

## Agency Response – Additional Written Evidence

This document provides further written information/data in response to six of the Commission’s questions (questions 111, 160, 167, 170 and 174). On 6 April 2023 the Department of Justice and Community Safety (DJCS) provided the Commission with a supplementary Agency Response in a question and answer format. The supplement committed to providing further information to address six of the Commission’s questions by 14 April 2023. This further information is provided in the table below. For each question, DJCS has included the response provided in the supplement, including the relevant paragraphs of the Agency Response, as well as new and additional information to answer each question more fulsomely. **All new information is provided in green text** (other text is directly extracted from the supplementary Agency Response provided on 6 April 2023)

If it would assist the Commission, DJCS can provide a revised Agency Response and/or Agency Response supplement which embeds this information.

**Question. 111 - What are the key factors attributable to the significant growth in the rate of First Peoples in remand and/or prison in Victoria, particularly over the past 5 years, notwithstanding: the Aboriginal Justice Agreement(s); Closing the Gap initiatives; and the recommendations of the RCIADIC**

The Attorney-General’s witness statement responds to the Commission’s question in paragraphs 26--55.

The Agency Response addresses this question in Sections 1, 2 and 7. The most relevant paragraphs are outlined below:

In summary, the Agency response describes the key factors attributable to the significant growth in the rate of **Aboriginal people in remand/prison particularly in the past five years** (notwithstanding the stated agreements, initiatives and recommendations) as the following (including the interrelationship between these factors):

- the ongoing impacts of colonisation
- inequality within social and economic determinants
- systematic racism
- policy and legislation and the operations of these laws and policies
- rates of reoffending.

**DJCS commits to providing the Commission with further written information/data in response to this question by 14 April 2023.**

*Socio-economic and historical factors attributable to growth (Agency Response: Paras 11 – 14)*

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.<sup>1</sup>

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.'<sup>2</sup> As acknowledged by the Victorian Government, systemic racism is a primary driver of the over-representation of Aboriginal people in the criminal justice system<sup>3</sup>. 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.<sup>4</sup>

The recent growth in Aboriginal peoples' contact with the criminal justice system is inextricably linked to those intergenerational and compounding effects of colonisation.<sup>5</sup> Over-representation in the criminal justice system perpetuates social and economic exclusion, intergenerational trauma, and intensifies the effects of disconnection to Country and culture.

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 outcomes<sup>6</sup>. 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 (within the Agency Response).

*Socio-economic and historical factors attributable to growth cont. (Agency Response: Para 40)*

<sup>1</sup> Department of Premier and Cabinet. 2021, *Victorian Government Aboriginal Affairs Report*, Victorian Government, p. 11.

<sup>2</sup> 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](#)

<sup>3</sup> Victorian Government. 2023. *Victorian Government Submission to the Yoorrook Justice Commission: Response to Critical Issues Paper on the Criminal Justice System*, p.11.

<sup>4</sup> 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_into_Victorias_Justice_System/_Submissions/093_Victorian_Government_Redacted.pdf).

<sup>5</sup> 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.

<sup>6</sup> Victorian Government. 2023. *Victorian Government Submission to the Yoorrook Justice Commission: Response to Critical Issues Paper on the Criminal Justice System*, p.12.

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’.<sup>7</sup>

*Over-representation of Aboriginal adults reoffending (Agency Response: Paras 24 – 26)*

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).<sup>8</sup>

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.<sup>9</sup>

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.

**Criminal justice system factors correlated with increased numbers of people in custody**

The criminal justice system has been subject to a range of reforms over the past 10 years which have contributed to the increased number of people incarcerated in Victoria. No single factor is the sole contributor, rather, the combination of changes has had the cumulative effect seen in offending, sentencing and custodial trends. The main correlating factors include policy and legislative changes to the operation of bail and sentencing options (see

<sup>7</sup> 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>.

<sup>8</sup> Evidence and Insights business unit. 2023, *Corrections Victoria prisons data* [unpublished data set], Victorian Department of Justice and Community Safety.

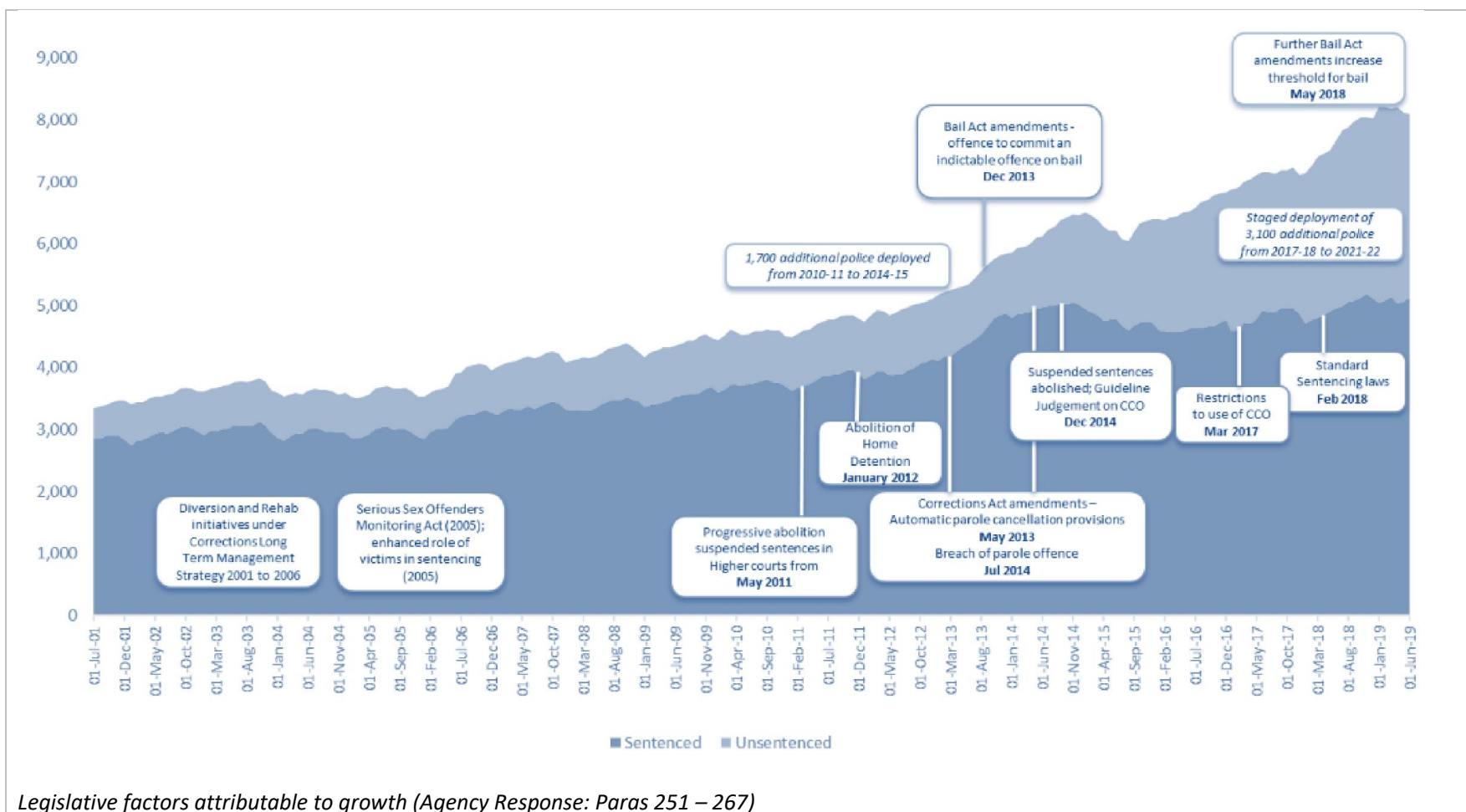
<sup>9</sup> In 2021, 22 per cent of males in prison had previously been in youth justice custody, as had 16 per cent of women in prison: Evidence and Insights business unit. 2023, *Corrections Victoria prisons data* [unpublished data set], Victorian Department of Justice and Community Safety. Only includes 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.

Figure 1). Over this period, the number of offences charged and number of alleged criminal incidents recorded against offenders has increased (in part as a result of legislative changes that criminalised breaches of bail conditions), the rate of people returning to prison (partially due to changes to bail) and imprisonment has become a more frequent sentencing outcome. Importantly, Figure 1 reflects trends up until June 2019 as this is considered the most accurate indication of how data was trending pre the COVID-19 pandemic, which had a unique impact on numbers of prisoner.

