community attending school or working in the lead up to their parole. A lack of stable housing can limit opportunities for young people to participate in this program, underscoring the importance of family and community engagement while young people are still in custody.
144. Youth Justice custodial based ALOs work in partnership with the Community Based Aboriginal Youth Justice Program worker and the Aboriginal YTC program workers (all outlined above) to ensure culturally appropriate transition support is provided to Aboriginal young people exiting custody settings into the community. With the consent of the young person, the ALO will contact their family and maintain communication with them throughout the young person's time in custody.⁶⁴

Housing upon release

145. Stable housing and community connection is critical to support young people exiting custody and to reduce their risk of re-offending. In the 2020–21 Youth Parole Board Annual Report, the Board listed stable accommodation as the first foundation (of five) essential to a successful parole. An analysis of a sample of parole cancellations by the Youth Parole Board in 2020–21 demonstrated that a lack of stable accommodation was a key reason for parole cancellations and that cancellations of parole increased during the reporting period.

⁶⁴ Youth Parole Board Victoria. 2021, *Youth Parole Board Annual Report 2020-21*, Victorian Government, p. 33. Available at: [Youth Parole Board Annual Report 2020-21 | Department of Justice and Community Safety Victoria](#)

146. There are a number of critical gaps and challenges in securing stable housing for young people involved in the youth justice system, including a lack of:
- housing stock to meet the sometimes complex and diverse needs of children and young people
 - appropriate and up to date service models
 - permanent, long-term housing solutions as an exit pathway from short- and medium- term housing models.
147. While limited, there are a small number of dedicated Youth Justice Housing initiatives which provide some housing options for young people exiting Youth Justice. These include:

Program	Description
Youth Justice Transitional Housing Management (THM) program	Delivered by YJCSS to help young people in one of 55 THM properties. In 2020–21, 69 young people accessed a THM property.
Youth Justice Homelessness Assistance (YJHA) program	Delivered by VincentCare, YJHA assists young people at risk of homelessness to be linked to housing and other support services when released from youth justice custody. In 2021–22, 42 young people were supported by this service.
Kids Under Cover program	Kids Under Cover, a not-for-profit organisation, provides one- or two-bedroom studios that are placed in the backyards of existing properties to address overcrowding and support young people aged 12 to 25 to remain with their caregivers. As of February 2023, 46 studios have been delivered and 15 are under construction.

Parole in the youth justice system

148. In 2021–22, 16 Aboriginal children and young people came under the jurisdiction of the Youth Parole Board, a 33 per cent reduction from the previous year.⁶⁵
149. Parole planning is a critical component of case planning and case management and commences as soon as possible after a young person enters youth justice custody. This is led by the young person's case manager (a Youth Justice case manager based in the community) in collaboration with the care team which includes ALOs, and family and community members. The aim of the care team approach is to enable continuity of planning and support during the young person's time in custody, through the transition to community and the completion of parole.
150. The role of ALOs as part of the care teams includes ensuring cultural supports are embedded in the young person's parole plan. ALOs work with the care team, and with Aboriginal YTC workers to ensure the plans are carried through while transitioning from custody to community.
151. The Aboriginal community member of the Youth Parole Board also oversees the development of the parole planning of all Aboriginal children and young people on parole.

⁶⁵ Youth Parole Board Victoria. 2022, *Youth Parole Board Annual Report 2021-22*, Victorian Government, p .27. Available at: [Youth Parole Board Annual Report 2020-21 | Department of Justice and Community Safety Victoria](#). 24 Aboriginal children and young people were on parole in 2020–21. This number includes young people aged 18–21 years of age who are part of the dual track system.'



Section 5: Health supports for Aboriginal adults and young people in custody

152. DJCS recognises that the delivery of culturally safe and quality custodial health care services can play a critical role in responding to Aboriginal people's health needs in a way that reduces the risk of further contact with the justice system.
153. Culturally safe services place the person at the centre of care utilising a wraparound approach to address health and wellbeing needs in a holistic manner. Consistent continuity of care during transition back into the community is critical to ensure that health gains achieved in prison are not lost upon a person's release. This can be achieved through collaboration and information sharing between the health service provider and relevant services to provide coordinated care.
154. DJCS does not have responsibility for the oversight or delivery of health care for people in police custody. Health care in police custody is a matter for Victoria Police to address.

The provision of health services in custodial settings (adult and youth)

155. Justice Health sets the policy and standards for health care across public and private prisons and youth justice facilities in Victoria and oversees the delivery of primary health services, AOD programs, and specialist mental health services in prisons. Justice Health is responsible for ensuring that health service providers deliver services that meet the standards set by its Health Services Quality Framework (Quality Framework). Separate Quality Frameworks are in place for both adult and youth health services. Individual clinicians are also responsible for delivering services in accordance with the relevant codes, standards and guidelines established by their registration boards.
156. Mechanisms available to Justice Health to ensure services meet the standards set through the Quality Frameworks, and drive continuous improvement include:
 - a. contract management mechanisms—including penalties for poor performance
 - b. clinical governance mechanisms—Justice Health's clinical governance teams audit health service delivery against the Quality Frameworks and work with health service providers on an ongoing basis to support service delivery
 - c. development of policies and procedures—health service providers are contractually required to comply with Justice Health policies and procedures. Justice Health policies and procedures provide the framework for consistent service delivery across the State. Health service providers then develop their own operational policies and procedures and are required to submit these to Justice Health annually for review. Justice Health's newly established Aboriginal Health team will have a role in this review process going forward, to drive continuous improvement in cultural safety.
157. Health service providers are also contractually required to report incidents to Justice Health. A 'notifiable incident' refers to any event or circumstance which actually or could potentially lead to an adverse outcome or consequence for adults, children and young people in custody and/or health service provider staff and contractors. Justice Health's role in notifiable incidents is to provide:
 - a. monitoring and assurance: e.g., systemic issue identification; identification and escalation of professional practice issues.

- b. data capture and analysis: collecting data for monitoring and assurance role, for auditing and compliance, and to meet needs of Justice Health governance
 - c. administrative response: e.g., briefing up, information sharing.
- 158. When a person dies in custody, Justice Health and the Justice Assurance and Review Office (JARO) undertake a review. This review process is described in detail later in this response.
- 159. DJCS recognises that the recent coronial inquest into the passing of Veronica Nelson identified that the system for auditing and scrutinising custodial health care services needs to be revised to ensure that it is:
 - a. regular, independent, comprehensive and transparent
 - b. designed to enhance the health, wellbeing and safety outcomes for Victorian prisoners
 - c. designed to ensure custodial healthcare services are delivered in a manner consistent with Charter obligations.
- 160. Justice Health is currently reviewing its internal systems, processes and governance to ensure all of the mechanisms listed above are being fully utilised to drive high quality, consistent health service provision.
- 161. DJCS also notes that the inquest recommended that the implementation of any recommendations for improved practice identified by the system through auditing and scrutiny is monitored.
- 162. DJCS acknowledges all of the findings of the inquest into Ms Nelson's tragic and preventable passing. Further detail on the proposed response is included in Section 6.

Access to healthcare in prison

- 163. Every prison in Victoria has a health centre, where people in prison (both those on remand and under sentence) can access primary health care.⁶⁶ Primary care is delivered by a multidisciplinary, nurse-led team comprising qualified nurses, doctors and allied health practitioners. Prison health services also provide access to mental health professionals as required, with psychiatrists and voluntary mental health treatment available.
- 164. Correct Care Australasia currently holds the contract for the delivery of primary health services in Victorian public prisons. Following a recent procurement process, Victoria's public prisons will have new primary health providers from 1 July 2023:
 - a. GEO Healthcare will provide services at men's public prisons
 - b. Western Health will provide primary health services at DPFC. Clinical services at DPFC will be led and provided by a multidisciplinary team incorporating care coordinators within core clinical teams including Wilim Berrbang, Western Health's Aboriginal Health unit
 - c. Dhelkaya Health will provide primary health services in Tarrengower Prison. Dhelkaya Health will work in partnership with Bendigo Health and Bendigo & District Aboriginal Co-operative.

⁶⁶ The primary services available in Victorian prisons include GP services, general and mental health nursing, pharmacotherapy, pathology, radiology, dentistry, audiology, optometry, podiatry, physiotherapy and health promotion. See <https://www.corrections.vic.gov.au/prisons/health-care>.

Further information about the services to be delivered by new providers is discussed later in this section.

165. Primary health services in private prisons are delivered by health service providers engaged by the prison operator. Correct Care Australasia delivers primary health services at Ravenhall Correctional Centre, GEO delivers primary health services at Fulham Correctional Centre and St Vincent's Correctional Health delivers primary health services at Port Phillip Prison.

Access to complex secondary and tertiary health care services

166. People in prison are also able to access more complex secondary and tertiary health care services through the public hospital system. If a person has a health issue that cannot be treated at their prison, they may be transferred to another prison where those services are available, or to a secure ward at St Vincent's Hospital. A person in prison, who is referred to specialist services in the public health system, is placed on the same waiting lists as members of the community.
167. The current pathway to access the secure ward at St Vincent's Hospital is generally through Port Phillip Prison, which has presented a barrier to access for people in prison. People in prison have indicated transfer to Port Phillip has been a factor in refusing health care. In 2019, Justice Health conducted a review of this pathway. The review led to the development of strategies aimed at improving flow and coordination of healthcare (including using capacity in other front-end prisons and developing clinical escalation protocols for prisoners who refuse treatment due to a reluctance to be transferred to Port Phillip). The escalation protocols set out what steps are to be taken when a person's refusal of treatment via the Centralised Hospital Pathway poses an unacceptable clinical risk. This is determined following a comprehensive assessment by the Medical Officer treating the person. Justice Health acknowledges further work is required to develop pathways to secondary and tertiary care.

New Specification for the delivery of primary health services and new Health Services Delivery Model—1 July 2023

168. Justice Health undertook a comprehensive Health Services Review prior to recommissioning primary health services for adult public prisons from 1 July 2023. The Review identified a number of opportunities for improvement in health services and outcomes, including the development of a new specification for the delivery of primary health services and a new health services delivery model.
169. The new specification, which will be implemented in public prisons on 1 July 2023, was released as part of a Request for Tender in December 2021. The specification sets out aims underpinning the delivery of primary healthcare in the prison system:
- a. that the right to healthcare (physical, mental health and wellbeing) is met by ensuring:
 - i. that people in prison have access to healthcare
 - ii. healthcare is person-centred, safe, and culturally appropriate
 - iii. service delivery promotes and preserves professional and clinical independence.
 - b. improving the health of people in prison, which requires:
 - i. continuity of healthcare throughout their time in prison and on release to the community
 - ii. that healthcare services are equitably accessible, timely and minimise service refusals
 - iii. that healthcare services consider the person holistically

- iv. strong partnerships between health service providers and between prison and community-based health services
 - v. a health-promoting prison environment that encourages health agency to ensure that people have a better understanding of their health needs, and lifestyle factors that impact on their health and ways to protect, maintain and make choices about their health, including an understanding of how to access health services.
 - c. improving rehabilitation outcomes for all and reducing the overrepresentation of Aboriginal people by:
 - i. addressing the health and wellbeing limitations that impact on a person's ability to participate in programs, education, training, and social engagement, through:
 - 1) a proactive, trauma-informed health approach to identify and address the health and mental health-related factors that may impact on someone's ability to engage with training, education, work, social opportunities, family, and so on
 - 2) providing primary healthcare that meet the physical, social, emotional, spiritual and cultural wellbeing needs of Aboriginal people in prison in a culturally safe way
 - 3) partnerships with the wider corrections services, including corrections case management and release management.
 - ii. ensuring that Services are culturally safe through:
 - 1) a trauma informed approach that recognises the impacts of racism and trauma on health and mental health
 - 2) employment and support of Aboriginal staff and continually building the cultural capability of all health staff
 - 3) coordinated care through collaboration with AWOs and Aboriginal Community Controlled Health Organisations (**ACCHOs**).
170. The new service delivery model will also be implemented on 1 July 2023, and will see a range of enhancements, including:
- a. expanded multi-disciplinary teams to deliver high quality care
 - b. a strong focus on delivering enhanced health services to Aboriginal people
 - c. integrating alcohol and other drug services into primary healthcare
 - d. incorporating Hepatitis assessment and treatment into the primary care services
 - e. faster response times for non-urgent medical appointments.
171. When developing the new specification and model, the Health Services Review consulted with Aboriginal people with lived experience of prison health services, the AJC (and its Rehabilitation and Reintegration Collaborative Working Group), the Aboriginal Health division of the DH, Victorian Aboriginal Community Controlled Health Organisation (**VACCHO**), health service providers and other jurisdictions. The review also considered complaints and feedback on health services from people in prison. The Review undertook this engagement with the aim of delivering more tailored, trauma-informed and culturally safe health responses for Aboriginal people.
172. Specific enhancements for Aboriginal people will include:
- a. an Aboriginal specific health check (equivalent to community's standard of an Aboriginal and Torres Strait Islander (Medicare 715) check) upon reception into custody
 - b. integrated care plans for all Aboriginal people in custody
 - c. added services to strengthen health-related release planning and continuity of care for Aboriginal people in prison

