



Victorian Aboriginal Child Care Agency
**Response to the Inquiry into Victoria's
Criminal Justice System**

September 2021

VACCA
PO Box 494, Northcote Plaza
Northcote
Victoria, 3070

Email: vacca@vacca.org

INTRODUCTION

The Victorian Aboriginal Child Care Agency (VACCA) is the lead Aboriginal child welfare organisation and the largest provider of Aboriginal family violence and youth justice services in Victoria. We work holistically with children, young people, women, men, and families to ensure they have the necessary supports to heal and thrive.

VACCA welcomes the opportunity to provide feedback to the Inquiry into Victoria's Criminal Justice System. Our expertise in delivering justice services as well as a suite of supports across Victoria including; child and family welfare, family violence, housing and homelessness, alcohol and drugs, early years, education, emergency relief and cultural strengthening, makes us well placed to provide input on the changes necessary to improving our criminal justice system.

VACCA's submission offers the following observations and recommendations as they pertain to the children, young people and families with whom we work with. Specific considerations, measures and systemic changes must be incorporated into the Victorian criminal justice system that address the over-representation of Aboriginal peoples and the distinctive issues contributing to children crossing from out of home care (OOHC) into the justice system.

KEY POINTS

- Recently, the Victorian Closing the Gap Implementation Plan was launched, outlining two justice targets. All policy reform and changes to the justice systems must align with and take into account these targets and priority reforms
 - Target 10:** By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent
 - Target 11:** By 2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10-17) in detention by at least 30 per cent¹
- Victoria is tracking ahead of the Aboriginal Justice Agreement target to reduce the daily average of Aboriginal children and young people under supervision by at least 43 children by 2023. Demonstrating promising practice and ways of doing that should be leveraged off
- Strengthening connection to family, culture and community is key to improving justice and wellbeing outcomes of Aboriginal peoples
- A more coordinated service systems response is needed, one that adopts a holistic model of care and responds to the enduring impacts of colonisation on Aboriginal peoples
- Need greater investment in ACCOs to deliver and expand early intervention, prevention and diversionary programs that respond to risk factors driving contact with the justice systems
- Aboriginal women are the fastest growing prison population. Significant policy reform and investment across the criminal justice continuum is needed to address the intersectional discrimination they face
- Systems responses to Aboriginal peoples are punitive and criminalising, failing to recognise them as victims of crime themselves. Healing and trauma informed responses must be embedded across the spectrum of the criminal justice system
- Differentiated responses that are tailored to need, age and developmental stage are missing from the youth justice system, including raising the age of criminal responsible from 10 to 14.

¹ <https://www.aboriginalvictoria.vic.gov.au/victorian-closing-gap-implementation-plan/print-all>



VACCA RECOMMENDATIONS

1. For all policy reform to the criminal justice system to align with the new Victorian Closing the Gap Implementation Plan
 - a. Legislative reform including to the Bail Act, sentencing legislation, and the new Mental Health Act and new Youth Justice Act to require consideration of the impact of systemic racism, intergenerational trauma and disadvantage
2. For Government to take immediate action to meaningful implement all recommendations of the Royal Commission into Aboriginal Deaths in Custody
3. Greater investment in ACCOs to deliver and expand early intervention, prevention and diversionary programs to address risk factors contributing to offending behaviours
 - a. Transfer care and custody of Aboriginal children and young people to ACCOs
 - b. Establish a post release, crisis accommodation and support service in the West, with a particular focus on Aboriginal women leaving prison and their children
 - c. For VACCA to be funded to provide an Aboriginal Victims Assistance Program (VAP), given the breadth of our service delivery and our support of Aboriginal children, young people and adults who have experienced family violence and sexual abuse
4. Adopt culturally therapeutic, trauma informed models of care, recognising the importance of connecting to culture and healing
 - a. Provision of specialised, culturally appropriate health care in custodial settings for Aboriginal children, young people and adults with mental health, disabilities and/or substance abuse issues
 - b. Establish minimum cultural standards across the mainstream service delivery sector
 - c. Create and transform workplace practices to be trauma informed and culturally safe for staff and clients
 - d. Mandatory Aboriginal Family Violence training for Victoria Police, with a cultural lens to family violence identification and response
5. Improve the safety and inclusivity of the LGBTQIA+ Aboriginal community across police and custodial services with training and policy reform
6. Create a more holistic, coordinated systems, encompassing the impacts of colonisation, intergenerational trauma, experiences of family violence and Stolen Generations
 - a. Fund ACCOs to deliver AOD, health and wellbeing supports in custody
 - b. Greater opportunities for skill building, job readiness and employment pathways pre-release
7. Family centred decision making by introducing a mandatory model of AFLDM in the youth justice system
8. Age specific, community led responses to children, recognising their developmental age
 - a. Raise the age of criminal responsibility from 10 to at least 14 years of age
9. For universities and educational institutions to deliver compulsory subjects on Aboriginal Affairs including Aboriginal legal advocacy

BACKGROUND

The defining feature of Victoria's criminal justice systems is the over-representation of Aboriginal peoples. What we know;

- Aboriginal women are the fastest growing prison population²
- Aboriginal children and young people are over-represented in all stages of the justice systems³
- Indigenous people are being incarcerated at higher rates than at the time of the Royal Commission and are now 13 times more likely to be imprisoned than non-Indigenous people
- Approximately 1 in 3 Aboriginal children and young people sentenced to a custodial order have a history of Child Protection or residential care⁴
- Aboriginal children are likely to be younger at first sentence or diversion⁵
- An extremely high proportion coming into contact with the justice system have complex needs including mental health, substance abuse and trauma.⁶

VACCA's feedback is based on our unique position as a Victorian Aboriginal Community Controlled Organisation (ACCO) providing a suite of services across the state. We have protected and promoted the rights of Aboriginal children and families for over 40 years and are committed to upholding their rights to maintain and celebrate their identity and culture. Recognising that connection to culture is critical for children's emotional, physical and spiritual wellbeing. VACCA believes all children have a right to grow up with family and community and to feel and be safe in an environment that is free from abuse, neglect and violence.

As the largest provider of services for Aboriginal children and young people in Victoria, VACCA is highly cognisant of the correlation between OOHG and the criminal justice system. It is pivotal that these systems are not thought of in isolation. Recognising the programs and support VACCA provides not only strengthen social and emotional wellbeing (SEWB) and connection to culture and community, but also act as early intervention and prevention to involvement in the justice system.

VACCA JUSTICE FOOTPRINT

VACCA has extensive knowledge and expertise in delivering a number of justice programs to Aboriginal peoples at risk, or already in contact with the justice system. The provision of these programs as well as performance against deliverables and promising outcomes has led VACCA to develop in-depth knowledge on the issues and challenges facing Aboriginal children, young people and families. It has also helped VACCA identify promising practices and further enhance service delivery by leveraging off the strength of Aboriginal families and communities to provide community-led responses and supports.

VACCA justice programs include;

- Barreng Moorop Youth Justice Program

² Human Rights Law Centre & Change the Record. (2017). *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment*. Retrieved from <<https://www.hrlc.org.au/news/2017/5/10/over-represented-overlooked-report>>.

³ Commission for Children and Young People. (2021). *Our youth, our way: inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system*, Commission for Children and Young People, Melbourne.

⁴ Sentencing Advisory Council. (2019). *'Crossover Kids': Vulnerable children in the youth justice system*. Melbourne: Sentencing Advisory Council.

⁵ CCYP. (2021). *OYOW final report*.