*Figure 1: Victorian prison population at end of month by warrant status, against key policy and legislative changes<sup>10</sup>*

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<sup>10</sup> Corrections Victoria internal analysis, 2019.



### Public intoxication

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.<sup>11</sup>

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.<sup>12</sup>

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.<sup>13</sup>

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.

The RCIADIC also recommended that intoxicated people should be diverted to non-custodial facilities (such as sobering-up centres),<sup>14</sup> 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.<sup>15</sup>

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 was appointed to provide advice to Government on the decriminalisation of public drunkenness and an alternative public health-based response.

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.

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.<sup>16</sup> 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.<sup>17</sup>

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.

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

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.

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

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.

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 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.

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.

<sup>11</sup> 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](https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System/_Submissions/106_Aboriginal_Justice_Caucus_Redacted_.pdf).

<sup>12</sup> 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>.

<sup>13</sup> 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>.

<sup>14</sup> 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>.

<sup>15</sup> Ibid.

<sup>16</sup> Expert Reference Group on Decriminalising Public Drunkenness. 2020, *Seeing the Clear Light of Day: Report to the Victorian Attorney-General*, Victorian Government, p. 25.

<sup>17</sup> Ibid.

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.

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.

*Legislative factors attributable to growth cont. (Agency Response: Paras 280)*

#### Bail laws

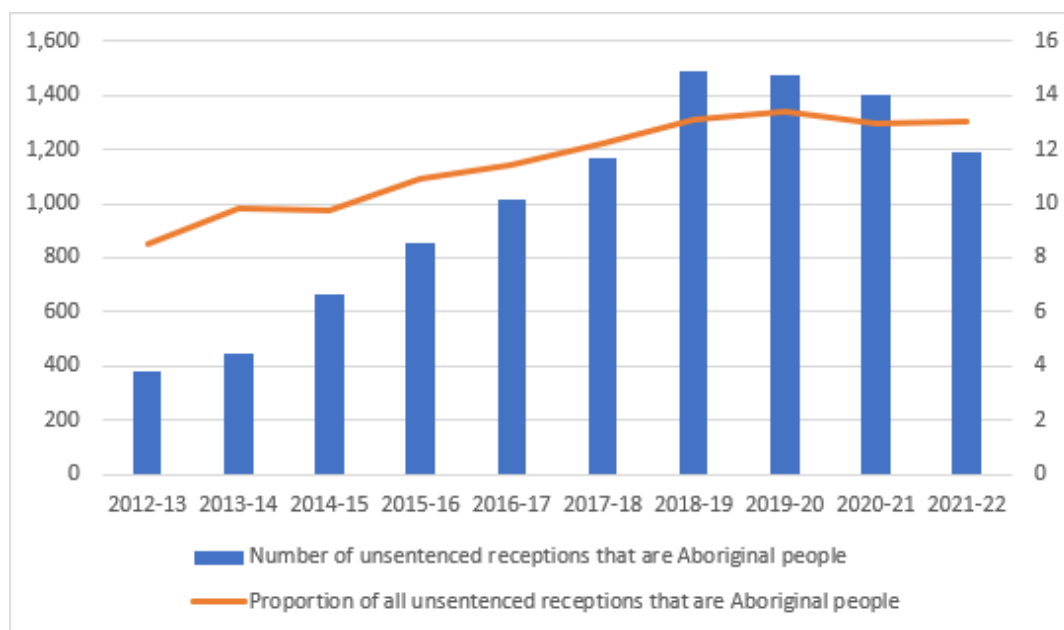
Changes to bail legislation have led to an increase in the number of people who are unsentenced being remanded, and this has disproportionately impacted Aboriginal people, particularly Aboriginal women. Consequently, since changes to the Bail Act, the number of Aboriginal people entering prison unsentenced has increased significantly. Between 2012–13 and 2018–19, the 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.<sup>18</sup> 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.<sup>19</sup> 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.

<sup>18</sup> Evidence and Insights business unit. 2023, *Corrections Victoria prisons data* [unpublished data set], Victorian Department of Justice and Community Safety.

<sup>19</sup> 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](https://new.parliament.vic.gov.au/4932ce/contentassets/ff275e1a441e458db80e4959d74af23d/submission-documents/093.-victorian-government_redacted.pdf).



Figure 6: Number and proportion of Aboriginal unsentenced prisoner receptions, 2012/13 to 2021/22<sup>20</sup>



Legislative factors attributable to growth cont. (Agency Response: Paras 295 – 297)

### Sentencing

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).<sup>21</sup>

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.<sup>22</sup>

Over the past five years, the proportion of Aboriginal prisoners with longer sentences has increased. At 30 June 2018, 16 per cent of sentenced Aboriginal people in custody had a sentence of over five years. At 30 June 2022, this had increased steadily to 26.1 per cent<sup>23</sup>.

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.<sup>24</sup> 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.<sup>25</sup> VALS is currently undertaking a project which will produce 20 Aboriginal Community Justice Reports modelled on Gladue reports and adapted for the Victorian context.<sup>26</sup>

### Notwithstanding: the Aboriginal Justice Agreement(s); Closing the Gap initiatives; and the recommendations of the RCIADIC

DJCS acknowledges that Aboriginal people continue to be grossly over-represented in the criminal justice system, despite significant efforts to address this issue - including initiatives and actions implemented through the AJA, Closing the Gap, and in response to the recommendations of the RCIADIC. As recognised by RCIADIC's findings, many of the key drivers contributing to Aboriginal over-representation are outside of the justice system and include external socio-economic and intergenerational drivers which have their genesis in colonisation (discussed in paras 11-14 and para 40 of the Agency Response) – this means that strategies focussed only on the justice system cannot alone address over-representation.

The scale, complexity and intergenerational nature of the drivers contributing to over-representation mean it is particularly challenging to slow, and reverse, rates of Aboriginal people entering the justice system. Addressing these drivers requires coordination and sustained intervention by services and supports, including those well before a person first comes into contact with the justice system. The evaluation of AJA3 supports this noting that 'no single strategy or set of strategies is going to make quick and significant inroads into the over-representation problem.'<sup>27</sup>

However, initiatives and actions implemented through the AJA, Closing the Gap, and in response to the recommendations of the RCIADIC have started to tackle some of the drivers of over-representation. For example, the evaluation of AJA2 found it contributed to improvements in projected justice outcomes for Aboriginal people in Victoria and across its operation saw lower numbers of Aboriginal people in prison, offenders and offences committed than estimated (based on 2001-06 statistical trends).<sup>28</sup> Several of these initiatives have proven successful in fulfilling their stated objectives - such as improving the cultural responsiveness of the justice system, strengthening participants cultural identity, increasing opportunities for diversion, and improving compliance with Community Correction Orders – however unacceptable rates of over-representation persist.

<sup>20</sup> Evidence and Insights business unit. 2023, *Corrections Victoria prisons data* [unpublished data set], Victorian Department of Justice and Community Safety.

<sup>21</sup> Australian Bureau of Statistics. 2022, *Victoria: Aboriginal and Torres Strait Islander population summary*, Australian Bureau of Statistics.

<sup>22</sup> Sentencing Advisory Council, *Comparing Sentencing Outcomes for Koori and Non-Koori Adult Offenders in the Magistrates' Court of Victoria* (Melbourne: 2013), x.

<sup>23</sup> Evidence and Insights business unit. 2023, *Corrections Victoria prisons data* [unpublished data set], Victorian Department of Justice and Community Safety.

<sup>24</sup> 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.

<sup>25</sup> Gladue reports assist judges by contextualising the circumstances of individual Indigenous people who are charged with crimes and being sentenced.

<sup>26</sup> See Victorian Aboriginal Legal Service, Aboriginal Community Justice Reports.

<sup>27</sup> Clear Horizon, Place-based evaluation of the Aboriginal Justice Agreement (Phase 3) p. 121.

<sup>28</sup> Nous Consulting, Evaluation of the Aboriginal Justice Agreement – Phase 2 Final Report (May 2012), p. 34 – 36.