- d. AOD health programs specifically tailored for Aboriginal men and women
 - e. an enhanced Aboriginal workforce including Aboriginal Health Workers and Aboriginal Health Practitioners.
173. The new service delivery model includes an updated Quality Framework against which all health providers across prisons in Victoria will be required to deliver services.⁶⁷ Public and private providers will also be required to establish ongoing review and improvement processes for capability in relation to inclusive, reflective and trauma informed practices, unconscious bias and confidentiality.
174. The new services review model also includes and a strengthened accountability framework. Justice Health is currently reviewing its internal processes to ensure the accountability framework drives consistent, high-quality performance.
175. The new service delivery model is taking steps towards achieving 'equity of outcomes' as opposed to delivering community equivalent services. The notion of community equivalence fails to account for the significant health disparity experienced by vulnerable groups in custody, including Aboriginal people. Because of this disparity, community-equivalent services in prisons will not be able to deliver community-equivalent health outcomes. Justice Health is working to determine the targeted and specialist services required to reach this standard and support their delivery.
176. The role of Justice Health in relation to the provision of health services in the adult prison system will not change from 1 July 2023 and remains as articulated above. Justice Health will continue to be responsible for ensuring that health service providers deliver services that meet the standards set by the Quality Framework.

Access to the Medicare and Pharmaceutical Benefits Scheme

177. All people in prison or youth justice custody, whether under sentence or on remand, lose their entitlements to the Medicare Benefits Scheme (MBS) benefits when they enter prison. The *Commonwealth Health Insurance Act 1973* (Cth) precludes payment of Medicare benefits where services are delivered under an arrangement with state and territory government authorities.
178. This means that the Victorian Government covers the full costs associated with prison healthcare. Further, people in prison are unable to access specific services provided to people in the community under the MBS, such as the Indigenous health check.⁶⁸ Although the Victorian Government is taking steps to address these barriers, for example, by funding an equivalent health check from 1 July 2023, this presents a significant challenge in providing community-equivalent healthcare.
179. There has been engagement between the State and Commonwealth, including through representations from the Corrective Services Ministers Conference. However, access to Medicare for people in prison remains an unresolved issue. Universal access for prisoners to MBS and Pharmaceutical Benefits Scheme (PBS) would be beneficial:
- a. to improve effective continuity of health care for prisoners, given the transitory nature of most people in prison

⁶⁷ The updated framework is aligned with the National Safety and Quality Health Service Standards and service specification, including culturally safe health responses.

⁶⁸ MBS item 715 – Medicare Health Assessment for Aboriginal and Torres Strait Islander People.

- b. for continued access to Medicare funded health care plans, such as mental health plans and those available to Aboriginal and Torres Strait Islander people in the community
 - c. where new services or pharmaceuticals entering the market may be too expensive for the state to fund.
180. There is no corresponding provision in the *National Health Act 1953* (Cth) that precludes people in prison from accessing PBS entitlements. However, states and territories have historically accepted responsibility for providing pharmaceuticals to people in prison.
181. Health services are available to people who are sentenced or on remand, but there are eligibility requirements on some services that preclude people on remand or short sentences. For example, non-urgent optometry and dental are only available to people who have sentence lengths of greater than twelve months. From 1 July 2023, this requirement will be lifted from optometry.

Assessments upon entry into prison

182. Upon a person's entry to prison, they receive a physical and mental health assessment so that health staff are aware of the person's health and medication needs. A person's physical and mental wellbeing is reviewed by health staff each time they move between prisons. The initial reception assessments also address AOD issues, referrals to AOD treatment providers, and assessment for withdrawal or pharmacotherapy needs.
183. People in prison who are identified as being at risk of suicide or self-harm are required to receive an assessment within two hours by a mental health professional. Prison mental health services consist of:
- a. primary mental health care delivered by mental health nurses and general practitioners
 - b. specialist mental health services delivered by Forensicare (including voluntary acute and sub-acute inpatient care at relevant forensic mental health units across the prison system, and outpatient services).

Aboriginal-specific health services in prison

184. Through successive AJAs and the Aboriginal Social and Emotional Wellbeing plan (endorsed by the AJF), DJCS has been working towards a holistic and integrated approach to the health of Aboriginal people in prison in Victoria, with culturally safe services that recognise the impact of trauma and racism.
185. Justice Health is currently leading several initiatives to improve the cultural safety of all healthcare delivered in custodial settings and increase health service participation for Aboriginal people in custody. The Strengthening Aboriginal Healthcare Project aims to ensure Aboriginal people in prison have culturally specific health care and are engaged in their health response. This project is a commitment to develop a comprehensive, long-term plan of action targeted to the specific needs of Aboriginal People in custody. Initiatives undertaken as part of this project include:
- a. the Continuity of Aboriginal Health Care program (delivered at the DPFC and Fulham Correctional Centre by the Victorian Aboriginal Health Service to increase prisoner engagement in the management of their health)
 - b. cultural safety training for health service providers
 - c. completion of an Aboriginal Health Risk Review
 - d. embedding Aboriginal Cultural Safety Standards.

186. There is also an explicit expectation that private and public primary health care providers partner with ACCHOs as part of a through care model.
187. DJCS will transition primary healthcare services at the DPFC and Tarrengower Prison to public healthcare provision on 1 July 2023. Western Health will provide primary health services at DPFC. Clinical services at DPFC will be led and provided by a multidisciplinary team incorporating care coordinators within core clinical teams including *Wilim Berrbang*, Western Health's Aboriginal Health unit. Dhelkaya Health will provide primary health services in Tarrengower Prison. Dhelkaya Health will work in partnership with Bendigo Health and Bendigo & District Aboriginal Co-operative.
188. All health service providers will be required to work closely with ACCHOs and to ensure services comply with the National Aboriginal Community Controlled Health Organisation and the VACCHO standards for culturally safe health care.
189. In the coming months, DJCS will work with the new providers to transition primary health services. DJCS will continue to engage with the AJC, AJF, VACCHO and other ACCHOs to support ongoing improvements in service delivery across public and private providers and update the AJF on progress.
190. Work is also progressing to establish an Aboriginal Healing Unit at DPFC (as mentioned in Section 3).

Health service provisions for other priority cohorts

Priority cohort	Supports
People with disability	<p>There are challenges in obtaining accurate data regarding the number of Aboriginal people with disability in the criminal justice system. Aboriginal legal experts suggest that a significant proportion of Aboriginal people charged with criminal offences who appear in court may have an intellectual disability, a cognitive impairment, or a mental illness.⁶⁹ However, there is no nationally consistent disaggregated data on the number of Aboriginal people with disability in prisons.⁷⁰</p> <p>Internal DJCS data from 28 February indicates that of 271 people in custody who had been identified as having an intellectual disability, 81 (30 per cent) were Aboriginal or Torres Strait Islander. These people represented 10 per cent of all Aboriginal people in custody on that date. In comparison, three per cent of non-Aboriginal people in prison were identified as having an intellectual disability. These figures are limited to people with a known intellectual disability and is likely to be a significant under-representation of actual rates of cognitive impairment in the prison population.</p> <p>In addition to the health services available to all people in prison, a range of specialised services are available to people with a disability, covering cognitive impairment, sensory and physical disability and psychiatric disability. The Prison Disability Support Initiative is Corrections Victoria's</p>

⁶⁹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. 2020, 'People with disability over represented at all stages of the criminal justice system, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.' Available at: <https://disability.royalcommission.gov.au/news-and-media/media-releases/people-disability-over-represented-all-stages-criminal-justice-system>.

⁷⁰ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability Public Hearing 27 (Perth) Day 1 – Conditions in detention in the criminal justice system.

	<p>disability service that uses a strengths-based approach to support people in prison with non-physical disability who are accommodated within the Victorian prison system. The support also extends to prison staff and other stakeholders working with the service user. These supports are provided at DPFC through the Disability and Complex Needs Service.</p> <p>Victoria is also working with the Commonwealth Government to maximise the benefits of the National Disability Insurance Scheme (NDIS) for justice clients. All people in prison or on community correction orders, as well as residents in post-release facilities with a disability, are now able to seek access to the NDIS.</p>
Older people in prison	<p>Personal care services within prison are also available to support older people in custody, including those living with a disability, to access the right level of care for their needs. This includes provision of the In Prison Aged Care Consultancy Service and Specialist Aged Care Transition Service for older prisoners delivered by Wintringham.</p>
LGBTIQ+ people in prison	<p>To support trans and gender diverse people in prison, Justice Health has developed a practice guideline on health care and provision of treatment to people who are trans and gender diverse and to assist service providers to provide a safe and inclusive service.⁷¹ DJCS has also established a formal online peer support group for trans, gender diverse and non-binary people in prison at Hopkins Correctional Centre.⁷²</p> <p>Telehealth access to gender services, including the Monash Health and Gender Clinic, is also being provided for trans, gender diverse and non-binary people in prison. From 1 July 2023, new health service providers will be required to develop Integrated Care Plans for all transgender and gender diverse people, to ensure their health needs are appropriately identified, responded to and monitored.</p>

Integration of health and custodial services

191. While there are necessary limits on the sharing of prisoner's health information with custodial staff (to ensure appropriate privacy limitations and ensure trust in healthcare services), recent coronial findings have highlighted the need to strengthen communication between healthcare and custodial staff, to ensure that a coordinated approach is taken to meeting the care needs of people in custody. Within each prison, there are different reporting lines for health and custodial staff, reflecting the different role and professional boundaries of each workforce. This means that it is critical that systems and governance support appropriate integration and collaboration at all levels.
192. DJCS is currently reviewing existing arrangements for coordination of care, with the view to ensuring that:

⁷¹ Department of Health and Human Services. 2018, *Development of Trans and Gender Diverse Services*, Victorian Government, <https://www.health.vic.gov.au/sites/default/files/migrated/files/collections/research-and-reports/d/development-of-trans-and-gender-diverse-services.pdf>. In recognition of the consultation and co-design for the *Development of trans and gender diverse services in Victoria report*, this policy mirrors the model identified in the report and makes adaptations where necessary to reflect the prison environment. Department of Health and Human Services. 2018, *Development of Trans and Gender Diverse Services*, Victorian Government. <https://www.health.vic.gov.au/sites/default/files/migrated/files/collections/research-and-reports/d/development-of-trans-and-gender-diverse-services.pdf>.

⁷² The program is funded for two years and commenced in April 2022. The new health services model, commencing on 1 July 2023, will include tailored Aboriginal health and LGBTIQ+ responses.



- a. roles, responsibilities and accountabilities are clearly and appropriately described, documented and communicated
- b. coordination and communication supports DJCS to discharge its duties
- c. systems and processes provide the mechanisms to identify and escalate complaints and issues to facilitate a coordinated response to health-related issues
- d. governance structures provide appropriate oversight including monitoring the performance and delivery of health service outcomes.

Access to health services in youth justice facilities

193. Primary health and primary mental health services at Parkville and Malmsbury Youth Justice Centres include:
- a. general and mental health nursing
 - b. general practitioner services
 - c. nursing staff to administer medications
 - d. allied health services
 - e. a Clinical Nurse Educator, a Health Promotion Officer and an Aboriginal Health Worker.
194. The new Cherry Creek Youth Justice Precinct (Cherry Creek) facility, due to open later this year includes:
- a. a specialised health care facility, and two four-room mental health units
 - b. an enhanced primary health care model including dedicated Aboriginal Health Workers
 - c. an enhanced custodial forensic youth mental health service
 - d. operation of two four-room mental health units
 - e. an in-house rehabilitation services model responsible for delivering rehabilitation and psychosocial programs.
195. Young people with a disability are also supported by a team of Specialist Disability Advisors who work across community and custody to ensure they receive appropriate support, including access to disability services.
196. Correct Care Australasia currently holds the contract for the delivery of primary health services at Parkville and Malmsbury. Barwon Health has been engaged to provide services for Cherry Creek.