⁶ Ibid

- Youth Through Care
- Local Justice Worker Program
- Youth Justice Program
- Better Futures
- Beyond Survival
- Dardee Djeetgun- Koorie Women's Diversion Program

*** Appendix A outlines each program in further detail*

RESPONSE TO THE INQUIRY'S TERMS OF REFERENCE

FACTORS INFLUENCING VICTORIA'S GROWING REMAND AND PRISON POPULATIONS

Firstly, it is important to note that more recently, the youth justice system has seen a declining trajectory of children and young people on remand, reporting a 47 per cent reduction from Jan 2021- to Apr 2021 compared with Jan 2020-Apr 2020⁷, including a reduction in the number of Aboriginal children in custody. Although numbers are declining, the rate of over-representation of Aboriginal children and young people on remand and prison, as well as across the entire criminal justice system continues to rise. What this demonstrates and what cannot be understated, is the need for culturally specific alternatives to incarceration, with an emphasis on prevention and early intervention, tailored to the needs of Aboriginal children and young people that is Aboriginal led.

Growing number of Aboriginal children and young people entering out-of-home care

Given the well documented correlation between OOHC and youth justice, it is not surprising that concurrent to growing over-representation in prison numbers, is a growing number in OOHC. As of June 2020, not only does Victoria have the highest rate of Aboriginal children in OOHC (100 per 1,000) but has the highest rate of Aboriginal children receiving Child Protection services (280 per 1,000) and remain in care longer than non-Aboriginal children and young people⁸.

In Victoria, most Aboriginal children and young people under youth justice supervision have also had Child Protection involvement, with many having had experiences in OOHC⁹. Given this indisputable link, VACCA strongly believes that if we prevented children from entering OOHC, we would also disrupt the growing number of Aboriginal children and young people on remand and in prison. The government has a sanctioned responsibility for all children and young people entering the youth justice system from OOHC and have failed their duty of care in protecting, and raising these children, instead institutionalising them. Growing numbers alongside trajectories into poor health, wellbeing, housing, education and employment outcomes give a clear indication that they have failed these children in their duty of care.

Aboriginal peoples treated as perpetrators, not victims of crime

Most Aboriginal peoples coming into contact with the justice system are victims of crime themselves. Not only surviving intergenerational trauma and historic forced removal policies that resulted in the Stolen Generations, but are also over-represented in rates of violence, trauma and

⁷ Department of Justice and Community Safety. (2021). *Youth justice data report to the Aboriginal Justice Forum*, Victorian Government.

⁸ AIHW. (2021). *Child protection Australia 2019-20. Child welfare series no. 74. Cat. No. CWS 78. Canberra: AIHW.*

⁹ CCYP. (2021). *Our youth, our way final report.*

discrimination. The criminal justice systems current response to these experiences is a punitive one, treating Aboriginal peoples as perpetrators, rather than prioritising healing and addressing the multiple and complex sources of trauma.

This is evident in the criminalisation of children and young people in OOHC, who are significantly more likely to have been exposed to trauma, family violence and neglect¹⁰ as well as the treatment of Stolen Generations, who were found to be significantly more likely have contact with the police and criminal justice system¹¹, more likely to be a victim of either actual or threatened violence in the past 12 months¹² and who may not have ended up in prison if it wasn't for being forcibly removed from their family and institutionalised as a child.

Criteria under the National Redress Scheme excludes Stolen Generations from applying whilst incarcerated,¹³ defaulting to a response that fails to recognise them as a victim of crime. VACCA, has long advocated for a Reparations Scheme for Stolen Generations so we welcomed the Victorian Government's announcement in 2020. Having participated in the Steering Committee for the Victorian Stolen Generations Reparations Scheme and alongside other reforms have advocated strongly that Stolen Generations who are incarcerated should still be eligible to access the Scheme, with consideration given to the type of offence committed. It is VACCA's contention that up until this point Stolen Generations should have been able to, and encouraged to, access the Victims of Crime financial payments as an interim measure¹⁴. While we recognise that the Victims of Crime financial assistance has its barriers and limitations in application and eligibility, there was also no recognition by the Victims of Crime Tribunal in their review of the Koori VOCAT List Pilot of the ongoing impact of policies of forced removal and invasion on Aboriginal peoples in Victoria.¹⁵

Further, from VACCA's experience, police responses to family violence indicates a level of misunderstanding about what family violence looks like for Aboriginal women and their children and often we are seeing Aboriginal women labelled as perpetrators rather than victims. We believe this directly attributes to the high number of children crossing over from child protection into the criminal justice system as well as Aboriginal women being the fastest growing prison population.

Inadequate access to mental health and social and emotional wellbeing supports

Over-representation in OOHC and the justice system, as well as experiences of childhood trauma and family violence can have detrimental effects on development and overall mental health and SEWB. This is not a new discovery and it has been well documented that Aboriginal peoples experience traumatic events at much higher rates than non-Aboriginal peoples.¹⁶ Often compounded with intergenerational trauma and transmission of grief and loss resulting from historical contact with

¹⁰ VLA. (2016). *Care not custody: A new approach to keep kids in residential care out of the criminal justice system*. Melbourne, Victoria.

¹¹ AIHW & The Healing Foundation. (2018). *Aboriginal and Torres Strait Islander Stolen Generations and descendants: Numbers, demographics, characteristics and selected outcomes*. AIHW. Retrieved from <https://www.aihw.gov.au/reports/indigenous-australians/stolen-generations-descendants/contents/table-of-contents>

¹² Ibid

¹³ National Redress Scheme. (2020) 'Who can apply?' Department of Social Services

¹⁴ It is VACCA's understanding that as per s2(b) of the *Victims of Crime Assistance Act 1996* (Vic) that once the Reparations Scheme comes into effect Stolen Generations no longer be eligible.

¹⁵ Victims of Crime Assistance Tribunal, "Koori VOCAT List Pilot Review and Recommendations" 2010.

¹⁶ Ombudsman Western Australia. (2021). *A report on the monitoring of the infringement notices provisions of 'The Criminal Code', Volume 3: The impact on Aboriginal and Torres Strait Islander and other communities*, Perth, Western Australia.

institutions including the forcible removal of children and the over-representation of Aboriginal deaths in custody¹⁷. These experiences of trauma continue to have a profound impact on Aboriginal people's wellbeing and the criminal justice system does not currently respond to the intersection with mental health and offending behaviours, leading to an over-representation.¹⁸

The 'Our Youth, Our Way Final Report on the Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system' (OYOW Final Report) revealed over half (53%) of Aboriginal children and young people in youth justice presented with a mental health condition and 32 percent had self-harmed, engaged in suicidal ideation or attempted suicide¹⁹. Even with such high rates, the persistent message reiterated²⁰ is a lack of access to culturally safe mental health supports, prior to, after entering and on release from the criminal justice system.

Currently, Correct Care Australasia, a private mainstream organisation, provides health services in Victoria's prisons, and a lack of youth mental health specialisation has been flagged as problematic,²¹ particularly culturally safe supports for Aboriginal children and young people. VACCA staff discussed challenges in obtaining information around health provision including inconsistencies and a lack of transparency. Without culturally safe mental health and wellbeing supports, symptoms of poor mental health are exacerbated and can be misjudged as challenging behaviours.

Prisons do not adequately support children and young people with disabilities

The precise prevalence of disability in youth justice is uncertain, however there is a growing body of evidence showing over-representation of psychosocial and intellectual disabilities²². A 2013 Victorian Parliamentary Inquiry revealed individuals with an intellectual disability were anywhere between 40 and 300 percent more likely to be incarcerated than those without²³. Over-representation of Aboriginal children and young people in this cohort skyrockets as they are already between 4 and 5 times more likely to have an intellectual disability²⁴ and more complex in terms of co-occurring disabilities.