DJCS acknowledges that interventions to address drivers of over-representation have occurred alongside changes to criminal justice policy, justice system investment, and legislation (referred to above) which may have disproportionately impacted Aboriginal people. The success of initiatives aimed at reducing Aboriginal over-representation in the criminal justice system – including initiatives and actions implemented through the AJA, Closing the Gap, and in response to the recommendations of the RCIADIC – must be considered in the context of these wider factors that have had a disproportionate impact on Aboriginal people and increased the number of Aboriginal people being imprisoned.

DJCS acknowledges over-representation remains a key failing of the justice system and is committed to continuing to work across government and in partnership with Victoria’s Aboriginal community, and to progressing work under the AJA, Closing the Gap and the RCIADIC recommendations, to improve outcomes. DJCS recognises that, whilst Aboriginal communities have worked in partnership with government to improve Aboriginal justice outcomes, Aboriginal people have not been afforded true self determination over these matters – and the evidence-based position is that the best outcomes are often achieved when policies and programs are led and guided by Aboriginal peoples’ knowledge and expertise. We look forward to being guided by the Commission and working with Aboriginal stakeholders to reduce the over-representation of Aboriginal people in the Victorian criminal justice system.

**Question.160 - Explain any current or planned reform in respect of cultural awareness training for bail decision-makers.**

The Attorney-General’s written statement responds to the Commission’s question in paragraphs 219--221.

The Commission’s question was not directly addressed in the agency response as it relates to possible policy decisions and/or possible reform which are the responsibility of government.

**DJCS commits to providing the Commission with further written information in response to this question by 14 April 2023.**

The 2022-2023 Aboriginal Cultural Awareness Training program sought to reflect the importance of Aboriginal cultural considerations in bail/remand and Interim Accommodation Order hearings. The training program includes consideration of cultural bias, reflects on Aboriginal history, and provides an overview of legislative principles and scenarios to guide decision-making processes. Learning outcomes covered in the training include:

- reflection on Aboriginal history, including justice initiatives and the broader justice system
- consideration of identity
- practical consideration of ‘cultural safety’
- wellbeing concepts and broader kinship ties
- consideration of cultural bias and possible impacts
- introduction to local Koori culture through highlighting local Koori supports

- legislative principles and scenarios to guide hearing processes.

Section 23 of the *Honorary Justices Act 2014 (Vic)* provides that honorary justices (which includes bail justices) must complete training and personal development that is prescribed or that the Secretary directs be undertaken. All current Bail Justices were directed to complete the Aboriginal Cultural Awareness Training program under section 23. For any new Bail Justices appointed or for future training to be undertaken a new direction will be issued under section 23. —The program was developed and delivered by an Aboriginal consultancy service with significant experience in providing comparable cultural awareness training programs for justice related organisations.

Future reform of and improvements to the cultural awareness training provided to Bail Justices will involve the evaluation of the 2018 and 2022/2023 training packages. The evaluation, commencing in July 2023, will consider:

- whether existing training achieved its objective of providing Bail Justices with knowledge and the opportunity to consider unconscious bias in the context of bail/remand decision making
- whether there is any correlation between the training provided and the remand rates of Aboriginal peoples and how the knowledge gained by participants is put into action
- feedback from key stakeholders, including Aboriginal legal services, Aboriginal Justice Caucus, Judicial College and Bail Justices on what a future state should look like in relation to cultural awareness training for Bail Justices.

DJCS is currently planning the delivery of additional training that will address recommendation 28 of the Hon. Paul Coghlan QC *Bail Review: Second advice to the Victorian Government* (1 May 2017) and provide training to Bail Justices on other areas of potential unconscious bias (such as homelessness, family violence, mental illness, and substance dependence). This will form part of a broader package of training to address unconscious bias and build on the previously delivered cultural awareness training.

**Question.162 - Explain what mechanisms are available to facilitate the allocation of bail decision makers who have demonstrated cultural competency to areas of higher contact with First Peoples.**

The Agency Response addresses bail justices in Section 3.

**DJCS commits to providing the Commission with further written information in response to this question by 14 April 2023.**

All Bail Justices are required to complete Aboriginal Cultural Awareness Training. The Bail Justices' cultural awareness is monitored through the training program, including completion of an assessment, team discussion and scenarios relevant to their role. The training provides Bail Justices with knowledge and skills to apply in their role relating to cultural, procedural and legal considerations for Bail and Interim Accommodation Order (IAO)

hearings as well as touching on topics such as kinship, language (including body language and terminology), cultural bias and history. The training focuses on culturally safe hearings and decision-making, delivered through group discussion and presentations.

Allocation of Bail Justices is done on an availability model, preferencing local Bail Justices first. There is no mechanism for a Bail Justice to be assigned to or select a particular hearing upon request. Assigning specific Bail Justices to an area of higher contact with First Peoples is not currently feasible given the voluntary nature of the role, the impact it would have on availability for other areas/matters, and the potential complexities to establish a system to enable this model. Bail Justices are typically allocated to hearings in their local area, although remote hearings can be allocated state-wide. Where an accused person is Aboriginal and/or Torres Strait Islander, section 3A of the *Bail Act 1977* (Vic) requires the Bail Justice to take into account any issues that arise due to an accused's Aboriginality. Bail Justices receive consistent reminders, including written correspondence, to follow the hearing checklist, which includes asking if the accused is Aboriginal and, if so, whether they have spoken with VALS.

**Question. 167 – Explain current rates and trends of the incarceration of women: (a) total and (b) First Peoples.**

**DJCS commits to providing the Commission with further written information in response to this question by 14 April 2023.**

The Agency Response addresses this question in Sections 1 and 7. The most relevant paragraphs are outlined below:

*Over-representation (Agency Response: Para 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.<sup>29</sup>

The overall number of women (Aboriginal and non-Aboriginal) imprisoned in Victoria has grown over the past decade, and this has been driven by increases in both remand and reoffending. There are several potential drivers of the increase in the female prison population, including increases in the number of female offenders detected by police, in the frequency of their offending and/or in the seriousness of their offences. Changes to the *Bail Act 1977* (Vic) commencing in 2013, 2015, 2016 and 2018 respectively, may have decreased the likelihood of bail being granted, consequently increasing the number of alleged offenders entering prison on remand over the past decade. These amendments also made it less likely for people accused of

<sup>29</sup> 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](https://www.firstpeoplesrelations.vic.gov.au/sites/default/files/2022-09/2021-VGAAR-Data-Tables-Domain-5-Justice-%26-Safety_0.xlsx).

family violence offences or with a history of perpetrating family violence to be granted bail.<sup>30</sup> The response to question 111 describes in more detail the factors that have driven overall increases in the numbers of Aboriginal people in custody in Victoria, which also apply to Aboriginal women. Allowing for differences in structural age distributions between the Aboriginal community and non-Aboriginal Victorians, the age standardised imprisonment rate for Aboriginal women was 162.4 per 100,000 compared to 12.3 per 100,000 for non-Aboriginal women.<sup>31</sup> On 30 June 2022, Aboriginal women were 13.2 times more likely to have been held in prison custody than non-Aboriginal women in Victoria.<sup>32</sup> For additional context, the age standardised rate of Aboriginal female imprisonment in Victoria is the third lowest in the country and well below the national rate of 386.1 per 100,000.<sup>33</sup> In terms of imprisonment trends, Aboriginal women in prison in Victoria are notably younger than other states, with a mean age of 31.1 years and median age of 29.7 years at 30 June 2022, younger than the equivalent Australian figures of 34.0 (mean) and 33.2 (median).<sup>34</sup> This is not the case for non-Aboriginal women, whose average age is older and very similar to the Australian average.

Due to the significant disruptions to the usual operations of the criminal justice system during the pandemic period, pre-pandemic analysis is helpful to understand long-term trends. In the 2019 Crime Statistics Agency study on the characteristics of women received into prison custody in Victoria in 2012, 2015 and 2018, it noted the following trends:

- The number of women going into prison each year doubled between 2012 and 2018, mostly due to increased instances of people going into prison unsentenced, while instances of people going into prison sentenced remained relatively stable.
- The proportion of unsentenced women with prior imprisonment had risen.