Assessment upon entry

197. Every child and young person entering a youth justice centre receives a health and mental health screen within 24 hours of reception, and a comprehensive health and mental health assessment within 72 hours of reception. Aboriginal and Torres Strait Islander children and young people receive their initial health and mental health screen within 12 hours of reception.
198. Where a specialist mental health response is required, this is delivered by a multidisciplinary team, to ensure coordinated, specialist assessment and treatment for young people with complex mental health needs. This team is led by a consultant psychiatrist and includes a psychiatric registrar, clinical coordinator, psychologists and other allied health staff. The service is provided at Parkville and Malmsbury precincts during business hours, and through an after-hours on-call arrangement to ensure 24-hour service coverage.
199. Health staff working in the youth justice custodial system are required to complete cultural safety training, with the most recent training delivered by VACCHO in 2022. In addition, part of

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the role of the Aboriginal Youth Justice Team and ALOs is to build capacity of staff to engage with young people in a culturally appropriate way.



Section 6: Deaths in custody

200. This section addresses the Commission's questions regarding:
- the status of RCIADIC recommendations directed to DJCS
 - the monitoring of recommendations directed to DJCS
 - the department's response to other inquiries related to deaths in custody.
201. DJCS acknowledges the terrible pain, sorrow and anger that deaths in custody cause to families and the broader Aboriginal community. There have been 22 Aboriginal deaths in adult prisons and 10 Aboriginal deaths in police custody and custody-related operations in Victoria since the RCIADIC released its final report in 1991.⁷³ There have been no Aboriginal deaths in youth justice custody during this period.
202. Since January 2020, five Aboriginal people have passed in Victorian prisons:
- Ms Veronica Nelson, a Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman, passed on 2 January 2020 at DPFC (age 37 years).
 - Mr Michael Suckling passed on 7 March 2021 at Ravenhall (age 41 years)
 - Ms Heather Calgaret, a Yamatji, Noongar, Wongi and Pitjantjatjara woman, passed on 29 November 2021 at Sunshine Hospital while in custody at DPFC (age 30 years)
 - Mr Joshua Kerr a Yorta Yorta, Gunai and Gunditjmara man, passed on 10 August 2022 at PPP (age 32 years)
 - Mr Clinton Austin, a Gunditjmara and Wiradjuri man, passed on 11 September 2022 at Loddon Prison (Loddon) (age 38 years).
203. The Coroners Court of Victoria will investigate the causes of each of these passings. The Court has already handed down findings in relation to the passing of Ms Nelson (outlined below) and is currently investigating the passing of Mr Suckling.
204. DJCS acknowledges the devastating impact of these passings—for the individual, their families, their communities and across the wider Aboriginal community. DJCS is committed to doing more to prevent any further Aboriginal people dying in custody, including by responding to reviews and inquiries relating to deaths in custody and through the AJA.

The 1991 Royal Commission into Aboriginal Deaths in Custody

205. The RCIADIC was commissioned in response to public concern about the number of Aboriginal deaths in custody and the lack of fulsome explanations about the causes of these deaths.⁷⁴ The RCIADIC found that, between 1 January 1980 and 31 May 1989, 99 Aboriginal people died in

⁷³ Corrections Victoria data shows that between 1991 and November 2022, there have been a total of 303 deaths in Victoria's custodial system. Just over 7 per cent of these were Aboriginal deaths (22 deaths in total). There has been a further 10 Aboriginal deaths in Victoria Police custody and custody-related operations. At present there is no single source of information related to the number of Aboriginal deaths in custody in Victoria. Rather, statistics pertaining to deaths in custody rely on the triangulation of several sources. The Australian Institute of Criminology reports annually on deaths in police custody and custody-related operations and deaths in prison using data collected from DJCS and Victoria Police.

⁷⁴ Royal Commission into Aboriginal Deaths in Custody (RCIADIC). 1991, '1.1 The Royal Commission', *National Report Volume 1*, Austlii Indigenous Law Resources. Available at: <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/other/cth/AURoyalC/1991/1.html>.

- custody.⁷⁵ Three Aboriginal people died in custody in Victoria during this period. Aboriginality was determined to have played a significant role in all 99 people being in custody and dying in custody.⁷⁶ RCIADIC found that the deaths were often the result of systemic failures that led to poor standards of care for Aboriginal people in custody.⁷⁷
206. In addition, the RCIADIC findings highlighted that while Aboriginal deaths in custody were occurring too frequently, Aboriginal people in custody did not die at a greater rate than non-Aboriginal people.⁷⁸ Instead, the number of Aboriginal deaths were a direct result of the over-representation of Aboriginal people in custody, cumulating in Aboriginal people dying in custody at a higher rate relative to their proportion of the whole population.⁷⁹
207. The findings of the RCIADIC remain true today in that Aboriginal people are no more likely to die in custody than non-Aboriginal people in custody, yet they are significantly more likely to be arrested and imprisoned.⁸⁰

Monitoring of RCIADIC recommendations

208. Following the release of the RCIADIC report, states and territories were required to report annually on implementation progress. The 1997 National Ministerial Summit on Indigenous Deaths in Custody resulted in a shift away from annual reporting on RCIADIC implementation (until this Summit, Victoria had followed a recommendation-by-recommendation approach to RCIADIC reporting) to the development of strategic Aboriginal Justice Plans aimed at reducing the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system.⁸¹
209. The AJA, developed in partnership with the Victorian Aboriginal community and launched in 2000, was established as Victoria's key response to the RCIADIC and the 1997 National Summit. At this point Victoria shifted its focus and resources towards the development, implementation and monitoring of the AJA (as the State's response to RCIADIC) and ceased regular reporting against RCIADIC recommendations.⁸² The AJA is discussed in the section below.
210. Although annual monitoring of RCIADIC recommendations ceased to be a priority after the National Ministerial Summit, three reviews have been conducted since 2005 that give insight into Victoria's progress in implementing the recommendations of RCIADIC. This included the 2005 *Victorian Implementation Review of the Recommendations of RCIADIC* and 2018 *Commonwealth Review of the Implementation of RCIADIC Recommendations*. Both of these reviews are discussed later in this section.

⁷⁵ Ibid, 1.1.1.

⁷⁶ Ibid, 1.1.1.

⁷⁷ Ibid, 1.2.2.

⁷⁸ Royal Commission into Aboriginal Deaths in Custody (RCIADIC). 1991, '1.3 The Disproportionate number of Aboriginal People in Custody', *National Report Volume 1*, Austlii Indigenous Law Resources. Available at: <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/other/cth/AURoyalC/1991/1.html>.

⁷⁹ Ibid, 1.3.3.

⁸⁰ National Deaths in Custody Program. 2022, *Deaths in custody in Australia*, Australian Institute of Criminology. Available at: <https://www.aic.gov.au/statistics/deaths-custody-australia>.

⁸¹ Ministerial Summit on Indigenous Deaths In Custody. 4 July 1992, *Agenda, Ministerial Summit Outcomes Paper etc*

⁸² Victorian Government and Aboriginal Justice Forum. 2005, *Victorian Implementation Review of the Recommendations from the RCIADIC*. Page 681

211. Most recently, in 2022, DJCS funded the AJC to undertake a review of Victoria's progress against implementation of the RCIADIC recommendations, which DJCS understands will also be developed into a submission from the AJC to the Commission. DJCS will be guided by this Aboriginal-led review, which is currently underway, and update its summary on progress against each recommendation to align with the findings of the review. In the interest of not pre-empting the findings of the independent Aboriginal-led review, the department has not provided a self-assessment of progress of implementation against RCIADIC recommendations.

DJCS Response to the RCIADIC - the Aboriginal Justice Agreements

212. The AJA, as described above, is Victoria's response to RCIADIC and is a formal partnership between the Victorian Government and Aboriginal communities. The AJA is the longest agreement of its kind in Australia and has been implemented over four phases, described below:

AJA Phase	Priority area of focus
AJA1 2000-2005	Establishing robust partnership structures between Victorian Government and Aboriginal community, and delivering initiatives focused on diversion and increasing cultural competence of justice system.
AJA2 2006-2012	Delivering initiatives focused on prevention and diversion.
AJA3 2013-2018	Delivering initiatives focused on reoffending and recidivism; reducing conflict, violence and victimisation; and cultural strengthening.
AJA4 <i>Burra Lotjpa Dunguludja</i> 2018-present	Delivering initiatives focused on enabling greater self-determination, and eliminating over-representation.

213. The signatories of the AJA are committed to working together to 'improve Aboriginal justice outcomes, family and community safety, and reduce over-representation in the Victorian justice system'.⁸³ Through the AJF, the AJA 'brings together the most senior representatives of Victoria's Aboriginal communities and the justice, human services, health and education government portfolios'⁸⁴ in recognition that the drivers of over-representation are multi-systemic and many lie outside of the justice system. In addressing the drivers, AJA provides a robust foundation to build upon.

Overview of AJA governance mechanisms	
Aboriginal Justice Forum (AJF)	The AJF is the statewide partnership forum that oversees the development, implementation, monitoring and direction of AJA. The AJF meets a minimum of three times per year to promote accountability, support community participation and engagement and provide momentum to progress major policies and initiatives. These meetings are held over two days, alternating between metropolitan and regional locations and include open community forums.
Aboriginal Justice Caucus (AJC)	The AJC comprises the Aboriginal community members of the AJF. In addition to the nine Chairs of the RAJACs, the AJC also includes representatives from Aboriginal peak bodies, ACCOs, the Aboriginal Community Justice Panels (ACJPs) and the Koori Independent Prison Visitor Program. The purpose of the AJC is to be a conduit between the Aboriginal community and the government in relation to justice issues. The AJC provides leadership, advocacy and drives continuous change to address the drivers of offending as well as system and programmatic reform within the criminal justice system.

⁸³ Aboriginal Justice. 2018, *Burra Lotjpa Dunguludja: Victorian Aboriginal Justice Agreement Phase 4*, p. 10.

⁸⁴ Ibid, p. 55.

Collaborative Working Groups (CWGs)	CWGs have a dedicated focus on key AJA initiatives and other priority matters emerging from AJF's. The six current CWGs are: Rehabilitation and Reintegration; Youth Diversion; Policy and Legislative Change; Places; Courts; and Women, Families and Victims). CWGs include AJC and senior government membership, and co-chairing arrangements.
Regional Aboriginal Justice Advisory Committees (RAJACs)	The nine RAJACs are instrumental in developing and maintaining strong partnerships and plans between Aboriginal communities and justice agencies at the regional level. They play an important role in building community participation and involvement in AJA-related work, advocating for program and service changes to improve justice outcomes, providing advice and expertise in the development and implementation of place-based initiatives, and ensuring regional issues are raised and responded to via the AJF.
Local Aboriginal Justice Advisory Committees (LAJACs)	The 12 LAJACs function as localised problem-solving mechanisms, bringing together local Aboriginal community members, justice agency and judicial representatives, and other government representatives to develop and guide local responses to justice and safety issues.

214. The evaluation of AJA3 in 2018 found the partnership has reached a level of maturation not replicated elsewhere.⁸⁵ The evaluation found that the partnership had been instrumental in effecting real change in terms of embedding cultural awareness, and adopting an Aboriginal lens in developing new strategies, policies, and initiatives. The evaluation also found it has facilitated and enabled the development of strong and durable relationships between agencies and members of the Victorian Aboriginal community. The partnership has evolved and there are now high levels of trust between the partners. This has not led to complacency on the part of any of the partners. There remains a high demand for accountability and action.
215. The AJA has led to the planning, implementation and monitoring of a range of justice initiatives and programs aimed at reducing Aboriginal over-representation in the justice system. Under AJA4, over \$100 million in overall Victorian Government funding has been dedicated to these initiatives. This funding includes over \$30 million per annum for a suite of community grants programs, which primarily fund ACCOs to deliver community-based initiatives aimed at preventing contact with the justice system or improving outcomes in the justice system.
216. The AJA community grants program recognises that Aboriginal communities are best placed to design and deliver initiatives that effectively engage Aboriginal people and achieve positive and sustainable outcomes. The grants program is an example of where DJCS has transferred resources to Aboriginal communities. Despite that investment, more must be done in order to have a self-determined justice system. An overview of current initiatives funded through the AJA community grants program is at Appendix B.
217. DJCS has dedicated significant resources and effort towards implementing RCIADIC's recommendations, however more must be done to prevent Aboriginal deaths in custody. DJCS is committed to progressing the AJA partnership, including to prevent any further Aboriginal

⁸⁵ Clear Horizon Consulting. 2018, *Evaluation of the partnership arrangements of the Aboriginal Justice Agreement Phase 3*, prepared for DJCS (at the time, it was the Department of Justice and Regulation).