Systemic barriers in conjunction with an absence of support is creating a pathway into prison, rather than into learning, education and family supports²⁵. Cognitive impairments are often masked by drug or alcohol misuse or another form of disability such as a learning difficulty, mental illness, or a

¹⁷ Ibid

¹⁸ Ibid

¹⁹ CCYP. (2021). *Our youth, our way final report*.

²⁰ CCYP. (2021). *Our youth, our way final report*, Armytage, P., & Ogloff, J. (2017). *Youth justice review and strategy meeting needs and reducing offending*. Victorian Government, Department of Justice and Community Safety, Melbourne., State of Victoria. (2021). *Royal Commission into Victoria's Mental Health System Final Report*, Volume 3

²¹ CCYP. (2021). *Our youth, our way final report*.

²² AHRC. (2019). Information concerning Australia's compliance with Convention on the Rights of Persons with Disabilities (25 July 2019).

²³ Parliament of Victoria Law Reform Committee. (2013). *Inquiry into access to and interaction with the justice system by people with an intellectual disability and their families and carers*. Parliamentary Paper. No. 216, Victorian Government

²⁴ Calma, T. (2008). *Preventing crime and promoting rights for Indigenous young people with cognitive disabilities and mental health issues*. Australian Human Rights Commission, Sydney.

²⁵ First Peoples Disability Network, *Final submission to the Royal Commission into the protection and detention of children in the Northern Territory* (2018) Retrieved from <<https://childdetentionnt.royalcommission.gov.au/submissions/Documents/submissions/PIAC-obo-First-Peoples-Disability-Network-June-2017.PDF>>.

hearing impairment²⁶. Even with a diagnosis on arrival, Aboriginal children and young people are unable to access culturally appropriate assessments and thus may receive an accurate diagnosis. Plus, a diagnosis does not ensure culturally appropriate support while in custody or post release.

This is particularly disturbing for those deemed unfit to plead, as the magistrate or judge often has the power to order for the individual to be detained, only on the grounds that the person is a danger to themselves or others. This occurs irrelevant of the fact that majority of diversion programs in Australia require a periodic review of people who have been detained due to their unfitness to plead²⁷.

Children and young people with a disability should under no circumstances be incarcerated as it is not an effective or appropriate way to respond to their needs or behaviours²⁸ and by detaining them, Australia is not upholding Article 14 of the UNCRPD 'Liberty and Security of the Person'²⁹. This is not only a contributing factor to growing prison populations and over-representation but also demonstrates the unfair and dismissive treatment of Aboriginal peoples with disabilities.

Aboriginal women in prison faced with Intersectional discrimination

Aboriginal women are the fastest growing prison population, with a rapidly increasing number being held on remand³⁰. In 2008, there were 15 Aboriginal women in prison and 20.4 per cent on remand. Ten years on and the number had risen to 76, with almost 46 per cent on remand and by 2019 Aboriginal women made up 13 percent of the prison population³¹. Irrespective of these trajectories, the criminal justice system neglects to respond to the intersectional discrimination they face on the grounds of gender and race,³² evident with no culturally appropriate post release service in Victoria. Currently mainstream services are funded to deliver post release for Aboriginal women without any guidance or partnership from ACCOs. Being forced to access services that are not culturally safe and neglect to recognise the specific experiences and stories of Aboriginal women and their children.

When women are placed in prison, they are often separated from children and the intrinsic link between this act and child protection is invisible within service delivery and policy makers. The lack of awareness and understanding of what is needed to keep women connected with their children leads to a greater risk of recidivism due to trauma and weakened family and community ties. Concurrently contributing to the growing number of Aboriginal children in OOHC. VACCA is also deeply concerned about Aboriginal women who are incarcerated when they are pregnant, knowing the vital need for the social and emotional development and connection between mother and baby.

²⁶ McCausland, R. (2017). Indigenous people, mental health, cognitive disability and the criminal justice system, *Indigenous Justice Clearinghouse* (Brief 22), Australian Institute of Criminology.

²⁷ Gooding, P., Arstein-Kerslake, A., Andrews., & McSherry, B. (2017). 'Unfitness to Stand Trial and the Indefinite Detention of Persons with Cognitive Disabilities in Australia: Human Rights Challenges and Proposals for Change', vol. 40(3), *Melbourne University Law Review*, pp.816-866.

²⁸ Change the Record Coalition Steering Committee. (2015). *Blueprint for change*. Retrieved from <<https://changetherecord.org.au/policy-framework-blueprint-for-change> p.6>

²⁹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. (2020). *Research report, The United Nations Convention on the Rights of Persons with Disabilities: An assessment of Australia's level of compliance* (October).

³⁰ Crivellaro, G. (2020). 'Number of Indigenous women in Victorian prisons skyrocketing', *National Indigenous Times*. (October 9, 2020). Retrieved from <<https://nit.com.au/number-of-indigenous-women-in-victorian-prisons-skyrocketing/>>.

³¹ Ibid

³² Baldry, E., & McCausland, R. (2009). 'Mother seeking safe home: Aboriginal women post-release', *Current Issues in Criminal Justice*. Pg. 288-301.

While we acknowledge the Living with Mum program in Dame Phyllis Frost Centre and Tarrengower Prison, there is limited capacity. We must ensure that post release mum and baby (and any other dependent children) are provided with support and linked in with services to ensure any risk of further contact with child protection or justice is reduced.

Lack of LGBTIQIA+ inclusive and respectful responses

The vulnerabilities of LGBTIQIA+ children and young people are well documented, indicating greater exposure to discrimination and isolation, poorer health and wellbeing outcomes, higher rates of poor mental health and risk of suicide; and a greater risk of problematic use of alcohol and other drugs.³³ Although the specific experiences of LGBTIQIA+ Aboriginal children and young people are less documented, by applying an intersectional lens, we can infer even greater risks of poor outcomes including higher levels of discrimination and a lack of safe and inclusive services for their gender and sexuality, and cultural needs.

Staff in the sector and helping professions have a history of harm towards both Aboriginal and LGBTIQIA+ communities, who have been both problematised and pathologised by physical and mental health professions³⁴, in much the same way that Aboriginal peoples have been criminalised by the justice system. Though there has been some improvement, and a legislated commitment to improve inclusivity through the Rainbow Tick quality framework in Victoria, the impacts of a lack of availability of safe and inclusive support services for an already vulnerable population are significant.

The Our Youth Our Way Final Report highlighted an increased risk to LGBTIQIA+ Aboriginal children and young people for coming into contact with the justice system, and the lack of inclusive and respectful responses experienced within and outside of the criminal justice system³⁵. VACCA echoes the Final Reports recommendation³⁶ for more targeted services and spaces for LGBTIQIA+ Aboriginal children and young people in the community, and to improve the safety and inclusivity of police and custodial services through training and improved processes.

Inconsistent commitment to court-based diversion

One of the key policy principles underpinning the youth justice system in Victoria is 'diversion of young people from entry into the youth justice system, or from progressing further into a life of crime'³⁷. A young person who participates in a diversion program is significantly less likely to reoffend³⁸ as well as community-based supervision being incomparably more cost effective than incarceration. In 2019-20 the average cost per day for a young person under community-based supervision was \$223 in comparison to \$1,901 for detention-based supervision³⁹.