<sup>30</sup> Walker, S., Sutherland, P., and Millsteed, M. 2019, Characteristics and offending of women in prison in Victoria, 2012-2018, Crime Statistics Agency. Available at: [https://files.crimestatistics.vic.gov.au/2021-07/Crime%20Statistics%20Agency%20Characteristics%20and%20offending%20of%20women%20in%20prison%20in%20Victoria%202012%202018\\_0.docx](https://files.crimestatistics.vic.gov.au/2021-07/Crime%20Statistics%20Agency%20Characteristics%20and%20offending%20of%20women%20in%20prison%20in%20Victoria%202012%202018_0.docx)

<sup>31</sup> Australian Bureau of Statistics. 2023, 'Table\_17' in 2023 *Prisoner Characteristics, States and Territories (Tables 14 to 35)*, Prisoners in Australia, Australian Government. Available at: <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/2022/2.%20Prisoner%20characteristics%2C%20States%20and%20territories%20%28Tables%2014%20to%2035%29.xlsx>.

<sup>32</sup> Australian Bureau of Statistics. 2023, 'Table\_17' in 2023 *Prisoner Characteristics, States and Territories (Tables 14 to 35)*, Prisoners in Australia, Australian Government. Available at: <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/2022/2.%20Prisoner%20characteristics%2C%20States%20and%20territories%20%28Tables%2014%20to%2035%29.xlsx>.

<sup>33</sup> Australian Bureau of Statistics. 2023, 'Table\_17' in 2023 *Prisoner Characteristics, States and Territories (Tables 14 to 35)*, Prisoners in Australia, Australian Government. Available at: <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/2022/2.%20Prisoner%20characteristics%2C%20States%20and%20territories%20%28Tables%2014%20to%2035%29.xlsx>.

<sup>34</sup> Australian Bureau of Statistics. 2023, 'Table\_21' in 2023 *Prisoner Characteristics, States and Territories (Tables 14 to 35)*, Prisoners in Australia, Australian Government. Available at: <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/2022/2.%20Prisoner%20characteristics%2C%20States%20and%20territories%20%28Tables%2014%20to%2035%29.xlsx>.

- Historical police-recorded involvement in family violence incidents (as a perpetrator and/or victim) increased over time.
- Frequency of police-recorded offending had increased over time, with women recorded for more offences. Women also had more charges associated with their prison entries over the study period.
- The most common offence recorded was a property and deception offence (83% of unsentenced and 79% of sentenced women).
- The category of historical offending showing the greatest change was breach of bail offences, with 41% of unsentenced women in 2012 having a breach of bail offence recorded rising to 69% in 2018. Drug offences had also increased.

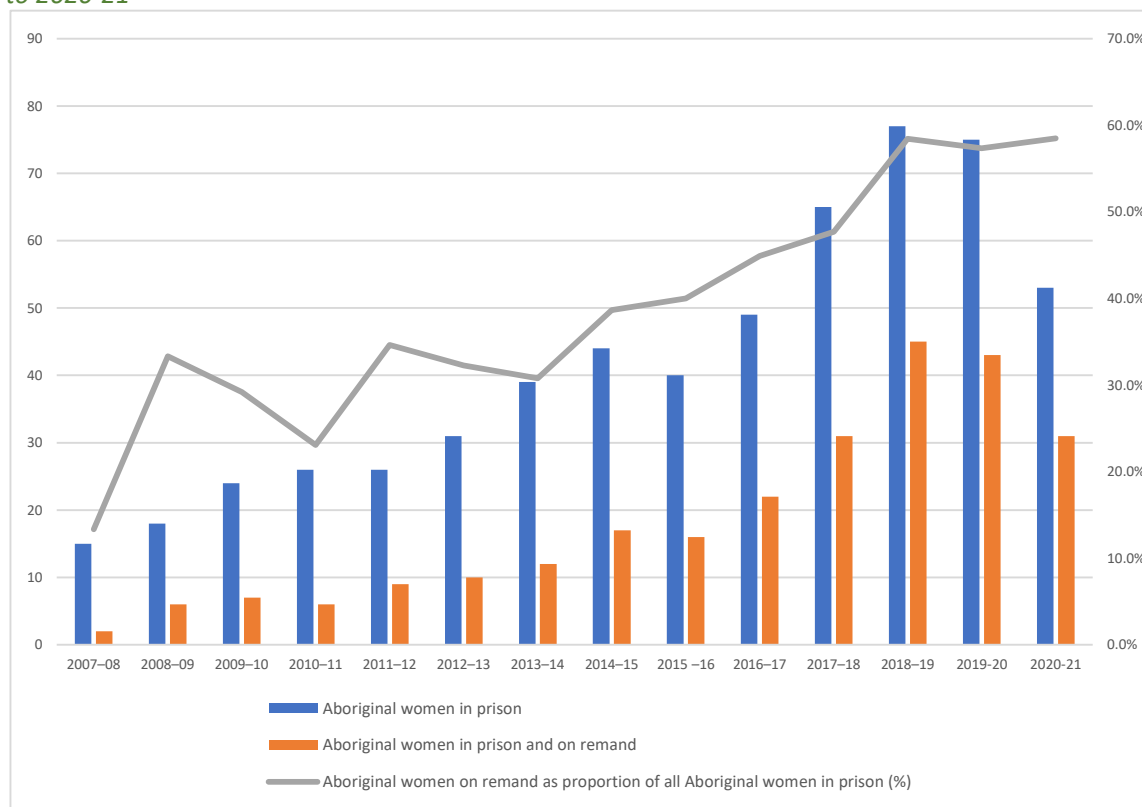
Overall, the study found that unsentenced women who entered prison in 2018 had more extensive offending, drug use, victimisation, and family violence histories compared with women who entered prison in 2012. While this study did not explicitly break down findings for Aboriginal women and non-Indigenous women, an increasing percentage of both sentenced and unsentenced receptions in the study cohorts were Aboriginal women through the study period.<sup>35</sup>

Recent data confirms that Aboriginal women are more likely to return to prison within two years than non-Aboriginal women, with 46.2 per cent of Aboriginal women released from prison returning within two years in 2020-21<sup>36</sup>. Similarly, remand continues to contribute to a significant proportion of Aboriginal women being in prison (see Figure 2 and 3). Recent figures reflect disruption to usual patterns of crime and criminal justice operations due to the COVID-19 pandemic.

<sup>35</sup> Walker, S., Sutherland, P., and Millsteed, M. 2019, Characteristics and offending of women in prison in Victoria, 2012-2018, Crime Statistics Agency. Available at: [https://files.crimestatistics.vic.gov.au/2021-07/Crime%20Statistics%20Agency%20Characteristics%20and%20offending%20of%20women%20in%20prison%20in%20Victoria%202012%202018\\_0.docx](https://files.crimestatistics.vic.gov.au/2021-07/Crime%20Statistics%20Agency%20Characteristics%20and%20offending%20of%20women%20in%20prison%20in%20Victoria%202012%202018_0.docx)

<sup>36</sup> Department of Premier and Cabinet. 2021, 'Table 15.2.2.3' 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](https://www.firstpeoplesrelations.vic.gov.au/sites/default/files/2022-09/2021-VGAAR-Data-Tables-Domain-5-Justice-%26-Safety_0.xlsx).

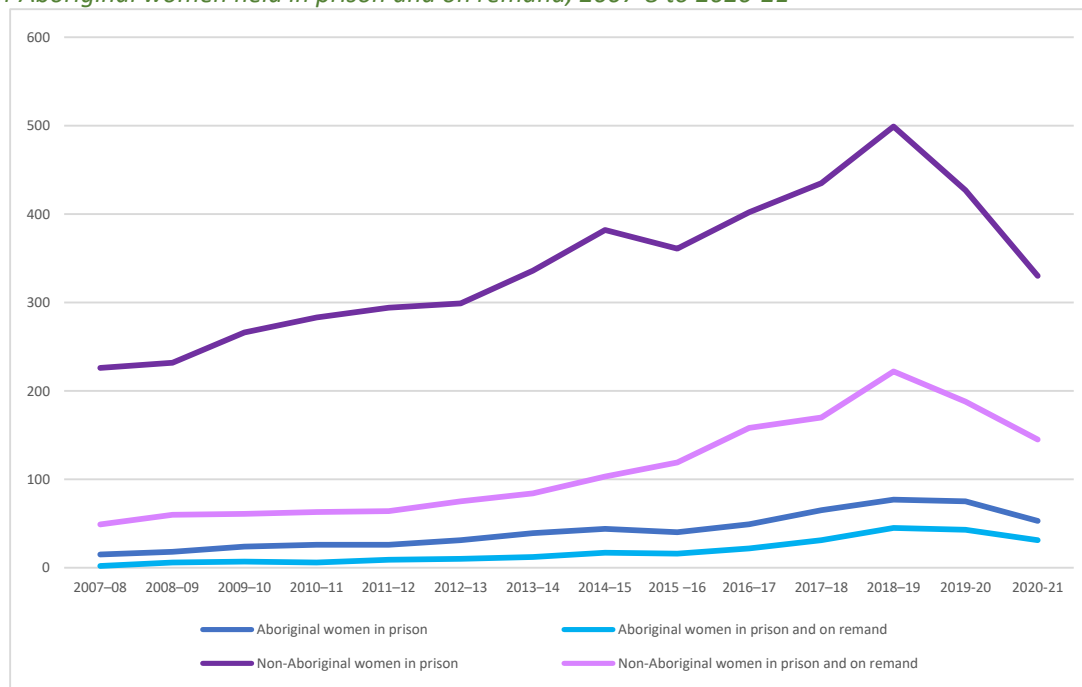
Figure 2: Number of Aboriginal women in prison and held on remand and proportion of Aboriginal women on remand as a proportion of Aboriginal women in prison, 2007-8 to 2020-21<sup>37</sup>