- deaths in custody, and to respond to the findings of the independent Aboriginal-led review currently being conducted.
218. DJCS, in partnership with Aboriginal communities, is working to reduce the risk of deaths in custody. Relevant examples include decriminalising public intoxication, developing a new legislative framework for youth justice, significant investment in improving prison health services in prisons, and enhancing programs and responses for Aboriginal young people and adults in custody or under supervision in the community.
219. Those efforts are at several points across the justice continuum and are therefore included in the relevant sections throughout this agency response. The table below shows the RCIADIC recommendations relevant to DJCS that the Commission expressed a particular interest in, and references to the relevant sections of this agency response.

Relevant RCIADIC recommendation	Activity	Relevant sections of this agency response
Imprisonment as a Last Resort (R92–120)	Strategies and initiatives to address over-representation of Aboriginal people in the adult and youth justice system, particularly through AJA4 and Wirkara Kulpa.	Sections 2–4 and 6
	Repeal of public intoxication laws.	Section 7
Custodial health and safety (R122–167)	Reform to assessment and the provision of health services in custody including specific supports for Aboriginal children and adults.	Sections 5 and 6
The Prison experience (R168–187)	Programs and initiatives to reduce over-representation delivered in custody, including cultural programs.	Section 3
The Path to self-determination (R188–204);	AJA4 and Wirkara Kulpa-driven reform and initiatives.	Sections 2–4
	Current initiatives funded under the AJA Community Grants Program.	Appendix B
Young Aboriginal People and the Juvenile Justice System (R62)	Strategies and initiatives to address over-representation of Aboriginal people in the youth justice system.	Sections 2 and 4
Breaking the Cycle: Aboriginal Youth (R234–245)		

Response to reviews of RCIADIC

220. As mentioned earlier, annual monitoring of RCIADIC recommendations ceased to be a priority after the National Ministerial Summit. However, in recognition of the importance of this landmark report, two reviews of progress against RCIADIC recommendations have been conducted, and a third is currently underway (the independent Aboriginal-led review that is currently being undertaken by the AJC). These reviews give insight into Victoria's progress in implementing the recommendations of RCIADIC. Key findings are summarised below.

2005 Victorian Implementation Review of the Recommendations of RCIADIC

221. In 2005, the AJF and the Victorian Government partnered to produce a community-led review of Victoria's progress against RCIADIC's recommendations. Dr Aunty Joy Murphy and Dr Mark Rose were appointed to lead the review. Overall, the review found that while there had been progress against the recommendations of the RCIADIC since 1991, 'evidence coming from community, together with statistical analyses, paint[ed] a disappointing picture'.⁸⁶
222. The review noted that Aboriginal community views were focused on the lack of action to address underlying issues that increase the likelihood of Aboriginal people having contact with the justice system. For example, through the review's consultation process, Aboriginal community members highlighted that the RCIADIC appreciated the way in which social determinants such as education, housing and employment form part of the 'complex set of interacting factors that ultimately lead to contact with the criminal justice system'.⁸⁷
223. The findings of this review informed the priority focus area for AJA2: Delivering initiatives focused on prevention and diversion, to reduce Aboriginal over-representation through programs that address the underlying factors that can lead to engagement with the justice system.

2018 Commonwealth 'Review of the implementation of the recommendations of the RCIADIC'

224. The Department of the Prime Minister and Cabinet commissioned an independent national review of the implementation of the RCIADIC recommendations in August 2018. It reviewed the extent to which each jurisdiction had implemented the recommendations of the RCIADIC. The independent reviewer, Deloitte Access Economics, divided recommendations into ten themes and assessed jurisdictions against each. The table below identifies how Victoria was assessed against each justice related theme.⁸⁸

Justice related recommendation themes	Deloitte assessment of Victoria's progress
Coronial matters (recommendations 1–47) The findings of the Commissioners as to the deaths, post-death investigations, and the adequacy of information.	<i>Mostly complete</i> 3 recommendations assessed as not implemented
The justice system (recommendations 48–62) Aboriginal society today, relations with the non-Aboriginal community, the criminal justice system (relations with police), and young Aboriginal people and the juvenile justice system.	<i>Mostly complete</i>
Non-custodial approaches (recommendations 79–121) Diversion from police custody, and imprisonment as a last resort.	<i>Partially complete</i> 3 recommendations assessed as not implemented
Prison safety (recommendations 122–187) Custodial health and safety, and the prison experience.	<i>Mostly complete</i> 1 recommendation assessed as not implemented
Cycle of offending (recommendations 214–245)	<i>Mostly complete</i>

⁸⁶ Victorian Department of Justice. 2005, *The Victorian Implementation Review of the Recommendations from the Final Report of the Royal Commission into Aboriginal Deaths in Custody (1991)*, Victorian Government, p. 4.

⁸⁷ Ibid, p. 12.

⁸⁸ Deloitte. August 2018, 'Executive Summary' in *Review of the implementation of the recommendations of the Royal Commission into Aboriginal deaths in custody*, Department of the Prime Minister and Cabinet.

Improving the criminal justice system, and breaking the cycle.	1 recommendation assessed as not implemented
Reconciliation, land needs and international obligations (recommendations 328–339) Conforming with international obligations, addressing land needs, and the process of reconciliation.	<i>Partially complete</i>

225. The Commonwealth review provided a positive view of Victoria's progress and found that most recommendations had been implemented (more than 80 per cent were fully or mostly implemented, approximately 4 per cent were not implemented and the remainder were partially implemented). The review found Victoria had not implemented 13 recommendations (out of about 300 for which the State has some responsibility). Eight of the 13 recommendations assessed as not implemented fall directly within justice-related recommendation themes and are identified in the table above. DJCS's review of these eight recommendations found:
- Of the three coronial recommendations not implemented, two are matters for Victoria Police, and one related to a notification protocol for Aboriginal deaths in custody has now been implemented.
 - Of the three non-custodial approaches not implemented, two of the recommendations relate to decriminalisation of public intoxication, which Victoria has now implemented (see Section 7). One of the recommendations relates to home detention being provided as a sentencing option. While home detention is no longer available as an alternative sentencing option in Victoria,⁸⁹ community correction orders are available as a sentencing option for most offences and may include conditions relating to residence and place restrictions, and treatment and rehabilitation requirements (see Section 3).
 - Of the prison safety and cycle of offending recommendations not implemented, both are of limited relevance to the Victorian context and the AJC have not raised these as a priority.
226. DJCS acknowledges the concerns raised by Victorian Aboriginal stakeholders about the lack of Aboriginal community involvement in the Commonwealth review, and whether the conclusions drawn by the review were overly positive, as they were inconsistent with Aboriginal community members lived experience. While the review provided the opportunity for Victorian government agencies to provide an update on actions taken to address the RCIADIC recommendations, it did not allow for the involvement of Aboriginal stakeholders.
227. In 2018, the Centre for Aboriginal Economic Policy Research at the Australian National University issued a joint statement endorsed by 33 academic and professional experts across 12 academic institutions in the policy areas examined by the RCIADIC. This statement outlined concerns with the scope, methodology and findings of the review. It noted that the review gives a misleadingly positive view that 78 per cent of all recommendations had been fully or mostly implemented, and this in turn has the potential to misinform policy and practice responses.
228. During consultations, DJCS expressed concerns to the reviewer about its failure to investigate whether actions taken have been implemented in line with the RCIADIC intent of: reducing rates of incarceration; increasing the safety of Aboriginal people in custody; and advancing self-

⁸⁹ Home detention as an alternative sentencing option was introduced following the RCIADIC Report but was abolished in the *Sentencing Legislation Amendment (Abolition of Home Detention) Act 2011* (Vic).



determination.⁹⁰ Further, given the scope, methodology and timing of the review, work under AJA4 was not considered.

Current and future reviews of implementation of RCIADIC recommendations

229. DJCS considers that future reviews of implementation should not necessarily be restricted to the progress of individual RCIADIC recommendations, and any future reviews may wish to consider progress towards meeting the underlying intent of the recommendations. DJCS is committed to involving Aboriginal people and organisations at every stage. As such, the Victorian Government have provided funding for the AJC to undertake a community-led independent review focused on Victoria's progress.
230. Under AJA4, DJCS has continued to work with Aboriginal communities and the AJC to reduce the over-representation of Aboriginal people in the criminal justice system and prevent further Aboriginal deaths in custody. As with every AJA, the concept of self-determination has been specifically enshrined.

Response to other inquiries related to Aboriginal deaths in custody

231. This section provides a summary of other key inquiries that are relevant to Aboriginal deaths in custody (but are not in direct response to RCIADIC recommendations).

Parliamentary Inquiry into the Criminal Justice System (March 2022)

232. The Legal and Social Issues Committee's Inquiry into Victoria's Criminal Justice System report included findings related to Aboriginal over-representation in the criminal justice system. To contribute to this review, the Victorian Government, in partnership with Victoria Police, made a submission to assist the inquiry's investigations,⁹¹ and representatives from DJCS appeared as witnesses. Now that the report has been tabled, government is carefully considering the inquiry's 100 recommendations and 73 findings, which span Victoria's criminal justice and social service systems.
233. Many of these recommendations will complement and build on ongoing reforms, including:
- a. the *Crime Prevention Strategy*, which sets out a clear, long-term approach for how to intervene early and prevent crime
 - b. the *Youth Justice Strategic Plan 2020-2030*, which sets out the government's vision for a leading youth justice system (outlined in Section 2)
 - c. reforms that provide greater support to victims of crime and give them a stronger voice in our justice system.

Cultural Review of the Adult Custodial Corrections System

234. In 2021, the then Minister for Corrections established an Expert Panel to undertake a Cultural Review of the Adult Custodial Corrections System (**the Review**). The Review examined both public and private prisons, focusing on the culture, wellbeing and safety experiences of staff and those in custody. The Review also had a particular focus on Aboriginal cultural safety and self-

⁹⁰ Standing item 11.1, Aboriginal Justice Forum 56, Thursday 25 and Friday 26 June 2020.

⁹¹ Victorian Government. 2021, *Whole of Victorian Government Submission to the Legal and Social Issues Committee Inquiry into Victoria's Criminal Justice System*, Victorian Government. Available at: https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System/Submissions/093_Victorian_Government_Redacted.pdf.

determination, noting the continuing over-representation of Aboriginal people in custody in Victoria.

235.

Australian Law Reform Commission (ALRC) Pathways to Justice report - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (March 2018)

236. DJCS acknowledges the importance and findings of this report. However, it did not formally respond to the report, as Victoria does not formally respond to Commonwealth reports.

Response to recent coronial recommendations

237. Despite the number of recent reviews and inquiries to identify systemic faults in the corrections system, and the establishment of the AJA to respond to these findings, Aboriginal people continue to die in Victoria Police and Corrections Victoria custody. DJCS recognises that more could have been done to prevent the passing of Ms Nelson and Ms Day and will work closely with government and other public sector agencies to consider the findings of the coronial inquests for both of these tragic and preventable deaths. More information about actions taken by DJCS is set out below.

Roles of Justice Assurance Review Office (JARO), Justice Health and the coroner

238. All deaths in custody (where the person was under the control, care or custody of police or corrections officers at the time of their death) must be reported to the coroner for investigation. The coroner independently investigates these deaths to determine what happened, including the cause of the death and how it occurred. The investigating coroner also considers whether anything could be done differently to help prevent similar events. This informs any recommendations as part of their finding.