³³ Rainbow Health Victoria (2020), Research Matters: Why do we need LGBTIQ-inclusive services?

³⁴ Phelan, P. & Oxley, R. (2021) Understanding the Social and Emotional Wellbeing of Aboriginal LGBTIQ(SB)+ Youth in Victoria's Youth Detention, Social Inclusion, 9 (2), pg. 18–29.

³⁵ CCYP. (2021). *OYOW Final Report*

³⁶ Ibid, Recommendation 21, pg. 43

³⁷ Armytage & Ogloff (2017). *Youth justice review and strategy meeting needs and reducing offending*

³⁸ K. Richards & L. Renshaw. (2013). 'Bail and remand for young people in Australia: A national research project', Australian Institute of Criminology, Research and Public Policy Series No. 125.

³⁹ Productivity Commission. (2021). *Report on Government services 2021. Part F, Section 17: Youth justice services*. Australian Government, Canberra.

However, how consistently diversionary mechanisms and programs are enacted remains intermittent⁴⁰, with Victoria the only jurisdiction that does not have a legislated court-based diversionary scheme for children and young people⁴¹. Discretionary powers of police to issue a caution, the lack of legislative basis for pre-charge cautions and the ability for police to veto on court-based diversion detract away from a rehabilitative approach, leading to harmful contact with the court system⁴².

Insufficient investment in court-based diversion is further amplified for Aboriginal children and young people who are less likely to be cautioned than non-Aboriginal young people⁴³ and a lack of culturally safe court-based diversion program means they may be eligible but there are no programs available to support it, particularly in rural and regional Victoria. *Burra Lotjpa Dunguludja* (AJA4) includes a commitment to deliver community-based intensive diversion programs for Aboriginal children and young people⁴⁴. This should be adequately resourced and implemented at the nearest possible time. Further, to enhance cultural safety, VACCA supports VALS recommendation for Koori Diversion Coordinators to be employed in the Children's Court Youth Diversion (CCYD)⁴⁵.

Lack of community-based, Aboriginal led alternatives to incarceration

The recent passing of the *Summary Offences Amendment (Decriminalisation of Public Drunkenness) Bill 2020* in February was a step in the right direction and a much overdue reform to protect against unnecessary incarceration- however many more changes are needed. Any length of time spent incarcerated not only increases the likelihood of reoffending but also leads to significant harm. In particular, for children and young people whose brains are still developing and have often experienced significant trauma⁴⁶.

Incarceration is costly, not just in the confines of remand and sentencing but the ongoing impact on SEWB for the duration of a young person's life, potentially impeding on their ability to gain stable and secure housing and obtaining education or employment. The implications of locking up our most vulnerable children and young people are life long, not only for the individual but for the state.

In Victoria, there is a lack of alternatives to incarceration that are community based and Aboriginal led, leading to missed opportunities for diversion and to reducing points of contact with the system. ACCOs already deliver a number of programs and services, which if effectively resourced to be available would support Aboriginal children and young people who are involved in or at risk of involvement in the youth justice system on their healing journey and reintegration into society, lessening the likelihood of reoffending.

Technology as a new way of exploitation

Social media and technology have fundamentally changed the way in which children and young people are learning about norms and behaviours regarding sex and consent. Technology is providing unprecedented access to sexualised content and there are a wide range of social media platforms and apps with varying degrees of security and exposure. Placing children at risk of sexual

⁴⁰ VALS. (2019). *Submission to the commission for children and young people inquiry: Our youth, our way*, pg. 11.

⁴¹ Grover, C. (2017). 'Youth justice in Victoria', *Parliamentary Library and Information Service, Parliament of Victoria*. Research paper. No.2.

⁴² VALS. (2019). *Ibid*

⁴³ Crime Statistics Agency. (2017). *The cautious approach: Police cautions and the impact on youth reoffending*. Brief 9.

⁴⁴ Koori Justice Unit. (2019). *Burra Lotjpa Dunguludja, Victorian Aboriginal Justice Agreement Phase 4*. Victorian Government, Melbourne.

⁴⁵ VALS. (2019). *Ibid*, Recommendation 7. p. 3

⁴⁶ Grover. (2017).

exploitation and breaking laws governing child pornography protections. It is very clear that the justice system cannot keep up with appropriate provisions of regulation, oversight, control and protection, particularly given that many of these platforms are based overseas.

The normalisation of porn and the age of exposure years before any sexual activity sets unrealistic expectations about sex, consent and respectful relationships. The normalisation of the violence portrayed in pornography and the glamorization of the negative treatment of women is incredibly damaging and dangerous. This issue is amplified by digital exclusion and social isolation, in which Aboriginal peoples, older Australians and peoples with a disability are at greater risk of⁴⁷.

Specifically, digital exclusion for Aboriginal children and young people in OOHC is leading to an uneducated understanding of sexual exploitation, consent and rights and responsibilities regarding sexual relations with a minor or as a minor. For children and young people who have experienced trauma and past sexual abuse, consent will look and feel very different. Whether they are cognitively able to understand and give consent due to the trauma they have experienced is of significant concern and has broad implications in society and the justice system. How consent is given within an Aboriginal cultural understanding also needs to be considered. The role for parents and carers is only made more complex where they are not suitably knowledgeable and skilled with digital literacy, so their ability to educate and protect their children is compromised.

Substance abuse

Substance abuse particularly alcohol is a major underlying problem for Aboriginal children and young people involved in youth justice. The 2019 Youth Justice survey revealed almost all (94%) Aboriginal children and young people under supervision had a history of alcohol and/or drug misuse and over three quarters (88%) had offended under the influence⁴⁸.

Links between substance abuse, mental health and trauma have been well documented⁴⁹ though insufficient early intervention and prevention measures has meant a lack of action to intervene prior to coming into contact with the justice system. Seeking help and treatment is often inhibited by criminalised drug approaches, community stigmatisation or long wait times⁵⁰ and consequently children and young people don't seek support,⁵¹ particularly in rural and regional communities.

Not only is substance abuse a driver into youth justice but once in custody there is inadequate alcohol and other drugs (AOD) supports to assist healing and recovery. Prior to Correct Care Australasia, Malmsbury had an AOD worker who provided follow up whilst in custody however the understanding from VACCA staff is that this role no longer exists. AOD is not listed as a service provided by Correct Care Australasia either⁵². Currently, YSAS complete a one-off assessment for young people sentenced or remanded prior to release. However, this is often insufficient and a missed opportunity for regular engagement about problematic substance use whilst in custody and to facilitate rapport with an AOD worker prior to release.

⁴⁷ Australian Digital inclusion Index. (2020) pp18, 20

⁴⁸ CCYP. (2021). *OYOW final report*

⁴⁹ Ibid., Heffernan, E., Davidson, F., Andersen, K., Kinner, S. (2016). 'Substance use disorders among Aboriginal and Torres Strait Islander people in custody: A public health opportunity', *Health & Justice*, 4 (12).

⁵⁰ Halacas, C., Genat, B., & Barney, K. (2015). "Not everyone has that support": an evaluation of a series of harm reduction and AOD awareness activities within Victorian Aboriginal communities, VACCHO, p 4.

⁵¹ CCYP. (2021). *OYOW final report*

⁵² <https://www.correctcare.com.au/about-us/>

Further, the interface between existing systems when leaving care and custodial settings is fragmented particularly with the mental health and AOD sector. Often involving delays or long wait times. Youth Justice case managers are required to provide a referral to a community AOD provider however the OYOW Final Report⁵³ revealed there was often a lack of coordination between clinicians in custodial settings and the AOD community provider.