<sup>37</sup> Department of Premier and Cabinet. 2021, 'Table 15.2.2.4' 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](https://www.firstpeoplesrelations.vic.gov.au/sites/default/files/2022-09/2021-VGAAR-Data-Tables-Domain-5-Justice-%26-Safety_0.xlsx).



Figure 3: Aboriginal and non-Aboriginal women held in prison and on remand, 2007-8 to 2020-21<sup>38</sup>



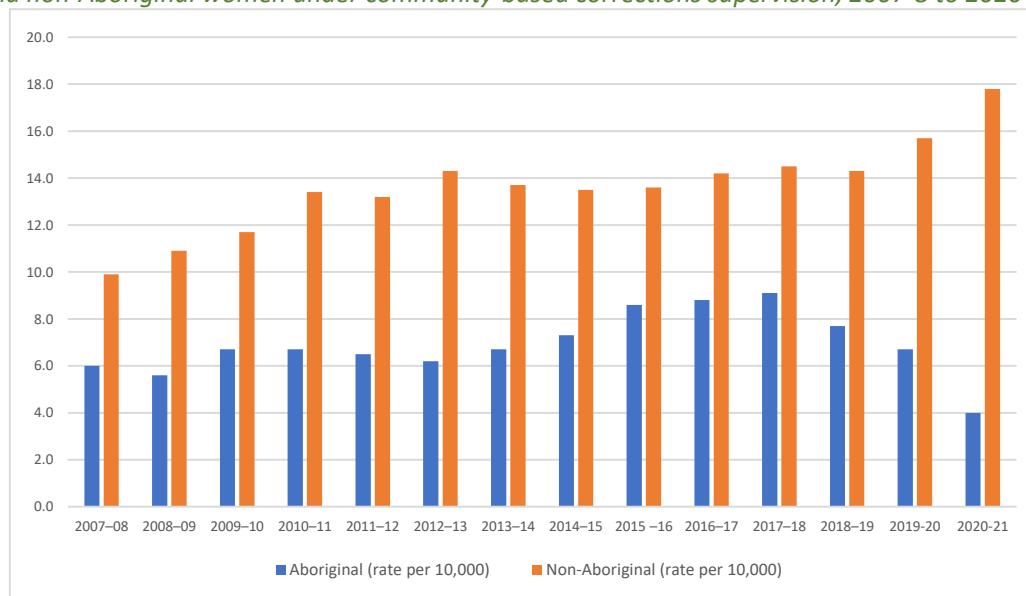
The top 5 most serious offence or charge that Aboriginal women were held in custody for at 29 June 2022 were assault (23%), drug offences (19.5%), homicide (15.2%), other property offences (12%) and burglary (5%)<sup>39</sup>.

<sup>38</sup> Department of Premier and Cabinet. 2021, 'Table 15.2.2.4' 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](https://www.firstpeoplesrelations.vic.gov.au/sites/default/files/2022-09/2021-VGAAR-Data-Tables-Domain-5-Justice-%26-Safety_0.xlsx).

<sup>39</sup> Evidence and Insights business unit. 2023, *Corrections Victoria prisons data* [unpublished data set], Victorian Department of Justice and Community Safety.

Growing incarceration of Aboriginal women in Victoria may also reflect sentencing decision-making. Aboriginal women are less likely to be under community-based corrections supervision than non-Aboriginal women, and this gap has been increasing over time, as illustrated in the graphs below.

Figure 4: Rate of Aboriginal and non-Aboriginal women under community-based corrections supervision, 2007-8 to 2020-21<sup>40</sup>



#### Impact of bail amendments (Agency Response: Para 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 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.<sup>41</sup> 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

<sup>40</sup> Department of Premier and Cabinet. 2021, 'Table 15.2.2a.' 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](https://www.firstpeoplesrelations.vic.gov.au/sites/default/files/2022-09/2021-VGAAR-Data-Tables-Domain-5-Justice-%26-Safety_0.xlsx).

<sup>41</sup> Evidence and Insights business unit. 2023, *Corrections Victoria prisons data* [unpublished data set], Victorian Department of Justice and Community Safety.

Aboriginal women.<sup>42</sup> 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.

**Question. 170 – How would the State characterise: (a) the accessibility and efficacy; and (b) the key barriers, challenges and failings of the available support programs, and where is further work needed?**

**DJCS commits to providing the Commission with further written information in response to this question by 14 April 2023.**

There are a range of programs and services available in Victorian prisons (as per response to questions 168 and 169). Aboriginal people in custody, based on case management planning and relevant assessments, may access mainstream programs to support rehabilitation and successful transition into the community and Aboriginal cultural programs that support connection to culture and country.

*Efficacy – the theoretical evidence base*

The selection, design and implementation of all programs and services in a correctional setting are underpinned by, and align with, the Offender Management Framework (OMF).

**Offender Management Framework:**

The Offender Management Framework (OMF) provides an evidence-based framework to ensure programs and services are designed and delivered in a manner which maximises their effectiveness through a number of practice principles that are based on the “what works” literature - a substantial body of research evidence on reoffending. These practice principles ensure that Corrections Victoria's offender management practices are linked to evidence-based theory and enables a consistent, system-wide approach to offender management. The OMF aims to:

- maintain a safe and secure community
- motivate offenders to engage in and continue with programs and services
- identify and monitor offenders risks and needs
- based on these risks and needs, co-ordinate and prioritise offenders access to appropriate programs, services and activities.

A fundamental part of achieving this is to effectively engage and motivate offenders, while in our custody or under our supervision in the community, to address their level of risk and criminogenic needs.

<sup>42</sup> 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](https://new.parliament.vic.gov.au/4932ce/contentassets/ff275e1a441e458db80e4959d74af23d/submission-documents/093.-victorian-government_redacted.pdf).

### **Risk Need Responsivity Model and efficacy**

The 'Risk Need Responsivity' (RNR) model is the 'effective correctional intervention'<sup>43</sup> upon which Corrections Victoria's OMF is based. Effective correctional intervention with offenders dictates that specific principles exist which have been found to be essential in interventions designed to reduce recidivism - specifically, the principles of risk, need, and responsivity.<sup>44</sup> Research support is strong for the application of the RNR model and its principles and indicates that treatment that complies with these principles is superior to treatment that does not adhere to these principles and to criminal sanctions alone.

**Risk principle:** the intensity of correctional interventions must be matched to the level of risk of recidivism. Treatment is most effective when its level of intensity is matched to risk - the impact on reduced recidivism is *greatest* when higher risk offenders receive higher intensity intervention, and moderate risk offenders receive moderate intensity intervention.<sup>45</sup>

- Low risk offenders who received minimal levels of treatment had a recidivism rate of 15% and low risk offenders who received intensive levels of services had more than double the recidivism rate (32%)<sup>46</sup>
- High-risk offenders who did not receive any intensive treatment services had a recidivism rate of 51% but the high-risk offenders who did receive intensive services had almost half the recidivism rate (32%).<sup>47</sup>

**Need principle:** The need principle, states that interventions such as treatment and supervision should explicitly target the criminogenic needs of offenders that are empirically associated with recidivism risk and are amenable to change (dynamic (changeable) risk factors rather than static (historical) risk factors).<sup>48</sup> Research has shown that targeting these risk factors for change leads to reduced re-offending.