239. As well as the independent coronial process, DJCS also undertakes an internal review that considers the health and custodial response and opportunities for improvement. The findings of this internal review are submitted to the Coroners Court as part of the inquest process. Major changes have recently been made to this internal review process, including:

- a. expanded terms of reference and new review methodologies with a greater focus on determining the root cause and diagnosing a greater breadth of issues relating to the deaths
- b. greater collaboration, including combined JARO and Justice Health review teams working together to deliver joint reviews rather than separate (and sometimes conflicting) reports
- c. establishment of an Aboriginal Expert Panel to provide advice that promotes the cultural safety, comprehensiveness and quality of the internal reviews
- d. stronger senior executive oversight of the review process.

240. The review now considers the circumstances surrounding the person's death in custody, including but not limited to the intersection between health and custodial systems, in order to identify anything that DJCS can change to prevent future deaths or harm. This includes:

- a. the management of, and response to, the death, including the circumstances preceding the death



- b. the direct cause of the death, and systemic factors that contributed to the event occurring
- c. a review of the custodial and health care management of the person in the lead-up to their death, including whether the custodial management and services (health, wellbeing, rehabilitative, cultural and any other) provided to the person were appropriate
- d. the identification of any system issues or themes that caused or contributed to the death, or impacted upon their custodial experience
- e. consideration of the extent to which the person's human rights were protected and promoted
- f. opportunities for systemic improvement at the prison location, or to the management of prisoners within the corrections system more generally to reduce the likelihood of such deaths occurring in the future
- g. any other issues relevant to the review, such as the implementation of recommendations from previous reviews.

Ms Veronica Nelson inquest

241. Ms Nelson passed on 2 January 2020 at the DPFC. On 30 January 2023, the Coroners Court of Victoria handed down its inquest findings in relation to her passing. The coroner found there were significant failings by DJCS, Correct Care Australasia (the correctional private health care provider), JARO and others in relation to Ms Nelson's passing.
242. A number of the coroner's recommendations have been directed to DJCS, including to Corrections Victoria, Justice Health and JARO. DJCS acknowledges that it failed to deliver safe and appropriate health and custodial services to Ms Nelson. DJCS and the wider justice system must do better. DJCS is strongly committed to working in partnership with the Aboriginal community to make the justice system safer and more responsive to the needs of Aboriginal people. DJCS is carefully considering the recommendations and how best to address the coroner's findings to ensure that this does not happen again. Work to respond to the inquest is underway and DJCS is on track to provide a response to the coroner within the three-month response period.
243. In acknowledgment of the shortcomings of the processes, policies and systems that failed Ms Nelson, DJCS is undertaking significant work to address the coroner's recommendations and improve outcomes for Aboriginal people in custody. Additionally, as outlined in Section 5, from 1 July 2023 significant changes will occur to health care in the prison system including:
- a. primary healthcare services in the women's prison system will be delivered by public healthcare providers
 - b. primary health services in all public prisons will be delivered by new providers
 - c. a new service model will come into operation which includes enhanced supports for Aboriginal people.
244. Other key activities that are underway or have been completed in response to these findings, include:
- a. development of a new Communication Protocol on the notification processes following the death of an Aboriginal or Torres Strait Islander person in prison custody that is person, family and community centred

- b. initiatives to clarify the roles and responsibilities of custodial and health staff in relation to women requiring additional care and development of policies and procedures to improve communication and information sharing
 - c. recruiting more AWOs and establishing Aboriginal Engagement Advisors to support AWOs.
 - d. major changes to the Justice Health and JARO processes for reviewing Aboriginal deaths in custody (outlined above).
245. These actions represent further steps towards preventing any further deaths in custody. However, DJCS is continuing to work carefully through all of the coroner's recommendations to identify what further changes are necessary to address the issues identified. DJCS will continue to work closely with the AJC in the development of any changes to respond to the coroner's recommendations.
- Ms Tanya Day inquest*
246. Ms Day was a 55-year-old Yorta Yorta woman who passed in hospital on 22 December 2017. Ms Day was in police custody at the Castlemaine police station when she fell and hit her head hard on the wall, causing an injury which led to her death. Ms Day had been arrested the day before for public intoxication. The inquest made a number of recommendations relevant to DJCS, including delivering on Recommendation 79 of the RCIADIC relating to decriminalising public intoxication. Recommendations were also directed at legislative amendments to the *Coroner's Act 2008* (Vic) and a review of the volunteer model of the ACJPs.
247. Since the Tanya Day inquest, DJCS has supported government to pass legislation to decriminalise public intoxication, which is due to take effect in November 2023. To support decriminalisation, the DH is implementing a new health-based model to respond to incidents of public intoxication, reducing the reliance on continued police engagement with intoxicated people (see Section 7). A number of recommendations of Ms Day's Inquest were directed to Victoria Police. Victoria Police will be able to provide information to the Commission on the implementation of police-led recommendations.
248. The 2020 inquest findings recommended legislative reform to recognise the role of police coronial investigators and to give coroners the power to direct them in coronial investigations (Recommendation 2). DJCS is currently undertaking work relating to Recommendation 2.
249. The ACJP service model review is complete and the final report has been accepted by DJCS. The review was overseen and endorsed by a working group comprising Victoria Police, VALS, Djirra, ACJP and DJCS. The evaluation found the ACJP plays a significant role in ensuring the safety of persons held in police custody and made 15 recommendations to enhance the program, including bolstering governance and professionalising state-wide operations and staff capacity through increased funding. Work is underway to implement the recommendations of the review and ensure ACJP is equipped to respond to system reforms including the decriminalisation of public intoxication.



Section 7: Criminal justice legislation and reform

250. This section of DJCS's agency response addresses:

- a. the Commission's questions about the impact of criminal justice laws in Victoria on justice outcomes for Aboriginal people
- b. how DJCS is contributing to the implementation of the government's legislative reform agenda, which will contribute to reducing over-representation and preventing deaths in custody.

Public intoxication

251. Aboriginal people are disproportionately impacted by laws criminalising being drunk in public. The Aboriginal community in Victoria has long called for the decriminalisation of public intoxication due to the harmful and disproportionate impact on Aboriginal people.⁹²
252. RCIADIC found that, of the 99 deaths in custody it investigated, 27 were in custody at the time of the deaths for the sole reason that they had allegedly committed the offence of public intoxication. Another eight had been put in custody for being intoxicated in jurisdictions where public intoxication was not an offence.⁹³
253. In Victoria, all three deaths investigated by the RCIADIC were of people in custody solely for the offence of public intoxication, including Ms Day's uncle, Harrison Day.⁹⁴
254. In response, the RCIADIC made a number of recommendations about the offence of public intoxication. Recommendation 79 urged:

That, in jurisdictions where drunkenness has not been decriminalised, governments should legislate to abolish the offence of public drunkenness.
255. The RCIADIC also recommended that intoxicated people should be diverted to non-custodial facilities (such as sobering-up centres),⁹⁵ and local government by-laws prohibiting public drinking required close monitoring to ensure that non-payment of fines imposed for violation of such by-laws did not replace the offence of public intoxication as a major cause of Aboriginal incarceration.⁹⁶
256. In the wake of Ms Day's passing, advocacy by both the Aboriginal and non-Aboriginal community culminated in the establishment of the Expert Reference Group (**ERG**) in August 2019. The ERG

⁹² Aboriginal Justice Caucus. 2021, *Aboriginal Justice Caucus submission on the Legislative Council Legal and Social Issues Committee Inquiry into Victoria's Justice System*, Legislative Council Legal and Social Issues Committee, p.10. Available at:

https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System/Submissions/106_Aboriginal_Justice_Caucus_Redacted.pdf.

⁹³ Mackay, Michael. 1996, 'Law reform: the offence of public drunkenness', *Alternative Law Journal* 21(3). Available at: <http://www5.austlii.edu.au/au/journals/AltLawJl/1996/53.html>.

⁹⁴ ABC News. 6 December 2018, 'Tanya Day got on a train to Melbourne. She never made it home', *ABC News online*. Available at <https://www.abc.net.au/news/2018-12-06/aboriginal-women-tanya-day-dies-after-injury-in-police-custody/10581650>.

⁹⁵ Mackay, Michael. 1996, 'Law reform: the offence of public drunkenness', *Alternative Law Journal* 21(3). Available at: <http://www5.austlii.edu.au/au/journals/AltLawJl/1996/53.html>.

⁹⁶ Ibid.



- was appointed to provide advice to Government on the decriminalisation of public drunkenness and an alternative public health-based response.
257. In April 2020, the Deputy State Coroner made ten recommendations following Ms Day's inquest, including the following recommendation directed to the Attorney-General:
- That the offence of public drunkenness be decriminalised and that section 13 of the *Summary Offences Act 1966* be repealed.
258. In August 2020, the ERG delivered its *Seeing the Clear Light of Day* report to Government, which found that charges of public drunkenness are still disproportionately brought against Aboriginal people. While Aboriginal people make up 0.8 per cent of the Victorian population, 6.5 per cent of all public drunkenness offences between 2014 and 2019 were recorded against Aboriginal people.⁹⁷ The report noted that this may be an underestimate given that the Aboriginal status of the person offending was recorded as unknown for between nine and 11 per cent of attendances each year.⁹⁸
259. The ERG made 86 recommendations as a framework for the transition from a criminal justice to a health-based response. These recommendations included the legislative decriminalisation of public drunkenness.
260. In response, the Government committed to decriminalising public drunkenness and establishing a health-led service model to ensure that people found intoxicated in public are provided with culturally safe health and support services.

The repeal of public intoxication offences

261. The Victorian Parliament passed legislation in 2021 to repeal public intoxication offences. That legislation was due to come into effect in November 2022 acquitting recommendation 79 of RCIADIC, recommendation 1 of Ms Day's inquest, and recommendation 2 of the *Seeing the Clear Light of Day* report.
262. The significant impact of COVID-19 on the health system and challenges in stakeholder coordination, resulted in delays in the commencement of trial sites of the health model. In March 2022, members of the ERG wrote to relevant ministers suggesting an extension of the transition period to a health-model on the basis that the reforms as envisioned by the ERG could not be achieved by November 2022. Consequently, on 4 August 2022 the government passed the Crimes Legislation Amendment Bill 2022 to defer decriminalisation from November 2022 to November 2023, ensuring sufficient time to trial the new health-based response.

Ongoing work of DJCS to support the rollout of the health-based response to public intoxication

263. DH is responsible for the overall design and implementation of the health model, including the development of the service framework to inform the commissioning and operation of health service providers.
264. The Centre for Evaluation and Research Evidence within DH is leading the evaluation of the four Public Intoxication Reform trial sites, with support from DJCS' Crime Statistics Agency on justice-based data inputs. DJCS is working in partnership with Crime Statistics Agency Victoria and

⁹⁷ Expert Reference Group on Decriminalising Public Drunkenness. 2020, *Seeing the Clear Light of Day: Report to the Victorian Attorney-General*, Victorian Government, p. 25.

⁹⁸ Ibid.

- Victoria Police to ensure that data insights on the role of police, including crime statics data and data on police interactions with intoxication persons, are fed into the evaluation to ensure that the final report can assess the extent to which the trial sites have delivered on the key objective of transitioning away from a police response to public intoxication.
265. DJCS was responsible for considering the role of police in a decriminalised environment, with government ultimately determining that no replacement powers were required for police following decriminalisation.
266. DJCS is leading the implementation of independent monitoring and evaluation of the justice-based impacts of the reforms following decriminalisation. This will assist in identifying measures that can be implemented to support achievement of the objectives of the reform to transition from a justice-based response to a health-based response to public intoxication.
267. DJCS is also leading the implementation of a program to deliver legal education to the community to build awareness around changes in the law, to be delivered by a legal service provider. The program aims to support a greater understanding of people's rights in a decriminalised environment, including how Victoria Police may engage with people found intoxicated in public and the role of the new health-based response (where available), and support a shift in perceptions of public intoxication as a health rather than a criminal justice issue.

DJCS's consultation with community on the reforms

268. DJCS consulted extensively with Aboriginal stakeholders including the Ms Day's family, VALS and the AJC co-chairs on whether new powers should be introduced for Victoria Police to respond to public intoxication following decriminalisation.
269. DJCS continues to consult with Aboriginal stakeholders on the implementation of these reforms. A Justice Transition Advisory Panel (which includes representation from the AJC co-chairs, VALS and Ms Day's family) has been established by the department and will be a key engagement mechanism for DJCS as it implements the reform ahead of decriminalisation. DJCS will also continue to engage on an ad-hoc basis with VALS, Ms Day's family, RAJACs and other key stakeholders to seek advice and provide updates on justice-related elements of the reforms. DJCS will also continue to provide regular updates to community members via the AJC and AJF.