Systemic racism

Evidence reveals systemic racism and bias disproportionately impact on Aboriginal children and young people at all stages of the justice system, including contact with police, being more likely to receive a harsher sentence for minor offences, less likely to be cautioned and more likely to be processed through the courts rather than through diversionary mechanisms⁵⁴, all leading to higher incarceration rates.⁵⁵ Systemic racism across Victoria's criminal justice systems as well as all service sectors including child protection, health, housing and education, places Aboriginal children and young people at greater risk of having contact with the system as well as creating additional barriers to successfully transitioning back into community with sufficient supports after leaving custody.

Systemic racism exacerbates barriers, creating intersectional discrimination based on multiple marginalised identities including Aboriginality, disability, LGBTIQ+, involvement in the Child Protection or justice systems⁵⁶. Legislative reform including to the Bail Act, sentencing legislation and the new Mental Health Act and Youth Justice Act to require consideration of the impact of systemic racism, intergenerational trauma and disadvantage on a child or young person's behaviour.

STRATEGIES TO REDUCE RATES OF CRIMINAL RECIDIVISM

Greater investment in early intervention and prevention

The most effective way to reduce recidivism, minimise contact with the system and promote health and wellbeing is to provide support as early as possible in a child's life, as well as at critical points. Not only has VACCA repeatedly called for greater investment in early intervention and prevention, but is a recommendation that has been echoed throughout various reports and inquiries for over 30 years.⁵⁷ The Ngaga-Dji Report highlighted the demand for early intervention models for children 'who are victims of crime' recognising 'majority of children who have contact with the justice system are victims of crime themselves' and when they do not have the opportunity to heal, there is a likelihood of sustained risk-taking behaviours and increased likelihood of involvement with police and the justice system⁵⁸. This solution was recommended in 2018 and whilst a *Review to improve victims' experience of summary criminal proceedings* is currently underway, ACCOs must be funded to deliver an Aboriginal led responses to prevention including funding VACCA to provide an

⁵³ CCYP. (2021). *OYOW final report*, p.362

⁵⁴ Ibid., KJU. (2019). *Burra Lotjpa Dunguludja.*, ALRC. (2017). 'Short sentences of imprisonment' in *Incarceration rates of Aboriginal and Torres Strait Islander peoples*, Retrieved from < <https://www.alrc.gov.au/publication/incarceration-rates-of-aboriginal-and-torres-strait-islander-peoples-dp-84/4-sentencing-options/short-sentences-of-imprisonment/>>.

⁵⁵ Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, ALRC Report 133 (2017) and Law Council of Australia, 'Aboriginal and Torres Strait Islander Peoples', Justice Project Final Report (2018).

⁵⁶ Scott, A. (2018). *Culture is inclusion: A narrative of Aboriginal and Torres Strait Islander people with disability*, Sydney: Australia, First Peoples Disability Network.

⁵⁷ RCIADIC. (1991)., Koorie Youth Council. (2018). *Ngaga-Dji, Young voices creating change for justice*. Koorie Youth Council., Armytage & Ogloff (2017). *Youth justice review and strategy.*, CCYP. (2021). *OYOW final report.*, State of Victoria. (2021). *RCVMHS.*, CCYP. (2016). 'Always was, always will be Koori children': *Systemic inquiry into services provided to Aboriginal children and young people in out- of-home care in Victoria*. Melbourne, CCYP.

⁵⁸ KYC. (2018). *Ngaga-Dji*, pg. 44

Aboriginal Victims Assistance Program (VAP). Given the breadth of our service delivery and our support of Aboriginal children, young people and adults who have experienced family violence and sexual abuse, we believe we are well placed to do this.

ACCOs such as VACCA are already delivering a number of justice programs providing early intervention and engagement and prevention opportunities. We must leverage off the evidence and expertise of these and invest in initiatives that strengthen peer, family and community networks. Creating opportunities for at risk and vulnerable young people to participate in sporting, recreational, cultural and community service activities. As well as innovative education, training and employment opportunities which can be tailored to specific needs and circumstances. ACCOs are best placed to deliver these as they are already touch points with Aboriginal children, young people and families and therefore have rapport to facilitate positive, beneficial engagement.

Increased Aboriginal community control and transfer of funding to ACCOs

The Royal Commission into Aboriginal Deaths in Custody in 1991 recommended that in order to eliminate disadvantage and improve justice outcomes, empowerment of Aboriginal people through returning control of their lives and their communities to Aboriginal hands is key⁵⁹. We are yet to see this happen. In order to prioritise self-determination, greater Aboriginal community control across the service system is needed, including proportionate funding transferred from mainstream to boost sector development and to enable the ACCO sector to take on new roles and build capability.

Greater investment in community-based services and restorative justice alternatives are needed across the continuum from prevention, early intervention, diversion, supervision, community reintegration as well as alternatives to incarceration. ACCOs are already delivering culturally therapeutic, trauma informed programs which when sufficiently funded can disrupt an intergenerational cycle of justice involvement and improve overall wellbeing.

In line with the Closing the Gap *Priority Reform Two: Building the Community-Controlled Sector*⁶⁰, ACCOs must be resourced to expand and deliver programs focused on engaging disconnected children and families in programs that provide practical supports as well as opportunities for personal development capable of offering pathways back into education, training, employment and the community.

Transfer care and custody of Aboriginal children and young people to ACCOs

There has been significant investment, learnings and a stronger move to Aboriginal self-determination in Aboriginal child and family welfare, particularly through Aboriginal Guardianship, that is changing outcomes for children. Improved outcomes for Aboriginal children and families are achievable when we reform systems. Support from ACCOs, government Ministers, Departments and Court Authorities have enabled the innovations of the child protection system and this practice must be replicated within the youth justice system.

Section 18 in the *Children Youth and Families Act (CYFA)* saw the transfer of power over time from government to the Aboriginal community. Enabling the Secretary of the DHHS to authorise the

⁵⁹ Royal Commission into Aboriginal Deaths in Custody (RCIADIC). (1991). *Final report of the Royal Commission into Aboriginal deaths in custody*. Commonwealth of Australia: Canberra.

⁶⁰ Victorian Government. (2021). *Victorian Closing the Gap Implementation Plan 2021-2023*, Melbourne, Victoria.

principal officer of an Aboriginal agency to undertake specified functions and powers in relation to a Children's Court protection order for an Aboriginal child or young person

In 2005 the CYFA was passed, including section. 18, however it was not until 2017 that VACCAs first authorisation took place. This could not have occurred without the significant input and drive from ACCOs. However, the process was slowed down due to the inability of the CEO to delegate and consequently legislation had to be changed. VACCA does not want this process to take another 12 years. Learnings from Child Protection such as the need for significant lead time and resourcing in ACCOs should enable government to enact the transfer much quicker.

An evaluation by Inside Policy conducted in 2019 on VACCA's Aboriginal Children in Aboriginal Care (ACAC) program 'Nugel', reported that *"based on the actual reunification rates from 2017-2019, from an indicative sample of 100 children, the reunification rate was higher for VACCA (22%) than for DHHS (5%)"*. The evaluation also revealed a significant number of children and young people had increased contact with their parents and majority saw an increase in their connection to culture and community.

What the establishment of ACAC has demonstrated is the importance of community control and ACCOs having the capacity to plan and implement initiatives including sufficient funding. Similar to section.18, new powers should be given to ACCOs to undertake community-based management and supervision of Aboriginal young people on youth justice orders.