<sup>43</sup> Andrews, D. A., & Bonta, J. (2010). Rehabilitating criminal justice policy and practice. *Psychology, Public Policy, and Law*, 16(1), 39; Hanson, R. K., Bourgon, G., Helmus, L., & Hodgson, S. (2009). The principles of effective correctional treatment also apply to sexual offenders: A meta-analysis. *Criminal Justice and behavior*, 36(9), 865-891.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.; Gendreau, P., & Goggin, C. (1996, September). Principles of effective correctional programming. In *Forum on corrections research* (Vol. 8, pp. 38-41), Correctional Service of Canada; Gendreau, P., Little, T., & Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: What works!. *Criminology*, 34(4), 575-608; Gendreau, P., Goggin, C. E., & Law, M. A. (1997). Predicting prison misconducts. *Criminal Justice and behavior*, 24(4), 414-431; Gordon, A., & Nicholaichuk, T. (1996). Applying the risk principle to sex offender treatment. In *Forum on Corrections Research* (Vol. 8, No. 2, pp. 36-38); Hanson, R. K., Bourgon, G., Helmus, L., & Hodgson, S. (2009). The principles of effective correctional treatment also apply to sexual offenders: A meta-analysis. *Criminal Justice and behavior*, 36(9), 865-891; Nicholaichuk, T. P. (1996). Sex offender treatment priority: An illustration of the risk/need principle. In *Forum on Corrections Research* (Vol. 8, No. 2, pp. 30-32).

<sup>46</sup> Bonta, J., Wallace-Capretta, S., & Rooney, J. (2000). A quasi-experimental evaluation of an intensive rehabilitation supervision program. *Criminal Justice and Behavior*, 27(3), 312-329.

<sup>47</sup> Ibid

<sup>48</sup> Andrews, D. A., & Bonta, J. (2010). Rehabilitating criminal justice policy and practice. *Psychology, Public Policy, and Law*, 16(1), 39; Hanson, R. K., Bourgon, G., Helmus, L., & Hodgson, S. (2009). The principles of effective correctional treatment also apply to sexual offenders: A meta-analysis. *Criminal Justice and behavior*, 36(9), 865-891.

Based on tests of the need principle, successfully addressing criminogenic needs has been found to be associated with an average 19% difference in recidivism.<sup>49</sup>

**Responsivity Principle:** This principle concerns the interaction between the individual and treatment. Specifically, this principle indicates that treatment, in addition to being cognitive-behavioural in orientation,<sup>50</sup> should be delivered in a manner that is responsive to various characteristics of the individual, such as language, culture, personality style, intelligence, anxiety levels, learning styles, motivation (readiness), self-esteem, and cognitive abilities, in order to increase their engagement and participation in treatment to ensure maximum effectiveness.<sup>51</sup>

Research indicates that adherence to the general responsivity principle alone (i.e., employing cognitive behavioural methods of intervention) results in an average 23 per cent difference in recidivism.<sup>52</sup>

#### **Evidence-based programs**

Ample empirical evidence has repeatedly found that when programs target risk and participants successfully complete these programs, they are less likely to re-offend. For example, the provision of education, employment and other correctional programs that target substance abuse, violence prevention, sexual offending and family violence prevention, have been shown to contribute to safe transition to the community and significantly reduce reoffending. It is important to note that while cognitive behavioural programs have been shown to reduce recidivism by 20-30 percentage points,<sup>53</sup> cognitive behavioural programs will not guarantee someone will not re-offend.

The program offering in Victorian prisons aligns to this evidence base, with offence-specific and offence-related programs. Programs are delivered using a cognitive-behavioural and strengths-approach as well as ensuring and supporting a humane approach to managing someone in custody including consideration to cultural safety.

<sup>49</sup> Andrews, D. A., & Bonta, J. (2006). *The psychology of criminal conduct*. Routledge.

<sup>50</sup> Andrews, D. A., & Bonta, J. (2010). Rehabilitating criminal justice policy and practice. *Psychology, Public Policy, and Law*, 16(1), 39; Hanson, R. K., Bourgon, G., Helmus, L., & Hodgson, S. (2009). The principles of effective correctional treatment also apply to sexual offenders: A meta-analysis. *Criminal Justice and behavior*, 36(9), 865-891.

<sup>51</sup> Ibid

<sup>52</sup> Andrews, D. A., & Bonta, J. (2006). *The psychology of criminal conduct*. Routledge.

<sup>53</sup> Duwe, G. (2017). *The use and impact of correctional programming for inmates on pre- and post-release outcomes*. US Department of Justice, Office of Justice Programs, National Institute of Justice.

Offence-specific programs address criminogenic needs including sexual, violence and drug and alcohol-related offending. Forensic Intervention Services (FIS) within Corrections Victoria is responsible for providing an integrated system of assessment, management and intervention across both prisons and Community Corrections Services. The primary focus of FIS is to deliver group-based interventions that are responsive to the service user's risks and needs to provide the opportunity for positive behaviour change and a reduction in the risk of re-offending. As such, several treatment options could be available for each service user.

FIS can also offer individual intervention in the following circumstances:

- where the individual service user may be unsuitable or unable to participate in group-based intervention
- when the service user requires individual support for a period to engage in, or remain engaged in, group intervention
- when the service user requires individual interventions to supplement their group-based program to address specific sexual and/or violent offending risks or needs
- for those subject to a Post Sentence order as per the clinical services model for this cohort of service users.

FIS delivers offending behaviour programs across the following portfolio areas:

- violent offending intervention programs
- sexual offending intervention programs
- Disability and Supported Pathways (DSP) programs (including sexual and violent offending intervention programs)
- High Risk Complex Needs (HRCN) interventions delivered to Post Sentence, Major Offenders and Special Category service users where required
- Rivergum Residential Treatment Centre.

Offence-related programs facilitate change relevant to managing risk of reoffending and can include family support, harm-related drug use and accommodation, education and employment as detailed in response to question 169. Offence related programs complement offence specific programs and may provide protective factors – such as employment, pro-social connections and engagement with family. Housing, for example, is an important factor that supports a person's reintegration, allowing them to focus on other factors such as getting a job, reconnecting with family, attending programs. As such, Corrections' program suite includes offence specific and offence related services and programs.

The literature on correctional program effectiveness suggests that programs are most effective when they are structured, have implemented systematic risk and needs assessment and adopt a cognitive-behavioural model for treatment. In line with this, FIS within Corrections Victoria utilises an

accreditation panel to regularly review clinical programs and services and ensure they are best practice and have a clear, evidence-based theoretical model underpinning each program and service.

User feedback and case studies are also regularly collected across program offerings and incorporated into evaluations – this includes individual surveys or yarning circles for specific Aboriginal cultural programs. Feedback contributes to recommendations and future funding submissions.

The department is committed to understanding the impacts of programs and making sure every initiative is making a positive difference. Across the justice system internal and external evaluations are undertaken to assess program implementation and effectiveness. Evaluations of new and established initiatives ensure ongoing improvement and responsiveness to the needs of service users and the sector more broadly. These evaluations draw on a range of data sources that are relevant to each program. External evaluators are engaged on an as-needs basis to understand the specific impacts of major departmental programs or funding streams. Program effectiveness is measured against the stated program's objectives – with recidivism not always being the main objective of a program.

#### **Challenges in measuring efficacy**

When questioning a program's efficacy, the program effectiveness is defined within evaluation findings as the ability to demonstrate whether the programs and services are meeting their intent, including consideration of factors such as responsiveness to program participants, user experience and integrity of program delivery. While the program's impact on recidivism is important to consider, it is not the only indicator that measures effectiveness. Measuring the impact of a program on recidivism presents unique challenges including being able to establish attribution of changes to behaviour to one particular program (where the individual may have participated in multiple programs throughout their time in custody or under an order), and in being able to identify appropriate comparison groups to appropriately measure efficacy, particularly when programs are eligibility based and voluntary.