Age of criminal responsibility

270. DJCS acknowledges that any child or young person under the age of 14 in a custodial facility, remand or sentenced, is a matter of great concern and that child or young person warrants serious and intensive action and support. On 28 February 2023, there was one 13-year-old Aboriginal child on remand. Due to an ongoing focus on diversion, there are a relatively small number of children under 14 in statutory contact with youth justice. For the 2018–19, 2019–20 and 2020–21 periods, there were no Aboriginal children aged 10 to 13 years in youth justice custody serving a custodial sentence. All 17 unique Aboriginal young people aged 10 to 13 years in detention during this period were on remand.

Current legal position

271. Currently, in all Australian jurisdictions, the minimum age a child can be found guilty of committing a crime, and therefore sentenced or incarcerated, is 10 years old. In Victoria, s 344



of the *Children, Youth and Families Act 2005* (Vic) provides that 'it is conclusively presumed that a child under the age of 10 years cannot commit an offence'.

National Process

272. Since 2018, the Victorian Government has been participating in the national process, currently led by the Standing Council of Attorneys-General (**SCAG**) Age of Criminal Responsibility Working Group, to explore alternative pathways tailored to the needs of 10 to 13-year-olds.⁹⁹ However, the Victorian Government has signalled it is open to acting independently on raising the age if a nationally-consistent approach cannot be agreed through the SCAG.¹⁰⁰ Details of Victoria's participation in the national forum in relation to raising the age have been outlined in a background brief provided to the Commission via a notice to produce.
273. While the national process takes place, Victoria has committed to age-appropriate responses to keep 10 to 14-year-olds out of the youth justice system in the *Youth Strategic Plan 2020-2030*.¹⁰¹ In particular, the plan recognises that:
- Children aged 10 to 14 years are often the most vulnerable and disadvantaged group in the youth justice system, noting a range of complex and intersecting issues.
 - 'Aboriginal Children are also over-represented at a higher rate in the 10 to 14 years-old age group (almost 25 per cent of that group) than for older groups in youth justice.'
 - The 'unique developmental state of children aged 10 to 14 years necessitates a differentiated and age-appropriate response by the criminal justice system.'
 - The diversionary focus is even more important for children aged 10 to 14 years and that the 'government is committed to developing new and safe approaches that keep them out of the youth justice system.'

Transfer of young people from youth justice custody to adult prison

274. The power to transfer a young person from youth justice custody to a prison resides with the Youth Parole Board. Under section 467 of the *Children Youth and Families Act 2005* (Vic), the Youth Parole Board may direct a young person aged 16 years and over, sentenced as a child by the Children's Court, to be transferred to adult prison if:
- it has had regard to the antecedents and behaviour of the young person
 - it has had regard to the age, maturity and stage of development of the young person
 - it has taken into account a report from the Secretary, which must set out the steps taken to avoid the need to transfer the young person concerned to prison
 - it is satisfied that the person:
 - has engaged in conduct that threatens the good order and safe operation of the youth justice centre; and
 - cannot be properly controlled in a youth justice centre.

⁹⁹ In December 2022, SCAG released a draft report that outlined the Age of Criminal Responsibility Working Group's recommendation that state and territory governments should raise the minimum age of criminal responsibility to 14 years of age, without exception. See <https://www.ag.gov.au/about-us/publications/standing-council-attorneys-general-communicues>.

¹⁰⁰ The Hon. Daniel Andrews MP, Premier of Victoria, *Parliamentary Debates*, Legislative Assembly, 20 December 2022.

¹⁰¹ Department of Justice and Community Safety. 2020, *Youth Justice Strategic Plan 2020-2030*, Victorian Government, p. 25. Available at: <https://www.justice.vic.gov.au/youth-justice-strategy>.



275. Between 2017–18 and 2020–21, 17 children and young people were transferred from a youth justice centre to an adult prison.¹⁰² Of these children and young people, seven were Aboriginal, with only one being aged under 18 years-old at the time of transfer.

Bail laws

Recent amendments to bail laws in Victoria

276. In 2013 and 2018, the Victorian Government amended the *Bail Act 1977* (Vic) to introduce new offences and make changes to the bail tests. Under the 2013 reforms, new offences were created for contravening a conduct condition of bail and/or committing an indictable offence while on bail, which can be charged in addition to any inherent consequences for failing to comply with the requirements of bail (eg, potential revocation of bail).¹⁰³ These new offences attracted a ‘show cause’ reverse-onus test in addition to an ‘unacceptable risk’ test.
277. Following the 2017 Bourke Street Tragedy incident, and a review of bail laws undertaken by the Supreme Court Justice the Hon. Paul Coghlan AO, further amendments were made to the Bail Act in 2018. The 2018 amendments apply a reverse-onus test for Schedule 1 and 2 offences. Prior to these changes, for most offences, the sole legal test for being granted bail was whether or not the person posed an ‘unacceptable risk’¹⁰⁴ if bailed. Only the most serious offences previously attracted an additional ‘reverse onus’ on the alleged offender to convince the court that there were ‘exceptional circumstances’ justifying a grant of bail.
278. Justice Coghlan consulted broadly in undertaking his review of bail laws, including taking submissions from the general public and conducting over 30 meetings with a range of affected stakeholders. DJCS provided Justice Coghlan with background information to inform his review, which included advice on the government’s progress towards acquittal of the Victorian Law Reform Commission’s recommendations set out in the 2007 review of the Bail Act, including the introduction of section 3A into the Bail Act in 2010.
279. Section 3A requires bail decision makers to consider any issues that arise due to an accused person’s Aboriginality in all bail determinations. This provision was designed to ‘recognise historical disadvantage, which has led to the over-representation of Aboriginal people on remand.’¹⁰⁵
280. Changes to bail legislation have led to an increase in the number of people who are unsentenced being remanded, and this has disproportionately impacted Aboriginal people, particularly Aboriginal women. Consequently, since changes to the Bail Act, the number of Aboriginal people entering prison unsentenced has increased significantly. Between 2012–13 and 2018–19, the

¹⁰² Youth Parole Board Victoria. 2021, *Youth Parole Board Annual Report 2020-21*, Victorian Government, p. 29. Available at: <https://files.justice.vic.gov.au/2021-10/Youth%20Parole%20Board%20Annual%20Report%202020-21.pdf>.

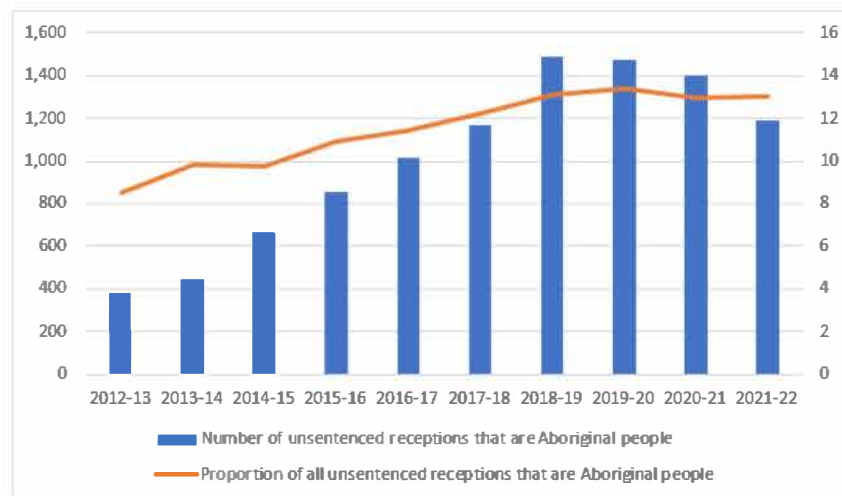
¹⁰³ Pail McGorrrery and Zsombor Bathy, Sentencing Advisory Council. 2017, *Secondary Offences in Victoria*, Sentencing Advisory Council, p. 18.

¹⁰⁴ A bail decision maker must refuse bail if the accused person poses an unacceptable risk of (i) endangering the safety or welfare of any person; (ii) committing an offence while on bail; (iii) interfering with a witness or obstructing the course of justice or (iv) failing to surrender into custody in accordance with the conditions of bail.

¹⁰⁵ *Bail Amendment Bill 2010* (Vic), Statement of Compatibility, *Parliamentary Debates*, Legislative Council, 29 July 2010.

overall number of Aboriginal people entering prison unsentenced increased by 293 per cent (as opposed to a 143 per cent increase over the same period for non-Aboriginal people), from 379 to 1,490.¹⁰⁶ The proportion of the total prison population which is on remand rather than sentenced is larger for women than men in recent years, with this figure even higher for Aboriginal women.¹⁰⁷ The trend of increases in the Aboriginal remand population during this period, shown below, began with the commencement of bail reforms in 2013. The 2018 bail reforms continued this trend. This increase is shown in the graph below.

Figure 6: Number and proportion of Aboriginal unsentenced prisoner receptions, 2012/13 to 2021/22¹⁰⁸



281. DJCS relied on existing methods of data capture and analysis, such as the custodial demand data outlined throughout this document, supplemented by justice partner and stakeholder feedback, including case studies to monitor the impact of the reforms. There are limitations in the existing data sets. These limitations include fragmentation due to different agencies collecting data at different points of the bail system for different purposes, incomplete capture methodology and a limited ability to access, link and make data public from across all relevant agencies.
282. The Crime Statistics Agency has published some relevant bail information. For example, a Crime Statistics Agency report published in December 2019 found that 37 per cent of unsentenced women would have been subjected to a reverse onus test in 2012, which increased to 74 per cent in 2015 and 79 per cent in 2018. Sixteen per cent of sentenced women would have been subjected to a reverse onus test when being considered for bail in 2012, which increased to 34 per cent in 2015 and 60 per cent in 2018.

¹⁰⁶ Evidence and Insights business unit. 2023, *Corrections Victoria prisons data* [unpublished data set], Victorian Department of Justice and Community Safety.

¹⁰⁷ Department of Justice and Community Safety. 1 September 2021, 'Submission to the Parliamentary Inquiry into Victoria's criminal justice system,' pages 31 and 39. Available at https://new.parliament.vic.gov.au/4932ce/contentassets/ff275e1a441e458db80e4959d74af23d/submission-documents/093.-victorian-government_redacted.pdf.

¹⁰⁸ Evidence and Insights business unit. 2023, *Corrections Victoria prisons data* [unpublished data set], Victorian Department of Justice and Community Safety.



283. A large proportion of the increase in proportions of women subject to a reverse onus test was related to the two new bail offences added to the 'show cause' test of the Bail Act in 2013 (contravention of a conduct condition of bail and commitment of an indictable offence whilst on bail). It also found that a significant proportion of women held on remand in 2018 received non-custodial dispositions (38 per cent), including a CCO (20 per cent), a fine (4 per cent), charges not proven (9 per cent) and other (6 per cent). This was not broken down further for Aboriginal women.¹⁰⁹

The impact of increasing rates of remand and short sentences

284. The Sentencing Advisory Council argues that the increase in Victoria's remand population is having an indirect effect on sentencing outcomes. Offenders who may have otherwise received a non-custodial sentence might instead receive a time served prison sentence (with or without a CCO) because they have, in effect, already been punished for their offending.¹¹⁰ They also found that in 2017–18, 20 per cent of all prison sentences imposed in Victoria were time served prison sentences imposed on people who had spent time on remand, and half of those sentences were not combined with a CCO.¹¹¹

285. Periods of remand, time served sentences and short sentences limit access to rehabilitation programs. They also limit the transition planning that can occur to support successful reintegration and reduce the risk of reoffending. The impact of the growth in the remand population, people released following time served and short sentences has been significant, particularly in relation to the impact on potential rehabilitative outcomes. This includes constrained access to services in some instances and impacts on system effectiveness. For example, in 2021–2022 the median length of stay at DPFC was 38 days. In 2020–2021 half of men (50 per cent) and two thirds of women (74 per cent) exiting prison custody had spent less than three months in prison.