Culturally therapeutic, trauma informed models of care

Children and young people who come into contact with the justice system, more often than not come from a highly disadvantaged background, with complex needs. Having experienced significant trauma, family violence, poor mental health or suffering AOD abuse. When their connection to culture is removed, families and communities are weakened, and Aboriginal people are at threat of being lost not only to their culture but also to themselves⁶¹.

As an ACCO providing child and family welfare services, we strongly believe in culturally therapeutic, trauma-informed programs that holistically support children and families. Programs that; connect Aboriginal peoples to culture, family and community, allow for healing, address the impacts of trauma and support positive SEWB are key to preventing offending behaviours and recidivism. Being immersed in culture and traditional forms of healing creates a safe space to tell their story free from judgement and acknowledge the trauma of their history. It helps to build identity and develop trust to maintain engagement with support services.

VACCA consistently advocates for the rights of Aboriginal peoples, reinforcing the importance of connection to culture and community throughout our services and program models including our justice programs. For example, VACCA's Youth Through Care (YTC) program draws on this strength and connection, creating an opportunity to engage with children and young people in custody prior to and post release to help prevent future contact with the system. When approaching a young person by facilitating cultural exploration, YTC staff found that the young person was eager to learn about their Aboriginality and culture, and this was effective in breaking down barriers and building rapport.

⁶¹ Commonwealth of Australia. (1997). *Bringing them home: National inquiry into the separation of Aboriginal and Torres Strait Islander children from their families.*

Part of embedding this model of practice within Victoria Police should include mandatory Aboriginal Family Violence training delivered with a cultural lens on how to identify and respond to family violence. Recognising cultural differences in how family violence can present itself within Aboriginal families and the specific experiences of Aboriginal women and children. Adopting a culturally therapeutic, trauma informed model of care across all service delivery, including the continuum of the criminal justice system, will help create a system responsive to the needs of Aboriginal children and young people.

Minimum standards on cultural safety

Minimum standards on cultural safety should be implemented across the mainstream sector. Cultural awareness training solely is insufficient to create impactful, sustainable change in attitudes and practice. Cultural sensitivity or cultural awareness does not ensure culturally competent practice and therefore unlikely to improve outcomes or ensure a culturally safe space for the Aboriginal workforce and clients.

This is necessary not only across the criminal justice system, but across all sectors including child and family welfare, health, housing and education. Minimum standards should include a cultural safety framework, one that recognises the social forces of cultural resilience and resistance of Aboriginal communities and that of the on-going processes of colonisation.

VACCA should be involved and consulted with on the development of cultural safety standards especially as it relates to Aboriginal children and young people, parents or others with care giving responsibilities; people experiencing family violence and any young person that has had or is likely to have contact with child protection or youth justice. VACCA is the largest provider of Aboriginal child and family services and family violence services in the state, we are well placed to provide specialist support to our community and guide best practice.

Holistic and coordinated systems response

At present, the criminal justice system is ill-equipped to provide help for those with primarily social, cultural or family problems. We know a high proportion of Aboriginal children, young people and women leaving prison end up homeless, that children leaving OOHC are more likely to have contact with the justice system and believe rates of disability in OOHC and youth justice are largely under-reported. These risk factors cannot be responded to in isolation of one another. All service delivery sectors including; justice, child protection, health, housing, education and disability must respond to the complex and multifaceted needs of their clients and work together to identify what needs to change to avoid future contact with the system. A holistic lens must encompass the impacts of colonisation, intergenerational trauma, experiences of family violence and Stolen Generations on both people impacted by violence and crime, as well as those committing offences.⁶²

Part of creating a more coordinated systems response should be establishing an Information and referral hub for communication across the sector and across community. VACCA heard reports of community members in prison and support staff being unaware of the services available for Aboriginal peoples whilst in custody and post release, leading to missed opportunities. There needs to be a hub for the sector and a hub for community to access, with a one-stop shop for all the information they require including referral pathways particularly for Aboriginal specific services.

⁶² Commission for Children and Young People. (2016). *Always was always will be Koori children*, retrieved from <<https://ccyp.vic.gov.au/assets/Publications-inquiries/always-was-always-will-be-koori-children-inquiry-report-oct16.pdf>>., CCYP. (2021). *OYOW final report*.

The separation of Youth Justice from Child Protection under the new Youth Justice Bill requires new and improved processes to be established between the two systems including information sharing and joint case management. For children or young people subject to a Child Protection order, if they are charged or sentenced, ongoing case management must remain with Child Protection, working closely with any youth justice program or case manager. This is critical in order to reduce delays, receive timely supports and minimise unnecessary contact with the system.

Family centred approaches to address offending behaviours

A child cannot be thought of in isolation of their family and community. Family centred approaches are strengths based and consider all factors relating to the family's wellbeing. Focused on addressing what is needed to meet the entire family's health, wellbeing, cultural and social needs. This model helps to empower families and recognises that working with strengthening vulnerable families directly benefits children and young people by reducing family risk factors such as homelessness, family violence, substance abuse and mental health concerns.

VACCA recently worked in partnership with Social Ventures Australia to research and co-design a family centred service delivery model as part of *AJA4, Domain 1: Strong and safe Aboriginal families and communities* and is modelled in the Aboriginal Family Led Decision Making (AFLDM) program, a culturally safe decision-making and planning program that builds on the strengths of family and kinship networks to create a coordinated, wrap around response⁶³. It empowers families to make good decisions and plans in relation to the safety and wellbeing of their children.

It is VACCA's contention that a mandatory model of AFLDM be introduced into the youth justice system, similar to s.12 of the *CYFA* Recognising the principle of Aboriginal self-management and self-determination when a decision is being made regarding an Aboriginal child or young person. This would entail ACCOs convening meetings with the child, parents and/or carers as well as kin and appropriate members of the Aboriginal community as determined by the child's parent. As an organisation that offers AFLDM, VACCA and the families we work with have identified this process as the preferred way of decision making for Aboriginal children.

Age specific, community led responses to children

Currently, differentiated responses that are tailored to need, age and developmental stage are missing from the youth justice system. The needs and factors leading to recidivism for 18-year old's vary drastically to those aged 10-14 and creating strategies with a blanket approach does not achieve intended outcomes. For every year a child is older when they first appear before court, there is an 18 per cent decrease in the likelihood of reoffending⁶⁴. Between the ages of 10 to 14, children are experiencing substantial physical, mental and emotional development⁶⁵ and a child under the age of 14 is not sufficiently developed nor do they have the capacity to understand why their actions were wrong or the repercussions of their behaviour⁶⁶.

Part of this and one of the most effective ways to ensuring Aboriginal children are diverted from the justice system is the legislative decision to raise the age of criminal responsibility from 10 to 14 years

⁶³ <https://www.vacca.org/page/services/children-and-families/family-support/aboriginal-family-led-decision-making>

⁶⁴ Sentencing Advisory Council. (2016). *Reoffending by children and young people in Victoria*. Melbourne, State of Victoria.

⁶⁵ Richards, K. (2011). What makes juvenile offenders different from adult offenders?, *Trends & Issues in Crime and Criminal Justice*.

⁶⁶ Human Rights Law Centre, "Explainer" for raising the age: <https://www.hrlc.org.au/factsheets/2018/2/8/explainer-raising-the-age>

of age. The minimum age at 10 years is a key driver of the high rates of Aboriginal children coming into contact with police and the justice system. By criminalising Aboriginal children and young people, responsibility and resources are diverted into the justice system rather than being available for the cultural and welfare support required to appropriately respond to their needs and reduce recidivism.