Qualitative information on individuals' perception of programs and services provide insight into the lived experience of rehabilitation programs and provide useful insights to inform program design and delivery, however it is often difficult to collect qualitative information on longer term outcomes for individuals and their families with appropriate consent once they end their involvement with the corrections system. When evaluating the effectiveness of rehabilitation programs delivered in the Victorian custodial environment, these challenges make it difficult to understand the medium to longer term outcomes.

While in recent years the Victorian Government has seen an enhancement in the quality and availability of linked service system data, this does not always extend to the capacity to meaningfully assess the effectiveness of bespoke programs and services. Many programs are offered to an individual based on their assessed risk of re-offending and other areas of assessed need in line with evidence-based best practice approach. This makes it difficult to establish an effective comparison group against which program effectiveness can be measured. Information may be recorded in multiple

disconnected data systems, impacting the ability to reconcile information for evaluation purposes, while comparison of information over time may be impacted by changes to policy, legislation, or administrative/business processes.

### **Challenges in measuring efficacy of programs for Aboriginal people in prison**

Best practice in rehabilitation programs for Indigenous populations is significantly under-researched.<sup>54</sup> There is a paucity of Australian risk instrument validation studies including Aboriginal cohorts. In fact, few Australian studies have validated risk instruments in Australian correctional and forensic populations of any kind.<sup>55</sup> (NB: *Corrections Victoria Forensic Intervention Services is currently engaged with South Australia Corrections to validate the Violence Risk Scale with Aboriginal populations*).

What is known is that the rehabilitation and treatment needs of Aboriginal people are distinct from those of non-Aboriginal people. For example, among Aboriginal people there is a clear need for programs that recognise the contribution of colonisation processes (e.g., de-culturation, separation and displacement, discrimination, and disconnection from ancestral lands), social disadvantage and offence-specific factors to offending behaviour.<sup>56</sup> The existing literature tends to identify what is not known about the treatment and rehabilitation needs of Aboriginal offenders, rather than what is known. For example, how Aboriginal people define rehabilitation or at what point they would consider an offender to be rehabilitated is undocumented. It is also not known what impact returning to potentially disadvantaged communities has on any rehabilitative gains obtained whilst incarcerated.<sup>57</sup>

There is emerging research attempting to address this lack of understanding. A growing body of thematic research from Australia, North America and New Zealand has acknowledged the unique manifestation of established risk factors for Aboriginal offenders across particular offence types,<sup>58</sup> however the question stills remains regarding the cross-cultural applicability of these findings.

<sup>54</sup> Jones, C., & Guthrie, J. (2016). *Efficacy, accessibility and adequacy of prison rehabilitation programs for Indigenous offenders across Australia*. Melbourne: Australasian Institute of Judicial Administration Incorporated.

<sup>55</sup> Shepherd, S. M., Adams, Y., McEntyre, E., & Walker, R. (2014). Violence risk assessment in Australian Aboriginal offender populations: A review of the literature. *Psychology, Public Policy, and Law*, 20(3), 281.

<sup>56</sup> Queensland Corrective Services 2010, *Rehabilitative needs and treatment of Indigenous offenders in Queensland*, available at: [Rehabilitative needs and treatment of Indigenous offenders in Queensland \(premiers.qld.gov.au\)](http://Rehabilitative%20needs%20and%20treatment%20of%20Indigenous%20offenders%20in%20Queensland%20(premiers.qld.gov.au))

<sup>57</sup> Jones, C., & Guthrie, J. (2016). *Efficacy, accessibility and adequacy of prison rehabilitation programs for Indigenous offenders across Australia*. Melbourne: Australasian Institute of Judicial Administration Incorporated.

<sup>58</sup> Allen, A., & Dawson, D. (2004). *Assessment of the risk of reoffending by Indigenous male violent and sexual offenders*; Howells, K., Day, A., Byrne, S., & Byrne, M. K. (1999). *Risk, needs and responsivity in violence rehabilitation: Implications for programs with Indigenous offenders*.; LaPrairie, C. (1994). *The Inner City Sample, Social Strata and the Criminal Justice System: Report 1, Seen But Not Heard: Native People in the Inner City*. Department of Justice Canada; Mals, P., Howells, K., Day, A., & Hall, G. (2000). Adapting violence rehabilitation programs for the Australian Aboriginal offender. *Journal of Offender Rehabilitation*, 30(1-2), 121-135; Maynard, K., Coebergh, B., Anstiss, B., Bakker, L., & Huriwai, T. (1999). Ki te arotu—Toward a new assessment: The identification of cultural factors which may pre-dispose Maori to crime. *Social Policy Journal of New Zealand*, 13, 43-58.; Monchalin, L. (2010). Canadian Aboriginal peoples victimization, offending and its prevention: Gathering the evidence. *Crime Prevention and Community Safety*, 12, 119-132.



Measuring efficacy of mainstream rehabilitation programs and supports specifically for Aboriginal people is further challenged given sample sizes affect the ability to speak to impact, specifically for Aboriginal people.

In Victoria, the majority of Aboriginal cultural programs have been developed in partnership with Aboriginal stakeholders and through Aboriginal Justice Forum mechanisms. Cultural programs are informed by both literature and Aboriginal wisdom about the importance of connection to culture, country and community.

Response to Q.174 (below) directly relates to evaluation of Aboriginal programs being delivered by Corrections Victoria.

#### **Challenges with accessibility**

A number of operational and practical matters affect accessibility, such as whether a person is at the right prison location when a relevant program is scheduled, their length of time in custody and how this impacts on the time needed to complete a program, their legal status, the sequencing of these programs when multiple risks and needs are identified and for the system the supply versus demand challenge. For more context, this includes that some Aboriginal people in prison, particularly those on remand, may not stay in prison for a period long enough to access these programs.

Over the past decade, the number of people being received into prison on remand has more than doubled. The increase in people being remanded in prison custody over the past decade has resulted in more short custodial episodes, which increases the 'churn' of people into and out of the system. In 2021-22, 1,190 Aboriginal people were received into prison unsentenced, over triple the number in 2012-13. 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. Of those Aboriginal people who did spend time in prison under sentence, 60 per cent were in prison for less than six months, inclusive of time on remand in most cases.

Short periods in custody (less than six months) therefore can both limit a person's ability to access programs and the impact a rehabilitation programs can have. The limited opportunities for the criminal justice system to provide programs that address the offending behaviour of people on remand is a significant challenge associated with the increase in the remand population.

For prisoners sentenced to six months or longer, a LSI: RNR Risk assessment is completed to determine risk of reoffending and highest areas of criminogenic need to support program pathways and priorities for rehabilitation. For all people assessed as having a moderate to high risk of reoffending, they go on to have an Offence Specific Program assessment. This determines which programs in which order would best meet a person's rehabilitation and reintegration needs. This precludes people on remand or serving short sentences from being able to access offending-related rehabilitation programs in prison. Ability to access a criminogenic programs will also be impacted by the level of demand for programs relative to available supply, and whether or not the individual has sufficient time remaining on their sentence to finish a program. For all other programs, being legally cleared is not a requirement though - as noted above – length of time in custody will impact on access.

The 2020 Victorian Auditor-General's Office audit *Ravenhall Prison: Rehabilitating and Reintegrating Prisoners*, highlighted that changes to the strategic and operational environment as a result of a higher-than-expected increase in remand and short sentenced prisoners resulted in challenges to deliver rehabilitation programs as designed. 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. This can compromise rehabilitative efforts for the system and individuals, as it drives greater movement between prison locations in order to safely and appropriately accommodate different profiles of prisoner.

There is also limited time for transition planning that can support successful reintegration and reduce the risk of reoffending.

**Further work needed**

Further investment in research of rehabilitation programs for First Nation's people is needed to improve the service offering and the efficacy of programs.

Multiple data systems also create a barrier to program evaluation, with considerable work required to understand an individual's engagement in all programs and data analysis of program access. Short, periods of fixed term funding for programs also create challenges re meaningful evaluation.

In some cases, workforce shortages also create barriers to accessing programs. For example, forensic clinicians are in short supply and high demand and while Corrections Victoria has a workforce recruitment and retention strategy this remains an ongoing challenge.

DJCS acknowledges that periods of remand can have significant adverse impacts on the lives of Aboriginal people. Short episodes of imprisonment disrupt many of the pro-social factors that mitigate against offending behaviour, such as connection to family, culture and Country, accommodation, employment, and positive relationships, which can compound challenges for rehabilitation.