286. Imprisonment disrupts many of the factors that mitigate against offending behaviour such as connection to culture and Country, accommodation, employment, and positive relationships with friends, family and the community. This means that when released from remand or a short sentence, people can be more likely to offend than they would have been prior to imprisonment. People on remand and serving short sentences can also be more volatile than people serving longer sentences, as they have less time to adjust to the prison environment. As the proportion of people on remand or serving short sentences increases comparative to people serving longer sentences, the level of instability across the system may also rise.

287. DJCS recognises the distinct impact of increasing remand rates on Aboriginal women. These typically short stays in prison can have significant impacts including potential loss of custody or access to children, impacts on wellbeing, loss of housing, income and employment supports, and disruptions to education and connection with community and support services.¹¹²

¹⁰⁹ Crime Statistics Agency. December 2019, *Characteristics and offending of women in prison in Victoria, 2012–2018*. Available at: www.crimestatistics.vic.gov.au.

¹¹⁰ Sentencing Advisory Council, *Time Served Prison Sentences in Victoria*, February 2020. Available at: www.sentencingcouncil.vic.gov.au.

¹¹¹ Ibid

¹¹² Evidence and Insights business unit. 2023, *Corrections Victoria prisons data* [unpublished data set], Victorian Department of Justice and Community Safety.



Bail and children and young people

288. In 2017, two measures were introduced relating to bail for young people. The Intensive Monitoring and Control Bail Supervision Scheme was introduced, requiring young people on bail to report more regularly to court, youth justice case managers and police (and with optional requirements for young people to comply with orders to attend work, training, school or education programs). Further, the Fast Track Remand Court commenced on 29 May 2017 in the Children's Court of Victoria to expedite bail applications relating to children in criminal proceedings.
289. Despite recent initiatives and a focus on diversion in youth justice, current bail settings are having an adverse impact on children and young people. For example, children charged with minor repeat offending are being remanded for very short periods of time before being granted bail by a court, with many of these children not ultimately receiving a custodial sentence.
290. There have been efforts to reduce these types of remands, for example, via the Children's Court Weekend Online Remand Court, which hears online bail applications on public holidays and weekends, further reducing the remand of young people. However, there is further work to do to reduce this type of remand for any young person, given evidence shows that being held in custody has a direct and detrimental relationship with a child's welfare and wellbeing, and often disrupts community connection through stigma. Further, spending time in custody can also have a criminogenic effect, impacting a child's rehabilitative prospects.
291. In light of this evidence and data in relation to over-representation, the current remand pattern in youth justice is of particular concern for Aboriginal children and young people.
292. In the first half of 2022–23,¹¹³ 67 per cent of episodes of remand attributed to Aboriginal children and young people were for a period of one month or less, with 30 per cent being one week or less. It is also important to note that 88 per cent of episodes of remand were attributed to Aboriginal children and young people released with no custodial sentence. However, some young people spend long periods on remand which reduces time spent in custody after sentencing. For these young people, it is critical to use time on remand to address underlying factors that contribute to offending including reconnection to education, and participation in psychosocial programs targeting emotional regulation, communication and decision making.
293. While children on remand for repeat minor offences only represent a small proportion of those on remand on any one day, a significant number of young people over the course of a year are affected by this type of remand. It is critical to find ways to engage and support these young people in the community to build stability, continuity and connection to community support networks.

Future reform to bail laws

294. The Victorian Government announced on 5 March 2023 proposed reforms to the Bail Act.¹¹⁴ Planned reforms commit to two key changes:

¹¹³ Youth Justice. 2022, *Youth Justice Data Report* [unpublished data set], Victorian Department of Justice and Community Safety.

¹¹⁴ The Age. 5 March 2023, *Bail law reforms unveiled as attorney-general concedes state 'cast the net too wide.'* Available at: <https://www.theage.com.au/politics/victoria/bail-law-reforms-unveiled-as-attorney-general-concedes-state-cast-the-net-too-wide-20230304-p5cpd8.html>.



- a. refining the unacceptable risk test so low-level offending no longer need to prove they will not pose an unacceptable risk to the community if released on bail
- b. limiting the 'reverse onus' test to those charged with serious offences and those who pose a terrorism risk.

DJCS will continue to monitor progress of proposed reforms.

Sentencing

295. As at 30 June 2022, 9.6 per cent of the total sentenced prison population identified as Aboriginal, while 8.2 per cent of the total community corrections population identified as Aboriginal (noting Aboriginal people make up only 1 per cent of Victoria's population).¹¹⁵
296. In 2013, the Sentencing Advisory Council found that in the Magistrates' Court, Aboriginal people who had committed offences were more likely to be sentenced to imprisonment than non-Aboriginal people (37 per cent versus 29 per cent)—even where other factors such as offence type and prior sentencing were examined at the same time.¹¹⁶
297. The *Sentencing Act 1991* (Vic) does not require the courts to specifically take into account factors unique to Aboriginal communities when deciding the appropriate sentence.¹¹⁷ However, AJA4 includes a government commitment to work with Aboriginal people to consider amending the Sentencing Act to take into account a person's Aboriginal status, and the use of Canada's 'Gladue' style pre-sentence reports.¹¹⁸ VALS is currently undertaking a project which will produce 20 Aboriginal Community Justice Reports modelled on Gladue reports and adapted for the Victorian context.¹¹⁹

¹¹⁵ Australian Bureau of Statistics. 2022, *Victoria: Aboriginal and Torres Strait Islander population summary*, Australian Bureau of Statistics. Available at: <https://www.abs.gov.au/articles/victoria-aboriginal-and-torres-strait-islander-population-summary>.

¹¹⁶ Sentencing Advisory Council, *Comparing Sentencing Outcomes for Koori and Non-Koori Adult Offenders in the Magistrates' Court of Victoria* (Melbourne: 2013), x. Available at: <https://www.sentencingcouncil.vic.gov.au/publications/comparing-sentencing-outcomes-for-koori-and-non-koori-adult-offenders-magistrates>.

¹¹⁷ In Victoria, submissions may be made on any relevant childhood deprivation that would reduce an offender's culpability or cultural background that may make imprisonment more onerous. However, there are otherwise no formal mechanisms for recognising a person's Aboriginal cultural history and its relevance to the sentencing exercise.

¹¹⁸ Gladue reports assist judges by contextualising the circumstances of individual Indigenous people who are charged with crimes and being sentenced.

¹¹⁹ See Victorian Aboriginal Legal Service, *Aboriginal Community Justice Reports*.
<https://www.vals.org.au/aboriginal-community-justice-reports/>.



Section 8: System oversight and conditions in custody

298. Due to experiences of historic racial bias, many Aboriginal people understandably continue to hold the view that they are subject to over-policing and that police are interested in controlling Aboriginal people, rather than protecting and upholding Aboriginal rights and interests.¹²⁰ The recent coronial inquests of Veronica Nelson and Tanya Day have further eroded trust among the Aboriginal community in the cultural safety of Victoria's criminal justice system and, specifically, in the health services available to Aboriginal people in police and correctional custody.
299. This section outlines the programs, initiatives and oversight mechanisms that are currently in place for police and custodial settings. The purpose of this framework is to ensure these aspects of the criminal justice system are accountable and responsive to community expectations. While this is intended to build trust in the broader community, DJCS recognises that the Aboriginal community feels let down by existing models used because they do not reflect their needs—underlining that current efforts to be culturally responsive to the Aboriginal community do not go far enough. In order to improve this framework, any future reforms must give proper account to the specific needs of the Aboriginal community and their historical experiences of the criminal justice system.

AJA4 accountability mechanisms

300. It is important to acknowledge the oversight and accountability role of the AJA and its suite of partnership governance structures. The AJA governance structures outline the authorising environment for the development and implementation of key projects, as well as monitoring and oversight expectations and how progress will be communicated and reported. The AJA governance structures (including the AJF, six Collaborative Working Groups; nine RAJACS; and twelve LAJACs) see DJCS regularly providing formal updates on matters of key importance to its Aboriginal stakeholders, and working in partnership to address any emerging issues.
301. Two further practical examples of oversight and accountability mechanisms created by the AJA include public updates on the progress of AJA (that are released on the DJCS website at <https://www.aboriginaljustice.vic.gov.au/the-aja-in-action>) and AJF community forums which have been a hallmark of AJFs since the early 2000s. The location of AJFs constantly rotate to different areas of Victoria which supports different local communities to participate in community forums. Community forums provide an avenue for Aboriginal community members (most frequently those with direct lived experience or a family member in current/recent contact with the justice system) to raise issues of concern or matters that require attention, directly with the senior departmental officials responsible for that system/matter. Community forums are widely publicised before each AJF and RAJACs explore avenues to make the community forums a safe space for community members to voice their issues (in recognition of the power imbalance that can occur between community members and the senior departmental officials that oversee these systems). Recent examples include opportunity to raise matters by phone texting or anonymously through the RAJAC Chair or other respected Aboriginal community members. The community forums are designed to hold government accountable,

¹²⁰ Independent Broad-based Anti-corruption Commission (IBAC). May 2022, *Victoria Police handling of complaints made by Aboriginal peoples*, IBAC.



through deep and respectful listening to community experiences and, importantly, to drive action on specific issues and identify systemic barriers that need to be addressed.

Victoria's police complaints and oversight system¹²¹

302. Victoria's system for external police oversight is a mixed civilian review model. This means that responsibility for investigating police misconduct and corruption is shared by police and an independent oversight agency, with more serious misconduct and corruption generally dealt with by the independent agency.
303. This model is used in all Australian jurisdictions, and many international jurisdictions. In Victoria, the Independent Broad-based Anti-corruption Commission (IBAC) is the independent agency. The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) can also receive complaints about police alleging discrimination, sexual harassment, victimisation, racial and religious vilification under in the *Equal Opportunity Act 2010* (Vic) and the *Racial and Religious Tolerance Act 2001* (Vic). This system has not been designed to specifically address the particular needs of Aboriginal people and within this framework there is no agency specifically responsible for oversight of complaints made by Aboriginal people, nor is there a specific framework in place to support Aboriginal people seeking to make complaints.
304. As an external oversight body, IBAC can exercise a range of powers and functions including:
 - a. requesting information from the police
 - b. reviewing police investigations
 - c. auditing police systems and processes and Victoria Police's compliance with them
 - d. undertaking investigations into police misconduct, including under the authority of its 'own motion' jurisdiction.
305. IBAC can also prosecute police misconduct that involves criminal offences, refer matters to the Chief Commissioner of Police for disciplinary action, make recommendations to Victoria Police, and exercise a range of educative and preventive functions.
306. The 2018 IBAC Parliamentary Committee Inquiry into the external oversight of police corruption and misconduct in Victoria found that mixed civilian review models like Victoria's are capable of meeting best practice principles for the oversight of complaints and disclosures about police. However, the Committee considered this approach must be robust and made recommendations aimed at improving Victoria's current model.¹²²
307. To meet internationally recognised best practice principles for investigating police, the system must be:
 - a. **Independent:** It is institutionally, hierarchically, and practically separate to police.
 - b. **Adequate:** It can gather evidence to determine whether police conduct was unlawful and punish those responsible.

¹²¹ Much of this information has previously been provided to the Commission via a background brief: Department of Justice and Community Safety. 2023, *Background Brief, Police Oversight in Victoria*.

¹²² Independent Broad-based Anti-corruption Commission Committee, Parliament of Victoria. September 2018, 'Chair's Forward,' in *Inquiry into external oversight of police corruption and misconduct in Victoria*, Victorian Government, p. xv.

- c. **Prompt:** It can resolve or finalise investigations of complaints and reviews within a reasonable time, thereby ensuring the community's confidence in the rule of law is maintained.
 - d. **Open to public scrutiny:** It publishes information and reports on activities and outcomes, ensuring transparency and accountability of decision making.
 - e. **Complainant centred:** It appropriately involves and informs complainants and safeguards their interests.
308. Derived from the European Court of Human Rights, and endorsed by the United Nations, these principles were described by the committee as offering the most authoritative statement on best practice principles relating to complaints about police.
309. Importantly, the Committee also found that any reform to the police oversight system must be more responsive to the needs of the Aboriginal community. Recommendation 16 provides that in handling complaints and disclosures about police corruption and other misconduct, IBAC and Victoria Police must ensure that they take proper account of the particular needs and backgrounds of diverse, and sometimes marginalised and vulnerable, Victorians. This highlights that the police oversight system not only needs to be made more robust, but it must be made more robust with a specific focus on communities like the Aboriginal community.