When resourced to do so, ACCOs are best placed to deliver trauma informed, culturally therapeutic services including community-based alternatives to incarceration for children aged 10 to 14 years. ACCO's are already contact points for families and community and have strong diversionary and early intervention programs. If the age of criminality was raised, many children may never have entered the system. Legislative reform along with investment in diversionary and early intervention programs, can address the causal factors of offending behaviour.

Education around consent and exploitation

The nature of consent also needs to be addressed. For children and young people who have experienced trauma and past sexual abuse, consent will look and feel very different. Whether they are cognitively able to understand and give consent due to the trauma they have experienced is of significant concern and has broad implications in society and the justice system. How consent is given within an Aboriginal cultural understanding also needs to be considered.

We may have limited success in curtailing the consumption of porn; however, with appropriate education, young people can learn what is normal, respectful, and safe in the real world. It is integral that sexual education programs about healthy and respectful relationships supports Aboriginal children and young people who identify as part of the LGBTIQ + community. Part of this education model needs to also include a clear understanding of the rights, responsibilities, and consequences if children and young people engage in behaviour that is not only damaging, but illegal.

Sexual exploitation through social media is of great concern for those most vulnerable in our community. Young people need to be informed and educated about what grooming behaviours look like, and what support services are available if they are concerned or affected. Gender specific programs that are culturally based and informed would need to be created. VACCA and other ACCOs are uniquely placed to deliver these programs with a cultural and trauma informed approach.

As an ACCO we have a responsibility to support community to access services and support and to help in bridging the digital divide. New programs and funding is needed that include an awareness about digital inclusivity for all community members, with specific programs for children in OOHC and Aboriginal children and young people.

Greater opportunities for skill building, job readiness and employment pathways

Aboriginal young people and adults, particularly those who have had contact with the justice system continue to face compounding discriminatory barriers to accessing employment. A challenge recently exacerbated by COVID-19. Leaving care and custodial settings are critical touch points that set young people and adults on trajectories away from or back to the justice system. Consequently, it is pivotal for the criminal justice and child protection systems to ensure they have equipped those leaving with the knowledge, skills and opportunities to succeed.

Completing a custodial sentence is an opportunity to learn and build skills that are transferrable to the workforce and assist in breaking the cycle. There needs to be more partnerships and employment opportunities lined up that Aboriginal young people and adults can work towards

whilst incarcerated. For example, the 'Carey Bindjareb'⁶⁷ program in Western Australia is a collaboration between traditional owners and Aboriginal contractor, Carey Mining. The 14-week program is focused on gaining industry specific skills as well as supporting connection to culture and building confidence, resilience and life skills. It has direct links to employment on release, with more than two thirds of former graduates employed by mining, construction or related companies. Partnerships with large organisations with a variety of roles such as supermarkets should be investigated, similar to the disability employment scheme offered at Coles⁶⁸.

For children and young people to thrive, further investment and opportunities for skill building and learning life skills is needed. Learning about health and nutrition, where to seek help and support, how to apply for jobs, education and housing, financial advice and money management, how to create positive connections with community and build healthy relationships. Not only will these skills help to navigate society but will assist in creating capacity to undertake employment or education.

VACCA welcomed the introduction of the *Spent Convictions Bill 2020* and believe this will help provide an opportunity for young people to return to community and choose their life course without being defined by their past. To further benefit and have sustainable change, VACCA recommends for the scheme to be expanded and to include the provision of funding to support access to legal services.

Pre and post release support for Aboriginal women in prison

More supports and services are needed specifically for Aboriginal women in prison to address factors driving offending and recidivism- and for these supports to carry through post release. We know that Aboriginal women in prison are generally younger, have children, more likely to have experienced family violence and be suffering mental ill health, often exacerbated and intertwined with the separation from children⁶⁹.

In response, greater investment and focus is needed on culturally appropriate early intervention, prevention programs such as playgroups and parenting programs. As well as working with women in custody to determine what supports they need post release including long term housing, trauma informed counselling and supports to regain access and guardianship of their children including through VACCAs Aboriginal Family Preservation and Reunification program⁷⁰.

In moving towards a more coordinated cross sector response and given VACCAs expertise in delivering family violence services including Orana Gunyah, a crisis accommodation and support service in Morwell, we also recommend for the establishment of an Aboriginal specific accommodation and support service in the west, with a focus on Aboriginal women leaving prison and their children. Adopting a holistic model of post release support and connecting Aboriginal

⁶⁷ <https://www.mediastatements.wa.gov.au/Pages/McGowan/2021/05/Prisoners-mine-new-skills-in-training-program.aspx>

⁶⁸ https://careers.colesgroup.com.au/content/People-with-disability/?locale=en_GB

⁶⁹ Victorian Equal Opportunity & Human Rights Commission. (2013). *Unfinished business: Koori women and the justice system*, State of Victoria., Kendall, S., Baldry, E., Sullivan, E., Sherwood, J., & Lighton, S. (2019). 'Aboriginal mothers are incarcerated at alarming rates- and their mental and physical health suffers', *The Conversation* (May 22, 2019). Retrieved from < <https://theconversation.com/aboriginal-mothers-are-incarcerated-at-alarming-rates-and-their-mental-and-physical-health-suffers-116827>>.

⁷⁰ <https://www.vacca.org/page/services/children-and-families/family-support/aboriginal-family-preservation-and-reunification-response>

women in with the necessary supports when leaving custody, including housing, mental health, rehabilitation and family violence services.

Specialised alcohol and other drug supports in custody and post release

The opportunity to engage children and young people experiencing substance abuse concerns with specialised supports must not be missed. Having specialised AOD workers to lead discussions around problematic AOD use would help engage young people, encourage them to attend rehab and assist them to make better choices regarding alcohol and drug consumption. Although VACCAs Youth Through Care program provides pre-release supports, they are not specialised in AOD or health. Access to an AOD program/worker while in custody would help build rapport and lead to better engagement with a community based AOD service post release. Looking to programs such as the 'Koorie Drug and Alcohol Program' pilot⁷¹ for key learnings.

Further, the coordination between prisons and alcohol and drug services, including residential rehabilitation needs to be strengthened and streamlined. With integrated referral pathways between service systems including justice, child protection, housing, mental health and family violence. In order to do so, clarity around what services are currently being provided is needed with an understanding of what is working, what is not working, and the cultural safety and quality of service provision. All Aboriginal children and young people sentenced or remanded with substance abuse concerns have a right to access to specialised, culturally safe AOD supports.

A highly qualified, trauma informed workforce

All staff working across the criminal justice systems and broader service delivery sector must be highly qualified and trauma informed in order to appropriately and safely respond to the complex needs of those they support. In VACCAs experience, labour market shortages, recruitment barriers, lack of pay parity and growing sector competition continue to fuel workforce shortages across the ACCO sector.

ACCOs must be resourced and adequately funded to recruit and retain staff with the capacity to focus on workforce development and enhance capability. Including enticing careers with pay parity reflective of cultural load and supports to accommodate the needs of Aboriginal staff. Many jobs in the justice, child and family welfare sector and across the ACCO sector are renowned for being underpaying in comparison to government jobs while also carrying with them a significant emotional toll and cultural load for Aboriginal staff.

Trauma-informed workplace practices must be in place recognising and responding to the needs of staff and in order to reduce burn out. Personal history of mental health, trauma and vicarious trauma can be contributors to staff burnout, compassion fatigue or becoming emotionally triggered. Staff supports, and supervision must always be trauma informed with an understanding of how these experiences impact their own wellbeing and their capacity to meet the needs of children and families. Including understanding and responding to the effects of all types of trauma while also celebrating the strength and resilience of Aboriginal peoples.