For people in prison who are sentenced to less than six months or on remand, the department aims to provide access to a range of programs and services to support them, including alcohol and drug programs, access to education and prison employment. As noted in Agency Response, providing access to programs and services is not always possible for people on short periods of imprisonment.

Recognising the particular challenges associated with the uncertainty of release for people on remand, the department has also invested in strengthening transition into the community for people who have spent short episodes on remand, including:

- Restart - a dedicated pre and post release program for those serving sentences of less than three months, which includes two Aboriginal case workers to provide tailored support to Aboriginal people.
- The ATLAS Remand Program Suite which provides eight voluntary psycho-educational sessions focused on practical information for adjusting to prison, as well as building capacity to help people on remand address transitional needs.

To address the increase in the remand population, the Victorian Government announced on 5 March 2023 proposed reforms to the Bail Act 1977 (Vic), including

- 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
- limiting the 'reverse onus' test to those charged with serious offences and those who pose a terrorism risk.

**Question. 174 – Provide an overview of the State’s assessment of the efficacy of the programs identified in response to paragraph (173) including under reviews and audits (whether internal or external)**

**DJCS commits to providing the Commission with further written information in response to this question by 14 April 2023.**

The Agency Response addresses this question in Section 3. The most relevant paragraph is outlined below:

*Evaluation of the Torch and the Wadamba Prison to Work Program (Agency Response: Para 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.

Further information is provided below:

A range of internal and external reviews over key transitional programs have been completed in recent years, as detailed below:

- An external review of **Corrections Victoria’s Reintegration Pathway** was conducted by the University of Melbourne in 2019. This report examined the implementation, operation and overall effectiveness of the ReLink and ReConnect programs, providing information about how these elements of the pathway are currently operating, their outcomes, and those critical factors that influence effectiveness. The evaluation found that the CVRP was reaching its intended target groups (female, Aboriginal people, those with a sentence over 12 months, serious sexual and violent offenders), referral was broadly consistent with eligibility criteria and priority cohorts. Prisoners who participated in interviews generally offered positive feedback about their experiences with ReLink and ReConnect; reporting good experiences of the support received both whilst in custody and post-release.
- In 2019, an external evaluation was undertaken for the **Kaka Wangity Wangin-Mirrie** Aboriginal Cultural Grant scheme. The evaluation found the programs had beneficial impacts on Aboriginal participants, including the building of social connections between people in prison, strengthened

cultural identity, enhanced knowledge and skills, improved confidence and self-esteem, and establishing connections between service providers and prisoners. The evaluation data suggests that prisoners who completed the Kaka Wangity Wangin-Mirrie programs completed more program activity of all kinds than prisoners who do not complete cultural programs.

- In 2019 an internal evaluation was conducted of the **Remand Program Facilitator Role** in prisons responsible for piloting the reintegration Pathway's ATLAS remand program suite provided to remandees in custody. Key findings included that prison management and program staff felt that there was a strong need for remand program facilitators and that the ATLAS program suite responded to a gap in programs and services for people on remand.
- In 2021 an external evaluation was undertaken of Vacro's provision of the **ReLink and ReConnect** programs, and their ability to support the transition from prison to community. The evaluation found that the programs support participants to develop the pre-conditions for desistance from crime through facilitating new positive self-labels and narratives; sustainable and health connections with peers and family; access to valuable resources to assist with housing, AOD, employment and health and supporting these services being in place upon release.
- The **Wadamba Prison to Work Program** has also been positively evaluated however the evaluation found that the impact of COVID19 on program delivery has been significant, as the program was launched in July 2020. Despite the impacts the evaluation found that the program had adapted to remote service delivery and was still able to achieve its target of supporting 64 participants, seven participants had gained employment in prison, two were engaged in employment post release and seven were studying or completing a training course. The evaluation found:
  - Cultural and personal development are important enablers for participants to become ready to enter employment and traineeships. The Program should consider how it can measure this as an outcome as well as measure the progress of participants towards becoming job-ready.
  - It is also important to ensure that the Program retains/builds connections with key community members and Elders across the state to link in with participants following their release.
- **The Torch** arts program was evaluated in 2019 to build on a previous evaluation undertaken in 2012. Comprising a mixed methods approach, the evaluation reviewed data sets and undertook a range of interviews and consultations with 82 stakeholders. Ultimately the evaluation strongly supported the efficacy of the program in terms of its goals to develop self-esteem, confidence and resilience through cultural strengthening and artistic expression. The evaluation concluded
  - The program is clearly effective in providing participants an opportunity and forum for cultural exploration, expression and strengthening.
  - The program is effective in supporting the development and strengthening of participant creative skills.
  - The program is clearly effective in improving the social and emotional wellbeing of participants.
  - The program is effective in increasing the understanding of participants about the arts industry and arts opportunities

- Participation in the program has the potential to improve the financial stability of participants but not everyone is able to achieve this outcome.
  - More work is needed to enable The Torch to confidently measure the impact of the IAPC on recidivism rates
- An internal evaluation of **LINCS and LINCS in Families** was undertaken in 2022. The evaluation found that LINCS addresses a gap in program offerings by providing a program that is not offence specific, making it accessible to offenders who have a program condition on their order but for whom an offence-specific program would not be appropriate or available. Although LINCS in Families was intended to help meet the need for family violence programs, it is unlikely to be suitable as a standalone family violence program for medium and high-risk offenders with a family violence flag who need a more intensive level of intervention. However, LINCS in Families may serve as a suitable option for increasing the program readiness of medium and high-risk offenders prior to commencing other programs, such as MBCP or ChangeAbout.
  - **Inside Access** was externally evaluated in 2020 and internally evaluated in 2023. The external evaluation explored the effectiveness of the program offerings at Ravenhall and Dame Phyllis Frost Centre (DPFC) and recommended the program should be carefully replicated across the prison system. The internal evaluation looked solely at the services offered at DPFC and Tarrengower and found there are significant benefits to retaining a legal support service for women in prison with no eligibility criteria. The resolution of civil and financial issues can empower women in prison and help reduce their levels of stress and anxiety. In addition, addressing legal matters helps avoid costs to the system and reduces pressure on other public providers both during a woman's time in custody and following her return to the community. By resolving civil and financial issues while in prison, women exit with few or no outstanding legal matters.
  - In 2021, an internal evaluation was undertaken for the **Wintringham Specialist Aged Care Service**. Evaluation findings indicate Wintringham has been able to meet the unique needs of each prisoner through detailed assessments of ageing prisoners needs and a case coordination approach for prisoners needing post-release support. The service was found to respond to a gap in service delivery, in that it provides a unique service to older prisoners and complements the work done by prison staff (particularly health staff and Assessment and Transition Coordinators), which reduces service overlaps. Without Wintringham's assistance, some prisoners would not have received parole and some would be released to homelessness.
  - An internal evaluation of the **Prison Disability Support Initiative (PDSI) pilot program** was undertaken in early 2022, less than 12 months into the pilot when several operational processes were still being developed. The review found that despite the pilot being hindered by a range of factors such as COVID-19 and limitations with allocated resources, feedback from most stakeholders and the case studies strongly indicated that the PDSI was very effective where hindering factors were either not present or were overcome. The evaluation was unable to ascertain the precise demand for support and assessment of people with cognitive impairment and complex clinical needs in the prison system given the large and growing waitlist of referrals to the PDSI, the existence of other disability-focused services in prisons and innate challenges when screening for cognitive disability. However, it was reasonable to infer from stakeholder feedback that there is an unmet demand for the initiative across the prison system,

that the PDSI should continue to address the growing need for more disability services across the prison system in general. Since the evaluation was undertaken, the PDSI has made a number of changes to improve service delivery.

- **ReStart, Triple P, Djirra's Prison to Work Program** and **Baggarook** all have evaluations planned for 2023.

In addition to formal evaluations, the department utilises ongoing program monitoring and user feedback to inform recommendations and program improvements. For example, when establishing the Aboriginal Healing Unit at DPFC, multiple ways to capture the input of women in prison has been utilised, including a number of yarning circles held, as well as a booklet titled 'Your Voice' which asked a series of questions about what healing meant to them and what is important to include. Women with lived experience are also represented on the Community Reference Group which is in place to guide the development and implementation of this service.

Case studies are also regularly collected as part of quarterly or half yearly reporting.