The legislative frameworks governing Victoria's police oversight system¹²³

310. Victoria's mixed civilian police oversight system is largely governed by the *Independent Broad-based Anti-Corruption Commission Act 2011* (Vic) (IBAC Act) alongside the *Victoria Police Act 2013* (Vic) (Victoria Police Act). In this system, IBAC, Victoria Police and VEOHRC have varied levels of responsibility and powers for the receipt, investigation, or resolution of police complaints.
311. IBAC can receive complaints about police through the IBAC Act,¹²⁴ the Victoria Police Act¹²⁵ and the Public Interest Disclosures Act.¹²⁶ Most police complaints, including serious misconduct complaints, are referred from IBAC back to Victoria Police for investigation.
312. The Chief Commissioner of Police through Professional Standards Command (and through referral down to Victoria Police regions, departments or commands) can receive and investigate police complaints.¹²⁷ The Chief Commissioner must notify IBAC of any complaint received about police corrupt conduct or misconduct and, if a misconduct investigation is conducted, report the outcomes and any actions following that investigation.¹²⁸
313. VEOHRC receives and can attempt to resolve complaints about alleged discrimination, sexual harassment, or victimisation by police.¹²⁹ Where a matter relates a class or group of persons that is serious in nature, VEOHRC may investigate.¹³⁰

¹²³ Much of this information has previously been provided to the Commission via a background brief: Department of Justice and Community Safety. 2023, *Background Brief, Police Oversight in Victoria*.

¹²⁴ *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), ss 51–52, 57 ('IBAC Act').

¹²⁵ *Victoria Police Act 2013* (Vic), ss 167 and 169 ('Victoria Police Act').

¹²⁶ *Public Interest Disclosures Act 2012* (Vic), ss 13, 14, 22.

¹²⁷ *Victoria Police Act*, ss 167–172.

¹²⁸ *IBAC Act* (n 19) s 57; *Victoria Police Act* (n 20) ss 169–170.

¹²⁹ *Equal Opportunity Act 2010* (Vic), ss 111, 123–126.

¹³⁰ *Ibid*, s 127.



Oversight in the adult corrections system

314. DJCS is committed to improving conditions in custody for Aboriginal people and making the custodial environment more culturally safe. Effective internal and external oversight is essential to support this. In this regard, the Corrections Cultural Review focused on strengthening transparency and internal and external oversight for the adult system. In particular, the cultural review focused on the mandate of JARO to external transparency and accountability of the operation of the adult custodial corrections system.

The National Preventative Mechanism

315. The National Preventative Mechanism (**NPM**) is subject to funding discussions as part of the Commonwealth Government's ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**OPCAT**). NPMs are cooperative in nature and actively engage with government authorities and other relevant stakeholders, such specific places of detention, to improve their systems. In this way, NPMs need to be distinguished from investigative or oversight bodies – they do not investigate and report on individual complaints and focus instead on the proactive identification and detection of systemic risks in places of detention.

The Independent Prison Visitor Scheme

316. JARO also administers the Independent Prison Visitor Scheme, on behalf of the Minister for Corrections. This scheme plays an important role in maintaining the standards of the Victorian prison system. The program enables respected community members to visit prisons across the state and provide objective and independent advice to the Minister for Corrections on the operation of Victoria's prison system. The Aboriginal Independent Prison Visitor Scheme contributes to the AJA through the appointment of respected Elders and community members as Independent Prison Visitors (IPVs).¹³¹
317. IPVs report on the operation of Victoria's prison system by regularly observing daily prison routine, engaging directly with Aboriginal men and women in custody and reporting any issues or concerns on behalf of individual prisoners. Previously overseen by the JARO, oversight of the Aboriginal Independent Prison Visitor Scheme's management was transitioned to the Aboriginal Justice Group on 1 February 2023. Under the AJA, the Victorian Government has committed to review and redesign the IPV scheme to increase the number of Aboriginal IPVs and ensure the scheme is culturally appropriate.

Oversight in youth justice custody

318. Accountability and transparency are also critical aspects of Victoria's youth justice system and are fundamental to our shared responsibility for the safety and wellbeing of children and young people, including through listening to the voices of children and young people.

The Commission for Children and Young People and the Victorian Ombudsman

319. CCYP and the VO play critical oversight roles in relation to the care and wellbeing of children and young people in youth justice custody.
320. CCYP receives incident reports for all Category 1 incidents as well as all incidents of suicidal and self-harming behaviours, and all incidents of alleged assault by police prior to admission to custody. CCYP is also provided with data on episodes of isolation and use of force. While this

¹³¹ IPVs are appointed by the Minister for Corrections under Section 35 of the *Corrections Act 1986* (Vic).

- oversight covers all young people, specific reporting on the impact of isolation or restraint on Aboriginal young people is included in daily reporting to the CCYP.
321. CCYP also raises thematic issues for response by youth justice based on their review of incident reports over time. Particular attention to use of force, isolations and unclothed searches (discussed directly below) is ongoing, with some progress being made including a new Occupational Safety Training model, a new Safety and Emergency Response Team model with a focus on engagement to assist in the de-escalation of incidents as well as response to incidents.
322. CCYP has oversight of the Independent Visitor Program in youth justice custody, with visitors including Aboriginal visitors attending precincts monthly to meet with young people to discuss their safety, wellbeing and any concerns they may have. Issues raised are documented and the Director of Operations for that Precinct is formally briefed. Visitors complete formal exit interviews with all sentenced young people prior to their exit, and with remanded young people at any time during their period of remand. The interviews have questions specific to cultural support, safety, and wellbeing of Aboriginal young people.
323. CCYP and the VO have dedicated phone lines that young people can access free of charge in their accommodation units to make complaints.

Unclothed searches

324. Unclothed searches and the impact on all young people including Aboriginal young people have been raised through CCYP, the VO and the Human Rights Law Centre, with Youth Justice ceasing all routine unclothed searches in custody and replacing these with the use of an Electronic Body Scanner. While unclothed searches can still be undertaken where there is a belief that the young person has in their possession a prohibited item, or other items, they could use to harm themselves or someone else or use to damage the environment.
325. Work is underway to review unclothed searches practices for boys under the age of 15 years and girls and young women, with the aim of putting additional safeguards in place. This includes requiring the Executive Director, Youth Justice Operations to approve an unclothed search, based on an assessment of significant risk, and the likelihood of an unclothed search being successful in retrieving the item. Consultation about these changes is underway with implementation planned for mid-year.

Use of isolation

326. In March 2017, CCYP tabled their report *The Same Four Walls: an inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system* noting the disproportionate use of isolation on Aboriginal children and young people and recommending the commencement of quarterly reporting to CCYP on isolations and other restrictive practices, including their use on Aboriginal young people. Quarterly reporting was implemented and is ongoing.
327. In September 2019, the VO tabled their report *A thematic investigation of practices related to solitary confinement of children and young people*. This report looked at the 'practical realities of OPCAT', along with a thematic inspection of solitary confinement of children and young people in three different closed facilities: a secure welfare facility, a youth justice centre and an adult prison.

328. The report noted the disproportionate use of behavioural isolation on Aboriginal young people, representing 14 per cent of the population but 20 per cent of behavioural isolations.
329. More recent data has shown that behavioural isolations have decreased slightly:
- During the six months from 1 July to 31 December 2022, there were 25 episodes of behavioural isolation across 17 Aboriginal young people at Malmsbury Youth Justice Precinct and 39 episodes across 39 Aboriginal young people at Parkville Youth Justice Precinct.
 - Looking at the same time period for the previous year (1 July 2021 to 31 December 2021), there were 33 episodes of behavioural isolation across 14 Aboriginal young people at Malmsbury Youth Justice Precinct and 78 episodes across 45 Aboriginal young people at Parkville Youth Justice Precinct.¹³²
330. While behavioural isolations have decreased, security-based isolations have increased. Security-based isolations are used during periods of low staffing, which can be caused by issues with recruitment, retention, and absenteeism. Absenteeism is impacted by violence in the workplace, with serious assaults of staff by young people occurring at both precincts over last 12 months.
331. Where there is low staffing and, a dynamic risk assessment finds that it is unsafe to unlock all young people at the same time, small group rotations will be commenced. This means that a young person or a small group of young people may have time out of their room for an hour, and then go back into their room to allow other young people to have time out. Every time a young person is isolated back into their room this is recorded as a period of isolation.
332. Low staffing has the potential to seriously impact the safety of staff and young people, and the maintenance of the overall security of the precinct. Being able to manage young people's behaviour and interactions, and preventing incidents and harm, requires assertive engagement, vigilance and a level of situational awareness that is dependent upon adequate staffing.
333. On that basis, at Malmsbury Youth Justice Precinct there were 541 episodes of security isolation that impacted 17 Aboriginal young people over the 6-month period, from 1 July 2022 to 31 December 2022. This means each young person was subject to a security-based isolation on an average of 2.5 times a week for that period.
334. At Parkville Youth Justice Precinct there were 1,610 episodes of security isolation that impacted 35 Aboriginal young people over the same 6-month period, from 1 July 2022 to 31 December 2022. This means each young person was subject to a security-based isolation on an average of almost four times a week for that period.
335. While this has a significant impact on all young people, DJCS acknowledges the additional risk associated with the isolation of Aboriginal young people is of great concern and DJCS is committed to continuing to take action to decrease behavioural isolations.
336. Immediate action to address this issue include recalling YJ staff who have moved into support roles back to units, and considering opportunities to temporarily close or consolidate some units so that staff are not spread across so many units. This must be done with caution based on the

¹³² Youth Justice records all instances where a young person is placed in a locked room, separate from others and from the normal routine of the centre as a distinct period of isolation. For example, where a unit of 15 young people are being rotated one hour in their room and one hour out of their room over a period of 10 hours, this equates to 15 young people multiplied by five episodes of isolation each, resulting in the recording of 75 episodes of isolation.

complex dynamics between some individuals or groups of young people and the associated safety and security risks in housing those young people in the same unit.

337. In addition, Youth Justice is focusing on the drivers of absenteeism to understand why these levels are high and how DJCS can support staff to feel more safe and supported in the workplace.
338. Youth Justice also reports to AJF on isolations of Aboriginal young people, and on complaints of mistreatment by Aboriginal young people three times per year. These complaints include allegations of mistreatment by police during arrest and prior to being admitted into youth justice custody, as well as allegations of excessive force by youth justice staff. All allegations of police mistreatment are incident reported, reported to police integrity, and to CCYP. Allegations against youth justice staff are Category 1 incident reported (referred for assessment for misconduct and reportable conduct) and reported to CCYP.

Conclusion

339. The information presented in this agency response about the numerous existing strategies, programs and policies DJCS is delivering to improve Aboriginal justice outcomes, is not intended to imply these efforts are sufficient to address the systemic injustices Aboriginal people face. DJCS recognises that this work is not enough—this is clear from the continuing rate of Aboriginal over-representation in the criminal justice system, and the recent and tragic passings of Veronica Nelson and Tanya Day. This information is intended to give the Commission an understanding of our current efforts, in order to inform the Commission’s findings and recommendations.
340. This response is also intended to provide, from a DJCS perspective, an honest account of some of the challenges facing the justice system and the associated injustices for Aboriginal people who come into contact with it. As recognised by the RCIADIC, structural and underlying socio-economic factors outside of the justice the system play a significant role in increasing the risk of Aboriginal people being in contact with the criminal justice system—which are deeply rooted in colonisation and require a holistic response, with an emphasis on prevention and early intervention. However, the justice system must be improved to not operate in a way which further magnifies these injustices.
341. The fundamental importance of and respect for self-determination underpins the Victorian Government’s commitment to Treaty. Treaty in and of itself is not the end goal – it is the legal framework through which Aboriginal self-determination can be realised.
342. DJCS is committed to Treaty processes and outcomes, and to working in partnership with Aboriginal communities. DJCS acknowledges that truth and Treaty, are critical steps in determining the future direction of criminal justice in Victoria. This response will be supplemented with the oral evidence of DJCS witnesses, as well as witness statements/outlines and oral evidence of justice ministers.
343. DJCS is committed to engaging with the Commission in a transparent and open manner, to support the Commission in pursuit of its objectives. DJCS looks forward to receiving the Commission’s findings and recommendations.