An example of trauma informed practice for staff is the de-briefing and reflective practice VACCA's Aboriginal Children's Healing Team (AHT) conducts with a multi-disciplinary team of Therapeutic

⁷¹ <https://www.caraniche.com.au/about-us-menu/indigenous-culture/2-page/87-koorie-drug-alcohol-program-pilot-and-development>



Practitioners. The ACHT is the central point for the development of an integrated, culturally grounded, trauma-informed and healing-driven approach to working with Aboriginal children and families and supporting the VACCA workforce. There is a strong need and demand for this support across the family violence sector and child and family welfare more broadly.

Skilled workforce starts in the curriculum. Universities and TAFEs that receive extra weighting to increase the number of Aboriginal students need to be held accountable to ensure a genuine commitment to building an Aboriginal workforce.

HOW TO ENSURE THAT JUDGES AND MAGISTRATES HAVE APPROPRIATE KNOWLEDGE AND EXPERTISE WHEN SENTENCING AND DEALING WITH OFFENDERS, INCLUDING AN UNDERSTANDING OF RECIDIVISM AND THE CAUSES OF CRIME

Compulsory law degree subjects on Indigenous legal advocacy

There are currently no compulsory Aboriginal legal subjects in either undergraduate or postgraduate law courses in Victoria. This must change so lawyers can better understand the issues facing First Nations populations in the judicial system, including the ongoing impact of invasion and transgenerational trauma and the need for the legal system to be part of systemic reform to address racism.

Mandatory culturally appropriate and culturally informed professional development

All qualified lawyers in Victoria must complete ongoing Continuing Professional Development (CPD). Currently there is one CPD course that is specific to First Nations experiences and interactions with the justice system and that is 'MCV Specialist Courts & Programs CPD Series: Koori Court' - while important to understand the roll of the Koori Court, it is limited. An Aboriginal advocacy subject that covers child protection, juvenile justice, family law and treaty and native title rights would be beneficial for all lawyers and their ability to represent Aboriginal clients across the spectrum of legal issues.

VACCA strongly contends that there must be mandatory culturally appropriate and culturally informed professional development that will help to ensure that all those involved *in* the legal profession has an informed understanding of the impact of colonisation invasion and intergenerational trauma on over-representation of Aboriginal peoples in the criminal justice system.

VACCA RECOMMENDATIONS

1. For all policy reform to the criminal justice system to align with the new Victorian Closing the Gap Implementation Plan
 - a. Legislative reform including to the Bail Act, sentencing legislation, and the new Mental Health Act and new Youth Justice Act to require consideration of the impact of systemic racism, intergenerational trauma and disadvantage
2. For Government to take immediate action to meaningful implement all recommendations of the Royal Commission into Aboriginal Deaths in Custody
3. Greater investment in ACCOs to deliver and expand early intervention, prevention and diversionary programs to address risk factors contributing to offending behaviours
 - a. Transfer care and custody of Aboriginal children and young people to ACCOs
 - b. Establish a post release, crisis accommodation and support service in the West, with a particular focus on Aboriginal women leaving prison and their children
 - c. For VACCA to be funded to provide an Aboriginal Victims Assistance Program (VAP), given the breadth of our service delivery and our support of Aboriginal children, young people and adults who have experienced family violence and sexual abuse
4. Adopt culturally therapeutic, trauma informed models of care, recognising the importance of connecting to culture and healing
 - a. Provision of specialised, culturally appropriate health care in custodial settings for Aboriginal children, young people and adults with mental health, disabilities and/or substance abuse issues
 - b. Establish minimum cultural standards across the mainstream service delivery sector
 - c. Create and transform workplace practices to be trauma informed and culturally safe for staff and clients
 - d. Mandatory Aboriginal Family Violence training for Victoria Police, with a cultural lens to family violence identification and response
5. Improve the safety and inclusivity of the LGBTQIA+ Aboriginal community across police and custodial services with training and policy reform
6. Create a more holistic, coordinated systems, encompassing the impacts of colonisation, intergenerational trauma, experiences of family violence and Stolen Generations
 - a. Fund ACCOs to deliver AOD, health and wellbeing supports in custody
 - b. Greater opportunities for skill building, job readiness and employment pathways pre-release
7. Family centred decision making by introducing a mandatory model of AFLDM in the youth justice system
8. Age specific, community led responses to children, recognising their developmental age
 - a. Raise the age of criminal responsibility from 10 to at least 14 years of age
9. For universities and educational institutions to deliver compulsory subjects on Aboriginal Affairs including Aboriginal legal advocacy

For further information, please contact Sarah Gafforini, Director, Office of the CEO via sarahg@vacca.org.



APPENDIX A

Barreng Moorop Youth Justice Program, an early intervention program that provides wrap around support through integrated and intensive case management support. The program strengthens cultural and community connections and provides access to welfare, housing, family and education services. VACCA is currently delivering the program in partnership with the Jesuit Social Services and the Victorian Aboriginal Legal Service (VALS)

Youth Through Care: works to reduce reoffending of Aboriginal young people through an intensive, holistic, client-centred, culturally appropriate and trauma informed model with a strong connection to family and Country. The model is based on offering support through intensive, individual case management from entry into detention and then for up to 24 months or as required during the post release period

Local Justice Worker Program: provides culturally appropriate support to Aboriginal adults who are subject to community corrections or parole orders or have outstanding fines or warrants. The primary functions of the program are to work with Community Corrections Services to provide support to Aboriginal people who are subject to community corrections or parole orders to successfully complete their order, work with the Sheriff's Office to assist clients to successfully resolve their fines and warrants, provide appropriate support and supervision for clients undertaking mandatory community work

Youth Justice Program: This program commenced in August 2020, and similarly to the Local Justice Worker Program, provides critical culturally safe and appropriate supports with a focus on Aboriginal youth in the Southern region. VACCA's Southern youth justice team is currently delivering this program to 29 clients, with an overarching target of 40

Better Futures: helps Aboriginal young people leaving out of home care (or who have exited care) from the age of 15 years and 9 months, to navigate steps towards independence and a rewarding life ahead. The program works with them to connect with family and culture, access practical help when leaving care, connect with their communities and local support. It provides an opportunity for young people to be engaged with a local Aboriginal mentor and to attend community events. Youth advocates and a key worker deliver this program. Although this is not a justice specific service, as further outlined below, we know that young people in and leaving care are disproportionately represented in the justice system

Beyond Survival: delivered across Victorian prisons including Tarrengower and Dame Phyllis Frost Centre Beyond Survival is a 3-day group program that provides trauma informed facilitation of narrative group work for prisoners including yarning circles to support healing and strengthen each person's connectedness to family, community and culture. The program also provides a point of contact upon release for people who have attended the yarning circles to support access to local Aboriginal and non-Aboriginal services and to connect to family, community and culture upon their release and sustain the changes they have made in prison, build their protective factors to maximise effective reintegration into the community and reduce the likelihood of reoffending

Dardee Djeetgun Koorie Women's Diversion program: provides intensive case management, in a culturally and gender appropriate manner to support Aboriginal women and their family where appropriate for up to 12 months. The program adopts a holistic and trauma informed approach to addressing the underlying factors which contribute to the women's offending or reoffending. Support is provided to Aboriginal women in the Morwell area and Northern Melbourne on court orders, bail, community corrections and parole orders.